

AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND THE
CITY OF CONCORD FOR THE
KIRKER PASS ROAD NORTHBOUND TRUCK LANES PROJECT

This Agreement (“Agreement”) is entered into as of the ___ day of _____, 2018, (“Effective Date”) by and between Contra Costa County, a political subdivision of the State of California (“COUNTY”) and the City of Concord, California, a municipal corporation (“CITY”). The COUNTY and the CITY are sometimes referred to together as the “Parties” and each as a “Party.”

RECITALS

- A. The Kirker Pass Road Northbound Truck Lanes Project (“Project”) is a project to widen a portion of Kirker Pass Road to construct a truck climbing lane in the northbound direction, from approximately 800-feet north of Clearbrook Drive, in the City of Concord, to the northernmost intersection of Hess Road and Kirker Pass Road, in unincorporated Contra Costa County. The Project location is shown in Exhibit A, attached hereto and incorporated herein.
- B. The Scope of the Project will include pavement widening for the truck climbing lane and adjacent future bike lanes, relocation of hot mix asphalt dikes, concrete ditches, and other drainage features, retaining wall construction, installation of signage and striping, construction of two bioretention areas (the bioretention area located within City limits shall be referred to as “bioretention area #1;”) and relocation of existing roadside features. Pavement maintenance also will be performed on the existing roadway by the placement of an open grade rubberized hot mix asphalt overlay on the southbound and northbound lanes, from the Concord city limit line to a point approximately 4,200 feet north of the Project limits.
- C. The Contra Costa Transportation Authority (“CCTA”) and the County have entered into Master Cooperative Agreement No. 24C.06 to provide the County Project funding through the Measure J transportation sales tax, under the “Major Streets: Traffic Flow, Safety, & Capacity Improvements” funding category.
- D. CCTA has approved Resolution 14-03-P appropriating Measure J funds for the Project (Measure J Project no. 24004), including Project-related environmental clearance, design, and right-of-way acquisition.
- E. The COUNTY and the CITY have been coordinating regarding the Project. The purpose of this Agreement is to set forth the Parties’ responsibilities pertaining to the Project. The COUNTY does not anticipate needing to condemn property or property rights within the CITY’s jurisdiction.

However, if the COUNTY needs to take that action, an additional purpose of this Agreement is to designate the COUNTY as the Party to exercise the power of eminent domain for Project-related right-of-way acquisition, pursuant to Code of Civil Procedure section 1240.140 and other applicable law.

AGREEMENT

Now, therefore, the CITY and the COUNTY agree as follows:

1. TERM. The term of this Agreement begins on the Effective Date, and this Agreement expires upon the acceptance of the Project by the CITY under Section 7.
2. ENGINEERING AND DESIGN IMMUNITY. The COUNTY will be responsible for all Project engineering. The COUNTY has completed PROJECT preliminary engineering and environmental documentation and is in the process of completing final design and right-of-way engineering activities. The COUNTY has submitted plans, specifications, and estimates ("PS&E") for CITY'S review and has received CITY'S comments, at the following completion levels: 35%, 65%, and 95%. The COUNTY intends to submit the final PS&E to CITY for its review and approval by September 30, 2018. Within 30 days after the County submits the final PS&E to the CITY for its review, the CITY shall provide the COUNTY any written comments the CITY may have on the final PS&E. For that portion of the Project within the CITY'S jurisdiction, the COUNTY shall perform all engineering and design work to the satisfaction of the CITY, in accordance with CITY standards and requirements, and in accordance with all applicable State of California, Department of Transportation ("Caltrans") standard plans and specifications. In advance of any construction of the Project, the Project PS&E and design drawings shall be approved by either the COUNTY or by a COUNTY employee who is authorized to exercise discretionary authority to give such approval in conformity with County standards. The COUNTY shall provide to the CITY copies of all as-built drawings for the Project improvements after acceptance of the Project by the COUNTY.
3. RIGHT-OF-WAY ACQUISITION. The COUNTY is hereby designated as the Party to acquire all property and property interests required for the Project within the Parties' jurisdictions, by eminent domain or otherwise, by and through the COUNTY'S Board of Supervisors, County officials and departments, and COUNTY'S attorneys. The COUNTY shall be responsible for conducting all public hearings to the end of adopting a resolution of necessity, and for taking all steps necessary to pursue to conclusion eminent domain proceedings as may be necessary to obtain property and property interests for or relating to the Project, and, in connection therewith, for entering into any and all contracts to obtain performance of all legal, engineering, appraisal, right-of-way, relocation assistance, and related services.

4. CONSTRUCTION.

(a) The COUNTY will act as the lead agency for the PROJECT for purpose of the California Environmental Quality Act (CEQA) and shall conduct all appropriate environmental review under CEQA. The COUNTY will be responsible for the overall management, advertisement, solicitation of bids, and Project construction contract award. The COUNTY will be responsible for all Project-related contract administration, and the COUNTY shall be responsible for ensuring that the Project is constructed in compliance with all applicable local, state, and federal laws, including without limitation the California Public Contract Code and the California Labor Code. The COUNTY's and the CITY's respective legislative bodies shall approve the PROJECT, improvement plans, and specifications prior to the COUNTY's advertisement and solicitation of bids for the PROJECT.

(b) Prior to construction, the COUNTY or COUNTY's contractor shall obtain an encroachment permit from the CITY for all Project improvements constructed within the jurisdictional boundaries of the CITY, at no cost to the COUNTY or the COUNTY's contractor.

(c) For Project features located within the CITY, the CITY, at its cost and expense, may elect to provide a qualified representative who shall have authority to accept or reject work or materials, or to order any actions needed for public safety or the preservation of property and to assure compliance with all provisions of the CITY's encroachment permit. The CITY's representative shall have no direct contact with COUNTY's contractor, but shall make all comments and recommendations to the COUNTY's representative.

5. FINANCIAL RESPONSIBILITY. The COUNTY will pay for all Project-related design, engineering, and construction costs, including construction contract administration costs necessary for completion of the entire Project. The COUNTY will pay all costs for the acquisition of property or property interests for the Project, whether by eminent domain or otherwise, including all costs for legal, appraisal, right of way, relocation, and other related services. Unless otherwise expressly provided herein, the CITY shall pay for its costs to satisfy its obligations under this Agreement.

6. COMPLETION. Upon the completion of Project construction, the COUNTY and the CITY shall conduct a joint final inspection of the Project prior to acceptance of improvements as complete. If the COUNTY or the CITY is not satisfied with the improvements, the COUNTY will notify the contractor and will require the contractor to complete the improvements to the COUNTY's and the CITY's satisfaction. After the improvements are completed to the satisfaction of the COUNTY and the CITY, the COUNTY will accept the Project as complete. Within sixty (60) days following the COUNTY's acceptance of the Project as complete, the CITY shall accept the improvements within its jurisdiction as complete, with the exception of bioretention area #1, and shall provide the COUNTY written notice of that acceptance.

7. GUARANTEE, WARRANTY AND ACCEPTANCE. The COUNTY will require that its contractor guarantee that the Project is and will be free from defects and will perform satisfactorily in accordance with the COUNTY's and the CITY's standards and requirements for a period of one year following the acceptance of the Project as complete by both the COUNTY and the CITY. Prior to expiration of the one-year warranty period of the Project, the COUNTY and the CITY shall conduct a joint inspection of the Project to determine whether any defects exist that may be covered by the warranty. If the COUNTY or the CITY identify any defects covered by the warranty, the COUNTY will notify the contractor and will require the contractor to repair the defects the COUNTY's and the CITY's satisfaction. If no defects are identified and if the COUNTY and the CITY determine that the Project has performed during the warranty period to the COUNTY's and the CITY's satisfaction, the CITY shall provide the COUNTY concurrence for a release of the warranty for the Project, and the COUNTY will provide the contractor a release of the warranty. The CITY shall not unreasonably withhold its concurrence for a release of the warranty. The requirements of this Section 7 shall survive the expiration of this Agreement, and those requirements shall terminate when the COUNTY provides the contractor a release of the warranty following receipt of the CITY's concurrence for that release under this Section.

8. PROJECT OWNERSHIP AND MAINTENANCE.

(a) After the COUNTY accepts the Project as complete in accordance with Section 6, the COUNTY will own, operate, and maintain (1) the portion of the Project located within the COUNTY's jurisdictional boundaries, and (2) bioretention area #1 located within CITY's jurisdictional boundaries; and, following the acceptance of the Project, the COUNTY will assume total responsibility for the maintenance and operation of (1) that portion of the Project that is within the COUNTY'S jurisdictional boundaries and (2) bioretention area #1 within the CITY's jurisdictional boundaries. At the time that the CITY accepts the Project as complete in accordance with Section 6, the CITY shall issue an encroachment permit to the COUNTY, at no cost to the COUNTY, to allow the COUNTY to maintain bioretention area #1 within the CITY's jurisdictional boundaries.

(b) After the CITY accepts the Project as complete in accordance with Section 6, the CITY shall own, operate, and maintain the portion of the Project located within the CITY's jurisdictional boundaries, and the CITY shall assume total responsibility for the maintenance and operation for that portion of the Project within the CITY'S jurisdictional boundaries, except bioretention area #1, as outlined in Section 8(a) above.

(c) The requirements of this Section 8 shall survive the expiration of this Agreement.

9. HOLD HARMLESS AND INDEMNIFICATION.

- (a) Nothing in this Agreement 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) The CITY shall defend, hold harmless, and indemnify the COUNTY, and its officers, agents, and employees, from and against any and all Liabilities related to or arising out of the CITY's performance of its obligations under this Agreement, except for any Liabilities that arise out of the sole negligence or willful misconduct of the COUNTY, or its officers, agents, or employees. In addition, from and after the date that the CITY accepts the Project as complete in accordance with Section 6 above, the CITY shall defend, indemnify, save, and hold harmless the COUNTY, its governing body, officers, agents, and employees, against all claims, demands, lawsuits, costs, expenses and liabilities for any damages, injuries, sicknesses, or deaths ("Liabilities") that arise from or are related to the use, operation, or maintenance of the portion of the Project located within incorporated City of Concord
- (d) The COUNTY will defend, hold harmless, and indemnify the CITY, and its officers, agents, and employees, from and against any and all Liabilities related to or arising out of COUNTY's performance of its obligations under this Agreement, except for Liabilities that arise out of the sole negligence or willful misconduct of the CITY, or its officers, agents, or employees. In addition, from and after the date that the COUNTY accepts the Project as complete in accordance with Section 6, the COUNTY will defend, indemnify, save, and hold harmless the CITY, its governing body, officers, agents, and employees, against all Liabilities that arise from or are related to the design, construction, use, operation, or maintenance of the portion of the Project located within the COUNTY's jurisdictional boundaries.
- (c) The requirements of this Section 9 shall survive the expiration of this Agreement.

10. GENERAL TERMS.

- (a) Modification. This Agreement may be modified in a writing executed by both Parties and approved by both Parties' governing bodies.
- (b) Agreement Format. The section headings and captions of this Agreement are, and the arrangement of this Agreement is, for the sole convenience of the Parties. The section headings, captions, and arrangement of this Agreement do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement.

- (d) Entire Agreement. This Agreement contains the entire understanding of the Parties relating to the subject matter of this Agreement. No promise, representation, warranty or covenant not expressly included in this Agreement has been made, or is being relied upon, by any Party.
- (e) Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, with all counterparts constituting but one and the same instrument. The execution of this Agreement will not become effective until counterparts have been executed by both Parties.
- (f) Notices. All correspondence under this Agreement, including invoices, payments, and notices, shall be given personally, by overnight delivery, or by First Class U.S. Mail, and directed to the following persons at the following addresses, which may be changed by written notice from one party to the other:

COUNTY:

Brian Balbas, Public Works Director
255 Glacier Drive
Martinez, CA 94553-4825
brian.balbas@pw.cccounty.us

CITY:

Kevin Marstall, Interim City Engineer
1950 Parkside Drive, MS/52
Concord, CA 94519
Kevin.Marstall@cityofconcord.org

Notices shall be deemed given on the day of delivery if personally delivered, on the business day following the date if sent by overnight delivery, and three business days after the date of mailing if sent by U.S. Mail. Email addresses are included as a convenience to the Parties, but a notice sent by email is not properly given under this Agreement, unless it is also given personally, by overnight mail, or by U.S. Mail.

- (g) Governing Law; Venue. This Agreement will be governed and construed in accordance with California law. The venue of any litigation arising out of this Agreement will be Contra Costa County.
- (h) Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the Parties hereunder.
- (i) Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

(j) Survival. All rights and obligations hereunder by their nature are to continue after any expiration or termination of this Agreement, shall survive any such expiration or termination.

(k) Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties have each executed this Agreement as of the date first set forth above.

CONTRA COSTA COUNTY:

CITY OF CONCORD:

By: _____
Brian M. Balbas, Public Works Director

By: _____
Valerie Barone, City Manager

APPROVED AS TO FORM:
Sharon L. Anderson
County Counsel

APPROVED AS TO FORM:

By: _____
Deputy County Counsel

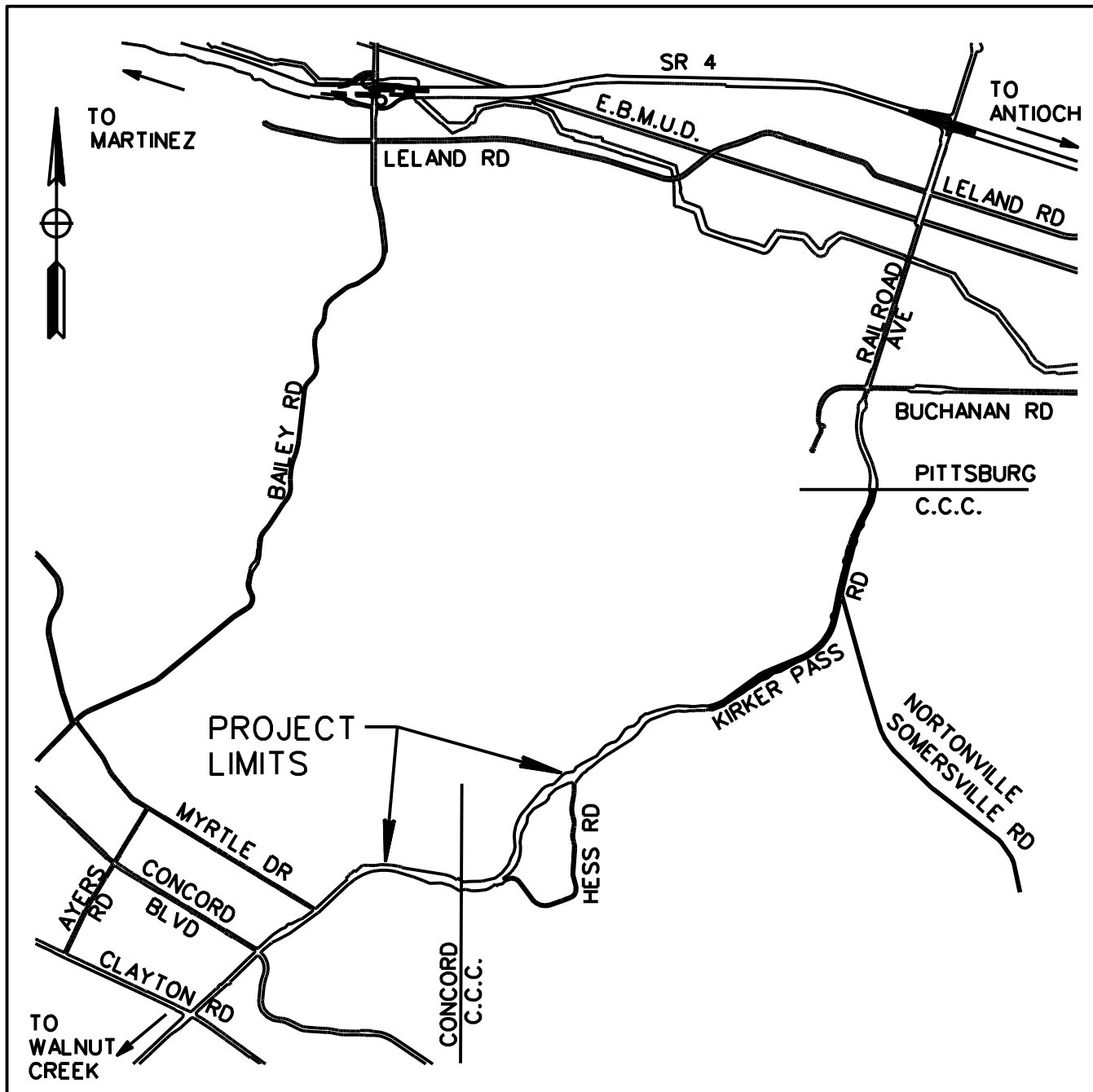
By: _____
City Attorney

Exhibits

Exhibit A – Project Boundary Map

NW:SMS:sr
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Exhibit A



TIME PLOTTED =>

DATE PLOTTED =>

FILE =>



Contra Costa County
Public Works
 Department

255 GLACIER DRIVE MARTINEZ, CALIFORNIA 94553 PH: (925) 313-2000 FAX: (925) 313-2333

PROJECT LOCATION

KIRKER PASS ROAD NORTHBOUND TRUCK LANES

DB: AV

CB:

DATE: APRIL 2013

SHEET 1 OF 1