

ORDINANCE NO. 2020-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT FOR THE NAPA AIRPORT CORPORATE CENTER PROJECT APPROVALS TO EXTEND THE TIME PERIOD FOR ACTING ON THE APPROVALS FOR FIVE YEARS FOR THE PROJECT LOCATED AT THE CORNER OF SOUTH KELLY ROAD AND STATE ROUTE 29, WITHIN THE BOUNDARIES OF THE NAPA AIRPORT INDUSTRIAL AREA SPECIFIC PLAN (APN 057-090-086)

WHEREAS, the Development Agreement Law (Gov. Code § 65864 et seq.) authorizes the City of American Canyon ("City") to enter into agreements for the development of real property with any party having a legal or equitable interest in such property to establish certain development rights in such property for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements can assure property owners that they may proceed with projects as approved by the City and that those approvals will not be modified (consistent with the legal principles of vesting) during the period covered by said agreements. The City is equally assured that elements of the project with peculiar and specific public interests are achieved and that its local land use policies are advanced; and

WHEREAS, the City has enacted Municipal Code Title 19, Chapter 19.47 to implement Government Code section 65865(c), establishing the procedures and requirements for the consideration of development agreements to carry out the City's planning policies; and

WHEREAS, Napa Airport Corporate Center I, LLC, has submitted an application for a Development Agreement to extend the term of the approved Napa Airport Corporate Center ("NACC") Project Approvals consisting of: 1) a Tentative Subdivision Map for subdivision of the Property into five lots, including public road rights-of-way; and, 2) Conditional Use Permits and Design Permits approving a Conditional Use Permit for Buildings A and B on Lots 1 and 2; a Conditional Use Permit and Design Permit for Building E on Lot 4; a Conditional Use Permit and Design Permit for Building G on Lot 5); and, 3) modifications of the Conditional Use Permit/Design Permit for Building E on Lot 4 and Building G on Lot 5, which would increase the area of preserved wetlands on Lot 4 and Lot 5, reduce the square footage and building site coverage of Building E and Building G, adjust parking and loading consistent with the revised buildings and reduce overall development on the Property from approximately 261,541 square feet to approximately 193,741 square feet (collectively, the "Project Approvals"); and

WHEREAS, the Project Approvals will expire prior to the time when the Project Sponsor could initiate construction of the Project based on the need to obtain permits from the Regional Water Quality Control Board and the U.S. Army Corps of Engineers prior to obtaining City construction permits; and

WHEREAS, the Development Agreement would extend the Project Approvals for 5 years under the Development Agreement; and

WHEREAS, on July 31, 2018, the City Council conducted a duly noticed public hearing to evaluate the NACC Project and consider certification of the NACC Project Final Environmental Impact Report ("Final EIR"; State Clearinghouse No. 2014122005) and heard all public speakers and considered written materials in the record, including the staff report, and oral testimony given at the hearing; and

WHEREAS, on July 31, 2018 the City Council certified the Final EIR as adequate to address environmental impacts associated with the NACC Project, pursuant to the requirements of the California Environmental Quality Act ("CEQA"; Pub. Res. Code Sections 21000, et seq.) and the CEQA Guidelines (Cal. Code Regs,

Title 14, Section 15000, *et seq.*), adopted a Statement of Overriding Considerations for the project, and adopted the Mitigation Monitoring and Reporting Program, based on all of the evidence in the record and presented at the hearing, as set forth in City Council Resolution 2018-85; and approved the Project Approvals by adopting City Council Resolutions 2018-86, 2018-87, 2018-88, and 2018-89; and

WHEREAS, the City caused the 2020 Addendum to the Napa Airport Corporate Center Project Final EIR (the "Addendum"), included and incorporated by reference in this Ordinance as Exhibit A, to evaluate the reduced project square footage, expansion of the preserved wetlands on the project site, and whether approval of the Development Agreement had the potential to present any significantly increased or new impacts over the project impacts evaluated and identified in the Final EIR or whether there was any new information of substantial importance, which was not known and could not have been known at the time the Final EIR was certified as complete, that would require additional environmental review pursuant to Public Resources Code Section 21166 and the CEQA Guidelines Sections 15162-15164; and

WHEREAS, on June 25, 2020, the Planning Commission conducted a duly noticed public hearing on the proposed Development Agreement and heard all public speakers and considered all material in the record including written materials, the staff report, and oral testimony given at the meeting; and

WHEREAS, on June 25, 2020, the Planning Commission unanimously adopted Resolution No. 2020-07 recommending that the City Council determine the Final EIR and Addendum provide the necessary environmental review as required by CEQA and the CEQA Guidelines for the proposed Development Agreement and approve the Development Agreement, included as Exhibit B to this Ordinance; and

WHEREAS, the City Council heard all public speakers and considered all material in the record including written materials, the staff report, and oral testimony given at a duly noticed public hearing on July 21, 2020 as well as the findings and recommendations of the City Planning Commission; and

WHEREAS, the City Council has heard all public speakers and considered all material in the record including written materials, the staff report, and oral testimony presented at the public hearing on July 21, 2020, in addition to hearing all public speakers and considering all material in the record including written materials, the staff report, and oral testimony presented on August 4, 2020, as well as the findings and recommendations of the City Planning Commission.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: This Ordinance incorporates by this reference, the Development Agreement attached hereto as Exhibit B.

SECTION 2: This Ordinance is adopted under the authority of the Development Agreement Law (Gov. Code § 65864 *et seq.*) and the City Development Agreement Standards (American Canyon Municipal Code Title 19, Chapter 19.47).

SECTION 3: The City Council makes the following Findings to Approve the Development Agreement in accordance with American Canyon Municipal Code Section 19.47.080:

- A. The proposal for which the Development Agreement is requested conforms with the maps and policies of the general plan and any applicable specific, community, or area plans because:**

When approving the Project Approvals in 2018, the City Council found the NACC Project consistent with the City's General Plan and the Napa County Napa Valley Business Park Specific Plan, which applies to the subject property. The Development Agreement will not change the project as it was approved in 2018 subject to the minor modifications approved in Exhibits G and H attached to the Development Agreement. The Development Agreement extends the time period within which the Project Approvals may be exercised and will revise the timing requirement for dedications/easements for certain rights-of-way required to implement the widening of South Kelly Road and related intersections improvements at South Kelly and SR-29 and South Kelly and Devlin Road.

- B. The proposal for which the development agreement is requested complies with the requirements of California Government Code Sections 65865 through 65869.5, and any other applicable state law, because:**

The property that will be subject to the Development Agreement is located within the municipal boundaries of the City; and the Development Agreement will be between the City and the owner of the property;

- C. The proposal for which the development agreement is requested is consistent with the zoning ordinance and all applicable codes and ordinances because:**

When approving the Project Approvals in 2018 and as set forth in the City Council Project Approval Resolutions 2018-86, 2018-87, 2018-88, and 2018-89, the City Council found the NACC project consistent with the Zoning Ordinance; the other goals and purposes for which Municipal Code Title 19, Chapter 19.47 was enacted by the City and the City's other applicable codes and ordinances.

- D. The proposal for which the Development Agreement is requested will not be detrimental to or cause adverse effects on adjacent property owners, residents, or the general public because:**

The City Council made findings when approving the Project Approvals that the proposed development would not be detrimental to or cause adverse effects on adjacent property owners, residents, or the general public, and the extension of time within which the property owner may exercise the Project Approvals will not cause adverse effects.

- E. The proposal for which the Development Agreement is requested provides clear and substantial benefit to the residents of the city because:**

Approval of the proposed Development Agreement will extend the Project Approvals for five years. The extension will eliminate uncertainty in the City's land use planning for the project site and its vicinity, and will provide for orderly growth and development consistent with the City's General Plan, the Napa County Napa Valley Business Park Specific Plan and other policies and programs; will provide critical public benefits; and will otherwise achieve the goals and purposes for which Municipal Code Title 19, Chapter 19.47 was enacted by the City.

SECTION 4: The City Council finds that the Final EIR certified by City Council Resolution 2018-85 and the Addendum, incorporated by this reference, provide the necessary environmental review as required by CEQA and the CEQA Guidelines for the proposed Development Agreement.

SECTION 5: The City Council approves the Development Agreement included as Exhibit B to this Ordinance and authorizes the City Manager to finalize and execute the Agreement.

SECTION 6: The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 21st day of July, 2020, by the following vote:

AYES: Council Members Aboudamous, Joseph, Leary, Vice Mayor Oro, and Mayor Garcia

NOES: None

ABSTAIN: None

ABSENT: None

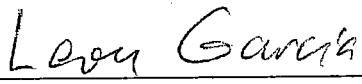
The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 4th day of August, 2020, by the following vote:

AYES: Council Members Aboudamous, Joseph, Leary, and Mayor Garcia

NOES: None


ABSTAIN: None

ABSENT: Vice Mayor Oro



Leon Garcia, Mayor

ATTEST:



Suellen Johnston, CMC, City Clerk

APPROVED AS TO FORM:



William D. Ross, City Attorney

EXHIBIT A - 2020 Addendum to the Napa Airport Corporate Center Project Final EIR

EXHIBIT B – Draft NACC Development Agreement

ATTACHMENT 1 EXHIBIT A

Addendum Napa Airport Corporate Center Project Final EIR 2020 Proposed Minor Modifications and Development Agreement

1. Background – 2018 Approvals

On July 31, 2018, the City Council certified the Final EIR for the Napa Airport Corporate Center Project and adopted a Mitigation Monitoring and Reporting Program for the Project. (City Council Resolution 2018-85). The Draft EIR evaluated a Project consisting of 571,808 square feet of warehouse space. In the Final EIR, the proposed development was reduced to 515,621 square feet.¹

At the time of the 2018 Project approvals, the lot west of Devlin Road, which was proposed for a 254,080 building, had been sold to a third party and removed from the Project. On July 31, 2018, the City Council approved 261,541 square feet of warehouse development on four lots (Lots 1, 2, 4 and 5) located east of Devlin Road.

The 2018 approvals included: (a) the tentative subdivision map; (b) the conditional use permit for Buildings A and B on Lots 1 and 2; (c) the conditional use permit and design permit for Building E on Lot 4; and (d) the conditional use permit and design permit for Building G on Lot 5. (Referred to below as “the 2018 approvals.”)

2. 2020 Approvals

Following the 2018 City approval, the project sponsor has been working to obtain approvals from the Regional Water Quality Board and the U.S. Army Corps of Engineers for the permits necessary to fill a portion of the wetlands on the Project site. As a result of these permitting processes, the Project has been modified to increase the area of preserved wetlands and reduce building square footage and building site coverage.

The project sponsor has applied to: (a) extend the life of the tentative map; (b) approve a minor modification of the conditional use permit/design permit for Building E on Lot 4; (c) approve a minor modification of the conditional use permit/design permit for Building G on Lot 5; (d) adopt a development agreement and implementing ordinance to extend the life of the 2018 and 2020 Project approvals to five (5) years in exchange for certain public benefits. (Referred to below as “the proposed 2020 approvals.”)

The proposed 2020 approvals will reduce the size of the buildings on Lots 4 and 5. Building E on Lot 4 will be reduced from 67,547 square feet to 52,956 square feet. Building site coverage on Lot 4 will be reduced from 23.04% to 20.75%. Building G on Lot 5 will be reduced from 146,929 square feet to 93,720. Building site coverage on Lot 5 will be reduced from 29.54% to 16.55%

Overall, under the proposed 2020 approvals, the Project square footage will be reduced from 261,541 square feet under the 2018 approvals to 193,741 square feet for a total reduction of 67,800 square feet.

¹ The EIR also evaluated a development option referred to as “Option 2,” which included a gas station, truck refueling, convenience market and quick serve restaurant on a portion of Lot 1. The 2018 approvals did not include Option 2 and it is not included in the 2020 approvals.

Wetland preservation on the site will increase from 1.08 acres under the 2018 approvals to 2.84 acres. Wetland impacts will be reduced from 2.41 acres under the 2018 approvals to 0.66 acres.

3. California Environmental Quality Act (CEQA) Requirements

Under CEQA, when an EIR has been prepared, no subsequent or supplemental EIR shall be required by the lead agency or by any responsible agency unless: (a) substantial changes are proposed in the project or substantial changes occur in the circumstances under which the project is undertaken that will require major revisions of the EIR due to new significant impacts or a substantial increase in the severity of previously identified significant effects; or (b) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, shows that the project will have one or more new or substantially more severe significant effects than shown in the EIR, that mitigation measures or alternatives previously found not to be feasible would be feasible and would substantially reduce one or more significant effects of the project but the project proponents decline to adopt the mitigation measure or alternative, or mitigation measures or alternatives which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects, but the project proponents decline to adopt the mitigation measure or alternative.

The Project changes significantly reduce the size of the Project analyzed in the EIR and increase wetland preservation on the Project site. These proposed Project modifications will reduce the Project impacts identified in the EIR. Thus, the Project changes do not result in new or more severe significant environmental effects than those identified in the EIR. There are no changed circumstances that will result in new or more severe significant environmental effects. None of the requirements for a subsequent or supplemental EIR have been met for the Project.

4. EIR Topics

The Project EIR assessed Project impacts based on 571,808 square feet of warehouse development on five lots. Although the Final EIR reduced the Project to 515,621 square feet, the analysis of Project impacts was not revised in the Final EIR to reflect the reduced square footage and instead continued to rely on the larger square footage from the Draft EIR thereby providing a conservative analysis.

The proposed 2020 approvals will reduce the Project to 193,741 square feet of warehouse development on four lots. This reduction is 378,067 square feet less (66% less) than evaluated in the Draft EIR. Additionally, the proposed 2020 approvals will increase the wetland preservation on the Project site from 1.08 acres to 2.84 acres. Wetland impacts will be reduced from 2.41 acres to 0.66 acres.

The proposed minor modifications to the conditional use permit/design permit approvals for Lots 4 and 5, the extension of the tentative map, and the terms of the proposed Development Agreement will not result in new physical development or impacts.

As demonstrated below, the proposed 2020 approvals will not result in new or increase impacts and are covered by the analysis, impact conclusions, and mitigation measures in the Project EIR.

a. *Aesthetics, Light and Glare*: The Project will be substantially smaller than the development assumed in the EIR. As described above, the Project square footage, site coverage, and size of the overall Project site (removal of the lot on the west side of Devlin Road) will be reduced. Additionally, the Project will increase the area of preserved wetlands by 1.76 acres from 1.08 acres to 2.84 acres. These changes will reduce the less than significant visual impacts. The Project will be subject

to the lighting mitigation measure (AES-3) and this impact will remain less than significant. Thus, the proposed 2020 approvals are within the scope of the Project EIR analysis and conclusions

b. *Air Quality/Greenhouse Gas Emissions:* The analysis and conclusions in the Project EIR were based on development of 571,808 square feet of warehouse uses on the Project site. The significant reduction in Project square footage to 193,741 square feet under the proposed 2020 approvals will reduce both the construction and operational (traffic and on-site uses) emissions identified in the Project EIR. Thus, the proposed 2020 approvals are within the scope of the EIR analysis and conclusions. Additionally, the adopted mitigation measures will continue to apply to the Project.

c. *Biological Resources:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking and landscaping. The proposed 2020 approvals will reduce the development on Lots 4 and 5, where the existing wetlands are located, in terms of square footage and site coverage. As described above, the proposed 2020 approvals will increase the wetland preservation on the site from 1.08 acres to 2.84 acres. Wetland impacts will be reduced from 2.41 acres to 0.66 acres. The proposed 2020 approvals will reduce the biological impacts identified in the Project EIR. Thus, the proposed 2020 approvals are within the scope of the biological resources impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measures will continue to apply to the Project.

d. *Cultural Resources:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. The proposed 2020 approvals, which significantly reduce the Project square footage, will reduce the site disturbance on Lots 4 and 5 and otherwise will be constructed on areas of the Project site assumed to be developed. No new or increased excavation or grading will occur. Thus, the proposed 2020 approvals are within the scope of the cultural resources impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measures will continue to apply to the Project.

e. *Geology, Soils, and Seismicity:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. The proposed 2020 approvals significantly reduce the Project square footage and reduce the building site coverage on Lots 4 and 5. All construction activities will occur on areas of the Project site assumed to be developed. No new, increased, or different excavation, grading or construction activities or techniques will occur in connection with the construction of the Project. Thus, the proposed 2020 approvals are within the scope of the geology, soils and seismicity impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measures will continue to apply to the Project.

f. *Hazards and Hazardous Materials:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. The proposed 2020 approvals, which reduce the Project square footage and the site coverage on Lots 4 and 5, will be constructed on an areas of the Project site assumed to be developed. No new, increased, or different excavation, grading or construction activities will occur in connection with construction of the Project. The Project uses remain the same as the uses evaluated in the Project EIR and approved in the 2018 approvals. Thus, the proposed 2020 approvals are within the scope of the hazards and hazardous materials impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measures will continue to apply to the Project.

g. *Hydrology and Water Quality:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. The proposed 2020 approvals will be constructed on areas of the Project site assumed to be developed. The reduced development and reduced site coverage on Lots 4 and 5 will reduce potential hydrology and water quality impacts. The proposed 2020 approvals will be subject to the requirements identified in the Project EIR for construction and post-construction drainage and water quality protection. Thus, the proposed 2020 approvals are within the scope of the hydrology and water quality impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measures will continue to apply to the Project.

h. *Land Use and Plans:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. The proposed 2020 approvals will be consistent with the land uses analyzed in the Project EIR and allowed by the 2018 approvals. No new or different uses are proposed. Thus, the proposed 2020 approvals are within the scope of the land use and plans impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measure will continue to apply to the Project.

i. *Noise:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. Construction and operation of the proposed 2020 approvals will have the same types of noise impacts as analyzed in the Project EIR, but those impacts will be reduced given the reduction in square footage and removal of one lot from the Project site. No new or different construction equipment or activities will be required for the construction and operation of the Project under the proposed 2020 approvals. Additionally, the smaller Project will generate reduced operational noise and reduced noise from traffic due to the reduction in vehicle trips. Thus, the proposed 2020 approvals are within the scope of the noise impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measures will continue to apply to the Project.

j. *Public Services and Utilities:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. The proposed 2020 approvals, which reduce the Project square footage to 193,741 (a 66% reduction), will reduce demand for fire and police services and result in reduced wastewater generation, water use, and solid waste generation. Thus, the proposed 2020 approvals are within the scope of the public services and utilities impact analysis and conclusions in the Project EIR. Additionally, the adopted mitigation measures will continue to apply to the Project.

k. *Transportation:* The analysis and conclusions in the Project EIR assumed the Project site would be developed with 571,808 square feet of uses and associated infrastructure, parking, and landscaping. The proposed 2020 approvals, which reduce the Project square footage to 193,741, will significantly reduce the Project's trip generation.

The Project EIR determined that the proposed 571,808 square feet of warehouse development would generate 2,212 daily trips, with 215 trips in the AM peak hour and 182 trips in the PM peak hour. (Draft EIR, Table 3.11-7: *Project Trip Generation Summary*, p. 3.11-32.) The Project EIR impact conclusions and mitigation measures are based on the impact assessment using these trip generation numbers.

Fehr and Peers, the EIR transportation consultant, has determined that the proposed 2020 approvals will generate 871 daily trips, which is 1,341 fewer daily trips (60% decrease) than projected and analyzed

in the Project EIR. The proposed 2020 approvals will generate 119 AM peak hour trips, which is 96 fewer trips (45% decrease) than projected and analyzed in the Project EIR. The proposed 2020 approvals will generate 91 trips in the PM peak hour, which is 91 fewer trips (50% decrease) than projected and analyzed in the Project EIR. (*Napa Airport Center Project – Trip Generation Update* Memorandum from Bob Grandy, Fehr and Peers to Tim Schaedler, Panattoni Development Company, dated May 27, 2020.)

Fehr and Peers also compared the trip generation of the 2018 approvals to the proposed 2020 approvals. The proposed 2020 approvals will generate 256 fewer daily trips than the 2018 approvals (1,127 trips for the 2018 approvals compared to 871 trips for the proposed 2020 approvals). The AM and PM peak hour trips also will be reduced with the proposed 2020 approvals in comparison to the 2018 approvals. The AM peak hour trips will be reduced from 140 trips to 119 trips. The PM peak hour trips will be reduced from 110 trips to 91 trips. (*Napa Airport Center Project – Trip Generation Update* Memorandum from Bob Grandy, Fehr and Peers to Tim Schaedler, Panattoni Development Company, dated May 27, 2020.)

The Project EIR identified the Project's contribution to the cumulative traffic impacts on SR 29 and at other locations. With the daily trip generation reduced by 60% under the proposed 2020 approvals, the Project's contribution to these impacts will be reduced. The City has also received a design permit application from the project sponsor of the Napa Logistics Phase 2 Project (a nearby project considered in the cumulative impact scenario in the Project EIR), which will reduce the approved development of 2,271,000 square feet by approximately 1,000,000 square feet. The reduced development associated with the Project and the Napa Logistics Phase 2 Project will collectively reduce the expected traffic generation from the airport industrial area of American Canyon on SR 29 and other roadways in the area of these projects.

Since certification of the Project EIR, the City has certified two other major EIRs: Watson Ranch Specific Plan EIR (WRSP EIR) and the Broadway District Specific Plan EIR (BDSP EIR). These two EIRs also evaluate the cumulative traffic impacts in American Canyon, including cumulative traffic impacts on SR 29.

The BDSP EIR uses a methodology for evaluating cumulative impacts on SR 29 that relies on tiering from the American Canyon General Plan Circulation Element EIR and references four roadway segments, including two roadway segments of SR 29 (SR 29 north of Kelly Road to north of American Canyon Road and SR 29 south of American Canyon Road). The BDSP EIR found significant cumulative impacts on both roadway segments of SR 29.

The WRSP EIR evaluates a mixed use (residential/commercial) project located east of Highway 29. Trip distribution patterns from the WRSP project will be different from the trip distribution for the Napa Airport Corporate Center Project. Consequently, the traffic study for the WRSP EIR evaluated an overlapping, but different, set of intersections than the Project EIR. Generally, both EIRs found the respective projects contribute to significant cumulative impacts at numerous intersections along SR 29 consistent with the trip distribution for each project.

The WRSP Final EIR included a comprehensive explanation of the cumulative traffic forecasts along SR 29 in and near American Canyon and the plans for local, regional, and state improvements to SR 29. Cumulative traffic includes American Canyon trips from existing and foreseeable development and trips from regional through traffic. This explanation describes the City's efforts to implement improvements within its jurisdiction to improve traffic flow on SR 29, including the implementation of the Devlin Road extensions and the Newell Drive extension, which will provide parallel roadway capacity west (Devlin

Road) and east (Newell Road) of SR 29. Additionally, the BDSP will extend Main Street from Rio Del Mar to Donaldson Way on the east side of SR 29. (WRSP Final EIR, Chapter 10, pp. 10-1-10-8, which are incorporated herein by reference.)

Consistent with the WRSP EIR, the American Canyon General Plan Circulation Element EIR, and the BDSP EIR, the Project EIR acknowledges the significant cumulative impacts along SR 29, the Project's contribution to those impacts, and the local, regional, and state plans for improvements. The mitigation measures identified in the Project EIR remain applicable to the Project.

5. COVID-19

On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California as a result of the threat of the COVID-19. Governor Newsom and other state and local agencies have issued various orders, directives, and policies to address the COVID-19 pandemic and the health, safety and welfare of California residents, including a stay at home mandate and provisions intended to provide for the continued delivery of necessary goods and services.

Executive Order N-33-20, which includes the stay at home mandate, provided that residents working in 13 critical infrastructure sectors identified by the federal government may continue working, because of the importance of these sectors to California's health and well-being. The State Public Health Officer has identified the following sectors as essential critical infrastructure with essential workers who should continue reporting to work as normal: communications and information technology; chemical; critical manufacturing; defense industrial base; emergency services; energy; financial services; food and agriculture; hazardous materials; healthcare/public health; community-based government operations and essential functions; transportation and logistics; and water and wastewater. These sectors have been identified as critical infrastructure to allow state, local, tribal, and industry partners to work to protect communities and ensure continuity of functions critical to public health and safety as well as economic and national security.

Under this Order, local governments, including the City of American Canyon and Napa County, have continued to provide critical functions and services to the public. Many critical workers are allowed to continue working under the Order. These functions and services include, among others, law enforcement, fire protection, public safety, emergency management, emergency medical technicians, public works, health care, and transportation. Additionally, local government agencies have emergency plans that provide appropriate procedures and actions to implement during emergency situations such as the COVID-19 pandemic. These plans address many of the concerns associated with the consequences of the pandemic, such as the continued provision of emergency and essential services.

Private sector businesses also continue to provide critical infrastructure functions and services such as food and transportation among many others. Firms that enable logistics operations, including cooling storage, packaging and distributing products for wholesale or retail sale or use are identified as essential. Roadways are considered part of the essential transportation system sector.

The COVID-19 pandemic and the stay in place Order and other orders and policies have resulted in certain social and economic impacts. Whether these social and economic impacts will result in any significant, adverse physical environmental impacts has not been documented and it would be speculative to make such determinations as there is no valid, reliable evidence available to the City at this time. A number of federal, state, and local programs (e.g., state unemployment, expansion of

workers covered by the unemployment program, the federal supplement for unemployment benefits, the CARE Act, pandemic relief for migrant workers, and various locally-enacted residential and commercial rent relief) are available to assist individuals and businesses with funding to offset the economic impacts of the stay at home mandate.

Certain physical impacts resulting from the stay at home Order have been beneficial, including a substantial reduction in traffic and related impacts such as noise reduction and vehicle air quality and greenhouse gas emission reductions. Additionally, the continued provision of critical infrastructure functions and services, including emergency services, ensure that no significant adverse impacts would occur from the COVID-19 pandemic with respect to public services, safety, or utilities. The COVID-19 pandemic and stay at home Order would not adversely affect resources related to geology, hydrology, hazards, cultural resources, aesthetics, land use, biology, energy, and other topics, because the pandemic has not necessitated significant construction activities.

In May, the state and local jurisdictions have been implementing phased reopening plans for certain employment and recreation sectors subject to implementation of appropriate protocols to reduce the potential for spreading the virus. It is expected that a COVID-19 vaccine will be available in the foreseeable future. Buildout of the Project and full occupancy of the site is not expected until after the current state of emergency has expired.

If construction is initiated prior to the availability of a COVID-19 vaccine, construction activities would be subject to various safety measures necessary to reduce the potential for the spread of the virus. These measures will be addressed in a project construction site safety plan and could include, among other measures, social distancing requirements, masks for all workers, daily worker screening for potential symptoms, disinfecting protocols for all shared surfaces, avoidance of tool sharing, and provision of sufficient hand sanitizer for all workers.

Therefore, the COVID-19 pandemic will not result in new significant impacts or substantial increases in previously identified significant impacts associated with the Project. No new or revised mitigation measures are required as a result of the COVID-19 pandemic. Thus, no revisions in the Project EIR are required.

6. Conclusion

The proposed 2020 approvals are within the scope of the Project EIR because the construction and operation of the proposed buildings were part of the development analyzed in the Project EIR and because the Project square footage will be substantially reduced (66% reduction) from the square footage analyzed in the EIR. Thus, the Project will result in reduced impacts in comparison to the impacts identified in the Project EIR. The Project remains subject to the applicable conditions of approval associated with the 2018 approvals and the requirements of the Mitigation Monitoring and Reporting Program. Based on the information presented in this memorandum, no further environmental review is required.

ATTACHMENT EXHIBIT B

Recording requested by

And when recorded, mail to

APN: 057-090-086

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF AMERICAN CANYON AND
NAPA AIRPORT CORPORATE CENTER I, LLC**

EFFECTIVE DATE

September 3, 2020

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EXHIBITS

EXHIBIT A. Legal Description of Property

EXHIBIT B. City Council Resolution No. 2018-86

EXHIBIT C. City Council Resolution No. 2018-87

EXHIBIT D. City Council Resolution No. 2018-88

EXHIBIT E. City Council Resolution No. 2018-89

EXHIBIT F. City Council Resolution No. 2018-85

EXHIBIT G. Minor Modification No. PL20-016

EXHIBIT H. Minor Modification No. PL20-017

EXHIBIT I. 2020 Addendum to the Napa Airport Corporate Center Project Final EIR

**Development Agreement By and Between the City of American Canyon and Napa Airport
Corporate Center I, LLC**

This Development Agreement (“Agreement”) is made and entered into on _____, by and between the City of American Canyon (“City”), a California General Law City and Napa Airport Corporate Center I, LLC, a Delaware Limited Liability Company (“Owner”), pursuant to the authority of California Government Code Title 7, Division 1, Chapter 4, Article 2.5, section 65864 *et seq.*, and City Municipal Code Title 19, Chapter 19.47.

RECITALS

1. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development, and to reduce the waste of resources, the Legislature adopted the Development Agreement Law (Gov. Code § 65864 *et seq.*).
2. The Development Agreement Law authorizes the City to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements can assure property owners that they may proceed with projects as approved by the City and that those approvals will not be modified (consistent with the legal principles of vesting) during the period covered by said agreement. The City is equally assured that elements of the project with peculiar and specific public interests are achieved and that its local land use policies are advanced.
3. The City has enacted Municipal Code Title 19, Chapter 19.47 as an implementing regulation of Government Code section 65865(c), establishing the procedures and requirements for the consideration of development agreements to carry out the City's planning policies.
4. The Owner owns in fee that certain real property located in the City described in Exhibit A, attached hereto and incorporated herein by reference (“Property”).
5. On July 31, 2018, the Owner obtained approval from the City for: 1) a Tentative Subdivision Map (Exhibit B, City Council Resolution No. 2018-86, attached hereto and incorporated herein by reference) for subdivision of the Property into five lots, including public road rights-of-way; and, 2) Conditional Use Permits (Exhibit C, City Council Resolution No. 2018-87, attached hereto and incorporated herein by reference) approving a Conditional Use Permit for Buildings A and B on Lots 1 and 2); (Exhibit D, City Council Resolution No. 2018-88 attached hereto and incorporated herein by reference approving a Conditional Use Permit and Design Permit for Building E on Lot 4); (Exhibit E City Council Resolution No. 2018-89 approving a Conditional Use Permit and Design Permit for Building G on Lot 5 attached hereto and incorporated herein by reference). These approvals allowed development of the Property with up to 261,541 square feet of industrial uses (warehouse, distribution, and/or E-commerce with accessory retail/office uses), and allowed the relaxation of certain lot size, front yard setbacks, and side yard landscaping requirements. The City conditioned the approval of the Project on the Owner's agreement to provide public infrastructure and other benefits to the City.

On July 10, 2020, the Owner obtained approvals from the City for modifications of the Conditional Use Permit/Design Permit for Building E on Lot 4 and Building G on Lot 5, which increased the area of preserved wetlands on Lot 4 and Lot 5, reduced the square footage and building site coverage of Building E and Building G, adjusted parking and loading consistent with the revised buildings and reduced overall development on the Property from approximately 261,541 square feet to approximately 193,741 square feet (Exhibit G, Minor Modification No. PL20-106; Exhibit H, Minor Modification No. PL20-017, attached hereto and incorporated herein by reference). The approvals described in this paragraph collectively constitute the Project.

6. The Owner has a desire to extend the life of the Project approvals described above in Recital No. 5 (Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit G, and Exhibit H) and have certainty to develop this Project. The City has a desire and a need for the public improvements and other benefits associated with the Project.

7. The City has determined that the development of the Project, in accordance with the terms and conditions of the City's General Plan, the Napa County Airport Industrial Area Specific Plan (now known as the Napa County Napa Valley Business Park Specific Plan), Zoning Ordinance, the City Subdivision Ordinance, and this Agreement, will eliminate uncertainty in the City's land use planning for, and will provide for orderly growth and development consistent with the City's General Plan, other policies and programs, and the Napa County Airport Industrial Area Specific Plan (now known as the Napa County Napa Valley Business Park Specific Plan), will provide critical public benefits, and will otherwise achieve the goals and purposes for which Municipal Code Title 19, Chapter 19.47 was enacted by the City.

8. The Owner recognizes that it is being afforded greater latitude in exchange for agreeing to contribute greater public benefits than could otherwise be required, and does so freely and with its full knowledge and consent.

9. The City recognizes that the Project Sponsor and/or its predecessors-in-interest have contributed substantial public benefit in advance of any development on the Project Site, including but not limited to:

(a) The Project Sponsor consented to the inclusion of the Property in the Green Island Road Community Facilities District.

(b) The Project Sponsor funded and constructed certain Devlin Road improvements. These improvements have provided critical infrastructure for the City of American Canyon.

10. The City examined the environmental effects of the Project (as defined in this Agreement) in an Environmental Impact Report prepared pursuant to the California Environmental Quality Act ("CEQA," Pub. Res. Code § 21000 *et seq*). In addition, the 2020 Addendum analyzing the environmental effects of this Agreement pursuant to CEQA was prepared (Exhibit I attached hereto and incorporated herein). The City Council found that the environmental impacts of the Project were adequately considered in the certified Final Environmental Impact Report ("FEIR") for the Napa Airport Corporate Center Project (State Clearinghouse No. 2014122005) as set forth in Exhibit F attached hereto and incorporated herein

by reference, City Council Resolution No. 2018-85, which adopted findings, a Mitigation Monitoring and Reporting Program, and a statement of overriding considerations for the Project. The City determined that, in connection with the approval of this Agreement, and the Addendum, there have been no Project changes, changed circumstances, or new information which would result in new, or substantially more severe, environmental impacts. The City Council found that approval of this Agreement based on the FEIR and the Addendum complies with CEQA.

11. On June 25, 2020, after conducting a duly noticed public hearing on this Agreement pursuant to City Municipal Code Title 19, Chapter 19.47, Section 060, the Planning Commission unanimously recommended that the City Council approve this Agreement based on the findings and determinations set forth in Planning Commission Resolution 2020-07.

12. On July 21, 2020, the City Council held a duly noticed public hearing on this Agreement pursuant to City Municipal Code Title 19, Chapter 19.47, Section 070. The City Council has reviewed and approves this Agreement. The City Council finds, pursuant to the requirements of Government Code section 65867.5, that this Agreement is consistent with the City's General Plan and the Napa County Napa Valley Business Park Specific Plan and readopts by reference its findings to this effect in Exhibits B, C, D, E, G, and H for the approval of the Project. The City Council finds that Agreement complies with the requirements of Government Code sections 65865 through 65869.5. The City Council also finds that this Agreement is consistent with City Municipal Code Title 19, specifically Chapter 19.47, its Zoning Ordinance, its Subdivision Ordinance, and all other applicable City ordinances, rules, and regulations, and that its implementation is in the best interest of the City and the health, safety, and welfare of its residents. Additionally, the City Council finds that the Project and this Agreement provide clear and substantial public benefits to the residents of the City. The City has considered and acted upon this Agreement by introducing Ordinance No. __ (“Adopting Ordinance”) on July 21, 2020 authorizing execution of this Agreement by the City. A second reading of the Adopting Ordinance was conducted on August 4, 2020 when the City Council adopted the Adopting Ordinance.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Law and City Municipal Code Title 19, Chapter 19.47, and in consideration of the mutual covenants and promises of the City and Owner herein contained, the parties hereto agree as follows:

ARTICLE 1
TERM AND DEFINITIONS

Section 1.1 The Property.

Owner owns in fee the parcel of real property as described in Exhibit A. Any reference to the “Property” in this Agreement is solely for the purpose of identifying the legal parcel or parcels on which the entitlements granted by the City for the Project are located.

Section 1.2 The Project.

The Project is the development and use of the Property consistent with the Tentative Subdivision Map approved in City Council Resolution No. 2019-86 (Exhibit B) and the Conditional Use Permits and Design Permits approved in City Council Resolution No. 2018-87 (Exhibit C), City Council Resolution No. 2018-88 (Exhibit D), and City Council Resolution No. 2018-89 (Exhibit E), Minor Modification No. PL20-016 (Exhibit G), and Minor Modification No. PL20-017 (Exhibit H) as further described in Section 3.1, including any modifications authorized by Subsequent Approvals.

Section 1.3 Definitions.

As used in this Agreement the following terms, phrases and words shall have the meanings and be interpreted according to their plain meaning as set forth in this Section. Certain other terms shall have the meaning set forth for such term in this Agreement.

(a) “Adopting Ordinance” means Ordinance No. _____, adopted on August 4, 2020, which approves this Agreement.

(b) “Affiliated Party” means any person or entity which is controlling of, controlled by, or under common control of Owner, and “control” shall mean the ability to influence, direct, or otherwise significantly affect the major policies, activities, or action of any person or entity.

(c) “City Manager” means the City Manager or his or her designee as designated in writing from time to time. The Owner may rely on the authority of the designee of the City Manager.

(d) “Collective Standards” means the regulations contained in this Agreement, the Project Approvals (as defined below), and the Existing Land Use Regulations (as defined below).

(e) “Effective Date” means the effective date of the Adopting Ordinance pursuant to Government Code section 65867.5, as specified in Recital 12 of this Agreement.

(f) “Environmental Documentation” means the Napa Airport Corporate Center Project EIR (State Clearinghouse No. 2014122005) certified by the City Council on July 31, 2018 by Resolution No. 2018-85, adopting findings pursuant to CEQA, certifying the FEIR, adopting a statement of overriding considerations, and adopting a Mitigation Monitoring and Reporting Program for the Project (Exhibit F) and the 2020 Addendum to the FEIR prepared in conjunction with this Agreement (Exhibit I).

(g) “Existing Land Use Regulations” means the ordinances, resolutions, rules, regulations, and official policies of the City, in effect as of the Effective Date, establishing and/or regulating design, density, permitted land uses, subdivisions, occupancy, improvement, impact fees, dedications, exactions, and the timing of development applicable to the Project, except as otherwise expressly set forth in this Agreement, and without limiting the foregoing, shall include the City General Plan, the Napa County Airport Industrial Area Specific Plan (now known as the Napa County Napa Valley Business Park Specific Plan), the City Zoning Ordinance and Subdivision Ordinance.

(h) “Improvement Plans” means the grading, building, and infrastructure plans as well as associated plans for the construction of the Project.

(i) “Project Approvals” means the Project approval described in Recital 5 and the Environmental Documentation.

(j) “Reserved Powers” means those powers explicitly reserved to the City by this Agreement.

(k) “Subsequent Approvals” means any and all permits and approvals of any kind or character required by the City to authorize and entitle the Owner to develop and occupy the Property and approved or issued after the Effective Date of this Agreement.

Section 1.4 Parties to the Development Agreement.

The parties to this Agreement are:

(a) The City of American Canyon, a General Law City under the laws of the State of California exercising general governmental functions and power. The principal place of business of the City is located at 4381 Broadway Street, Suite 201, American Canyon, CA 94503.

(b) Napa Airport Corporate Center I, LLC, a Delaware Limited Liability Company (Owner). The principal place of business of Owner is located at 8775 Folsom Boulevard, Suite 200 CA 95826.

Section 1.5 Term of the Development Agreement.

This Agreement shall commence upon the Effective Date and shall continue in force for five (5) years from such date, unless extended or terminated as provided herein (“Term”) or by operation of law. Development moratoriums initiated by City shall not apply to this Project. Following the expiration of the Term or extension thereof, this Agreement shall have no force and effect. The Term of this Agreement and any subdivision map, Project Approvals or Subsequent Approvals shall not include any period of time during which a lawsuit involving the approval of the Agreement or any such subdivision maps, Project Approvals, or Subsequent Approvals is pending, including actions brought under CEQA.

Section 1.6 Term of the Subdivision Maps, Project Approvals, Subsequent Approvals.

The term of any parcel map, lot line adjustment, tentative subdivision map, vesting parcel map, or vesting tentative subdivision map, relating to the Project, and the term of any subdivision improvement agreement related to development of the Property or any portion thereof, shall be extended for the longer of: (i) the Term, or (ii) the term of the particular map otherwise allowed under the Subdivision Map Act, and the City's Subdivision Ordinance. The term of any Project Approvals or Subsequent Approvals for development relating to the Project shall be extended for the longer of: (i) the Term; or (ii) the term of the permit or entitlement; or (iii) the term of the subdivision or parcel map relating to that portion of the Property that is the subject of the permit or other entitlement.

ARTICLE 2
VESTING RIGHTS AND LIMITATIONS

Section 2.1 Vested Rights of Owner.

Provided that Owner is not in default under this Agreement during its Term, Owner is assured, and City agrees, that the development rights, obligations, terms, and conditions specified or referenced in this Agreement are fully vested in Owner and may not be changed or modified by City except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including changes to existing land use regulations as set forth in Section 2.5, the City Reserved Powers as set forth in Section 2.6, or as consented to by the Owner in writing.

Section 2.2 Permitted Uses and Development Standards.

The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, payment of fees, the construction, installation, and extension of public improvements, development guidelines and standards and other conditions of development for the Project shall be those set forth in this Agreement, the Project Approvals, and the Collective Standards. The parties intend that the Collective Standards shall serve as the definitive and controlling document for all Subsequent Approvals, discretionary or ministerial, relating to the development and occupancy of the Project, except as provided in this Article. Owner shall have those benefits granted and obligations created to develop the Project in accordance with the Collective Standards and this Agreement.

Section 2.3 No Conflicting Enactments.

Except as provided for in the explicitly Reserved Powers under this Agreement, neither the City nor any agency of the City shall enact any specific or generally applicable ordinance, resolution or other measure that relates to the development or construction of the Project, including but not limited to any enactment affecting the intensity, design, use, timing, or sequencing of the development, construction or use of the Property, that is in conflict with the Collective Standards or this Agreement or the development rights associated therewith.

Section 2.4 Subsequent Approvals.

City shall accept for processing and shall review and act on all applications for Subsequent Approvals necessary for development of the Project, as set forth herein. Owner and City acknowledge that the Collective Standards contemplate the sole items for further review by the City. Owner shall provide the City with the processing fees, applications, documents, plans, materials and other information necessary for the City to carry out its review and processing obligations. Owner shall submit all applications and requests for Subsequent Approvals in the manner required under applicable City laws in effect as of the time of such submittal. The Parties shall cooperate with each other and shall use diligent, good faith efforts to cause the expeditious review, processing, and issuance of the approvals and permits for the development and

occupation of the Project in accordance with the Project Approvals, the Subsequent Approvals, and this Agreement.

Section 2.5 Changes to Existing Land Use Regulations.

Except as provided herein, and subject to Section 2.6 of this Agreement, only the following changes to the Existing Land Use Regulations may apply to the development of the Project:

(a) Land use regulations, ordinances, policies, programs, resolutions, or fees adopted or undertaken by City in order to comply with regional, state, or federal laws to which the legal principles of vesting do not apply. Provided that in the event that such regional, state, or federal laws prevent or preclude compliance with one or more provisions of this Agreement, such provision or provisions shall be modified or interpreted as narrowly as possible to comply with such regional, state, or federal laws or regulations.

(b) City land use regulations, ordinances, policies, programs, resolutions, or fees adopted after the Effective Date that are not in conflict with the terms and conditions for development of the Project established by this Agreement or otherwise by Existing Land Use Regulations.

(c) City land use regulations, ordinances, policies, programs, resolutions, or fees adopted after the Effective Date, which are in conflict with the Existing Land Use Regulations, but the application of which to the Project has been consented to in writing by the Owner, either through this Agreement or by later separate document.

Section 2.6 Reserved Powers.

Notwithstanding any other provision of this Agreement, and without limitation as to any other exceptions contained in this Agreement, the City shall retain the authority to take the following actions and apply the same to the Project:

(a) Adopt regulations to protect the City and its citizens from an immediate risk to health and safety;

(b) Apply changes in rules, regulations, or official policies of the City to the extent that the application of such changes is specifically required by changes in state or federal laws or regulations to which the legal principles of vesting do not apply;

(c) Impose conditions upon any new, discretionary permits not contemplated under the Collective Standards that the City approves for the Project after the Effective Date of this Agreement if such permits approve substantial changes to the Project that involve new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects on the environment, as such conditions are determined to be necessary under CEQA and other applicable law by the City to mitigate adverse impacts associated with the granting of such permits; and

(d) Apply standards contained in uniform building, construction, plumbing, electric, fire, or other uniform codes, as the same may be adopted or amended from time to time, to the extent such uniform code is applied generally to all development in the City and the application of such uniform code to the Project is required by state law.

Section 2.7 Processing Procedures.

Nothing herein shall be deemed to prevent the City from enacting or adopting changes in the methods and procedures for processing Improvement Plans, subdivision maps, and parcel maps so long as such changes do not preclude or materially burden Owner's realization of the rights conferred under the Collective Standards.

Section 2.8 Infrastructure Improvements.

To the extent not expressly covered in the Collective Standards, or unless otherwise specified in this Agreement, all infrastructure improvements will be designed in accordance with the City's rules, regulations, and engineering policies in effect at the time of approval of the Improvement Plans.

Section 2.9 No Liability.

To the extent that any actions of federal or state agencies (or actions of regional local agencies, including the City or its agencies, required by federal or state agencies) have the effect of preventing, delaying, or modifying development of the Project or any portion thereof, the City shall not in any manner be liable for such prevention, delay, or modification of such development.

Section 2.10 City Fees.

Notwithstanding any other provisions in this Agreement, all application fees, processing fees, development impact, and regulatory fees, set by or within the control of the City and imposed generally on all other development within the City: (i) levied upon the Project; (ii) charged as a condition to any application for or approval of development or condition thereof; or (iii) imposed to mitigate adverse environmental impacts, shall be paid at the rates in existence at the time of the applicable application submittal or permit issuance as required by the terms of such fees.

In addition, Owner acknowledges and agrees the City has expended significant Staff and Legal resources in processing the Owner's requests to extend the life of the Project approvals described above in Recital No. 5 (Exhibit B, Exhibit C, Exhibit D, and Exhibit E), and agrees it will pay all outstanding invoices thereon within ten (10) days of the execution of this Agreement.

Section 2.11 Bonds.

Notwithstanding any other provision in this Agreement, City may require performance, material, labor, or other bonds only for improvements to be located within the public streets

rights of way and/or on portions of the Project to be dedicated as public utility easements. No bonds shall be required for other improvements.

Section 2.12 Taxes and Assessments.

Notwithstanding any other provisions in this Agreement, City may impose such new taxes and assessments on the Owner and on the Project as are also equally imposed on all other persons or entities and on all other properties within the City, whether by City Council action or by citizen-sponsored initiative or referendum.

Section 2.13 Initiatives and Referenda.

With the exception of citizen-sponsored initiatives or referendums for taxes or assessments, if, after the Effective Date of this Agreement, any City law is enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which would conflict with the Collective Standards and Subsequent Approvals, such City law shall not apply to the Property or Project.

ARTICLE 3
PROJECT DEVELOPMENT

Section 3.1 Project Summary.

The Project includes the following general improvements:

- Construction of up to 193,741 square feet of industrial uses (warehouse, distribution, and/or E-commerce with accessory retail/office uses).
- On-site parking spaces and loading docks consistent with the requirements for end users.
- Grading for Project improvements.
- Storm drainage system and associated detention areas.
- Water connections to the City system.
- On-site and off-site recycled water connection lines.
- On-site and off-site sewer connection lines.
- Landscaping improvements.
- On-site and off-site infrastructure improvements.

The Project Conditional Use Permits and Design Permits also permit the relaxation of certain development standards as provided therein.

Section 3.2 Development Rights Vested Pursuant to this Agreement.

This Agreement shall vest Owner's rights to develop the Project in accordance with the approvals and conditions of approval contained in the Project Approvals (including but not limited to, designated permitted uses of the Property, density or intensity of use, and maximum height and size of proposed buildings) attached to this Agreement as Exhibits B, C, D, E, F, G, and H and incorporated herein by reference, any and all Subsequent Approvals, and the terms of this Agreement.

Section 3.3 Public Benefits.

(a) Pursuant to the Tentative Subdivision Map approval Condition of Approval No. 44.d (i), (ii) and (iii) and as shown on the approved Tentative Subdivision Map, Owner shall provide to the City: (1) the Irrevocable Offers of Dedication for the right-of-way necessary to accommodate the planned widening of South Kelly Road and the planned improvements to the intersection of South Kelly Road with both Devlin Road and SR 29 as shown on the final approved plans for these improvements; and, (2) the offers for public utility and public access easements, within thirty (30) days of receiving a notice from the City that approval of the final plans for the construction of the improvements associated with the particular requested right-of-way and easement has been obtained from Caltrans, the City, and all other necessary governmental agencies and that construction of the improvements will proceed within sixty (60) days of the date of the notice.

(b) Pursuant to Section 2.10, Owner has agreed to pay applicable City fees at the rates in existence at the time of the applicable application submittal or permit issuance as required by the terms of such fees.

(c) The Project will provide additional substantial financial benefits to the City through increased taxes, sales, jobs, business license fees, and other sources.

(d) Owner's obligations under the provisions of this Section 3.3 are subject to confirmation that no legal challenges, including without limitation any referendum and/or legal challenge brought pursuant to CEQA, have been initiated challenging the City Council's approval of the Agreement and/or the Adopting Ordinance. In the event a legal challenge is filed, or a referendum qualifies for the ballot, challenging the City Council's approval of the Agreement and/or the Adopting Ordinance, and as a result Owner is unable to proceed with the Project, the Owner's obligations under this Section 3.3 shall be suspended until the legal action and or referendum is resolved in a manner that upholds the Agreement ("Resolution Date"). In this event the timing requirements in this Section 3.3 shall be adjusted by mutual agreement based on the Resolution Date and such adjustment shall not constitute an amendment of this Agreement.

Section 3.4 Timing of Development.

The parties acknowledge that the most efficient and economical development of the Project depends upon numerous factors, such as market conditions and demand, interest rates, competition, and similar factors, and it will be most economically beneficial to have the rate of development determined by the Owner. Accordingly, the timing, sequencing, and phasing of the development is solely the responsibility of the Owner, except as otherwise set forth in the Collective Standards. In the event that an ordinance, resolution, or other regulation is enacted, whether by action of the City Council or by initiative or otherwise, which governs the rate, timing, phasing, or sequencing of new development or construction in the City, such regulation shall not apply to the Project. In particular, and without limitation thereof, City acknowledges that it will not withhold or delay approval of any entitlements for development of the Project or the construction of public improvements required therefore that are consistent with the terms and conditions of the Agreement.

Section 3.5 Subsequent Approvals.

The parties acknowledge that applications for Subsequent Approvals, including without limitation, land use approvals, subdivision maps, and other necessary permits will be submitted by Owner to construct, implement, operate, and/or modify the Project. Upon submission by Owner of an appropriate application and processing fee for any Subsequent Approval, the City shall promptly and diligently, subject to City ordinances, policies, and procedures, commence and complete all steps necessary to act on Owner's Subsequent Approval applications. The granting of a Subsequent Approval, including an amendment of a Project Approval, shall not be considered an amendment of this Agreement and shall automatically be deemed incorporated into the Project and vested under this Agreement.

ARTICLE 4
PERIODIC OR SPECIAL REVIEW FOR COMPLIANCE

Section 4.1 Periodic Review.

The City shall, pursuant to the requirements of Government Code section 65865.1 and City Municipal Code Title 19, Chapter 19.47, Section 100, review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain compliance by the Owner with the terms of the Agreement. The Owner shall submit an annual report, in a form acceptable to the City, on August 1 of each year commencing with August 1, 2021. If, as a result of such periodic review, the City determines, after a noticed, public hearing by the City Council that, on the basis of substantial evidence, the Owner has not complied in good faith with the terms of this Agreement, the City may, after following the default procedures required by Article 5, terminate this Agreement in accordance with applicable laws, including holding a public hearing on any such proposed termination. Owner shall pay to City all reasonable expenses incurred by City in conducting such review.

Section 4.2 Certificate of Compliance.

If, at the conclusion of a periodic review, the Owner is found to be in compliance with this Agreement, the City shall issue a Certificate of Compliance to the Owner stating that after the most recent periodic review that: (a) this Agreement remains in effect, and (b) the Owner is not in default. This Certificate shall be in recordable form, shall contain information necessary to communicate constructive notice of the finding of compliance and shall state the anticipated date of commencement of the next periodic review. Owner shall pay to City all reasonable expenses incurred in the preparation of such Certificate.

ARTICLE 5
DEFAULT AND LEGAL REMEDIES

Section 5.1 General Provisions.

Subject to extensions of time by mutual consent in writing, any material failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, or as a result of a finding made pursuant to Section 4.1, the party alleging such default or breach shall give the other party notice in writing specifying the nature of the alleged default, the matter in which such default may be cured, and a reasonable time period, which shall not be less than thirty (30) days, in which to cure the default ("Cure Period"). During the Cure Period the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. The City shall conduct a periodic review in accordance with Section 4.1 prior to giving notice to Owner pursuant to this Section.

After notice and expiration of the Cure Period, if said default has not been cured, or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may, at its option, exercise its remedies pursuant to Sections 5.2 and 5.3.

Section 5.2 Default by the City: Owner Remedies.

In the event the City does not cure the default as set forth in Section 5.1, Owner shall have the right to exercise any of the following remedies:

- (a) To waive in its absolute and sole discretion such default as not material;
- (b) To pursue legal remedies provided for in Sections 5.4 and 5.5 hereof; and
- (c) To terminate this Agreement with mutual consent of the City due to an uncured material default pursuant to Government Code section 65868. In the event Owner wishes to exercise this remedy, Owner shall provide written notice to the City and City shall comply with the applicable provisions of Government Code section 65867; and
- (d) To suspend Owner performance that is related to the default identified in Section 5.1 under the Agreement.

Section 5.3 Default by the Owner: City Remedies.

In the event the Owner does not cure the default as set forth in Section 5.1, City shall have the right to exercise any of the following remedies:

- (a) To waive in its absolute and sole discretion such default as not material;
- (b) To refuse processing of an application for, or the granting of any permit, approval, or other land use entitlement for, development or construction of the Project that is related to the

default identified in Section 5.1, including, but not limited to, the withholding of grading, excavation, building, and occupancy permits;

(c) To pursue legal remedies provided for in Sections 5.4 and 5.5 hereof;

(d) To terminate this Agreement with mutual consent of the Owner due to an uncured material default pursuant to Government Code section 65868 and City Municipal Code Title 19, Chapter 19.47, Section 100. In the event City wishes to exercise this remedy, City shall notify Owner in the manner provided by Government Code section 65867;

(e) To terminate this Agreement on a finding Owner has not demonstrated good faith compliance with the terms of this Agreement pursuant to Government Code section 65865.1, after complying with Government Code section 65867; and

(f) To delay or suspend City performance that is related to the default identified in Section 5.1 under the Agreement.

Section 5.4 Legal Actions.

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default by the other party to this Agreement, to enforce any covenant or agreement under this Agreement, or to enjoin any threatened or attempted violation hereunder.

Section 5.5 Specific Performance.

The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance is an appropriate remedy for the enforcement of this Agreement and should be available to the parties for the following reasons: due to the nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have to utilize the Property. The Owner has invested significant time and resources and performed extensive planning, processing, and construction of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in further implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate the Owner for such efforts.

Section 5.6 Waiver; Remedies Cumulative

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by another party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such default. No express written waiver of any default shall affect any other default, or cover any other period of time, other than any default and/or period of time specified in such express waiver. All of the remedies permitted or

available to a party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 5.7 Effect on Prior Approvals by City.

In no event shall the failure to perform by either party have any effect on the Project Approvals or any Subsequent Approvals. The parties acknowledge that said approvals are independent of this Agreement and shall not be invalidated by any provision of this Agreement. All Project Conditions of Approval, whether in the Project Approvals or Subsequent Approvals remain fully in effect.

ARTICLE 6
TERMINATION

Section 6.1 Termination upon Completion of Development.

This Agreement shall terminate upon the expiration of its Term as defined in Section 1.5 or when the Project has been fully developed and all of the Owner's and City's obligations in connection therewith are satisfied, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney, within ten (10) days of receiving a request from Owner.

Section 6.2 Effect of Termination on Owner Obligations and Rights.

Termination of this Agreement shall not affect any of the Owner's obligations to comply with the City's General Plan, the Napa County Airport Industrial Area Specific Plan (now known as the Napa County Napa Valley Business Park Specific Plan), and the terms and conditions of any applicable zoning, subdivision map, or other land use entitlements approved with respect to the Project. Termination of this Agreement shall not affect or invalidate in any manner Owner's obligations of defense and indemnification under Section 7.6.

Section 6.3 Effect of Termination on City Obligations and Rights.

Upon termination of this Agreement, the entitlements, conditions of development, and all other terms and conditions of this Agreement shall no longer be vested with respect to the portions of the Project affected by such termination, except as to portions of the Project as described in Article 3 which have been constructed or are being constructed. Further, the City shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements or conditions applicable to such portions of the Project, except as to portions of the Project as described in Article 3 which have been constructed or are being constructed. Termination of this Agreement shall not affect or invalidate in any manner City's obligations of defense and indemnification under Section 7.6.

ARTICLE 7
GENERAL PROVISIONS

Section 7.1 Transfer, Assignments, and Mortgagee Protection.

(a) Assignment of Interests. Rights and Obligations. Owner shall have the full right to assign this Agreement, in connection with any sale, transfer or conveyance of the Property or portion thereof. Upon the express written assumption by the assignee of such assignment and the conveyances of Owner's interest in the property related thereto, Owner shall be released from any further liability or obligation hereunder related to the portion of the property so conveyed. If the transferred property consists of a less than the entire Property, or less than Owner's entire title to or interest in the Property, Owner shall have the right to transfer, sell and/or assign to the transferee only those of Owner's rights and obligations under this Agreement that are allocable or attributable to the transferred property. Any transferee shall assume in writing the obligations of Owner under this Agreement and the Project Approvals or any Subsequent Approvals relating to the transferred property and arising or accruing from and after the effective date of such transfer, sale, or assignment. Owner's rights to assign shall be subject to City's approval pursuant to Section 7.1(b)(ii).

(b) Transfer Agreements.

(i) In connection with the transfer or assignment by Owner of all of any portion of the Property (other than a transfer or assignment by Owner to an Affiliated Party or a Mortgagee), Owner and the transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights, and obligations of Owner and the transferee in and under this Agreement. Such Transfer Agreement may: (i) release Owner from obligations under this Agreement that pertain to that portion of the Property being transferred, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, and (ii) shall address any other matter deemed by City to be reasonably necessary or appropriate in connection with the transfer or assignment.

(ii) Owner shall seek City consent to any Transfer Agreement (other than a transfer or assignment by Owner to an Affiliated Party or Mortgagee), which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that the City shall consent to any Transfer Agreement unless it reasonably determines, based upon substantial evidence, that the transferee is not financially capable of fulfilling the terms and conditions of this Agreement or the transferee is unwilling or unable to work cooperatively with the City.

(iii) Any Transfer Agreement shall be binding on Owner, City, and the transferee. Upon recordation of any Transfer Agreement in the Official Records of Napa County, Owner shall automatically be released from those obligations assumed by transferee.

(c) Mortgagee Protection.

(i) This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, after the date of recording of this Agreement, including any lien of any deed of trust or mortgage (“Mortgage”). The foregoing notwithstanding, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in the Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee (“Mortgagee”) who acquires title to the Property, or any portion thereof by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise.

(ii) The provisions of section 7.1(c)(i) notwithstanding, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements other than those uses or improvements provided for or authorized by the Agreement or otherwise under the Project Approvals or any Subsequent Approvals.

(iii) If the City receives written notice from a Mortgagee or from Owner requesting a copy of any notice of default given to Owner and specifying the address for notice, the City shall deliver to the Mortgagee, concurrently with delivery to Owner, any notice with respect to any claim by the City that Owner committed an event of default. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in the City’s notice. The City Manager is authorized on behalf of the City to grant to the Mortgagee an extension of time to cure or remedy, not to exceed an additional sixty (60) days.

Section 7.2 Covenants Running with the Land.

The conditions and covenants set forth in this Agreement and incorporated herein by exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. Each and every purchaser, assignee, or transferee of an interest in the Property, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of Owner contained in this Agreement, as such duties and obligations pertain to the property sold, assigned, or transferred to it.

Section 7.3 Amendment or Cancellation of Agreement.

Except as otherwise provided in this Agreement, this Agreement may be amended, modified, or cancelled in whole or in part by mutual consent of the parties in writing, and then only the manner provided for in Government Code section 65868 and City Municipal Code Title 19, Chapter 19.47, Sections 110 and 111. Any amendment to this Agreement which does not relate to the term of this Agreement, the Collective Standards, or the conditions relating to the

Project shall require the giving of notice pursuant to Government Code section 65867, as specified by section 65868 thereof, but shall not require a public hearing before the parties may make such amendment.

Section 7.4 Notices.

All notices herein required shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of: (i) actual receipt, or (ii) five (5) days after a registered or certified mail containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, notice shall be deemed to have been given when delivered to the party to whom it is addressed.

City of American Canyon
Attention: City Manager
4381 Broadway, Suite 201
American Canyon, California 94503

And with copies to:

William D. Ross, Esq.
Law Office of William D. Ross
400 Lambert Street
Palo Alto, California 94306

Notices required to be given to Owner shall be addressed as follows:

Napa Airport Corporate Center I, LLC
Panattoni Development Company, Inc.
8775 Folsom Boulevard, Suite 200
Sacramento, CA 95826

A party may change its mailing address at any time by giving to the other parties ten (10) days' notice of such change in the manner provided for in this Section 7.4. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

Section 7.5 Invalidation of Agreement/Severability.

If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which became effective after the Effective Date, the remaining

provisions shall continue in full force and effect so long as the invalid and unenforceable provisions do not alter the material provisions of the Agreement.

Section 7.6 Cooperation in the Event of Legal Challenge.

In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement or all actions, discretionary or ministerial, relating to the development and occupancy of the Project, the parties shall cooperate in defending such action or proceeding to settlement, stipulation, or final judgment including all appeals as set forth in this Section.

(a) Each party shall select its own legal counsel, subject to approval of the City, and in no event shall City be required to bear the fees and costs of Owner's attorneys. The Owner shall indemnify, defend, and hold harmless the City and the City's elected and appointed officers and officials, agents, employees, and independent contractors from and against any claims, including those brought under CEQA, losses, or liabilities, including attorney's fees, assessed or awarded against the City by way of judgment, settlement, or stipulation related to this Agreement, the Adopting Ordinance, the Project Approvals, any Subsequent Approvals, or any other permit or approval.

(b) The City shall have the right, but not the obligation, to defend such action, except that if Owner timely provides City with written notice that the Owner has elected to defend the action, the City shall not allow any default or judgment to be taken against it and shall not enter into any settlement or compromise of any claim which has the effect, directly or indirectly, of prohibiting, preventing, delaying, or further conditioning or impairing Owner's rights hereunder. In addition, if Owner elects to defend the action the City shall provide reasonable assistance to Owner, such assistance to include: (i) making available upon reasonable notice, and at no cost to Owner, City officials and employees who are or may be witnesses in such action, and (ii) provision of other non-privileged information within the custody or control of the City that is relevant to the subject matter of the action.

(c) Owner shall have the right, but not the obligation, to defend such action. If Owner defends any such action, it shall indemnify, defend, and hold harmless the City and the City's elected and appointed officers and officials, agents, employees, and independent contractors from and against any claims, losses, or liabilities, including attorneys' fees, assessed or awarded against the City by way of judgment, settlement, or stipulation. In such event, Owner shall further have the right to settle such action, provided that nothing herein shall constitute an amendment of this Agreement unless such amendment is approved by the City in accordance with applicable legal requirements, and the City reserves its full legislative discretion with respect thereto. With respect to actions challenging the validity of this Agreement, the Adopting Ordinance, the Project Approvals, any Subsequent Approvals, or any other permit or approval, including claims brought under CEQA, if Owner does not defend any such action, Owner shall be liable to City, to the same extent as is provided for in the Indemnification Agreement executed by Owner as a condition of obtaining the Use Permits approved in Exhibits B, C, D, and E attached to this Agreement.

Section 7.7 Joint Preparation of this Agreement.

This Agreement has been reviewed and revised by legal counsel for the City and Owner, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this agreement.

Section 7.8 Attorney's Fees.

If any action or proceeding, at law or in equity (including, without limitation, any cross-complaint, counterclaim, or third-party claim), is brought by either party to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs of such action or proceeding.

Section 7.9 Recordation.

This Agreement shall be recorded in the Official Records of Napa County within ten (10) days of its Effective Date as required by Government Code section 65868.5.

Section 7.10 Entire Agreement.

This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter hereof. There are no oral or written representations, understandings, undertakings, or agreements which are not contained or expressly referred to in this Agreement, and any such representations, understandings, or agreements not contained or expressly referred to herein are superseded in total by this Agreement.

Section 7.11 Exhibits.

The Exhibits referred to herein are deemed incorporated into this Agreement in their entirety.

Section 7.12 Governing Law.

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to its conflict of law principles.

Section 7.13 Time is of the Essence.

Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

Section 7.14 Mutual Covenants.

The covenants contained in this Agreement are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the benefited party of the covenants to be performed by such party.

Section 7.15 Project as a Private Undertaking.

It is specifically understood and agreed that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between the City and the Owner is that of a government entity regulating the development of private property and the owner of such property. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties or cause them to be considered a joint venture or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third-party beneficiary rights in any person who is not a party or a transferee.

Section 7.16 Further Actions.

Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

Section 7.17 Approvals Independent.

All Project Approvals and Subsequent Approvals which may be granted pursuant to this Agreement and all Project Approvals and Subsequent Approvals, which have been, or may be, issued or granted by the City with respect to the Property, constitute independent actions and approvals of the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability, or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Project Approvals or Subsequent Approvals.

Section 7.18 Indemnification.

(a) Owner shall indemnify and hold the City, its elected and appointed officers and officials, agents, employees, and independent contractors free and harmless from any liability based or asserted upon any negligent or intentional act of omission of the Owner, its officers, agents, employees, subcontractors, and independent contractors, for property damage, bodily injury, or death or any other element of damage, relating to or in any way connected with the Property or arising from Owner's activities contemplated under this Agreement save and except claims for damages arising through the sole negligence or willful misconduct of the City.

(b) The City shall indemnify and hold harmless the Owner, its officers, agents, employees, and independent contractors free and harmless from any liability based or asserted upon any negligent or intentional act of omission of the City, its elected and appointed officers and officials, agents, employees, and independent contractors, for property damage, bodily injury, or death or any other element of damage, relating to or in any way connected with the Property or arising from City's activities contemplated under this Agreement save and except claims for damages arising through the sole negligence or willful misconduct of the Owner.

Section 7.19 Force Majeure.

If Owner is unable to meet the terms and conditions of this Agreement due to any cause beyond its reasonable control, including but not limited to fire, weather, flood, disease, act of God, theft, explosion, war, labor strike or disturbance, boycott, utility interruption, or government regulation or directive, then Owner shall have the option to be relieved from performing its obligations under this Agreement to the extent such causes prevent performance. Notice of such shall be promptly given in writing to the City and such notice will release the Owner from any further obligation associated therewith.

Section 7.20 Construction of Agreement

The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships, limited liability companies or other legal entities.

Section 7.21 Counterparts.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed as original, but all of which when taken together shall constitute but one Agreement.

ARTICLE 8
PUBLIC BENEFIT

Section 8.1 Public Benefit.

The parties acknowledge and agree that the Project will create a substantial public benefit for the City and its citizens and that it confers substantial private benefits on the Owner. Accordingly, the Owner has agreed to deliver the consideration and undertake the obligations of this Agreement to balance the private benefits conferred on the Owner, to provide public assurance that this Agreement is fair, just, and reasonable and prompted by the necessities of the situation, and to provide extraordinary benefits to the City and the public. The Owner acknowledges that this consideration is reasonably related to the impacts of the Project on the community. The City hereby acknowledges the fairness and adequacy of such consideration. It is further acknowledged by the parties that neither party would have entered into this Agreement if each party had not acknowledged that a reasonable relationship exists between all requirements of the Project and all the benefits to the community of the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

“City”

City of American Canyon

By: _____
Jason B. Holley
City Manager

Dated: _____

“Owner”

Napa Airport Corporate Center I, LLC, a
Delaware limited liability company

By: _____

Name: _____

Title: _____

Dated: _____

ATTEST:

By: _____
Suellen Johnston, CMC
City Clerk

Dated: _____

APPROVED AS TO FORM:

By: _____
William D. Ross
City Attorney

Dated: _____