

Napa County Agreement No. 1707810-17

City of Napa Agreement No. _____

**JOINT POWERS AGREEMENT FOR THE DESIGN AND CONSTRUCTION
OF THE TRANCAS STREET BRIDGE OVER THE NAPA RIVER**

This Joint Powers Agreement for the Design and Construction of the Trancas Street Bridge over the Napa River (hereinafter "Agreement") is made and entered into this 7th day of March, 2017 by and between the City of Napa, a municipal corporation (hereinafter "CITY"), and Napa County, a political subdivision of the State of California ("COUNTY"). CITY and COUNTY may be identified as "a Party," or collectively, as "the Parties". The Parties are each public entities organized and operating under the laws of the State of California and each is a public agency as defined in California Government Code Section 6500.

RECITALS

WHEREAS, CITY and COUNTY jointly own, operate, maintain, and repair the Trancas Street Bridge over the Napa River (Bridge No. 21C-0003) because the City/County limit lies in the Napa River at that location; and

WHEREAS, in April, 2006 the CITY was notified that Federal Highway Bridge Program ("HBP") funds may be obligated for a new Local Assistance Bridge Preventive Maintenance Program ("BPMP") to help local agencies extend the life of federal-aid highway bridges by performing certain maintenance activities; and

WHEREAS, in the State of California Department of Transportation's ("Caltrans") biannual bridge inspection report, work recommendations for the Trancas Street Bridge are activities eligible for the BPMP which includes replacement of joint seals, deck surface treatment and restriping traffic lanes; and

WHEREAS, in May, 2014 the CITY applied to the State of California (on behalf of CITY and COUNTY) for HBP funding to provide 87.64% of eligible project cost, with 12.36% of participating project costs to originate from local funding sources ("local funding share"); and

WHEREAS, in August, 2016 the State of California secured HBP funding and authorized CITY to proceed with the design phase of the repairs; and

WHEREAS, California Government Code Sections 6500-6515 authorize two or more local public entities to jointly exercise any power common to them by Agreement; and

WHEREAS, each Party has the power under the laws of the State of California to construct and maintain bridges and public infrastructure necessary to public convenience; and

WHEREAS, the parties wish to enter into this Agreement in order to set forth necessary cooperative procedures and protocols for the administration of the HBP funding award and BPMP project, to set forth the respective obligations and payment responsibilities of the Parties, and to provide for mutual cooperation in the administration and implementation of the BPMP project.

TERMS

NOW, THEREFORE, said CITY and said COUNTY for the considerations hereinafter set forth,

mutually agree as follows:

1. **TERM; TERMINATION FOR CONVENIENCE OR CAUSE.** This Agreement shall commence on the date first above written and expire one year after the filing by CITY of the Notice of Completion of the bridge maintenance repairs. Notwithstanding the foregoing, this Agreement may be terminated prior to award of the construction contract for the convenience of either party upon that party giving the other party no less than thirty (30) days prior written notice. The Agreement may also be terminated for cause at any time by COUNTY upon failure of CITY to cure any material breach in its obligations under Paragraphs 2, 3, and 4 of this Agreement within thirty (30) days of receipt by CITY of notice from COUNTY describing the nature of such breach.

2. **DESIGN.**

(a) **Responsibility for Design.** The design of the bridge maintenance repairs shall be performed by CITY and its consultants and administrated by CITY. CITY shall secure all necessary regulatory permits required for construction as part of the design process.

(b) **Review.** COUNTY shall review the design plans to ensure conformance with appropriate COUNTY standards and shall submit any comments resulting from such review to CITY.

(c) **Design Costs.** Design costs shall include but not be limited to CITY administration costs, CITY consultant costs to produce construction documents, and any required permitting. The estimate of the design cost is included in Exhibit A, attached hereto and incorporated by reference herein.

(d) **Allocation of Funding for Design.** CITY and COUNTY shall share equally the local funding share of all design costs and costs not originally contemplated but necessary to complete the design ("design overruns"), except that design overruns resulting in the total cost of the design exceeding 125% of the design cost estimate in Exhibit A shall require prior written approval by COUNTY in the form of an amendment of this Agreement.

3. **CONSTRUCTION.**

(a) **Award and Administration of Construction Contract.** CITY shall be responsible for awarding and administering the construction contract for the bridge maintenance repairs. CITY's regulations and standard forms governing construction contracts shall be used.

(b) **Construction Costs.** Construction costs shall include the amount of the construction contract plus any required contingency and CITY-provided construction testing, /inspection, construction management, and oversight costs. An approximate construction cost estimate is included in Exhibit A, attached hereto and incorporated by reference herein.

(c) **Allocation of Funding for Construction.** CITY and COUNTY shall share equally the local funding share of all construction costs and costs not originally contemplated but necessary to complete construction ("construction overruns"), except that construction overruns resulting in the total cost of the construction exceeding 125% of the construction cost estimate in Exhibit A shall require prior written approval by COUNTY in the form of an amendment of this Agreement.

4. **RIGHT-OF-WAY.**

(a) **Acquisition.** CITY shall prepare temporary construction easement documents, provide property valuations or appraisals of necessary or required property rights, and acquire easements and rights necessary for construction.

(b) **Right-of-Way Costs.** Right-of-Way costs shall include the appraised value of all temporary construction easements, CITY administration costs, and CITY right-of-way/appraisal consultant costs. An approximate right-of-way cost estimate is included in Exhibit A, attached hereto and incorporated by reference herein.

(c) **Allocation of Funding for Right-of-Way.** CITY and COUNTY shall share equally the local funding share of all right-of way costs and costs not originally contemplated but

necessary to complete right-of-way acquisitions ("right-of-way overruns"), except that construction overruns resulting in the total cost of right-of-way exceeding 125% of the right-of-way cost estimate in Exhibit A shall require prior written approval by COUNTY in the form of an amendment of this Agreement.

5. **INVOICING AND PAYMENT.** Upon incurring design, construction, and right-of-way costs, CITY shall invoice COUNTY on a monthly basis for reimbursement of COUNTY's half of the local funding share. COUNTY shall pay the invoices within thirty (30) days of receipt.

6. **INSPECTION.** Pursuant to Paragraph 2 of this Agreement, CITY or agents of CITY shall provide construction inspection services. COUNTY's representatives shall provide inspection oversight and attend construction progress meetings on a regular basis. CITY's inspector shall have ultimate authority in directing construction and authorization of construction contract modifications, but will consider the opinions and requirements of COUNTY when doing so.

7. **OWNERSHIP.** After acceptance of bridge maintenance repairs, CITY and COUNTY shall jointly own, operate, maintain, and repair the Trancas Street Bridge as repaired.

8. **INSURANCE.** CITY shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage or equivalent amounts of self-insurance or, as to work which is performed by persons or entities under subcontract to CITY, shall require such persons or entities to provide the same coverage:

(a) **Workers' Compensation insurance.** To the extent required by law, workers' compensation insurance in the performance of any of CITY's duties under this Agreement; and upon request by COUNTY shall provide certification of such coverage.

(b) **Liability insurance.**

(1) Commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, issued by a company having a A.M. Best rating of A:VII or better, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CITY or any officer, agent, or employee of CITY under this Agreement except for acts or omissions performed in strict compliance with express direction COUNTY's governing board, officers or personnel.

(2) Professional liability/errors and omissions insurance in an amount of not less than One Million Dollars (\$1,000,000) combined single limit for each occurrence, covering all professional acts or omissions of CITY or its agents arising out of or in connection with this Agreement except for those acts or omissions performed in strict compliance with express direction from COUNTY's governing board, officers or personnel unless such direction was based upon professional advice from CITY or the agents of CITY under this Agreement.

(3) Comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CITY's activities under this Agreement of not less than Three Hundred Thousand Dollars (\$300,000) combined single limit per occurrence.

(c) **Certificates of Coverage.** Where the foregoing coverages are provided by insurance rather than by self-insurance (written proof of which shall be provided to COUNTY), the coverages shall be evidenced by a Certificate of Coverage which shall be filed with the COUNTY Risk Manager prior to reimbursement of CITY by COUNTY for performance of any of CITY's duties under this Agreement; shall name COUNTY, its officers, employees, and agents as additional insureds; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change; shall provide that the insurance provided is primary coverage to COUNTY with respect to any

insurance or self-insurance programs maintained by COUNTY; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. Upon request of COUNTY's Risk Manager, CITY shall provide or arrange for the insurer to provide COUNTY with certified copies of the actual insurance policies or relevant portions thereof within thirty (30) days of the request.

9. INDEMNIFICATION.

(a) By CITY. CITY shall defend, indemnify and hold harmless COUNTY and the officers, agents and employees of COUNTY from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by CITY or its officers, agents, or employees, of activities or obligations required of CITY under this Agreement except where the loss was proximately caused by acts or omissions of CITY performed in strict compliance with express direction from COUNTY's governing board, officers or personnel other than direction based upon and conforming to advice from CITY.

(b) By COUNTY. COUNTY shall defend, indemnify and hold harmless CITY and the officers, agents and employees of CITY from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by COUNTY or its officers, agents, or employees, of obligations required of COUNTY under this Agreement as well as for claims where the loss was proximately caused by acts or omissions of CITY performed in strict compliance with express direction from COUNTY's governing board, officers or personnel other than direction based upon and conforming to advice from CITY.

10. NO WAIVER. The waiver by any of the parties of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

11. NOTICES. All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that any party desires to give any other party shall be addressed to the other party at the address set forth below. Any party may change its address by notifying the other parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY
Director of Public Works
County of Napa
1195 Third Street, Suite 101
Napa, CA 94559

CITY
Public Works Director
City of Napa
P.O. Box 660
Napa, CA 94559

12. COMPLIANCE WITH LAWS. In performing any services required under this Agreement to be reimbursed by COUNTY, CITY shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes, including to the extent applicable, the laws pertaining to relocation assistance. Such laws shall also include, but not be limited to, the following, except where otherwise prohibited by state or local law:

(a) Non-Discrimination. During the performance of this Agreement, CITY and its subcontractors shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status,

age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. CITY shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CITY shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CITY services or works required of COUNTY by the State of California pursuant to agreements between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CITY and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CITY agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CITY performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CITY shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CITY under this Agreement are subcontracted to a third party, CITY shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

13. AUTHORITY TO CONTRACT. CITY and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

14. CONFLICT OF INTEREST. CITY hereby covenants that neither CITY nor any of its officers, employees or agents who may be providing services under this Agreement presently have any interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of such services hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CITY or such persons of such conflict.

15. INDEPENDENT ENTITIES. Although this Agreement is a Joint Powers Agreement as authorized by California Government Code 6500 *et seq.*, City and County are independent entities, and City and County and the respective officers, agents and employees of City and County are not, and shall not be deemed, employees of the other agency for any purpose, including but not limited to worker's compensation and employee benefits.

16. PRIVILEGES, IMMUNITIES AND OTHER BENEFITS. In accordance with California Government Code section 6513, all of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Parties when performing their functions within the territorial limits of their respective Public Agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with performance of this Agreement.

17. **THIRD PARTY BENEFICIARIES.** Nothing contained in this Agreement shall be construed to create any rights in third parties and CITY and COUNTY do not intend to create such rights.

18. **ATTORNEY'S FEES.** In the event that any of the parties commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

19. **RECORDS AND TITLE TO DOCUMENTS.** CITY shall retain the original plans and project files for the design and construction required under this Agreement for a period of five years or in accordance with CITY policy, whichever is longer. CITY shall furnish one set of reproducible set of record drawings and conformed specifications to COUNTY upon completion of construction.

20. **ENTIRETY OF CONTRACT.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF NAPA, a municipal corporation:

NAPA COUNTY, a political subdivision of the State of California:

(Signature)

(Signature)

Jacques R. LaRoche, Public Works Director
(Type name and title)

ALFREDO PEDROZA, Chair of the Board
(Type name and title) of Supervisor

ATTEST:

ATTEST:

(Signature)

(Signature)

Dorothy Roberts, City Clerk
(Type name and title)

Gladys I. Coil, Clerk of the Board of Supervisors
(Type name and title)

COUNTERSIGNED:

(Signature)

Desiree Brun, City Auditor
(Type name and title)

APPROVED 3/7/2017
BOARD OF SUPERVISORS
COUNTY OF NAPA
GLADYS I. COIL
CLERK OF THE BOARD
BY Greg Moya Deputy

APPROVED AS TO FORM:

APPROVED AS TO FORM:

(Signature)

Thomas S. Capriola
(Signature)

Michael W. Barrett, City Attorney
(Type name and title)

Thomas S. Capriola
(Type name and title)

Budget Code: _____

EXHIBIT A

Cost Estimate Breakdown for Bridge No. 21C0003 – Trancas Street at Napa River part of the Federal Bridge Preventive Maintenance Program [Federal No. BPMPL-5042(059)]

Preliminary Engineering (Design) Costs

Environmental Process	\$ 388
Preparation of Plans, Specifications, and Estimate	\$ 388
<i>Subtotal</i>	<i>\$ 776</i>

Construction Costs

Construction Contract	\$ 3,883
Construction Engineering & Management	\$ 388
<i>Subtotal</i>	<i>\$ 4,271</i>

GRAND TOTAL	\$ 5,047
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