

NAPA COUNTY AGREEMENT NO. _____

**AGREEMENT BETWEEN NAPA SANITATION DISTRICT AND NAPA COUNTY
REGARDING ROAD PAVING SERVICES**

This Agreement (“AGREEMENT”) is entered into and effective as of _____, 2018 by and between Napa County, a political subdivision of the state of California (“COUNTY”) and Napa Sanitation District, a County sanitation district, formed pursuant to Health & Safety Code Sections 4700, et seq. (“NAPASAN”).

RECITALS

WHEREAS, NAPASAN is designing and plans to construct a sanitary sewer rehabilitation project in southeast Napa in 2019 “NAPASAN Project Scope”;

WHEREAS, COUNTY plans to construct the Imola Avenue Paving and ADA Ramp Project (“COUNTY Project Scope”) in 2019 in the same project area as the NAPASAN Project;

WHEREAS, NAPASAN and COUNTY wish to partner and combine the projects to reduce the impacts to the residents of the project area and decrease total project costs;

WHEREAS, NAPASAN is willing to bid the COUNTY Project Scope and NAPASAN Project Scope together and to otherwise administer the construction of the COUNTY Project on COUNTY’s behalf under the terms and conditions set forth herein;

WHEREAS, COUNTY wishes to contract with NAPASAN to have NAPASAN administer the COUNTY Project Scope in conjunction with the NAPASAN Project Scope (collectively the “Combined Project”;

TERMS

NOW, THEREFORE, NAPASAN and COUNTY agree as follows:

1. Project Definition and Scope of Services.

- A. NapaSan Project. The NAPASAN Project will be included as part of its 2019 Collection System Rehabilitation Project. The NAPASAN Project will include rehabilitation, repair, and replacement of existing sanitary sewer main pipes, laterals, manholes, flush holes, and cleanouts and raising existing manholes and utility structures to grade within the project area, according to the Project Map (“Exhibit A”).
- B. County Project. The COUNTY Project that will be part of the Combined Project will include, but not be limited to, paving of COUNTY streets, construction of curb ramps, and relocation of storm drainpipes within the project area, according to the Project Map (“Exhibit A”).
- C. Project Modification. The Combined Project may be modified during construction as necessary to address unforeseen conditions or otherwise. The modifications shall be in the form of construction change orders, and will be approved in accordance with NAPASAN’s

Procurement Policies (District Code Section 2.03, et seq.). It is acknowledged that such construction change orders may or may not increase or decrease the overall construction cost of the Combined Project. The estimated project costs of the COUNTY's Project Work, as described in Section 4 below, identify construction costs including a construction contingency. NAPASAN and the COUNTY agree that all construction change orders will be discussed at regularly scheduled project meetings, and that any construction change orders that alter the COUNTY's Project Work shall require approval by the Director of Public Works, with such approvals or disapprovals made on a timely basis so as not to disrupt the project timeline or result in additional project costs due to time delays.

2. Design and bidding of the Project.

- A. The COUNTY will conduct, pay for, and be responsible for the design and preparation of plans and specifications of the COUNTY's Project Work.
- B. NAPASAN will conduct, pay for, and be responsible for the design and preparation of plans and specifications of NAPASAN's Project Work. NAPASAN will be the lead agency for CEQA. NAPASAN will combine the NAPASAN's design plans and specifications with the COUNTY's design plans and specifications for the purpose of creating a single project for bidding. NAPASAN will advertise the combined project design plans and specification for bidding by contractors per Section 3(A) below.

3. Construction of the Project.

- A. Procurement. NAPASAN will conduct and be responsible for the procurement of all contracts associated with the construction of the Combined Project, including selecting and awarding the lowest responsive and responsible bidder for construction. Procurements shall follow District Code Section 2.03, et seq. COUNTY may participate in the vendor selection process by reviewing proposals and bids, and providing timely comments to NAPASAN, but the final selection of contractors and consultants shall be made by NAPASAN.
- B. Construction Management and Inspection. NAPASAN shall be responsible for all construction management oversight of the project and comply with all Measure T signage requirements for the COUNTY Project Work. NAPASAN will be responsible for construction management, inspection, labor compliance services associated with construction, design services during construction, NAPASAN staff costs, permit fees, and other direct costs related to construction and oversight related to NAPASAN's Project Scope. COUNTY will be responsible for all construction management, inspection, labor compliance services associated with construction (if required), design services during construction, COUNTY staff costs, permit fees, and other direct costs related to construction and oversight of the COUNTY's Project Scope, including review and approval of the Contractor's traffic control plans for all work within the COUNTY's public rights-of-way, and any additional costs associated with compliance with Measure T requirements.

4. Project Cost, Payments, and Compensation.

- A. Project Cost Paid by the County. COUNTY agrees to be responsible for and pay those costs associated with the COUNTY's Project Scope per Section 4(B) below. If the COUNTY hires third-party design consultants, construction managers, inspectors, or others to aid in the implementation and/or oversight of the COUNTY's Project Scope, the COUNTY is responsible for paying for these costs directly.
- B. Amount of Project Cost Paid by the County. This Agreement authorizes the COUNTY to pay all actual COUNTY Project Scope expenses as defined above in accordance with the

maximums and procedures in this Section 4. The COUNTY Project Scope is estimated to cost that amount set forth below ("Estimated Cost"):

\$1,160,430	for paving construction
\$ 259,050	for curb ramp construction
\$ 49,000	for storm drain construction
\$ 0	permit fees
<u>\$ 146,848</u>	<u>contingency</u>

\$1,615,328 Total

Any amounts over the Estimated Cost shall require an amendment to this Agreement prior to encumbrance of those costs. COUNTY agrees not to withhold its agreement for reasonable expenses related to implementation of the COUNTY Project Scope. Both parties agree to proceed with the project acknowledging that if the COUNTY Project Scope exceed resources available to COUNTY, the COUNTY Project Scope may not be completed.

- C. Project Cost Paid by NAPASAN. NAPASAN agrees to be responsible for and pay Combined Project costs associated with NAPASAN's Project Scope. NAPASAN Project Scope costs include construction cost, construction management, inspection, labor compliance services associated with construction (if required), design services during construction, NAPASAN staff costs, permit fees, and other direct costs related to construction and oversight of NAPASAN's Project Scope.

- D. Amount of Project Cost Paid by NAPASAN. NAPASAN portion of the Project is estimated to cost as follows:

\$5,700,000 for sewer system rehabilitation

\$5,700,000 Total

- E. Payment Upon Invoice.

(i) Invoices. In accordance with Section 4(B) COUNTY shall reimburse NAPASAN the construction costs incurred by NAPASAN to complete the COUNTY Project Scope. NAPASAN shall present invoices no more frequent than monthly and include the construction contractor's progress pay estimate and any contract change orders for work listed in Section 4(B) above. After review and approval of invoices by the Director of Public Works or designee, approval of which shall not take more than fifteen (15) calendar days, invoices shall be forwarded to the Napa County Auditor for payment to NAPASAN within thirty (30) calendar days of receipt by the Napa County Auditor.

(ii) Interest on Overdue Invoices. COUNTY agrees that approved invoices that are not paid within the time established in Section 4 (E)(i) above shall be assessed a one percent (1%) per month interest charge, and that COUNTY agrees to pay and shall be financially responsible for such interest charges. Interest charges shall not accrue if COUNTY reasonably disputes an invoice.

5. Ownership, Maintenance and Operation of the Project.

- A. Ownership of the Project. Prior to NAPASAN accepting the work of the selected construction contractor and/or filing a Notice of Completion, NAPASAN shall address any close-out issues identified by COUNTY related to the COUNTY Project Scope and request

COUNTY accept the improvements. The parties agree that the existing improvements and completed COUNTY Project Scope improvements are COUNTY property.

- B. Operation of the Project. COUNTY will accept responsibility for operation and maintenance of the COUNTY's Project Scope upon completion. NAPASAN will accept responsibility for operation and maintenance of NAPASAN's Project Scope upon completion.

6. Access to Records / Document Retention.

NAPASAN will maintain Combined Project construction drawings and other information regarding the construction of the Combined Project for at least seven (7) years following completion of the project. Financial records associated with the Combined Project, including payables records, receivable records and grants receivable records, shall be maintained at least seven (7) fiscal years after the transactions are recorded. COUNTY, NVTA-TA, or the duly authorized representatives of the COUNTY or NVTA-TA, shall have access to any books, documents, papers and records of NAPASAN 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, NAPASAN shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

7. Term of the Agreement.

The term of this Agreement shall commence on the date first above written and shall continue through the warranty period of the Combined Project; except that the obligations of the parties under Paragraphs 8 (Insurance) and 9 (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 the Agreement, and the obligations of NAPASAN to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraph 6 (Access to Records/Retention).

8. Insurance.

NAPASAN and the COUNTY shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

- A. **Workers' Compensation Insurance.** To the extent required by law during the term of this Agreement, NAPASAN shall upon COUNTY's request provide workers' compensation insurance for the performance of any of NAPASAN's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.
- B. **Liability Insurance.** Each party shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance or coverage provided through a Joint Power Insurance Authority:
- (1) **General Liability.** Each party shall obtain and maintain in full force and effect during the term of this Agreement 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, 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 except for acts or omissions performed in strict compliance with express direction the other party's governing board, officers or

personnel. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability. Each party shall obtain and maintain in full force and effect during the term of this Agreement professional liability/errors and omissions insurance coverage in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit for each occurrence and covering all professional acts or omissions of that party arising out of or in connection with this Agreement except for those acts or omissions performed in strict compliance with express direction from the other party's governing board, officers or personnel unless such direction was based upon professional advice from the first party or its personnel or other agents under this Agreement.

(3) Comprehensive Automobile Liability Insurance. Each party shall obtain and maintain in full force and effect during the term of this Agreement a comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that party's activities under this Agreement of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

- C. Certificates of Coverage. Coverages referenced in 8(B), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by NAPASAN with the Public Works Director prior to commencement of performance of any of NAPASAN's duties, and evidence of coverage shall be filed by COUNTY with the NAPASAN General Manager prior to commencement of performance of any of COUNTY's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY and NapaSan 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 8(B)(1) and, for the comprehensive automobile liability insurance coverage referenced in 8(B)(3) where the vehicles are covered by a commercial policy rather than a personal policy, NAPASAN shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, NAPASAN shall file with the evidence of coverage an endorsement waiving subrogation. For the commercial general liability insurance coverage referenced in 8(B)(1) and, for the comprehensive automobile liability insurance coverage referenced in 8(B)(3) where the vehicles are covered by a commercial policy rather than a personal policy, COUNTY shall also file with the evidence of coverage an endorsement from the insurance provider naming NAPASAN, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, COUNTY shall 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 NAPASAN not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain

only to liability for activities of NAPASAN under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The certificate or other evidence of coverage shall also provide that if the same policy applies to activities of COUNTY not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of NAPASAN shall pertain only to liability for activities of COUNTY under this Agreement, and that the insurance provided is primary coverage to NAPASAN with respect to any insurance or self-insurance programs maintained by NAPASAN. 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 by COUNTY's Risk Manager or designee, or NAPASAN's Director of Administrative Services or designee, the requested party shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

- D. Inclusion in Subcontracts. NAPASAN agrees to require all contractors, subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 8.

9. **Indemnification.**

- A. By NAPASAN. NAPASAN, and any contractors secured by NAPASAN to complete COUNTY's Project Scope, shall defend, indemnify and hold harmless COUNTY and the officers, agents and employees of COUNTY from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by NAPASAN or its officers, agents, or employees, of activities or obligations required of NAPASA under this Agreement except where the loss was proximately caused by acts or omissions of NAPASAN performed in strict compliance with express direction from COUNTY's governing board, officers or personnel (which direction specifically includes the plans and specifications provided by COUNTY pursuant to section 2(A)) other than direction based upon and conforming to advice from NAPASAN.
- B. By COUNTY. COUNTY, and any contractors secured by COUNTY to complete COUNTY's Project Scope, shall defend, indemnify and hold harmless NAPASAN and the officers, agents and employees of NAPASAN from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by COUNTY or its officers, agents, or employees, of obligations required of COUNTY under this Agreement as well as for claims where the loss was proximately caused by acts or omissions of NAPASAN performed in strict compliance with express direction from COUNTY's governing board, officers or personnel other than direction based upon and conforming to advice from NAPASAN.
- 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, providing 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.

10. **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 Project is under construction:
 - A. Regular Staff Meetings. The respective staffs of COUNTY and NAPASAN, and their retained consultants or contractors, will meet as needed to address matters contained in this AGREEMENT.
 - B. Commitment of Staff and Resources. To provide sufficient staff and/or resources to this process to efficiently meet the goals and tasks set forth in this AGREEMENT.
11. **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.
12. **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.
13. **Dispute Resolution.** The parties agree to negotiate in good faith any disputes or disagreements arising from this AGREEMENT. In the event that the parties cannot come to agreement within a reasonable period of time, the parties agree to the use of a third party, independent mediator to help the parties come to mutual agreement. The parties agree not to seek remedy or dispute resolution through the courts without first attempting in good faith to resolve the dispute through negotiation or mediation, but in no way does this requirement limit the rights of either party to seek redress through legal action.
14. **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.
15. **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.
16. **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.

Napa Sanitation District:

General Manager
1515 Soscol Ferry Road
Napa, California 94558

County of Napa:

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

Changes may be made in addresses to where notices are to be delivered by giving notice pursuant to this provision.

17. **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.
18. **Amendment / Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY acting through its Board of Supervisors in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed in Section 1 above. Failure of NAPASAN to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.
19. **Recitals Adopted.** The parties hereby agree to and adopt the AGREEMENT recitals as portions of the AGREEMENT.

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20. **Termination.** This Agreement may be terminated by either party for any reason prior to NAPASAN executing a construction contract for the Combined Work by giving written notice of such termination to the other party; provided, however, that no such termination may be effected unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

IN WITNESS WHEREOF, this AGREEMENT was executed by the parties hereto as of the date first above written.

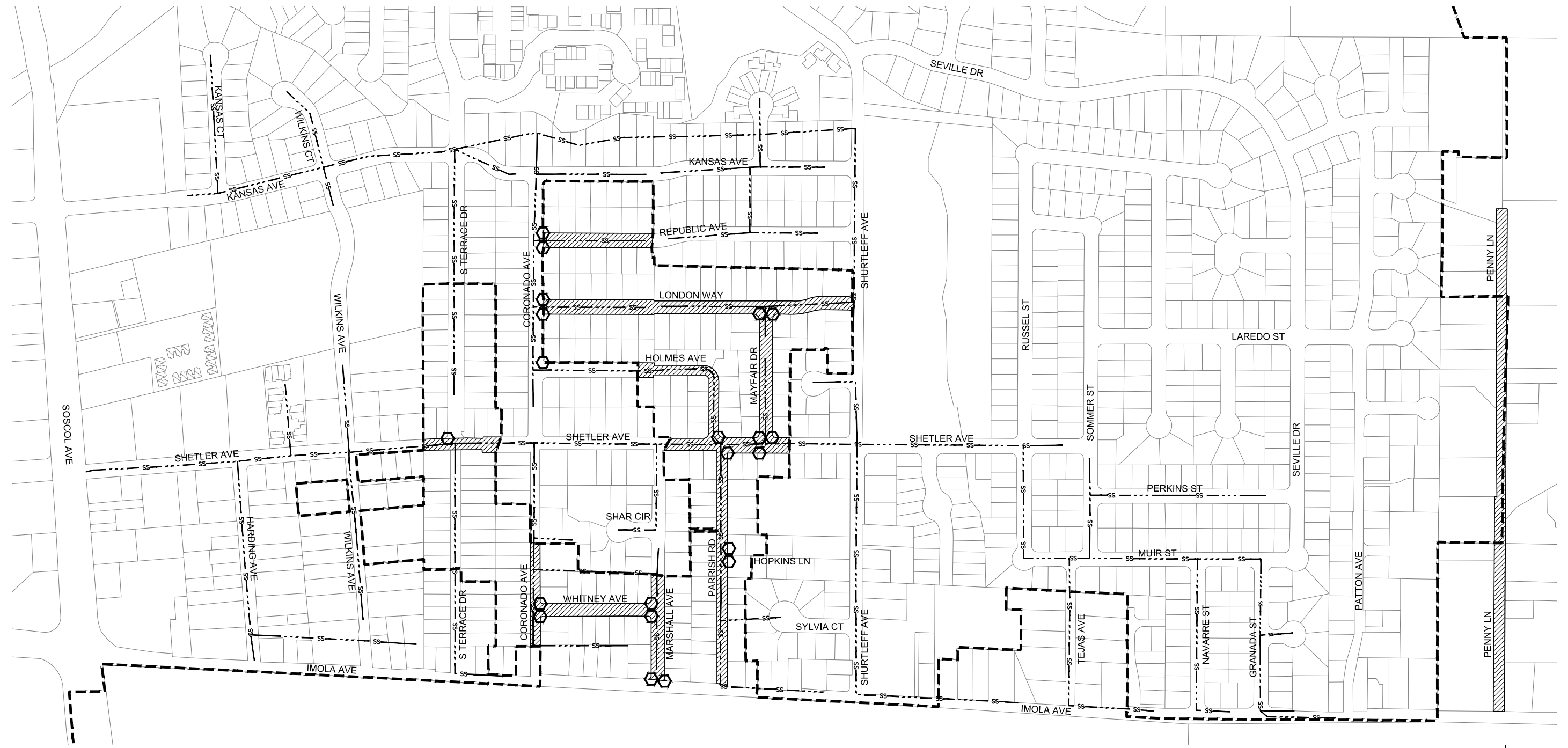
NAPA COUNTY, a political subdivision of the
State of California

By: _____
BRAD WAGENKNECHT,
Chair of the Board of Supervisors

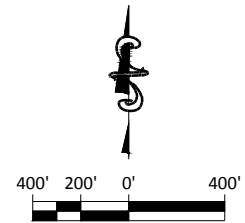
NAPA SANITATION DISTRICT

By: _____
JILL TECHEL,
Chair of the Board of Directors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas S. Capriola</u> Deputy County Counsel</p> <p>Date: <u>October 8, 2018</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: _____</p>
<p>APPROVED AS TO FORM District Counsel</p> <p>By: _____ District Counsel</p> <p>Date: _____</p>	<p>APPROVED BY THE NAPA SANITATION DISTRICT BOARD OF DIRECTORS</p> <p>Date: _____</p>	<p>ATTEST: CHERYL SCHUH Clerk of the Board of Directors</p> <p>By: _____</p>



- LEGEND**
- CITY/COUNTY LIMITS
 - SS --- SANITARY SEWER REHABILITATION
 - /// LIMITS OF PAVING
 - CURB RAMP CONSTRUCTION



AGREEMENT BETWEEN NAPA SANITATION DISTRICT AND
COUNTY OF NAPA REGARDING ROAD PAVING SERVICES
EXHIBIT A
PROJECT MAP