

CITY AGREEMENT NO. _____

NAPA SANITATION DISTRICT AGREEMENT NO. _____

**AGREEMENT BETWEEN CITY OF NAPA AND NAPA SANITATION DISTRICT
REGARDING THE PUEBLO AREA REHABILITATION PROJECT – PHASE 1**

This Agreement (this “AGREEMENT”) is entered into as of the date last signed by the CITY, which is identified on the signature page as the “Effective Date” by and between Napa Sanitation District, a county sanitation district (“DISTRICT”) and the City of Napa, a California charter city (“CITY”) (each a “PARTY” and collectively, the “PARTIES”).

RECITALS

A. DISTRICT plans to construct sanitary sewer improvements, including, but not limited to, sanitary sewer main repair, sanitary sewer lateral repair, and manhole replacement, within the City of Napa’s right-of-way depicted in Exhibit “A” attached hereto and incorporated herein by reference (“Project Area”) as part of an annual sewer rehabilitation project (“DISTRICT PROJECT”).

B. The CITY plans to construct roadway and water improvements (City Work) within the same Project Area.

C. The CITY and the DISTRICT agree to partner and combine their projects to reduce impacts to the residents of the Project Area and decrease total project costs.

D. The DISTRICT has agreed to include the work required to make concrete repairs and pave streets within the City of Napa’s right-of-way and construct water infrastructure improvements (“CITY Work”) in the scope of work for the construction contract for the DISTRICT PROJECT, and CITY has agreed to reimburse the DISTRICT for the costs of the CITY Work. The DISTRICT PROJECT and CITY Work shall hereinafter be collectively referred to as the “PROJECT.”

E. The PARTIES wish to memorialize the terms and conditions of the CITY’S agreement to reimburse the DISTRICT for costs associated with the CITY Work.

AGREEMENT

NOW, THEREFORE, CITY and DISTRICT, for the mutual consideration described herein, agree as follows:

1. **Scope of CITY Work.** As part of the DISTRICT PROJECT, the DISTRICT shall cause its contractor to perform the CITY Work in accordance with the City’s project-specific and standard plans and specifications and the terms of this Agreement. Notwithstanding the foregoing, the CITY, at its sole discretion, may elect not to have the CITY Work performed as part of the DISTRICT PROJECT if the City determines that the bid item price for the CITY’s Work provided by the lowest responsive and responsible bidder for the DISTRICT PROJECT is too high.

2. Design and bidding of Project(s).

- A. The DISTRICT will conduct, pay for, and be responsible for the design of and preparation of plans and specifications for the DISTRICT PROJECT and will incorporate the CITY's project-specific and standard plans and specifications for the CITY Work.
- B. The DISTRICT will advertise all design plans and specifications for the PROJECT for bidding by contractors pursuant to all State and Local bidding requirements and Section 3(B) below.

3. Construction of the Project.

- A. Approval of Bid Documents by City. At least fourteen (14) days prior to inviting bids for the PROJECT, the DISTRICT shall provide the CITY's Public Works Director with a complete set of bid documents for the PROJECT for review and written approval by the Public Works Director. DISTRICT shall include in the PROJECT bid documents specific bid items for the CITY Work.
- B. Procurement. The DISTRICT will conduct and be responsible for the procurement of all contracts associated with the construction of the PROJECT, including selecting and awarding the construction contract to the lowest responsive and responsible bidder. Prior to awarding a contract to the lowest responsive and responsible bidder for the PROJECT, the DISTRICT shall provide to the CITY the bid item price for the CITY Work provided by the lowest responsive and responsible bidder. Within five (5) business days of CITY's receipt of the bid item price for the City Work, the CITY's Public Works Director shall notify DISTRICT in writing whether CITY elects to have the CITY Work included in the construction contract for the PROJECT. The DISTRICT's Board of Directors maintains the authority to not award the CITY Work, regardless of the CITY's Public Works Director's election. If CITY notifies DISTRICT in writing of its election not to have the CITY Work included in the construction contract for the PROJECT or if the DISTRICT's Board of Directors does not award the CITY Work, this Agreement shall terminate and the Parties shall have no further obligations hereunder.
- C. Construction Management and Inspection. DISTRICT shall provide construction management oversight of the PROJECT and shall comply, and cause its contractor to comply, with all requirements for the PROJECT, including but not limited to requisite signage during construction, which are incorporated by reference herein. Any proposed changes to the CITY Work requiring a change order to the PROJECT contract shall be approved by the CITY's Public Works Director in writing prior to DISTRICT's approval of the change order. Failure of DISTRICT to secure City's authorization in writing in advance of the contractor performing any of the extra or changed work on the City's Assets shall constitute a waiver of any and all rights to reimbursement from CITY for such extra or changed work. The DISTRICT shall be responsible for construction inspection of DISTRICT Work. The CITY shall be responsible for construction inspection of CITY Work. The DISTRICT shall notify the CITY in writing at least three (3) days in advance of City inspections. Additionally, the CITY shall be responsible for reviewing submittals, requests for information, issuing design clarifications, and other engineering support for the CITY Work. The CITY will review and respond in writing to such submittals and requests within 10 working days of receipt from DISTRICT

- D. Notice of Completion. The DISTRICT shall ensure that the CITY's Assets are fully protected in place and operational upon completion of the PROJECT. Prior to DISTRICT accepting the work of the selected construction contractor for the PROJECT and/or filing a Notice of Completion, DISTRICT shall allow the CITY fifteen (15) business days to inspect all CITY Work performed by the contractor. DISTRICT shall not file a Notice of Completion for the PROJECT until the City's Public Works Director has informed the DISTRICT in writing that it accepts the CITY Work performed by the District's contractor or the fifteen (15) day CITY inspection period has expired.

4. Project Cost, Payments, and Compensation.

- A. Responsibility for Cost of CITY Work. The CITY shall be responsible for 100% of the cost of the bid items related to the CITY Work, not to exceed \$1,790,000 without the prior written and signed approval of the City. Bid items for CITY work shall be separate from bid items for District work so that CITY Work costs may be distinguished from DISTRICT Project costs. See Exhibit "B" and Exhibit "C" for the list of bid items for CITY work.
- B. Project Cost Paid by CITY. CITY agrees to pay DISTRICT for the cost of the CITY Work for which City is responsible pursuant to Section 4(A) in accordance with the terms of this Agreement. CITY shall not be responsible for any other costs associated with the PROJECT.
- C. Payment Upon Invoice. CITY shall pay the DISTRICT within thirty (30) calendar days of CITY's receipt of an invoice from the DISTRICT for CITY Work for which the City is responsible pursuant to Section 4(A). DISTRICT shall present invoices no more frequently than monthly and include the construction contractor's progress pay estimate for the CITY Work.

5. Access to Records / Document Retention.

DISTRICT will maintain PROJECT construction drawings and other information regarding the construction of the Project for at least seven (7) years following completion of the PROJECT. Financial records associated with the PROJECT, including payables records, receivable records, and grants receivable records, shall be maintained at least five (5) fiscal years after the transactions are recorded. CITY or the duly authorized representatives of the CITY, shall have access to any books, documents, papers, and records of DISTRICT 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, DISTRICT shall maintain all required records for at least seven (7) years after CITY makes final payment for any of the CITY Work and all pending matters are closed, whichever is later.

6. Term of this Agreement.

The term of this Agreement shall commence on the Effective Date and shall continue in effect until terminated pursuant to Section 18; except that the obligations of the PARTIES under Sections 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of this Agreement.

7. Insurance.

The DISTRICT shall cause its contractor to obtain and maintain in full force and effect throughout the term of this Agreement, the following insurance coverage and shall provide evidence of such coverage to the CITY upon request:

A. Workers' Compensation Insurance. Workers' compensation insurance for the performance of any of duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation.

B. Liability Insurance.

(1) General Liability. Commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, either issued by a company admitted to do business in the State of California and having an A.M. Best Rating of no less than A:VII or by self-insurance satisfactory to the CITY's risk manager, 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 that PARTY under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Comprehensive Automobile Liability Insurance. A comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with the DISTRICT's activities under this Agreement of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

C. Certificates of Coverage. Insurance coverages referenced in 7(B), above, shall be evidenced by one or more certificates of coverage or, by other evidence of coverage acceptable to the CITY's Risk Manager, which shall be available upon request.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by the DISTRICT or CITY number or title and department; shall be kept current during the term of this Agreement; shall provide that the CITY 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.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(B)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(B)(2) where the vehicles are covered by a commercial policy rather than a personal policy, the DISTRICT shall cause its contractor to also file with the evidence of coverage an endorsement from the insurance provider naming the CITY, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, the DISTRICT shall cause its contractor to file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of the DISTRICT's contractor not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of the CITY

shall pertain only to liability for activities of the DISTRICT's contractor under this Agreement, and that the insurance provided is primary coverage with respect to any insurance or self-insurance programs maintained by the CITY. 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.

(4) Upon request, the DISTRICT shall cause its contractor to provide, or arrange for the insurer to provide, to the CITY within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

- D. *Inclusion in Subcontracts.* DISTRICT shall cause all contractors and subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the insurance requirements set forth in this Section 7 and the indemnification requirements set forth in Section 8A.

8. **Indemnification.**

- A. *By CITY.* CITY, shall defend, indemnify and hold harmless DISTRICT and the officers, agents and employees of DISTRICT from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property (collectively, "Liability"), arising out of or connected with CITY's performance of its obligations under this Agreement. Consistent with Civil Code Section 2782, CITY will not be obligated to indemnify DISTRICT for the proportionate share of the Liability caused by the DISTRICT's active negligence, sole negligence, or willful misconduct.
- B. *By DISTRICT.* DISTRICT shall, and shall cause all contractors and subcontractors who perform work in connection with this AGREEMENT, to defend, indemnify and hold harmless CITY and the elected and appointed officers, agents and employees of CITY from any Liability arising out of or connected with any aspect of the performance by DISTRICT or its officers, agents, or employees, of obligations required of DISTRICT under this Agreement. Consistent with Civil Code Section 2782, DISTRICT will not be obligated to indemnify CITY for the proportionate share of the Liability caused by the CITY's active negligence, sole negligence, or willful misconduct.
- C. 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, provided 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.

9. **Ongoing Duties and Responsibilities.** In addition to the PARTIES' duties and responsibilities as described in other sections of this AGREEMENT, the PARTIES acknowledge and agree to perform the following on an ongoing basis during the time that the DISTRICT Project is under construction:

- A. *Regular Staff Meetings.* The respective staffs of DISTRICT and CITY, and their retained consultants or contractors, will meet as needed to address matters contained in this AGREEMENT.

- B. *Commitment of Staff and Resources.* The PARTIES shall provide sufficient staff and/or resources to efficiently meet the goals and tasks set forth in this AGREEMENT.
10. **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.
11. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.
12. **Attorneys' Fees.** In the event that either PARTY commences legal action of any kind or character to enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing PARTY in such litigation shall be entitled to all reasonable costs and reasonable attorney's fees incurred in connection with such action.
13. **No Waiver.** The waiver by either PARTY 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. 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 of Napa:

Public Works Director
P.O. Box 660
Napa, California 94559-0660

Napa Sanitation District:

General Manager
1515 Soscol Ferry Road
Napa, CA 94558

Changes may be made to the addresses where notices are to be delivered by giving notice pursuant to this provision.

15. **Entire Agreement.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, 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.
16. **Amendment / Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in a writing signed by both PARTIES.

17. **Recitals Adopted.** The PARTIES hereby agree to and adopt the AGREEMENT recitals as portions of this AGREEMENT.
18. **Termination.** This Agreement may be terminated by either PARTY prior to the selected contractor's commencement of the PROJECT for any reason by providing written notice to the other PARTY.
19. **Governing Law, Jurisdiction, and Venue.** The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.
20. **Counterparts.** This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.
21. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the DISTRICT and the CITY.

IN WITNESS WHEREOF, this AGREEMENT was executed by the PARTIES hereto as of the Effective Date written below.

DISTRICT:

NAPA SANITATION DISTRICT, a county
sanitation district:

ANDREW DAMRON ,
General Manager

Date: _____

ATTEST:

DONELL MANNOR
Clerk of the Board of Directors

APPROVED AS TO FORM:

John Bakker, District Counsel

CITY:
CITY OF NAPA, a California charter city

By: _____ Julie Lucido, Public Works Director

Date: _____ (“Effective Date”)

COUNTERSIGNED:

Erika Leahy, City Auditor

APPROVED AS TO FORM:

Christopher Diaz, Interim City Attorney

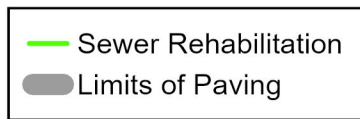
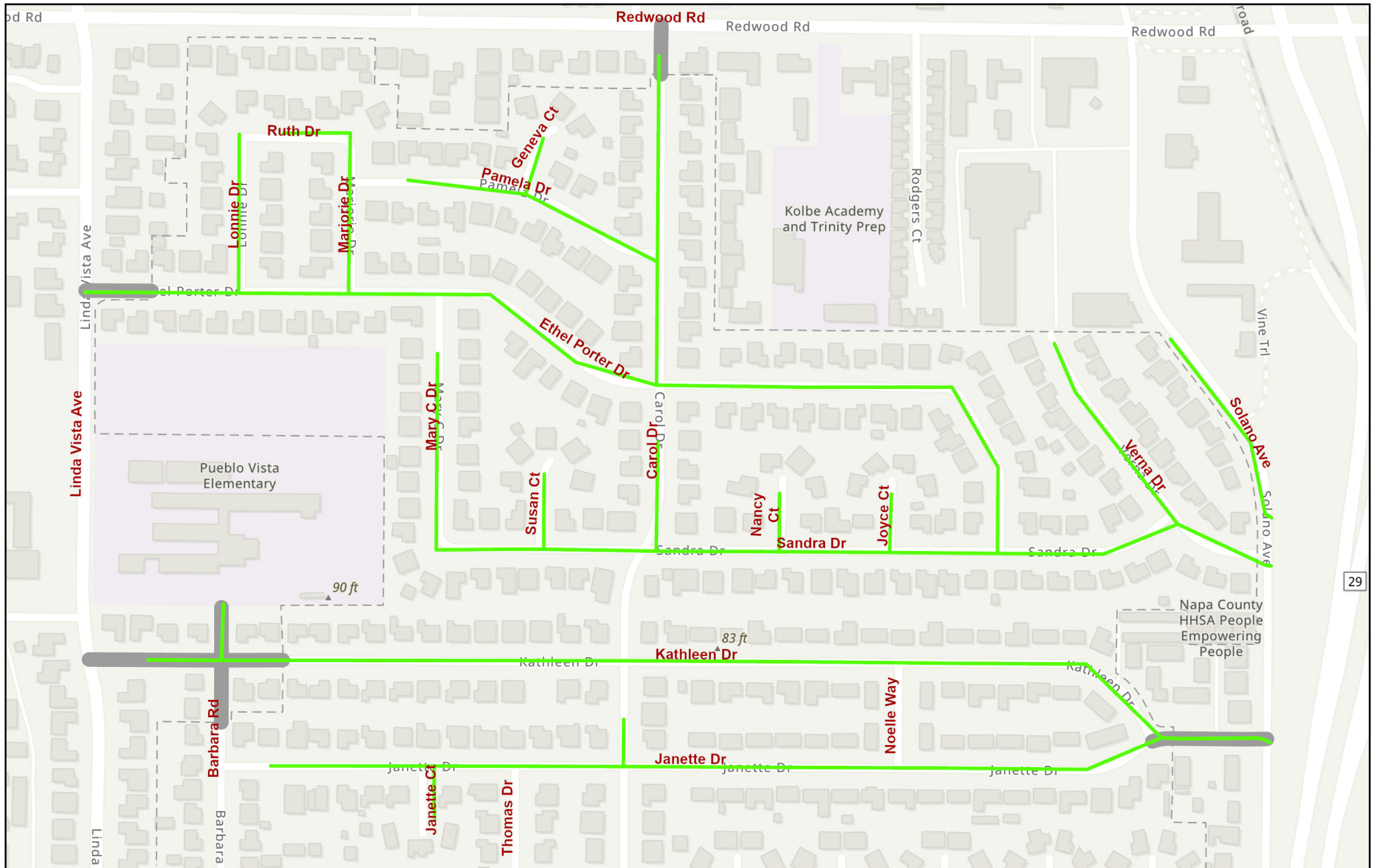


EXHIBIT A - PROJECT MAP

AGREEMENT BETWEEN NAPA SANITATION DISTRICT
AND THE CITY OF NAPA REGARDING THE PUEBLO
AREA REHABILITATION PROJECT - PHASE 1



EXHIBIT B – CITY WORK BID ITEMS

Pueblo Area Rehabilitation Project

Phase 1 - By City/County			
ITEM	ITEM DESCRIPTION	UNIT	PHASE 1 CITY QUANTITY
1	Mobilization	LS	0.2
2	Water Pollution Control Plan	LS	0.2
3	Traffic Control and Construction Area Signs	LS	0.2
4	Changeable Message Signs	EA	2
5	Remove Thermoplastic Markings, Striping, and Lane Markers	LS	0.2
6	Adjust Storm Drain Manhole Frame & Cover to Grade	EA	0
7	Adjust Water Valve Box & Cover to Grade	EA	63
8	Adjust Monument Box & Cover to Grade	EA	1
9	Remove and Replace PCC Standard Curb and Gutter	LF	0
10	Remove and Replace PCC Rolled Curb and Gutter	LF	14
11	Remove and Replace PCC Sidewalk	SF	0
12	Remove and Replace PCC Cross Gutter	SF	0
13	Cold Milling Asphalt Pavement (2-Inch Depth)	SY	0
14	Cold Milling Asphalt Pavement (3-Inch Depth)	SY	974
15	Wedge Grinding Asphalt Pavement (7' Width)	LF	0
16	Wedge Grinding Asphalt Pavement (10' Width)	LF	1,456
17	Conform Grinding Asphalt Pavement	SY	8,450
18	Remove Surfacing, Base, and Subgrade (2-inch Depth)	SY	0
19	Remove Surfacing, Base, and Subgrade (4-inch Depth)	SY	1,268
20	Subgrade Preparation	SY	1,268
21	Full Depth Base Repair (6-inch Depth)	SF	1,030
22	Over-Excavation (Revocable Bid Item)	CY	7
23	Crack Sealing	LS	0.2
24	Wide Crack Filling (Revocable Bid Item)	LF	2,000
25	Stress Absorbing Membrane Interlayer (SAMI-R)	SY	3,920
26	Hot Mix Asphalt Pavement (1.5 Inches)	TON	273
27	Hot Mix Asphalt Pavement (2 Inches)	TON	0

28	Hot Mix Asphalt Pavement (3 Inches)	TON	181
29	Hot Mix Asphalt Pavement (4 Inches)	TON	314
30	Thermoplastic Traffic Stripe - Detail 2	LF	0
31	Thermoplastic Traffic Stripe - Detail 22	LF	738
32	Thermoplastic Traffic Stripe - Detail 27B	LF	0
33	Thermoplastic Traffic Stripe - Detail 38A	LF	0
34	Thermoplastic Basic Crosswalk (White or Yellow)	LF	302
35	Thermoplastic Ladder Crosswalk (White or Yellow)	LF	0
36	Thermoplastic Limit Line	LF	0
37	Thermoplastic Pavement Markings (Arrows, Words, and Numerals; White or Yellow)	SF	44
38	Blue Fire Hydrant Pavement Marker	EA	2
39	Tree Removal	EA	0
40	Mount W4-4P Sign Panel to Existing Post	EA	2

EXHIBIT C – CITY WATER WORK BID ITEMS

Pueblo Area Rehabilitation Project

Phase 1 – By City/County

ITEM	ITEM DESCRIPTION	UNIT	PHASE 1 CITY WATER QUANTITY
1	Construction Staking	LS	1
2	Water Pollution Control Plan	LS	1
3	Traffic Control Plan	LS	1
4	Potholing Existing Utilities	LS	1
5	Shoring	LS	1
6	Installation of 6-inch PVC C900 DR14 Pipe	LF	260
7	Installation of 1-inch Water Service	EA	1
8	Install New Fire Hydrant	EA	2
9	Landscape Restoration at 2200 Sandra Drive and 1600 Carol Drive	LS	1
10	Trench Paving	SF	3100
11	Tie-in and Abandonment No. 1 (Sandra Drive and Carol Drive Intersection -East)	LS	1
12	Tie-in No. 2 (Sandra Drive and Carol Drive Intersection - West)	LS	1
13	Tie-in No. 3 (Intersection of Kathleen Drive and Carol Drive)	LS	1
14	Tie-in and Abandonment No. 4 (Kathleen Drive)	LS	1