

**AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND THE
CITY OF RICHMOND FOR THE
LOCAL STREETS AND ROAD PRESERVATION PROJECT**

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

RECITALS

- A. The Local Streets and Road Preservation project is a COUNTY-sponsored project that includes pavement preservation on an approximately 3.4-mile segment of San Pablo Dam Road between El Portal Drive and Tri Lane, shown in FIGURE 1 attached hereto and incorporated herein by reference (the "PROJECT"). As part of the PROJECT, the COUNTY will conduct pavement rehabilitation on San Pablo Dam Road to improve the pavement condition index of the roadway. The PROJECT consists of a pavement grind and overlay of hot mix asphalt, roadway pavement and base failure repairs, coordination with utilities to adjust their facilities to final pavement grade, re-construction of signal loops, re-construction of curb ramps to meet Americans with Disability Act (ADA) standards, traffic striping of the new pavement, and other related work.
- B. The PROJECT includes pavement preservation of portions of San Pablo Dam Road that are within the CITY's jurisdiction.
- C. The COUNTY and the CITY have been coordinating regarding PROJECT planning, and the COUNTY and CITY desire to share PROJECT costs and responsibilities as set forth in this Agreement.

AGREEMENT

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

- 1. PURPOSE. The purpose of this Agreement is to set forth the Parties' obligations with respect to constructing the PROJECT. This Agreement shall only be construed to create the specific rights and obligation set forth herein. This Agreement is not intended to create, and shall not be construed as creating, any other rights and obligations not expressly set forth herein, except as may otherwise be required under law.

2. TERM. The term of this Agreement begins on the Effective Date. This Agreement terminates upon the County's delivery of a warranty release to its contractor under Section 9.
3. ENVIRONMENTAL REVIEW. The COUNTY will act as the lead agency for the PROJECT and will be responsible for completing all applicable environmental review under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) before the COUNTY approves the PROJECT. The CITY will be a CEQA/NEPA responsible agency for the PROJECT and will complete all applicable requirements of a CEQA/NEPA responsible agency before the CITY approves the PROJECT.
4. ENGINEERING. The COUNTY will complete PROJECT preliminary engineering, environmental documentation, final design, and right of way engineering activities. The COUNTY will submit to the CITY the 35%, 65%, 95%, and final plans, specifications, and estimates (PS&Es) for review for the portion of the PROJECT located within the CITY's jurisdiction. Within 30 days after receiving each of the 35%, 65%, 95%, and final PS&Es, the CITY will provide the COUNTY any CITY comments on those PS&Es. The COUNTY will ensure that all engineering and design work for PROJECT improvements in the CITY's jurisdiction is performed 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 standard plans and specifications.
5. RIGHT OF WAY ACQUISITION. The Parties do not anticipate any right of way acquisition for this PROJECT. However, to the extent that the COUNTY determines that right of way acquisition is required to complete the PROJECT, the COUNTY will perform all PROJECT-related right of way activities, including but not limited to acquisition of right of way, slope easements, utility easement, license agreements, temporary construction easements, right of entry permits, storm drainage easements, drainage releases, and relinquishment of abutter's rights. The COUNTY is hereby designated as the Party to acquire all property interests required for the PROJECT within the Parties' jurisdictions, by eminent domain or otherwise, by and through the COUNTY's Board of Supervisors, officials and departments, and designated 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.

6. PROJECT CONSTRUCTION.

- (a) Lead contracting agency. The COUNTY agrees to act as lead agency for PROJECT construction, and it will be responsible for the overall management, advertisement and award, and contract administration for construction activities within the jurisdictional boundaries of both the COUNTY and the CITY. The COUNTY's and the CITY's respective legislative bodies shall approve the final PROJECT improvement plans and specifications prior to the COUNTY's award of the PROJECT construction contract.
- (b) Encroachment permit. When requested to do so by the COUNTY or its contractor, the CITY shall issue to the COUNTY's contractor, at no cost to the COUNTY or its contractor, an encroachment permit for all PROJECT improvements and work within the jurisdictional boundaries of the CITY.
- (c) City's designation of representative. For PROJECT features within the CITY's jurisdiction, the CITY may elect to provide, at its sole cost and expense, 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 the COUNTY's contractor, and shall make all comments and recommendations to the COUNTY's representative.

7. FINANCIAL RESPONSIBILITY.

- (a) County's financial responsibility. Except for the CITY's financial responsibility under this Section 7, the COUNTY will pay all PROJECT construction, design, engineering, contract administration, and other PROJECT-related costs.
- (b) City's financial responsibility. The CITY will pay the COUNTY, in accordance with subsections (c) and (d), the costs that the COUNTY's contractor charges to complete the portion of the PROJECT within the CITY's jurisdiction, as determined by the County following consultation with the City (the "City construction costs"), plus an additional fifteen percent (15%) of those costs for PROJECT design, engineering, contract administration, coordination, and other PROJECT-related costs. This amount CITY will pay COUNTY is estimated to be \$200,000.
- (c) Advance payment. Within 30 days after receiving written notice from the COUNTY that the COUNTY has awarded a PROJECT construction contract, the CITY will make an advance payment to the COUNTY in an amount equal to fifty percent (50%) of the CITY estimated construction costs, as estimated by the COUNTY based on the COUNTY's engineer's estimate (the "CITY advance payment").

(d) Final payment. Within 30 days after the PROJECT is accepted as complete by the COUNTY under Section 8, the COUNTY will provide the CITY a written demand for payment of the balance of the CITY construction costs ("CITY final payment"), calculated as follows:

$$[(\text{CITY construction costs}) \times (1.15)] - (\text{CITY advance payment}) = \text{CITY final payment}$$

The COUNTY's demand for payment under this subsection (d) will include documentation showing PROJECT costs and disbursements, and other information to support the COUNTY's determination of the CITY final payment. The CITY will pay the COUNTY the CITY final payment within 30 days after receiving the COUNTY's written demand for payment under this subsection (d). The requirements of this subsection (d) will survive the expiration or termination of this Agreement.

8. COMPLETION AND ACCEPTANCE. Within 10 days after the COUNTY notifies the CITY that PROJECT construction is complete, COUNTY and CITY representatives will 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 PROJECT 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. 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. The COUNTY's acceptance of the PROJECT as complete will start the contractor's one year warranty period.
9. GUARANTEE AND WARRANTY. The COUNTY will require that its contractor guarantee and warrant the PROJECT, as more particularly described in Section 11(b). Prior to expiration of the one-year warranty period for the PROJECT, the COUNTY and the CITY will conduct a joint final inspection. After COUNTY and CITY have determined that the PROJECT improvements have performed during the warranty period to the COUNTY's and the CITY's satisfaction, the CITY shall provide concurrence for a release of the warranty for the PROJECT. The CITY shall not unreasonably withhold said concurrence for release. The COUNTY will be responsible for providing the contractor its and the CITY's warranty release following the COUNTY's receipt of the CITY's concurrence for release.

10. OWNERSHIP AND MAINTENANCE.

(a) County's obligations. Beginning on the date that the COUNTY accepts the PROJECT as complete, and continuing thereafter: the COUNTY will own and maintain the portion of the PROJECT located in the COUNTY's jurisdiction; the COUNTY will assume total responsibility for that portion of the PROJECT; and the

COUNTY will defend, indemnify, save, and hold harmless the CITY, its governing body, officers, agents, and employees, against all claims, demands, lawsuits, costs, expenses and liability for any damages, injury, sickness, or death occurring after acceptance and relating to the design, construction, use, operation, or maintenance of the portion of the PROJECT located in the COUNTY's jurisdiction.

- (b) City's obligations. Beginning on the date that the CITY accepts the PROJECT as complete, and continuing thereafter: the CITY will own and maintain the portion of the PROJECT located in CITY's jurisdiction; the CITY will assume total responsibility for that portion of the PROJECT; and the CITY will defend, indemnify, save, and hold harmless the COUNTY, its governing body, officers, agents, and employees, against all claims, demands, lawsuits, costs, expenses and liability for any damages, injury, sickness, or death occurring after acceptance and relating to the use, operation, or maintenance of the portion of the PROJECT located in the CITY's jurisdiction.
- (c) Survival. The requirements of this Section 10 will survive the expiration or termination of this Agreement.

11. CONTRACTOR'S OBLIGATIONS.

- (a) Contractor's indemnity. The COUNTY will require its contractor to defend, indemnify, and hold harmless the COUNTY and the CITY, and their governing bodies, officers, agents, and employees, from and against any and all liability, claims, actions, causes of action, and demands whatsoever against them, including related attorneys' fees, arising from or connected with any injury, or death of any person, or damage to property, or other liability of any nature arising from or in any way connected with the PROJECT.
- (b) Contractor's warranty. In addition to the warranties existing at law, the COUNTY will require its contractor to provide an express warranty for the benefit of the COUNTY and the CITY for a one-year period following the COUNTY's acceptance of the PROJECT as complete. Said warranty will include the contractor's guarantee that the work has been completed in accordance with the plans and specifications for the PROJECT, and it will include the contractor's agreement to repair or replace all work that fails to conform to the plans and specifications, or that proves to be defective in workmanship or materials during the above-stated one-year period of time.
- (c) Bonds. The COUNTY will require its contractor 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, using the COUNTY's standard forms, naming the COUNTY and the CITY as obligees on the bonds.

12. GENERAL TERMS.

- (a) MODIFICATION. This Agreement may be modified or amended only with the written consent of the legislative bodies of each Party hereto.
- (b) ACCOUNTABILITY. The Parties will provide strict accountability of any and all PROJECT funds and will report to each other all receipts and disbursements.
- (c) FORMAT. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the Parties to this Agreement. 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 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 included in this Agreement has been or is 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. Faxed signatures on this Agreement or any notice, consent, or amendment required under this Agreement are binding.
- (f) NOTICES. All correspondence regarding this Agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses, which may be changed by written notice from one Party to the other:

COUNTY:

Brian M. Balbas, Public Works Director
255 Glacier Drive
Martinez, CA 94553-4825
Fax: 925-313-2333
brian.balbas@pw.cccounty.us

CITY:

Yader Bermudez, Director of Engineering
& Capital Improvement Projects
450 Civic Center Plaza
Richmond, CA 94804
Fax: 510-307-8116
Yader_Bermudez@ci.richmond.ca.us

Notices shall be deemed given on the day of delivery if personally delivered, on the business day following the date of mailing if sent by overnight delivery, and three business days following 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) NO THIRD PARTY BENEFICIARIES. There are no third-party beneficiaries to this Agreement.

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

CONTRA COSTA COUNTY:

CITY OF RICHMOND:

By: _____
Brian M. Balbas, Public Works Director

By: _____
Yader Bermudez, Director of Engineering & Capital Improvement Projects

APPROVED AS TO FORM:

Sharon L. Anderson
County Counsel

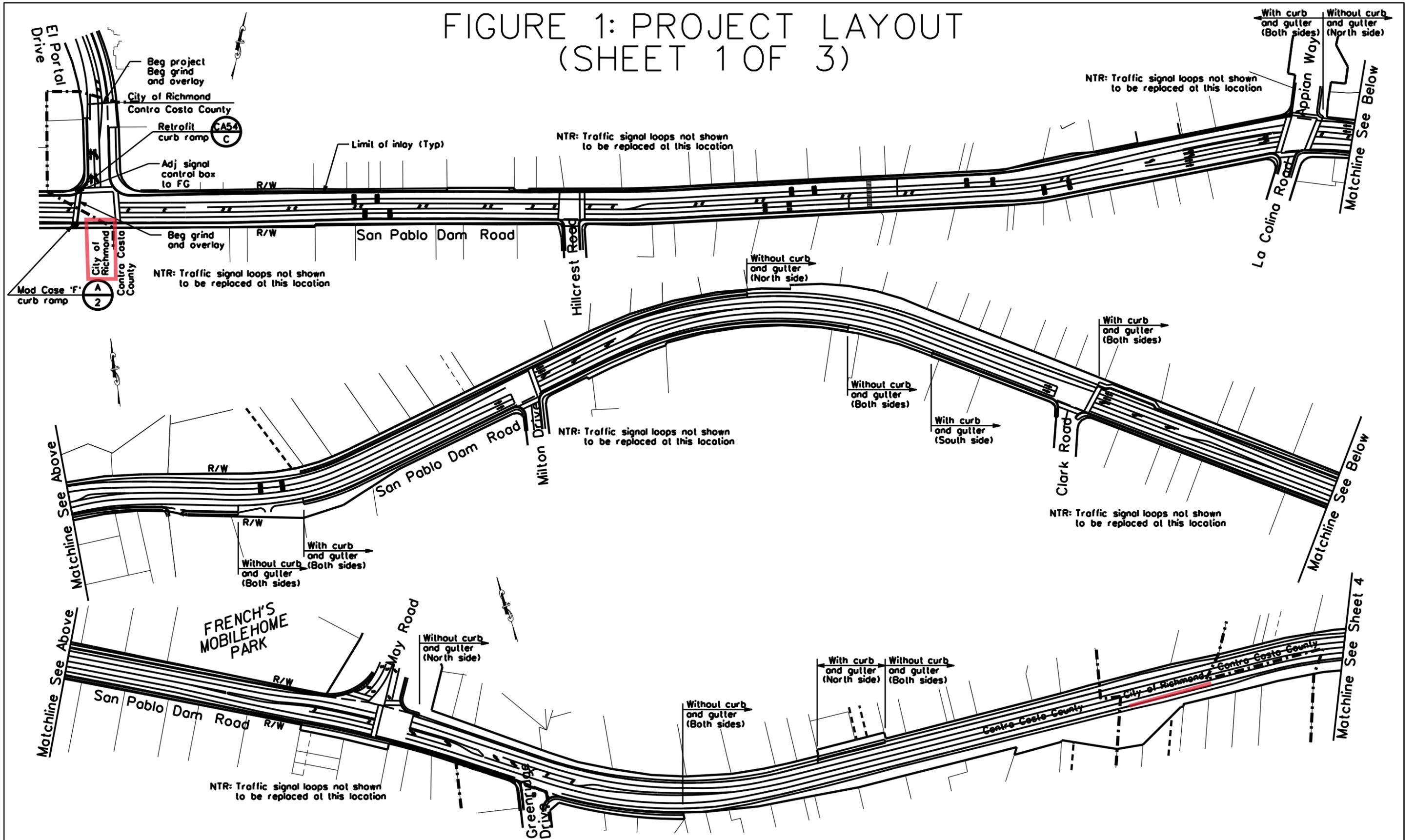
APPROVED AS TO FORM:

By: _____
Name: _____
Deputy County Counsel

By: _____
City Attorney

Attachment: Figure 1

FIGURE 1: PROJECT LAYOUT (SHEET 1 OF 3)



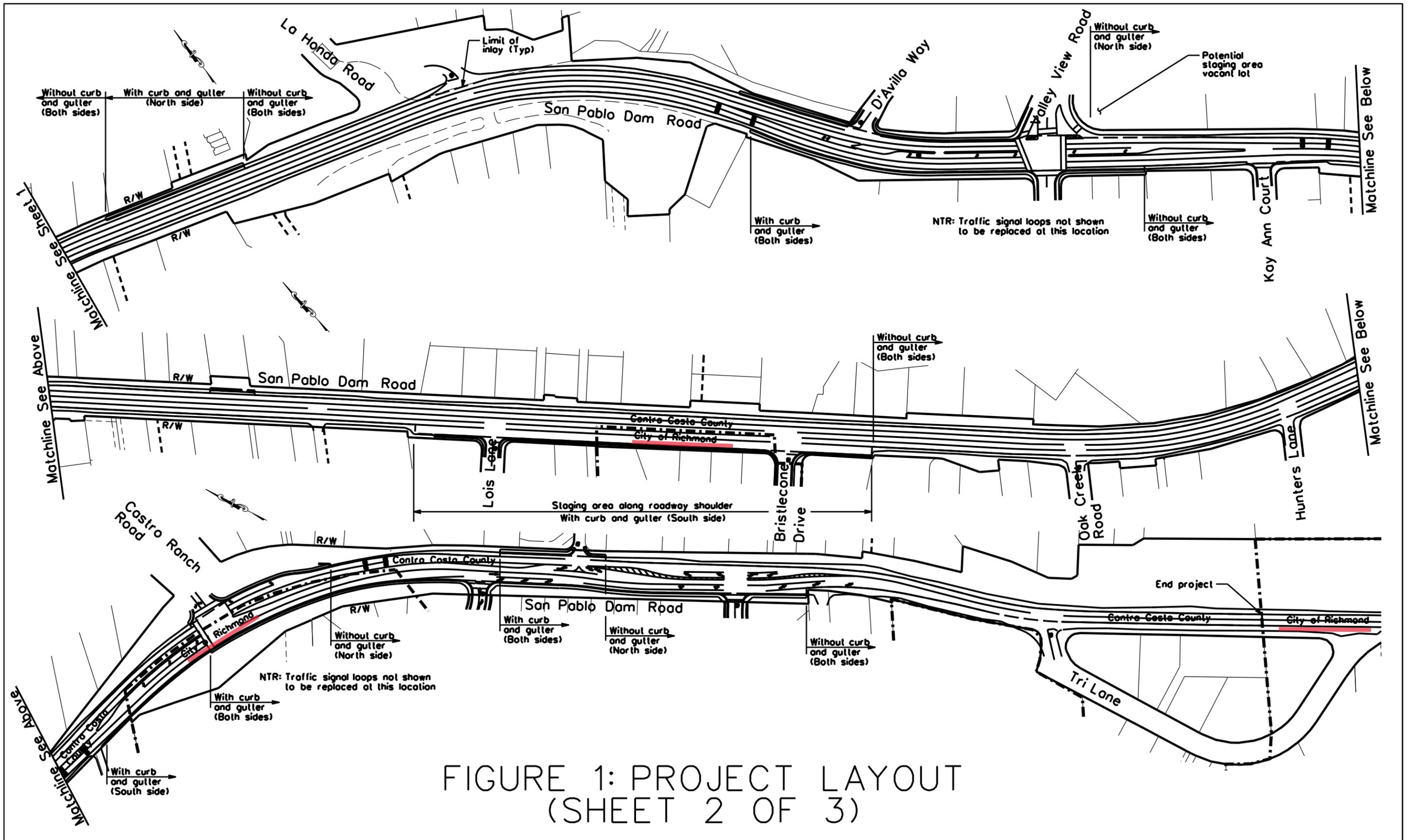


FIGURE 1: PROJECT LAYOUT
(SHEET 2 OF 3)

CONTRA COSTA COUNTY
PUBLIC WORKS DEPARTMENT
255 GLACIER DRIVE
MARTINEZ, CALIFORNIA 94553

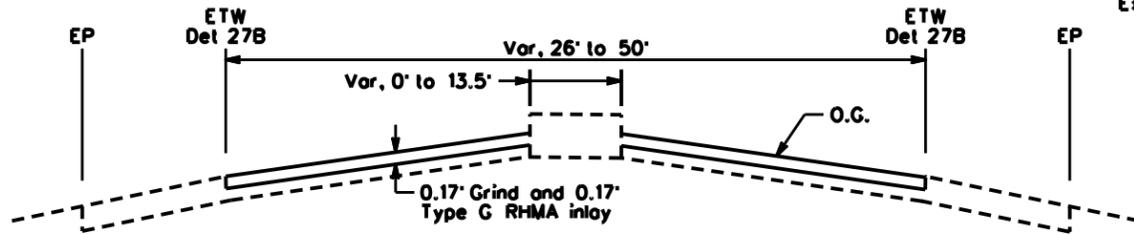
**PRELIMINARY
DRAWING** DATED
8-14-18

CONTRA COSTA COUNTY
LOCAL STREETS AND ROADS PRESERVATION PROJECT

PLAN-SITE 1

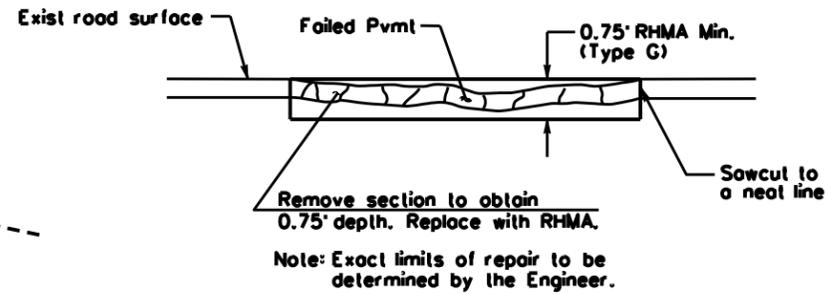
FILE NO. SHEET 2 OF 3

FIGURE 1: PROJECT LAYOUT (SHEET 3 OF 3)



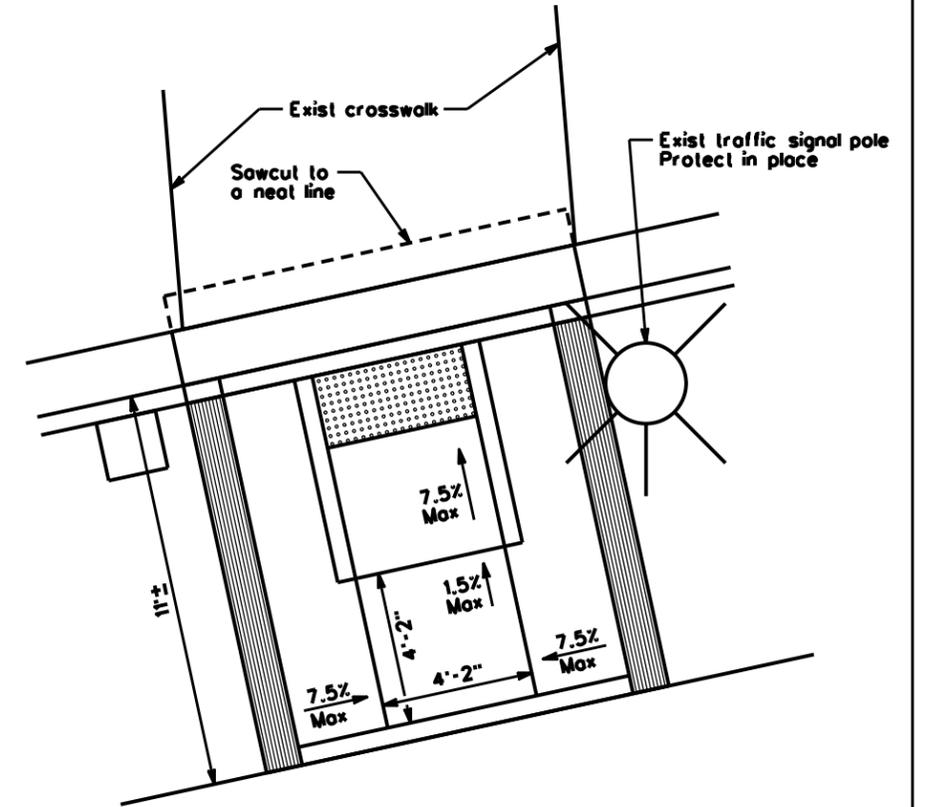
Note: Inlay area is limited to area enclosed by Del 27B on both sides of the roadway.

TYPICAL SECTION WITHOUT CURB AND GUTTER (SAN PABLO DAM ROAD)
No Scale



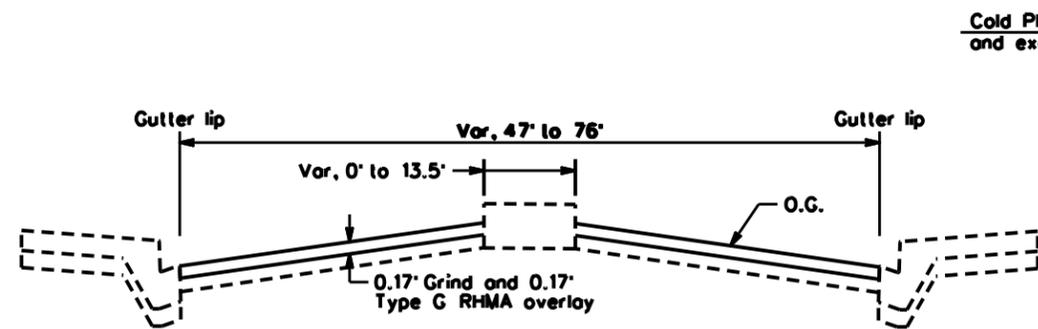
Note: Exact limits of repair to be determined by the Engineer.

PAVEMENT FAILURE REPAIR DETAIL
No Scale



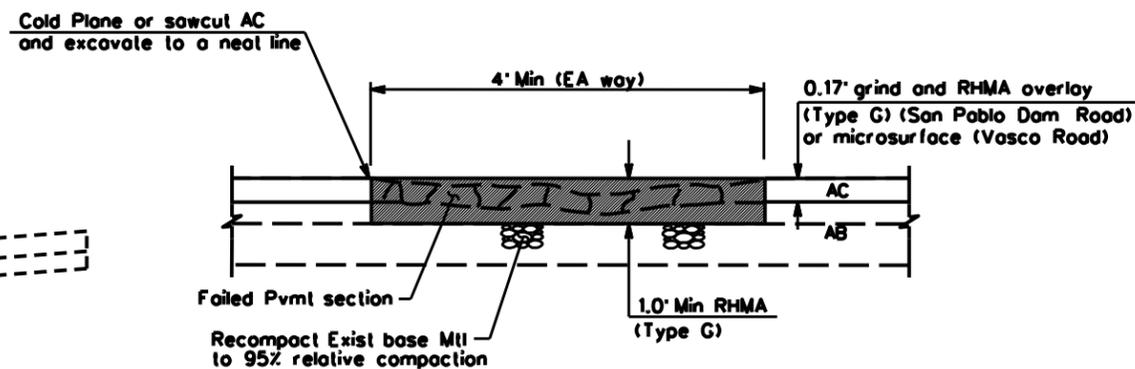
Note: For details not shown see Revised State Standard Plan RSP A88A.

MODIFIED CASE 'F' CURB RAMP DETAIL (A/2)
No Scale



Note: Inlay area is limited to area enclosed by gutter lip on both sides of the roadway.

TYPICAL SECTION WITH CURB AND GUTTER (SAN PABLO DAM ROAD)
No Scale



BASE FAILURE REPAIR DETAIL
No Scale

CONTRA COSTA COUNTY
PUBLIC WORKS DEPARTMENT
255 GLACIER DRIVE
MARTINEZ, CALIFORNIA 94553

**PRELIMINARY
DRAWING** DATED
8-14-18

CONTRA COSTA COUNTY
LOCAL STREETS AND ROADS PRESERVATION PROJECT
TYPICAL SECTIONS AND DETAILS
FILE NO. SHEET 3 OF 3