

Attachment B

GRANT AGREEMENT

This GRANT AGREEMENT (“*Agreement*”), by and between Silicon Valley Community Foundation (“*SVCF*”), a California Nonprofit Corporation and the County of Monterey, a political subdivision of the State of California (“*County*”) is entered into and effective as of the last date opposite the respective signatures below to reflect a grant from a donor advised fund of SVCF (“Fund 6169”) made in honor of Fox Creek Farms LLC to rehabilitate the pavement for a section of East Carmel Valley Road. SVCF and County are sometimes collectively referred to as the “Parties,” with each being a “Party.”

RECITALS

WHEREAS, the portion of East Carmel Valley Road between milepost 13.9 and milepost 16.6 has numerous defects, including potholes, patches and several types of cracking (longitudinal, block and edge cracking), making the road surface extremely uneven;

WHEREAS, the County’s pavement condition index (PCI) survey of East Carmel Valley Road between milepost 13.9 and milepost 16.6 (“*Segment*”) rates the pavement condition as “FAILED”;

WHEREAS, the Carmel Valley community relies on East Carmel Valley Road as an essential fire department access road and for public use; and

WHEREAS, the County Road Fund is limited and the rehabilitation of all currently failed pavements within the County road network is not financially feasible; and

WHEREAS SVCF Fund 6169 desires to contribute Two Million Nine Hundred Thousand Dollars (\$2,900,000) to the funding for rehabilitating the pavement for East Carmel Valley Road between milepost 13.9 and milepost 16.6 (hereafter “*Project*” or “*Segment*”); and

WHEREAS, funding from SVCF would prioritize County funds and allow for rehabilitating the pavement for East Carmel Valley Road between milepost 13.9 and milepost 16.6 to be scheduled for rehabilitation in the next fiscal year; and

WHEREAS, the Project is more particularly described in Exhibit A (attached and incorporated by this reference); and

WHEREAS, the Project has a cost estimate of \$2.9 million; and

WHEREAS, SVCF warrants and represents that SVCF Fund 6169 has sufficient funds to enter into this Agreement to provide a Grant to County in the amount of \$2.9 million to fund the Project.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1.0 SVCF's Responsibilities. SVCF warrants and represents that Fund 6169 has sufficient funds to enter into this Agreement and based on this assurance to County, SVCF, through Fund 6169, agrees to contribute up to a maximum not-to-exceed amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) to County for Project costs (the "**Grant**"), and payable as follows:

1.1 Initial payment. One Hundred Thousand Dollars (\$100,000) within 30 days of Board of Supervisors approval of this Agreement and/or the effective date of this Agreement whichever date occurs first.

1.2 Additional Payments. Any additional payments beyond the initial payment shall only become payable if actual construction of the Project commences on or before Friday, September 8, 2023 ("**Project Start Date**"), as follows:

1.2.1 Payment upon Fifty Percent (50%) completion. One Million Four Hundred Thousand Dollars (\$1,400,000) upon completion of fifty percent (50%) of the construction phase. Said payment shall be due to County within 30 days of County's notice of 50% completion of the construction phase.

1.2.2 Balance. The balance of SVCF's funding commitment of the maximum not-to-exceed amount \$2,900,000 in total contribution, shall be payable to County upon SVCF's receipt of the County's Notice of Completion for the Project. Said payment shall be the actual remaining cost of the Project (up to the not-to-exceed amount) and shall be made within 30 days of SVCF's receipt of County's Notice of Completion which can be emailed, sent via facsimile or through the United States Postal Service to the recipients specified in Section 5 (Notice) below.

1.3 Indemnification. SVCF agrees to hold harmless, defend and indemnify County and its officers, members, employees, agents, and representatives of each, for any losses, costs, damages or expenses from liabilities for damages arising from the negligent or intentional acts, errors, or omissions of SVCF, including SVCF's failure to pay County, through Fund 6169, in accordance with SVCF's Responsibilities as set forth above except to the extent such damages or expenses from liabilities for damages are the result of the sole negligence of County, its officers, employee or agents. SVCF accepts no liability for any consequences, whether direct or indirect, that may come about from County's use of the Grant or the Project that is funded by the Grant. SVCF's entire liability under this Agreement is limited to the amount of the Grant.

1.4 Material Breach. SVCF agrees that in the event SVCF fails to timely transmit payments to County as indicated above, such act or failure to act shall constitute a material breach of this Funding Agreement. In the event of Material Breach by SVCF, SFCV shall pay County for all County costs incurred toward the performance of County's Responsibilities set forth in Section 2 below. Said payment shall be due and payable by SVCS to County up to the maximum not to exceed amount set forth in Section 1 above within 30 days of SVCF's receipt of County's certified invoices which shall be transmitted to SVCF as set forth in Section 5 (Notice) below. If SVCF is in material breach of this Agreement, SVCF understands and agrees that it shall be responsible for County's actual costs in the event County has committed funds toward its

performance and/or performed any portion of its Responsibilities pursuant to Section 2 of this Agreement. SVCF shall be responsible for the payment of County's actual costs up to the maximum not to exceed amount specified in Section 1 above. Said payment to County shall be due and payable from SVCS to County upon receipt of certified invoices from County and no later than 30 days from the date said invoices are sent by County to SVCS.

2.0 County's Responsibilities. County shall be responsible for the following:

2.1. To use the Grant exclusively for carrying out the Project and for no other purpose.

2.1.1. Material Breach. County agrees that in the event County uses the SVCF Grant for purposes other than the Project, such act shall constitute a material breach of this Agreement. In the event of Material Breach by County, County shall return that portion of the Grant used for purposes other than the Project to SVCF Fund 6169. Said payment shall be due and payable by SVCS to County up to the amount used for purposes other than the Project within 30 days of any demand for repayment by SVCF.

2.2. Carry out, manage and complete the Project, including, but not limited to:

2.2.1. Pay all costs of the Project other than SVCF's maximum not-to-exceed Grant; and

2.2.2. Solicit bids and award contracts for the Project pursuant to the public contracting laws of the State of California; and

2.2.3. Manage and inspect the construction of the Project, disburse payments for the Project, and perform all future maintenance of the improved segment between milepost 13.9 and milepost 16.6.

2.3. County shall be the exclusive contracting party with respect to the Project. SVCF shall not be a party to any agreements with general contractors or subcontractors for work on the Project and shall not be directly liable to any contractor or subcontractor for the costs of the Project. However, if SVCF is in Material Breach of this Agreement as set forth in Section 1.4 above, SVCF understands and agrees that it shall be responsible for County's actual costs in the event County has committed funds toward its performance and/or performed any portion of its Responsibilities pursuant to Section 2 of this Agreement. SVCF shall be responsible for the payment of County's actual costs up to the maximum not to exceed amount specified in Section 1 above. Said payment to County shall be due and payable from SVCF to County upon receipt of certified invoices from County and no later than 30 days from the date said invoices are sent by County to SVCF.

2.4 The County shall deliver to SVCF written acknowledgment of each contribution within sixty (60) days of receipt which shall include the amount of the contribution received and the date of receipt of said contribution from SVCF to County.

2.5. Construction Contracts. County shall incorporate language into all construction contracts related to the Project to require Contractor(s) to defend, indemnify and hold harmless the County and SVCF, their members, officers, employees agents and representatives from and against any and all claims or actions arising out of or related to Contractor(s) performance of the work on the

Project, except to the extent such claims or actions are the result of the sole negligence of the County or SVCF.

2.6. **Additional Insureds.** County shall require all contractors and subcontractors related to the Project to name the County and SVCF as additional insureds on all contractor(s) liability policies.

2.7. **Indemnification.** County, on behalf of itself agrees to hold harmless, defend and indemnify SVCF and its officers, members, employees, agents, and representatives of each, for any losses, costs, damages or expenses from liabilities for damages arising from the negligent or intentional acts, errors, or omissions of County and/or County's failure to pay any supplier of materials, services or labor, except to the extent such damages are the result of the sole negligence of SVCF, its officers, employees or agents.

3.0. **County's Failure to Meet Project Start Date.** In the event that actual construction of the Project fails to commence by the Project Start Date, SVCF shall have the option to either terminate this Agreement and pay only the Initial Payment or, at its sole discretion, agree to change the Project Start Date, such date to be mutually agreed upon by the Parties.

4.0. **Termination.** This Agreement may be terminated by either Party by giving the other Party sixty (60) days' written notice. In the event County has committed funds toward its performance and/or performed any portion of its Responsibilities pursuant to Section 2 of this Agreement, SVCF shall be responsible for the payment of County's actual costs up to the maximum not-to-exceed amount specified in Section 1 above. Said payment to County shall be due and payable from SVCF to County upon receipt of certified invoices from County and no later than 30 days from the date said invoices are sent by County to SVCF.

5.0. **Notice.** Any notices required pursuant to this Agreement shall be made as follows (the Parties may change this information by written notice). If notice is provided through United States Postal Service (USPS), notice shall be presumed received within three (3) days from the date of mailing. If notice is provided via email, notice shall be presumed received as of the date of transmittal by the sender with the delivery confirmed through the outgoing system. Notice of intent to terminate this Agreement, written demand for mediation or intent to initiate an action in a court of law shall be sent through USPS Certified Mail with return receipt requested. All other notices pursuant to this Agreement may be sent via email with email delivery confirmed through the outgoing email system to the recipients indicated below:

TO COUNTY OF MONTEREY:
Randy Ishii, Director
Public Works, Facilities, and Parks
1441 Schilling Place, Second Floor
Salinas, California 93901
Email: ishiir@co.monterey.ca.us
Phone: 831.784.5647

TO Silicon Valley Community Foundation
Nicole C. Taylor, CEO
2440 West El Camino Real, Suite 300
Mountain View, California 94040
Email: grantsadmin@siliconvalleycf.org
Phone: 650.450.5400
Facsimile: 650-450-5401

WITH COPY TO :
Office of the County Counsel
Leslie J. Girard, County Counsel
Attention : Mary Grace Perry, Deputy

WITH A COPY TO:
Chanthi Lune, Vice President/General Counsel
Silicon Valley Community Foundation
2440 West El Camino Real, Suite 300

168 W. Alisal Street, 3rd Floor
Salinas, California 93901
Email: perrym@co.monterey.ca.us
Phone: 831.755.5045

Mountain View, California 94040
Email: clune@siliconvalleycf.org
Phone: 650.450.5400

6.0. Entire Agreement. This Agreement contains all agreements and understandings of the Parties and supersedes and cancels any and all prior or contemporaneous written or oral agreements, instruments, understandings, and communications of the Parties with respect to the subject matter herein.

7.0. Authority. Each Party executing this Agreement represents and warrants that (i) it has the authority to enter into this Agreement, (ii) the execution and delivery of this Agreement has been duly authorized by the Party pursuant to its formation documents, and (iii) upon such execution and delivery this Agreement shall be binding upon and enforceable against each Party.

8.0 Voluntary Agreement. The Parties each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The Parties further declare that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant information, through sources of their own selection, including consultation with counsel of their choosing if desired, in deciding whether to execute this Agreement. The signatories to this Agreement represent that they have the proper authority to execute this Agreement on behalf of the respective Party.

9.0. Amendment. This Agreement shall not be amended, revised, modified or revoked at any time without the written agreement of both Parties.

10.0. Binding Effect. This Agreement shall inure to and be binding upon the Parties, their representatives, successors, and assigns.

11.0. No Partnership or Joint Venture. The Parties agree that SVCF and the County are neither partners nor parties to any joint venture. Nothing in this Agreement creates a partnership or joint venture between SVCF and the County or imposes upon either party any liabilities as such.

12.0. No Other Representations or Warranties. No representations or warranties whatsoever are made by SVCF or the County, except as specifically set forth in this Agreement. Such representations and warranties made by SVCF or the County pursuant to this Agreement shall be deemed to be continuing. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE.

13.0. Limitation of Liability. Each party shall be liable to the other parties for its own performance under this agreement.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY IN CONNECTION WITH

THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR RELIANCE DAMAGES (OR ANY LOSS OF REVENUE OR PROFITS), HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR UNDER ANY OTHER LEGAL THEORY, WHETHER FORESEEABLE OR NOT AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.0. Severability. In the event any provision or any part of any provision of this Agreement shall be held to be invalid and unenforceable, the remaining enforceable provisions and remaining enforceable parts of any provision shall be valid and binding upon the parties to the maximum extent permitted by law. One or more waivers by either Party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other Party.

15.0. Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement, the Parties understand and agree that the State of California Superior Court of the County of Monterey shall be the sole venue and jurisdiction for the bringing of such action.

16.0. Dispute Resolution. The Parties first shall attempt to resolve any dispute through direct discussions. If the Parties cannot resolve the dispute through direct discussions, then the dispute shall be resolved through mediation conducted pursuant to applicable rules of JAMS. Mediation may be commenced by a written demand to mediate sent by one Party to the other, and filed with JAMS. Within 30 days after a Party's demand for mediation, the Parties shall, in good faith, make their best efforts to agree on and select a mediator. If the Parties are unable or fail to agree upon a mediator within the allotted time, the mediator shall be appointed by JAMS in accordance with its rules. The mediator shall serve as a neutral, independent, and impartial mediator. The Parties shall share equally the up-front costs of mediation. The foregoing provisions of this Section shall not prevent or preclude either Party from seeking from a court of law temporary restraining orders or temporary injunctive relief as an interim remedy for breach of this Agreement while the Parties are attempting to resolve the dispute through the foregoing provisions of this Section. Any mediation demands, proceedings, and/or agreements or awards resulting from such proceedings shall be strictly confidential and shall not be disclosed to any third parties except as required by law or as necessary to attorneys, accountants or similar professionals. In the event any action is filed in a court of law by either party, the parties shall bear their own court costs and attorneys' fees.

17.0. Counterparts. This Agreement may be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in PDF via email transmittal of which each shall be deemed a duplicate original but all of which shall constitute a single document.

18.0. Electronic signatures. The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this

Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

19.0 Form: Delivery by E-Mail. Executed counterparts of this Agreement may be delivered by delivery of a scanned counterpart in PDF by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

20.0 Incorporation of Recitals. The parties understand and agree that the Recitals to this Agreement are hereby incorporated into this Grant Agreement.

IN WITNESS WHEREOF, County of Monterey and Silicon Valley Community Foundation execute this Agreement as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

By: _____
Randell Y. Ishii, MS, PE, TE, PTOE,
Director of Public Works, Facilities and Parks

Date: _____

Approved as to fiscal provisions:
Rupa Shah, Auditor-Controller

Name:
Title:
Date: _____

Approved as to form:
Office of the County Counsel-Risk Management
Leslie J. Girard, County Counsel

By: _____
Mary Grace Perry
Deputy County Counsel

Date: _____

SILICON VALLEY COMMUNITY FOUNDATION

By: _____
Elizabeth A. Carey, Executive Vice
President, Finance and Operations; Assistant
Treasurer

Date: _____

Approved as to form:

By: _____
Chanthi Lune, General Counsel

Date: _____

And By: _____
Chanthi Lune, Senior Vice
President, Operations; Assistant Secretary

Date: _____

EXHIBIT A

Project Description and Budget Estimate

[see following pages]

EXHIBIT A

Project Description and Budget Estimate

East Carmel Valley Road Rehabilitation Milepost 13.9 to Milepost 16.6

Project Description

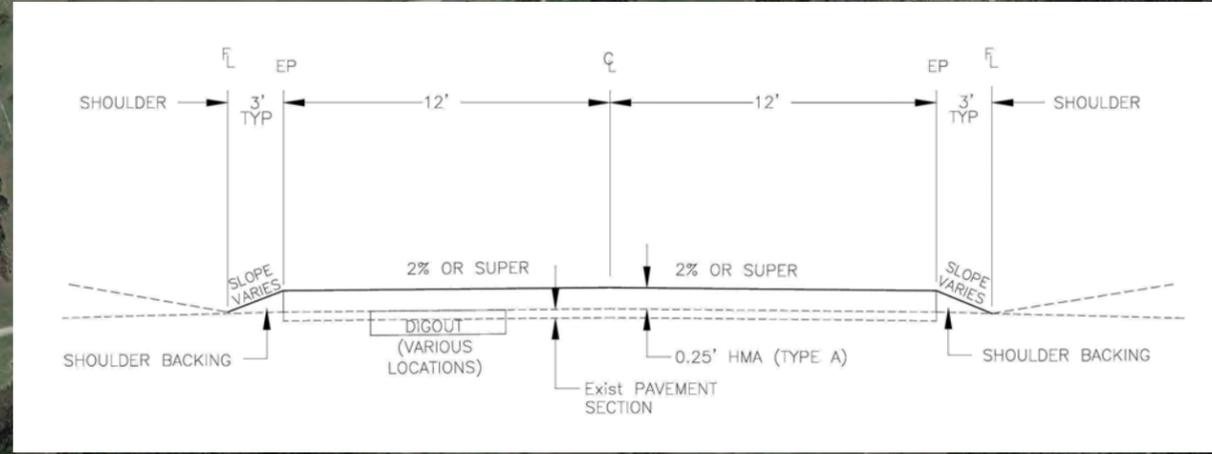
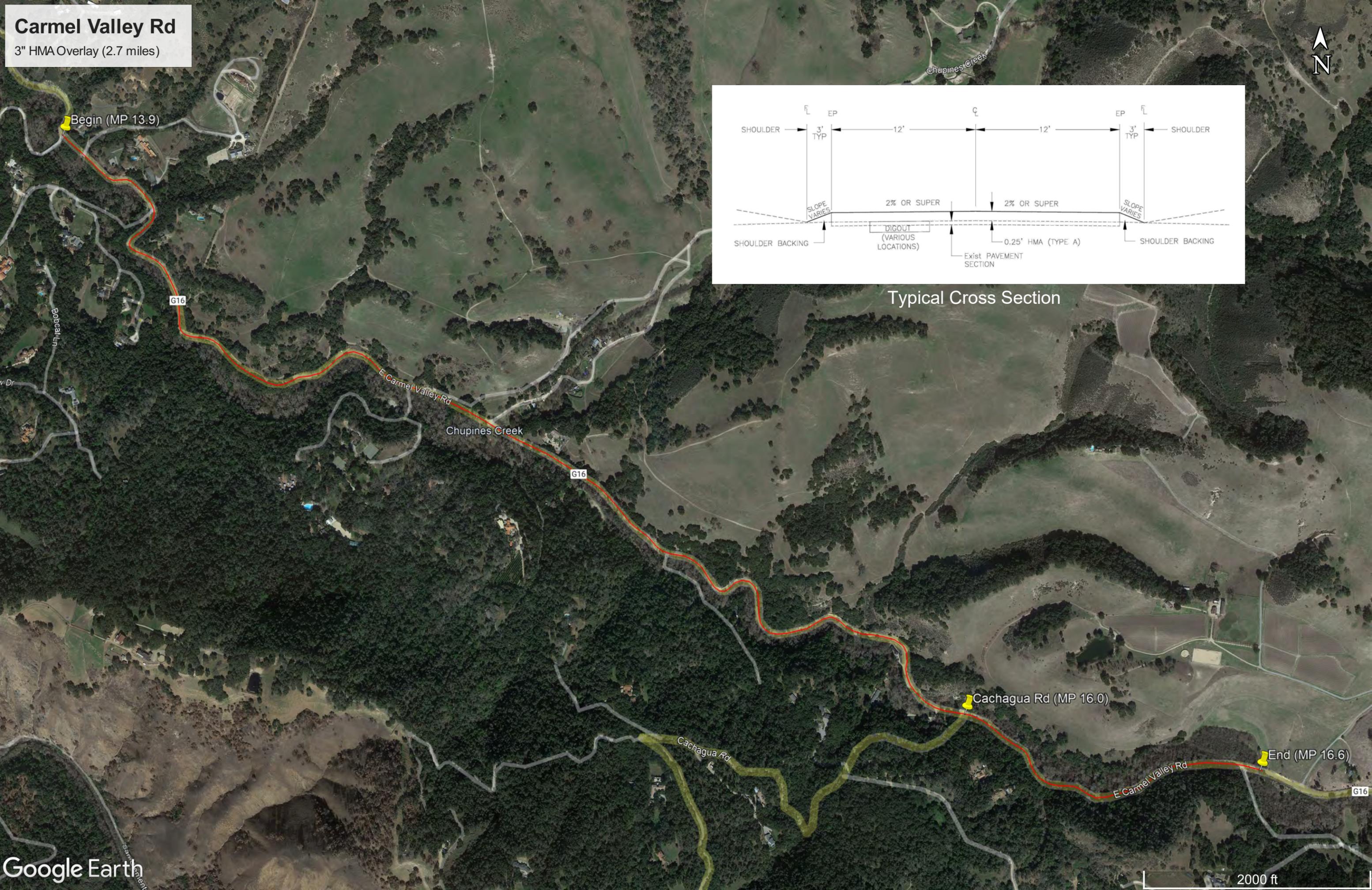
The project involves rehabilitation of East Carmel Valley Road from Milepost 13.9 to Milepost 16.6, approximately 2.7 miles. This segment of Carmel Valley Road consists of an asphalt paved surface, with one vehicle lane in each direction separated by a double-yellow centerline stripe. The rehabilitation work consists of:

- Removing existing pavement striping and markings
- Performing “digouts” to repair and rebuild failed subsurface at selected locations
- Grinding the existing surface where needed to minimize undulations and provide a more uniform surface
- Installing pavement reinforcement fabric
- Adding three inches of asphalt concrete over the existing pavement to provide a new pavement surface
- Placing approximately three feet of “shoulder backing” compacted gravel at the roadway edges to transition to adjacent ground surface and support the pavement edge
- Installing a new double-yellow centerline stripe with reflective pavement markers
- Installing new white stripes at the roadway edges

A map depicting the project location/limits and Engineer’s Estimate are provided on the following pages.

Carmel Valley Rd

3" HMA Overlay (2.7 miles)



Typical Cross Section

2000 ft

Carmel Valley Rd Overlay
 Project No. xxxx
 MP 13.9 / 16.6

Job Stamp

PRELIMINARY ENGINEER'S ESTIMATE

Prepared by	JP
Check by	
Date	2/27/2023

Item No	Item Code	F, S	Item Description	Unit of Measure	Estimated Quantity	Unit Price	Amount
1	120090	S	Construction Area Signs	LS	1	\$ 10,000.00	\$ 10,000.00
2	120100	S	Traffic Control System	LS	1	\$ 200,000.00	\$ 200,000.00
3	130100		Job Site Management	LS	1	\$ 5,000.00	\$ 5,000.00
4	130200		Prepare Storm Water Control Plan	LS	1	\$ 2,000.00	\$ 2,000.00
5	150713		Remove Pavement Marking	SQFT	80	\$ 3.00	\$ 240.00
6	150714		Remove Thermoplastic Traffic Stripe	LF	28,512	\$ 1.00	\$ 28,512.00
7	150722		Remove Pavement Marker	EA	1,190	\$ 1.00	\$ 1,190.00
8	398200		Cold Plane Asphalt Concrete Pavement	SQYD	1,000	\$ 28.00	\$ 28,000.00
9	160101		Clearing and Grubing	LS	1	\$ 150,000.00	\$ 150,000.00
10	190185	F	Shoulder Backing	TON	930	\$ 80.00	\$ 74,400.00
11	390095		Replace Asphalt Concrete Surfacing	CY	2,650	\$ 200.00	\$ 530,000.00
12	390011	S	Prepaving Inertial Profiler	LS	1	\$ 5,000.00	\$ 5,000.00
13	390020		Prepaving Grinding Day	DAY	5	\$ 7,000.00	\$ 35,000.00
14	390132		Hot Mix Asphalt (Type A)	TON	7,650	\$ 130.00	\$ 994,500.00
15	393001		Pavement Reinforcing Fabric	SQYD	45,310	\$ 5.00	\$ 226,550.00
16	780210A		Survey Monument	EA	20	\$ 1,500.00	\$ 30,000.00
17	820840A		Roadside Sign	EA	25	\$ 325.00	\$ 8,125.00
18	846007	S	6" Thermoplastic Traffic Stripe (Enhanced Wet Night Visibility)	LF	57,024	\$ 2.00	\$ 114,048.00
19	846012	S	Thermoplastic Pavement Marking (Enhanced Wet Night Visibility)	SQFT	80	\$ 10.00	\$ 800.00
20	810230	S	Pavement Marker (Retroreflective)	EA	1,190	\$ 5.00	\$ 5,950.00

F - Final Pay Item
 S - Specialty Item

Subtotal \$ 2,449,315.00
 15% Contingency \$ 367,397.25
 Total \$ 2,816,712.25
 SAY \$ 2,900,000