NAPA VALLEY TRANSPORTATION AUTHORITY
AGREEMENT NO. 16-15
CITY OF NAPA AGREEMENT NO. _____

COOPERATIVE JOINT POWERS AGREEMENT BETWEEN THE NAPA VALLEY TRANSPORTATION AUTHORITY AND THE CITY OF NAPA FOR THE FUNDING AND CONSTRUCTION OF THE VINE TRAIL OAK KNOLL DISTRICT PROJECT

This Cooperative Joint Powers Agreement between the Napa Valley Transportation Authority and the City of Napa for the Funding, and Construction of the Vine Trail OAK KNOLL DISTRICT Project ("Agreement") is made and entered into under the joint exercise of powers provisions of the Government Code of the State of California, California Government Code Section 6500-6536, as of this _____ day of _____, 2016 by and between the Napa Valley Transportation Authority, a joint powers agency ("NVTA") and the City of Napa, a California Charter City and municipal organization ("City"). NVTA and City are 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. NVTA and City may be referred to collectively as "the Parties."

RECITALS

WHEREAS, NVTA and City have each adopted all or portion of the County-Wide Bicycle Plan, one recommendation of which is envisioned as a continuous connected bike path, the Vine Trail, which is aligned through all of the jurisdictions in Napa County; and

WHEREAS, as one length of the Vine Trail ("Project") traverses the City, County of Napa, and Town of Yountville and is described in Section 2 below and depicted on Exhibit "A" (Project Map); and

WHEREAS, it is in the best interest of the public and the agencies for the Parties to pool resources to fund the planning, design (including environmental clearance), and construction of that portion of the Vine Trail depicted on the Project Map, and as described below; and

WHEREAS, the Parties desire to set forth the respective obligations of each which are necessary to successfully complete the Project.

TERMS

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements of the Parties, and other valuable consideration the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on the first date above written and shall expire upon completion of the Project, but no later than December 31, 2017, unless terminated earlier in accordance with the Agreement; except the obligations of the City as outlined in Section 6 of this Agreement and the obligations of the parties under Insurance, Indemnification, and Access to Records/Retention shall

continue in full force and effect after expiration or termination in relation to acts or missions occurring prior to expiration or termination of the Agreement.

2. **Project.** A portion of the Vine Trail will be constructed under this Agreement:

a. Oak Knoll District - The portion that is aligned parallel to and easterly of Solano Avenue with the southern terminus being at the Redwood Road Park and Ride within the City and the northern terminus at California Drive in the Town of Yountville. The project lies within the City, County of Napa, and Town of Yountville.

3. **Roles.** NVTA shall provide overall project management of the Project to complete the tasks as detailed in Exhibit "B". City shall provide direction as to City's design standards and review and comment on the plans, specifications, and estimates. Construction inspection is NVTA's responsibility but City can provide construction inspection based on staff availability.

4. **Payment of Funds.** Funding for the Project shall be paid to NVTA as follows:

a. City shall make one (1) lump sum payment to NVTA in the amount of TWO HUNDRED THOUSAND DOLLARS ($200,000) upon full execution of the Agreement.

NVTA shall use its Federal Highway Administration awards of Transportation and Community System Preservation (TCSP) and state Active Transportation Program funds as well as local funds from the Vine Trail Coalition, City, County of Napa and Town of Yountville to fund construction and construction management for the Project.

5. **Environmental.** NVTA was the Lead Agency for purposes of design and environmental determination of the Project consistent with the requirements of the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA) and standard engineering practices. NVTA secured a Categorical Exclusion under 23 CFR 771.117(c); activity (c) (3) of the NEPA and a Mitigated Negative Declaration under the CEQA.

6. **Ownership and Maintenance.** The City shall own, operate and maintain all improvements related to the Project within the City's public right-of-way following construction.

7. **Use of Funds, Return of Funds.** The City agrees to pay NVTA the funds specified in Section 4 of this Agreement. NVTA hereby agrees to use all funds conveyed to NVTA under this Agreement for the sole purpose of funding expenses directly related to construction of the project as set forth in this Agreement. NVTA shall create and maintain sufficient financial records in a manner that is consistent with generally accepted accounting principles for use of the funds conveyed through this Agreement, and further agrees to all applicable Federal, State, and local regulations associated with the stated fund sources herein.

(a) If NVTA has not fully expended the funds by the date of expiration stated in Section 1 or other termination of the Agreement and the Agreement has not been

amended by the Parties to extend the term or otherwise amended, then NVTA shall return to the City the remaining unspent funds within thirty (30) days after such expiration or other termination date.

(b) If NVTA fails to fulfill in a timely and proper manner NVTA's obligations under this Agreement or otherwise breaches this Agreement, NVTA shall, upon written demand of the City, return to the City all unencumbered and unexpended funds provided hereunder within thirty (30) days of receipt by NVTA of written demand therefore, and shall include any interest earned thereon by NVTA on a pro-rata basis. Return of funds under this paragraph shall be in addition to any other remedies available to the Parties by law.

8. **Insurance.** NVTA 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 self-insurance or a combination thereof:

(a) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, NVTA shall provide workers' compensation insurance for the performance of any of NVTA's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide the City with certification of all such coverages upon request by the City.

(b) Liability Insurance. NVTA shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:

(1) General Liability. NVTA shall require its contractors to obtain and maintain throughout the term of this agreement commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims 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 the contractors or any officer, agent, or employee of the contractors under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the amount per occurrence or $2,000,000.

(2) Professional Liability. NVTA shall require it's Consultants to provide Professional liability [or errors and omissions] insurance for all activities of the Consultant arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with NVTA's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of all Parties' Risk Managers, which shall be filed by NVTA prior to commencement of performance of any of NVTA's duties; shall reference this Agreement by its number or title and department; shall be kept current during the term of this Agreement; shall provide that the other Parties shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; 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. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) NVTA shall also file with the evidence of coverage an endorsement from the insurance provider naming the Parties, their officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of NVTA not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of the other Parties shall pertain only to liability for activities of NVTA under this Agreement, and that the insurance provided is primary coverage to the other Parties with respect to any insurance or self-insurance programs maintained by the other Parties. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by the other Parties, NVTA shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by the Parties' Risk Managers, which approval shall not be denied unless the Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of NVTA by this Agreement. At the option of and upon request by the other Parties' Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the other Parties, their officers, employees, agents and volunteers or NVTA shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Contractors. NVTA shall require all contractors performing work in connection with this Agreement to obtain an Encroachment Permit (at no cost) and to maintain insurance consistent with the terms set forth above; all such certificates shall name City as an additional insured.

9. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, the Parties shall each defend, indemnify and hold harmless each other as well as their respective officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, contractors or subcontractors when performing any activities or obligations required of that party under this Agreement, except when such acts or omissions have been requested by and non-negligently performed in compliance with the express direction of the other party. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications

that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege. NVTA shall require its consultants to defend, indemnify and hold harmless all of the Parties to this agreement.

(b) Employee Character and Fitness. NVTA accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of NVTA under this Agreement. Notwithstanding anything to the contrary in this Paragraph, NVTA shall hold the other Parties and their officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or NVTA's actions in this regard.

10. **Termination for Cause.** If NVTA shall fail to fulfill in a timely and proper manner the obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the other Parties may, in addition to any other remedies they may have, terminate this Agreement by giving five (5) days prior written notice to NVTA in the manner set forth in Paragraph 14 (Notices).

11. **Termination for Convenience.** This Agreement may be terminated by any party for any reason and at any time by giving no less than sixty (60) days prior written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected by NVTA unless an opportunity for consultation is provided prior to the effective date of the termination.

12. **Disposition and Payment for Work upon Expiration or Termination.** NVTA shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination.

13. **No Waiver.** The waiver by any 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.

14. **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 either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party 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.

City	NVTA
Eric Whan	Kate Miller
Deputy Director, Public Works	NVTA Executive Director
P.O. Box 660	625 Burnell Street
Napa CA 94559	Napa, CA 94559

15. **Compliance with Laws.** NVTA shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall

include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, NVTA 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. NVTA 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, NVTA 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 NVTA services or works required of Parties by the State of California pursuant to agreement between Parties 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 NVTA 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. NVTA agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of NVTA 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.

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

16. **Access to Records/Retention.** Parties, any federal or state grantor NVTA funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of NVTA which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, NVTA shall maintain all required records for at least five (5) years after Parties makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

17. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the

other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the public generally, and from processing filed applications in accordance with the party's general recruitment procedures.

18**. 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.

19. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

20. **Warranty of Legal Authority**. Each party warrants and covenants that it has the present legal authority to enter into this Agreement and to perform the acts required of it hereunder. If any party is found to lack the authority to perform the acts required of it hereunder or is prevented from performing the acts by a court of competent jurisdiction, this Agreement shall be void.

21. **Assignment/Delegation**. None of the Parties hereto shall assign or transfer any benefit or obligations of this Agreement without the prior written consent of the others, and no assignment shall be of any force or effect whatsoever unless and until the other Parties shall have so consented.

22**. Severability**. In the event any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect.

23. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

24**. Attorneys' Fees**. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled to reimbursement for its expenses, including court costs and reasonable attorneys' fees.

25. **Entire Agreement**. This document is intended both as the final expression of the agreement between the Parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original.

26. **Amendment**. This Agreement may only be amended in writing by an amendment authorized by the each of the Parties.

IN WITNESS WHEREOF, NVTA and City have executed this Agreement as of the date first below written.

CITY OF NAPA:

_____
(Signature)
Mike Parness, City Manager

ATTEST:

_____
(Signature)
Dorothy Roberts, City Clerk

COUNTERSIGNED:

_____
(Signature)
Desiree Brun, City Auditor

APPROVED AS TO FORM:

_____
(Signature)
Michael W. Barrett, City Attorney

NVTA
Napa Valley Transportation Authority

_____
(Signature)
Kate Miller, NVTA Executive Director

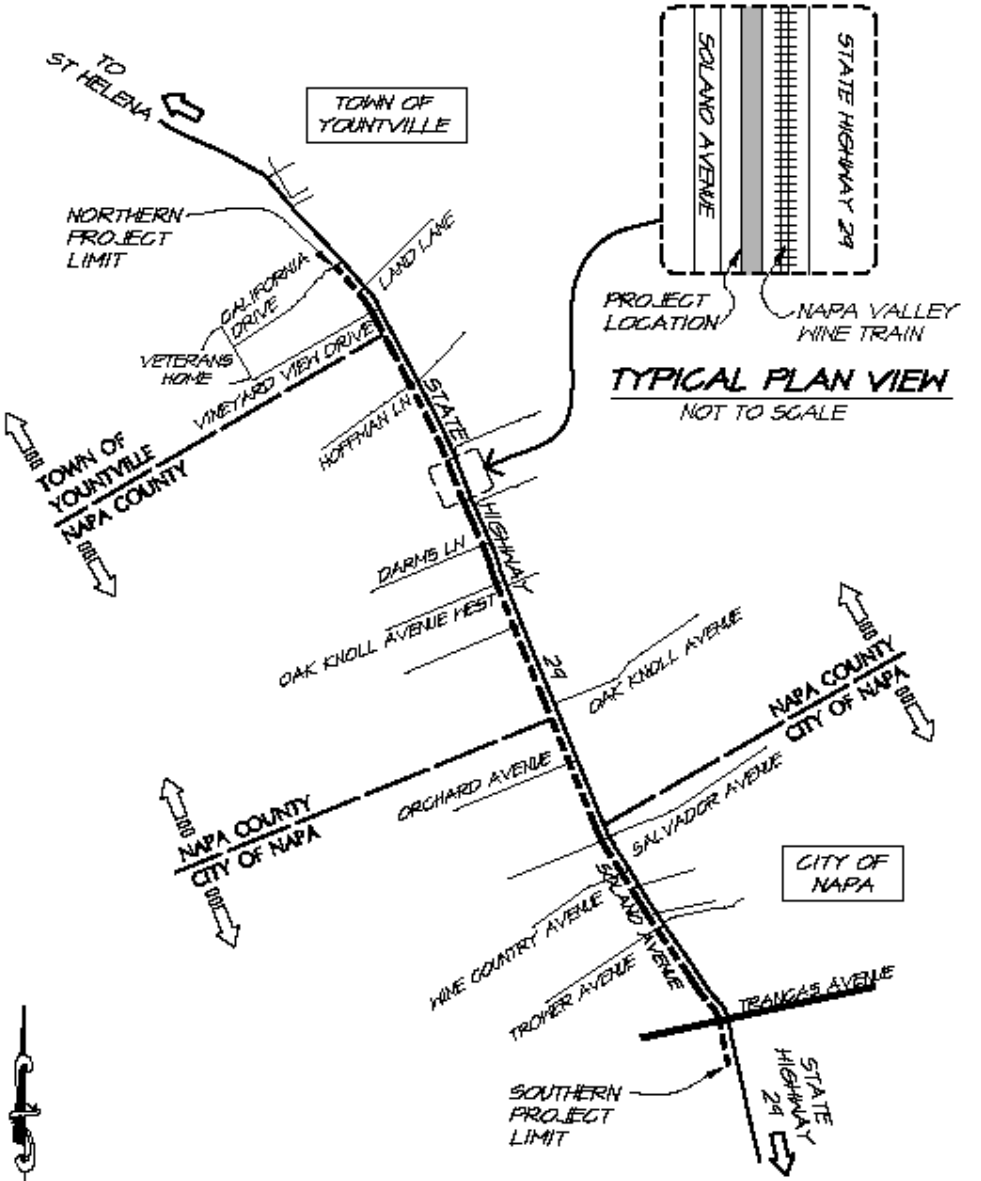
:

_____
(Signature)
Karalyn E. Sanderlin, NVTA Board Secretary

_____
(Signature)
NVTA Counsel

EXHIBIT "A"

PROJECT MAP
Oak Knoll District



KIECHERS SPENCE ASSOCIATES
1313 Fourth Street
Napa, Calif. 94559
v 707.252.3301
f 707.252.4968

EXHIBIT "B"

SCOPE OF WORK

OAK KNOLL DISTRICT

1. Project Management
    a. RFQ/RFP process & Consultant management
    b. Stakeholder agreements, reporting, invoicing & coordination
    c. Scheduling
    d. Caltrans coordination
        i. E-76 (PE, R/W, Construction)
        ii. Field Review, Preliminary Environmental Studies
        iii. Invoicing
        iv. Project close-out
    e. Work with City to identify additional funding as needed
        i. Grant writing
    f. Route Planning and Plan Development
        i. Co-ordination with City
    g. Cost Estimating
    h. Construction
    i. Project close-out
2. Data Collection and Analysis
    a. Topographic survey for City portion
    b. Base mapping
    c. Site Inventory
3. Environmental
    a. Process Preliminary Environmental Studies
    b. Conduct Field Review w/ Caltrans
    c. Complete required studies and technical memos
    d. Stakeholder Agency coordination
    e. Secure environmental determination, CEQA/NEPA
4. Right of Way
    a. Identify needed right of way, if any
        i. Easements; Temporary Construction & Permanent
        ii. Permanent acquisition
    b. Work with City to complete
        i. Appraisals, Deeds, Filing
    c. Caltrans Encroachment Permitting
5. Utilities
    a. Identify utility conflicts
    b. Stakeholder coordination on plan design
6. Design, engineering, PS&E
    a. City/Caltrans coordination for PS&E review; 30% 60%, 90%, final
    b. Consultant management
    c. Public meeting as required
    d. Board presentations

7. Construction (per Section 2. of this Agreement)
    a. Bid documents
    b. Advertisement/Bid opening
    c. Construction management
    d. Inspection services not provided by City
    e. Materials testing
    f. Contractor invoicing
    g. Project close-out