

AGREEMENT BETWEEN THE CITY OF BENICIA AND THE COUNTY OF SOLANO REGARDING IMPROVEMENTS AND ROAD MAINTENANCE TREATMENTS TO LAKE HERMAN ROAD

This Agreement is made and entered into on the date last written below, by and between the City of Benicia, a municipal corporation (City), and the County of Solano, a political subdivision of the State of California (County), with reference to the following facts:

1. Lake Herman Road is a Route of Regional Significance which connects Vallejo, unincorporated Solano County, Benicia, and Highway 680.
2. Lake Herman Road needs various improvements, primarily shoulder widening from Reservoir Road to 0.8 miles west, to enhance safety through the corridor.
 - a. The portion of Lake Herman Road needing improvement west of Reservoir Road is approximately 0.5 miles of City jurisdiction and 0.3 miles of County jurisdiction.
3. Lake Herman Road needs various maintenance treatments, from Reservoir Road to Highway 680, approximately 1.3 miles, to bring the road into a state of good repair.
4. The City and County wish to cooperate to deliver a road improvement project in fiscal year 2020-21 that will improve traffic safety across both jurisdictions.
 - a. The Lake Herman Road Improvements are estimated to cost approximately \$350,000 for the County and \$725,000 for the City.
5. The County performs annual chip seal road maintenance treatments and is planning to treat roads in the southern portion of Solano County in fiscal year 2020-2021 (Chip Seal Project).
6. Staff from the City and County have reviewed pavement conditions along Lake Herman Road in the City and determined that chip seal treatment is recommended from Reservoir Road to Highway 680 ("City Portion").
7. The City and County wish to cooperate to deliver chip seal road maintenance treatment on Lake Herman Road that will improve the pavement conditions along the route.
 - a. The City Portion of the Chip Seal Project is estimated to cost approximately \$117,000 (\$90,000/mile) for the City.

In consideration of the foregoing facts it is agreed as follows:

With regard to the Lake Herman Improvement Project:

1. The County shall:

- a. Design the road improvements, which will consider the following general design features:
 - i. Reconstruction of the road utilizing full-depth reclamation to recycle and rebuild the base materials section of the road from Reservoir Road to 0.8 miles west.
 - ii. Shoulder widening that meets the City's and County's standards.
 - iii. New signing and striping that meet the City's and County's design standards.
 - b. Solicit design review comments from the City on improvement features within the City's jurisdiction.
 - c. Environmentally clear the project, which will include a CEQA determination/filing, as well as, acquiring or obtaining any applicable permits by resource agencies.
 - d. Coordinate any necessary utility relocation work.
 - e. Provide the City an updated Engineer's Estimate and funding plan for review prior to soliciting construction bids.
 - f. Solicit, award, and execute a construction contract to the lowest responsive and responsible bidder.
 - g. Administer the construction contract, which includes engineering, surveying, inspection oversight, and payment to the contractor of the contract work.
 - h. Provide invoices and copies of pertinent documents to the City.
 - i. Provide the Notice of Completion and as-built drawings to the City at project completion.
2. The City shall:
- a. Review the draft designs provided by the County for the City Portion.
 - i. Design changes/requests cannot create costs beyond those approved in this Agreement without the prior written consent of each Party.
 - b. Provide a no-fee encroachment permit for the County and the improvement project contractor to operate within the City's right of way.
 - c. Sign, as co-applicant, any permits that are necessary for the improvement project work.
 - d. Assist the County with any utility relocation coordination (if necessary).
 - e. Review and comment on the County's updated Engineer's Estimate and funding plan prior to solicitation of bids.
 - f. Provide timely inspection of the work, in coordination with the County and the construction schedule.
 - g. Pay to the County the County's total costs of design, environmental clearance, permitting, and bidding for the improvement project, with the City's share estimated at \$75,000.
 - h. Pay to the County all construction costs directly related to the work done in the City's jurisdiction, not to exceed \$650,000 without prior written consent of the City.
 - i. City will pay 63% of all joint construction contract costs, such as mobilization, traffic control, storm water pollution controls, etc.
 - i. Pay the County's invoices within 60 days of receipt.

With regard to the Chip Seal Project:

3. The County shall:

- a. Provide traffic control with pilot car for single lane closures during work, including appropriate signs and flagging.
- b. Chip seal the road surface using County Operations crew, equipment, and materials and using the same standards and methods used on County roads.
- c. Broom/sweep the chip seal surfaces in the first 1-2 days after placement of the chip seal, and two more times in the 3 weeks following.
- d. Apply painted striping on the chip seal within the first (1st) week after placement of the chip seal.
- e. Perform work and provide materials that are similar to the County's chip seal work on unincorporated roads.
- f. Provide invoices for all labor, materials, and equipment costs, with copies of pertinent documents, to the City for review and payment.

4. The City shall:

- a. Provide a no-fee encroachment permit for the County and the project subcontractor to operate within the City's rights of way.
- b. Sign, as co-applicant, any permits that are necessary for the project work.
- c. Perform preparatory maintenance work (dig outs, blade patch, crack seal, etc.) to City road surfaces in advance of chip seal work.
- d. Provide timely inspection of the work, in coordination with the County and the construction schedule
- e. Pay to the County the County's total costs for the services provided by the County for the Chip Seal Project, not to exceed \$117,000 without prior written consent of the City.
- f. Pay the County's invoice(s) within 60 days of receipt.

5. County to indemnify City

County agrees to defend and indemnify City, its agents, officers and employees (collectively referred to in this paragraph as "City"), from any claim, action or proceeding against City, arising out of the acts or omissions of County in the performance of this Agreement. At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve County of any obligation imposed by this Section. City shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

6. City to indemnify County

City agrees to defend and indemnify the County, its agents, officers and employees (collectively referred to in this paragraph as "County") from any claim, action or proceeding against County, arising out of the acts or omissions of City in the performance of this Agreement. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this Section. County shall notify City promptly of any claim, action or proceeding and cooperate fully in the defense.

7. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

8. Contractor

City understands that the construction work will be done by a third-party contractor under County's sole and exclusive supervision. The County will require the contractor to indemnify both City and County and to add both City and County as additional insureds as a requirement of the construction contract.

9. This Agreement does not create a partnership or joint venture between the parties, nor does it create a possessory or ownership interest outside of an agency's jurisdiction.

10. No modification of this agreement shall be valid unless it is in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year last written below.

CITY OF BENICIA

COUNTY OF SOLANO

William Tarbox
Director of Public Works

Bill Emlen
Director of Resource Management

Dated: _____

Dated: _____

Approved as to form:

Approved as to form:

Deputy City Attorney

Lori Mazzella
Deputy County Counsel