

EXHIBIT A

CITY OF NAPA AGREEMENT NO. _____

NAPA COUNTY AGREEMENT NO. _____

AGREEMENT BETWEEN THE CITY OF NAPA AND NAPA COUNTY REGARDING THE TRANCAS STREET PAVING PROJECT

This Agreement (“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 County, a political subdivision of the State of California (“COUNTY”) and the City of Napa, a California charter city (“CITY”) (each a “PARTY” and collectively, the “PARTIES”).

RECITALS

A. CITY plans to construct pavement improvements, within the City of Napa’s right-of-way (“CITY Assets”) depicted in Exhibit “A” attached hereto and incorporated herein by reference (“Project Area”) as part of a pavement rehabilitation project (“CITY PROJECT”).

B. COUNTY owns roadways (“COUNTY Assets”) located adjacent to the Project Area that require repair.

C. CITY has agreed to include the work required to pave the COUNTY Assets (“COUNTY Work”) in the scope of work for the construction contract for the CITY PROJECT, and COUNTY has agreed to reimburse the CITY for the costs of the COUNTY Work. CITY PROJECT and COUNTY Work shall hereinafter be collectively referred to as the “PROJECT.”

D. CITY and COUNTY agree to partner on the PROJECT to pave the adjacent CITY Assets and COUNTY Assets. The PROJECT benefits by reducing overall costs for project improvements and reducing disruptions to community members and roadway users.

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

AGREEMENT

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

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

2. Design and bidding of Project(s).

- A. The CITY will conduct, pay for, and be responsible for the design of and preparation of plans and specifications for the CITY PROJECT and will incorporate the COUNTY's project-specific and standard plans and specifications for the COUNTY Work.
- B. The CITY 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 COUNTY. At least seven (7) days prior to inviting bids for the PROJECT, the CITY shall provide the COUNTY's Public Works Director with a complete set of bid documents for the PROJECT for review and written approval by the Public Works Director. CITY shall include in the PROJECT bid documents specific bid items for the COUNTY Work.
- B. Procurement. The CITY 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 CITY shall provide to the COUNTY the bid item price for the COUNTY Work provided by the lowest responsive and responsible bidder. Within five (5) business days of COUNTY's receipt of the bid item price for the COUNTY WORK, the COUNTY's Public Works Director shall notify CITY in writing whether COUNTY elects to have the COUNTY Work included in the construction contract for the PROJECT. The CITY'S City Council maintains the authority to not award the COUNTY Work, regardless of the COUNTY'S Public Works Director's election. If COUNTY notifies CITY in writing of its election not to have the COUNTY Work included in the construction contract for the PROJECT or if the CITY'S City Council does not award the COUNTY Work, this Agreement shall terminate and the Parties shall have no further obligations hereunder.
- C. Permits. The COUNTY will obtain and be responsible for compliance with all permitting as necessary to conduct COUNTY Work. COUNTY shall be responsible for any costs due to delay in obtaining permits or ensuring compliance with their terms.
- D. Construction Management and Inspection. CITY 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 COUNTY Work requiring a change order to the PROJECT contract shall be approved by the COUNTY's Public Works Director in writing prior to CITY's approval of the change order. Failure of CITY to secure COUNTY's authorization in writing in advance of the contractor performing any of the extra or changed work on the County's Assets shall constitute a waiver of any and all rights to reimbursement from COUNTY for such extra or changed work. The CITY shall be responsible for construction inspection of CITY Work. The CITY will provide for construction inspection of COUNTY Work. The CITY shall notify the COUNTY in writing at least two (2) days in advance of inspections of COUNTY Work. The COUNTY shall be responsible for reviewing submittals, requests for information, issuing design clarifications, and other engineering support for the COUNTY Work. The COUNTY will review and respond in writing to such submittals and requests within 5 working days of receipt from CITY.

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

4. Project Cost, Payments, and Compensation.

- A. *Responsibility for Cost of COUNTY Work.* The COUNTY shall be responsible for 100% of the cost of the bid items and inspection related to the COUNTY Work. Bid items for COUNTY work shall be separate from bid items for CITY work so that COUNTY Work costs may be distinguished from CITY Project costs. See the awarded construction contract Bid Schedule for the list of bid items for COUNTY work.
- B. *Project Cost Paid by COUNTY.* COUNTY agrees to pay CITY for the cost of the COUNTY Work including actual costs incurred for work associated with the time spent to provide administrative, project management, and construction inspection services for which County is responsible pursuant to Section 4(A) in accordance with the terms of this Agreement. COUNTY shall not be responsible for any other bid item costs associated with the PROJECT.
- C. *Payment Upon Invoice.* COUNTY shall pay the CITY within thirty (30) calendar days of COUNTY's receipt of an invoice from the CITY for COUNTY Work for which the City is responsible pursuant to Section 4(A). CITY shall present invoices no more frequently than monthly and include the construction contractor's progress pay estimate for the COUNTY Work.

5. Access to Records / Document Retention.

CITY 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. COUNTY or the duly authorized representatives of the COUNTY, shall have access to any books, documents, papers, and records of CITY 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, CITY shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the COUNTY 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 CITY 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 COUNTY 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 COUNTY'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 CITY'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 COUNTY's Risk Manager, which shall be available upon request.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by the CITY or COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that the COUNTY 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 CITY shall cause its contractor to also file with the evidence of coverage an endorsement from the insurance provider naming the COUNTY, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, the CITY 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 CITY's contractor not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of the COUNTY shall pertain only to liability for activities of the CITY'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 COUNTY. 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 CITY shall cause its contractor to provide, or arrange for the insurer to provide, to the COUNTY within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

- D. *Inclusion in Subcontracts.* CITY 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 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 (collectively, "Liability"), arising out of or connected with (1) COUNTY Work, or (2) COUNTY's performance of its obligations under this Agreement. Consistent with Civil Code Section 2782, COUNTY will not be obligated to indemnify CITY for the proportionate share of the Liability caused by the CITY's gross negligence or willful misconduct.
- B. *By CITY.* CITY shall, and shall cause all contractors and subcontractors who perform work in connection with this AGREEMENT, to defend, indemnify and hold harmless COUNTY and the elected and appointed officers, agents and employees of COUNTY from any Liability arising out of or connected with (1) CITY PROJECT, or (2) any aspect of the performance by CITY or its officers, agents, or employees, of obligations required of CITY under this Agreement. Consistent with Civil Code Section 2782, CITY will not be obligated to indemnify COUNTY for the proportionate share of the Liability caused by the COUNTY's gross 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 CITY Project is under construction:

- A. *Regular Staff Meetings.* The respective staffs of CITY and COUNTY, 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 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 County:

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

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 Napa County.
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 COUNTY and the CITY.
22. **Electronic Signatures.** Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. The term "electronic signature" means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures. Without limiting the generality of the foregoing, delivery of an executed counterpart's signature page of this Agreement, by facsimile, electronic mail in portable document format (.PDF) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

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EXHIBIT A

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

COUNTY:

NAPA COUNTY, a political subdivision of the State of California

By: _____

Anne Cottrell, Chair of the Board of Supervisors

Date: _____

ATTEST:

NEHA HOSKINS

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Ryan FitzGerald (e-sign)
Ryan FitzGerald, Deputy County 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 AREA



EXHIBIT A