

MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF DANVILLE AND CONTRA COSTA COUNTY
FOR THE CAMINO TASSAJARA SAFETEA-LU IMPROVEMENTS PHASE II PROJECT

This MEMORANDUM OF UNDERSTANDING ("MOU"), effective September 13, 2016, is entered into by the Town of Danville, a municipal corporation ("TOWN") and Contra Costa County, a political subdivision of the State of California (hereinafter referred to as "COUNTY").

RECITALS

- A. The Camino Tassajara SAFETEA-LU Improvements Phase II Project ("Project") consists of pavement rehabilitation, roadway base repair, replacement of striping, utility cover adjustments, removal of wireless vehicle detectors and installation of loop detectors in pavement located on westbound lanes of Camino Tassajara located within TOWN boundaries with construction that began in August 2016. A portion of Camino Tassajara lies within COUNTY boundaries, as shown on EXHIBIT A attached hereto.
- B. TOWN advertised the Project through the public bidding process and awarded it to the lowest responsible bidder, MCK Services Inc. ("MCK"), on July 19, 2016. The lowest bid amount was \$2,281,367.20. Construction of Project improvements within the COUNTY will require a change order to the MCK construction contract. Using bid unit costs, TOWN determined the change order costs to complete the improvements located within the COUNTY as \$111,394.30 for westbound lanes, and \$88,984.40 for eastbound lanes, for a total of \$200,378.70. The change order cost estimates are identified in EXHIBIT B attached hereto.

UNDERSTANDING

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, TOWN and COUNTY agree as follows:

- 1. Purpose. The purpose of this MOU is to set forth the parties' goals and expectations with respect to implementing a change order to the MCK construction contract for that part of the Project in COUNTY, and COUNTY'S payment to TOWN therefor. This MOU is not intended, and shall not be construed, to create any rights that do not otherwise exist under the law.
- 2. Construction Contract Change Order; Work Amount. TOWN shall initiate, approve and commence a change order to the MCK construction contract to include work and furnish material and equipment within COUNTY'S boundaries. COUNTY shall make payment to TOWN for the MCK construction contract change order work located within the COUNTY, as set forth in Section 3, in an amount not to exceed \$200,378.70 without written approval by the COUNTY.
- 3. Invoicing and Payment. TOWN shall provide COUNTY with a quarterly invoice of all contractor charges associated with Project improvements constructed within the COUNTY. COUNTY shall reimburse TOWN by June 30, 2017, for invoices associated with Project improvements constructed within the COUNTY.
- 4. Project Work; Inspection; Warranty.
 - a) COUNTY shall issue an encroachment permit to TOWN without charge for all Project improvements constructed within the jurisdictional boundaries of COUNTY, and TOWN shall comply with all permit terms.
 - b) TOWN is responsible for its own costs associated with pre-construction, construction and post-construction inspection service labor charges on behalf of COUNTY for work located within COUNTY. COUNTY may, at its own discretion, provide additional inspection services for work

within the COUNTY and shall be responsible for its own costs associated with those services.

- c) All engineering and design work for the portion of the Project in the jurisdictional boundaries of COUNTY has been reviewed by COUNTY and determined to meet COUNTY standards and requirements.
- d) Upon completion of the Project, but prior to TOWN'S acceptance of the Project improvements, COUNTY and TOWN shall conduct a final joint inspection of the Project area in the COUNTY'S jurisdictional boundaries. At the completion of the joint inspection, COUNTY shall either (i) accept the work as complete, and completed in a manner equal or superior to COUNTY standards and requirements, or (ii) provide TOWN with a detailed punchlist of areas not meeting such standards.

5. Agreement Modification. This MOU may be modified only by the written approval of the legislative bodies of both parties. Neither party may unreasonably withhold its consent to a modification of this MOU for the implementation and accomplishment of the overall purpose for which this MOU is made.

6. Accountability. TOWN shall provide strict accountability of all funds received for the Project. Within 60 days after Project completion, TOWN shall submit a final invoice to COUNTY for amounts due to MCK for costs of the Project located within the COUNTY'S jurisdictional boundaries only, and in an amount not to exceed \$200,378.70.

7. Hold Harmless.

- a) Nothing in this MOU is intended to affect the legal liability of any party by imposing any standard of care, with respect to the work performed hereunder, different from the standard of care imposed by law.
- b) To the extent not covered by contractor's insurance and indemnification provided pursuant to Section 8 below, TOWN shall defend, hold harmless, and indemnify COUNTY, and its officers, agents and employees, against any and all claims, demands, damages, costs, expenses or liability related to or arising out of TOWN's design and construction of the Project, or its performance of this MOU, except for liability arising out of the sole negligence or willful misconduct of COUNTY, or its officers, agents or employees.

8. Project Contract Documents. TOWN shall ensure that the contract documents it enters into for the Project, including without limitation the MCK construction contract, include provisions requiring the contractor to provide indemnity, insurance, warranties and bonds in the amounts and manner set forth below. TOWN shall perform contract administration for the PROJECT within the jurisdictional boundaries of COUNTY.

- a) Indemnity. The contractor will be required to defend, indemnify and hold harmless the COUNTY and TOWN, and their governing bodies, officers, agents and employees, from and against any and all liability, claims, damages, costs, expenses, actions, cause of action or demands whatsoever against any of them, including related attorneys' fees, arising out of or connected with any injury or death of any person or damage to property or other liability of any nature arising out of or in any way connected with the Project. Except as prohibited by Civil Code section 2782, the contractor's obligations under this section shall exist regardless of the existence or degree of fault of the COUNTY or TOWN or any indemnitee.
- b) Warranties. In addition to all warranties existing at law, the contractor will be required to provide an express warranty for the benefit of COUNTY and TOWN, for a one-year time period, containing, at a minimum, the contractor's guarantee that the work has been performed in accordance with the plans and specifications, and the Contractor's agreement to repair or replace all work that fails to conform to the plans and specifications or proves to be defective in workmanship or materials during the stated time period.

- c) Bonds. The contractor will be required to present two good and sufficient surety bonds, one for payment and one for performance, each in an amount equal to 100 percent of the contract price, issued by a surety admitted in the State of California in a form satisfactory to the COUNTY and TOWN, naming COUNTY and TOWN as obligees on the bonds.
- d) Insurance. TOWN shall ensure that the following insurance requirements are incorporated into all contracts entered into by TOWN, or their contractors, subcontractors or assigns, in connection with this MOU: (1) contractors shall maintain workers' compensation insurance pursuant to state law; (2) contractors shall maintain commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum single-limit coverage of \$2 million per occurrence; (3) contractors shall maintain builders' risk insurance in an amount equal to the construction contract amount, with a waiver of subrogation for TOWN and COUNTY, and naming TOWN and COUNTY as loss payees; and (4) contractors shall maintain vehicle liability insurance with a minimum combined single-limit coverage of \$1 million per occurrence. Contractors shall provide certificates of insurance, copies of policies, or endorsements evidencing the above insurance coverage and requiring at least 30 days' written notice to the TOWN and COUNTY of policy lapse, cancellation, or material change in coverage. The commercial general liability insurance and vehicle liability insurance shall include endorsements naming TOWN and COUNTY, and their governing bodies, officers, agents and employees, as additional insureds. The aforementioned insurance policies shall contain a provision that the insurance afforded thereby to the additional insureds shall be primary insurance to the full limits of the policy and that, if any of the additional insureds has other insurance or self-insurance against a loss covered by such policy, such insurance or self-insurance shall be excess insurance only.

9. Ownership. After TOWN accepts the Project as complete, COUNTY shall own and maintain the portion of the PROJECT located in COUNTY'S jurisdictional boundaries.

10. Agreement Termination. This MOU will terminate immediately after all of the following have occurred: TOWN accepts the Project as complete; COUNTY provides TOWN with the final payment for construction costs for Project; and TOWN returns to COUNTY any amount due under Section 6 above, if any.

11. Counterparts. The parties hereto recognize and agree that separate counterpart signature pages may be used to execute this MOU, but that all such pages constitute one and the same MOU.

12. Construction. The section headings and captions of this MOU are, and the arrangement of this instrument is, for the sole convenience of the parties to this MOU. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this MOU. This MOU will not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared it. The parties to this MOU and their respective counsel have read and reviewed this MOU and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this MOU. The recitals are, and will be enforceable as, a part of this MOU.

13. No Third Party Beneficiaries. This MOU is intended solely for the benefit of the parties hereto, and no third party will have any right or interest in any provision of this MOU or as a result of any action or inaction of any party in connection therewith.

14. Governing Law and Venue. This MOU will be governed and construed in accordance with California law. The venue of any litigation pertaining to this MOU will be Contra Costa COUNTY, California.

15. Notice. All correspondence regarding this MOU, including invoices, payments, and notices shall be directed to the following persons at the following addresses and facsimile numbers, which may be changed by written notice from one party to the other:

TOWN:
Joseph A. Calabrigo, Town Manager
510 La Gonda Way
Danville, CA 94526
Fax: (925) 838-0548

CONTRA COSTA COUNTY:
Julia R. Bueren, Public Works Director
255 Glacier Drive
Martinez, CA 94553-4825
Fax: (925) 833-6628

16. Entire MOU. This MOU contains the entire understanding of the parties relating to the subject of this MOU. Any representation or promise of the parties relating to Project shall not be enforceable unless it is contained in this MOU or in a subsequent written modification of this MOU executed by all the legislative bodies of both parties.

17. IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

TOWN OF DANVILLE:

COUNTRA COSTA COUNTY:

By: _____
Joseph A. Calabrigo, Town Manager

By: _____
Julia R. Bueren, Public Works Director

Approved as to form:

Approved as to form:
Sharon L. Anderson, County Counsel

By: _____
Name:
Town Attorney

By: _____
Name: _____
Deputy County Counsel