ACQUISITION AND MAINTENANCE AGREEMENT (MacArthur Blvd/Superior Ave/Footbill Blvd Roundabout Project

(MacArthur Blvd/Superior Ave/Foothill Blvd Roundabout Project)

THIS ACQUISITION AND MAINTENANCE AGREEMENT (MacArthur Blvd/ Superior Ave/Foothill Blvd Roundabout Project) (this "Agreement"), dated as of ______, 20 ("Effective Date"), is entered into by and between the CITY OF SAN LEANDRO, a municipal corporation ("San Leandro") and the CITY OF OAKLAND, a municipal corporation ("Oakland") (each individually a "Party" and collectively, the "Parties").

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings and intentions of San Leandro and Oakland:

A. San Leandro and Oakland are public agencies that share the common desire and interest to have a roundabout constructed at the intersection of MacArthur Boulevard, Superior Avenue, and Foothill Boulevard (the "**Project**" (and after construction of the Project is complete, the "**Roundabout**")) to improve the Level of Service, reduce traffic speeds, and make the intersection safer for all modes of transportation.

B. The Project footprint includes certain real property located within the Oakland and San Leandro jurisdictions as shown on the depiction attached hereto as <u>Exhibit A</u>, as well as a California Department of Transportation ("**Caltrans**") right-of-way within the Oakland city limits depicted in green on <u>Exhibit A</u> and as more particularly described on the plat attached hereto as <u>Exhibit B</u> attached hereto (the "**Caltrans Property**").

C. San Leandro has, or will obtain, funds to construct the Project and is currently undergoing the right-of-way decertification process with Caltrans in order to acquire the Caltrans Property to facilitate construction of the Project with the understanding that the Caltrans Property will ultimately be transferred to Oakland.

D. Oakland is not interested in acquiring the Caltrans Property declared excess by Caltrans pursuant to its right-of-way decertification process until after San Leandro acquires the Caltrans Property from Caltrans and San Leandro constructs the Project.

E. The Parties desire to enter into an agreement regarding the acquisition and transfer of the Caltrans Property, construction of the Project, and maintenance of the Roundabout.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and agreements set forth herein, the Parties agree as follows:

1. <u>Purpose</u>. The purpose of this Agreement is to memorialize (a) San Leandro's agreement (i) to acquire the Caltrans Property from Caltrans, (ii) design and construct the Project, (ii) transfer the Caltrans Property to Oakland, and (iii) to maintain the Roundabout, and (b) Oakland's agreement to (i) permit access for construction of the Project and maintenance of

the Roundabout, and (ii) accept the transfer of the Caltrans Property in accordance with this Agreement.

2. <u>Term of Agreement</u>. This Agreement shall commence on the Effective Date and continue in perpetuity unless terminated by mutual agreement in writing by the Parties.

3. <u>Project Costs</u>. San Leandro will be responsible for one hundred percent (100%) of the cost of design and construction of the Project and the Caltrans Property acquisition costs.

4. <u>San Leandro Acquisition of Caltrans Property</u>.

a. Caltrans staff has informed the Parties the following: The Caltrans Property (i) is currently going through the decertification process; (ii) will be appraised and sold at fair market value to San Leandro; and (iii) will be conveyed by a Director's Deed (the "Caltrans Property Director's Deed"), subject to approval by the California Transportation Commission ("CTC") and the Federal Highway Administration ("FHWA").

b. Following approval of the sale of the Caltrans Property by the CTC and FHWA, San Leandro, at its cost and expense, shall purchase the Caltrans Property and accept conveyance of the Caltrans Property pursuant to the Caltrans Property Director's Deed.

5. <u>Design and Construction of the Project.</u>

a. San Leandro has provided to Oakland design drawings in electronic format for review and Oakland has provided design review comments to San Leandro. Once the plans are approved by Oakland staff, Oakland staff will present to the City Council for its consideration a resolution to approve the final construction plans.

b. Oakland staff will process a P-Job permit ("**Construction Permit**") and if it meets permit requirements, issue the Construction Permit to San Leandro's contractor to construct the portions of Project within Oakland's jurisdiction. As part of the resolution referenced in Section 5(a) above, Oakland staff will seek City Council approval to waive the fee for the Construction Permit.

c. San Leandro, at its cost and expense, shall construct, or cause to be constructed, the Project pursuant to the Construction Permit and all other permits and governmental approvals required for construction of the Project.

6. <u>Conveyance of Caltrans Property to Oakland</u>. Following completion of construction of the Project, San Leandro shall convey the Caltrans Property, at no cost or expense to Oakland, pursuant to a Grant Deed (the "**Caltrans Property Grant Deed**") in accordance with California Government Code Section 66428, and Oakland shall accept the Caltrans Property pursuant to the Caltrans Property Grant Deed.

7. <u>Maintenance Obligations</u>. San Leandro, at its cost and expense, shall maintain the improvements comprising the Roundabout, including, but not limited to, sidewalks, paving, pavement striping and markings, street lights, street signage, the retaining wall, and landscaping, located within the area shown on <u>Exhibit C</u> attached hereto (the "**Roundabout Maintenance**

Area"). San Leandro shall notify Oakland pursuant to Section 12 below when maintenance is scheduled for the Roundabout Maintenance Area. Oakland and San Leandro will cooperate to facilitate such maintenance.

8. <u>Street Maintenance</u>. Nothing contained herein shall limit a Party's ability to maintain MacArthur Boulevard, Superior Avenue, and Foothill Boulevard located outside the Roundabout Maintenance Area and within such Party's jurisdiction in accordance with its respective standards and procedures.

9. <u>Access to the Roundabout Maintenance Areas</u>. Oakland hereby grants permission to San Leandro, and/or its authorized agents, employees or contractors, to enter upon the Roundabout Maintenance Area located within Oakland's jurisdiction at reasonable times and in a reasonable manner to maintain the Roundabout.

10. <u>Permits and Approvals</u>. To the extent that performance of the maintenance of the Roundabout requires permits or governmental approvals, San Leandro shall, at its cost and expense, obtain such permits and approvals.

11. Indemnification.

a. San Leandro shall indemnify, defend and hold Oakland, and its Councilmembers, officers, agents, contractors and employees (the "**Oakland Indemnified Parties**") harmless from liens, claims, demands, actions, cause of action, obligations, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) (individually, "**Claim**" and collectively, "**Claims**"), which may arise from, or in any manner relate to, any work performed, or services provided, under this Agreement by San Leandro, or San Leandro's contractors, subcontractors, agents or employees, including, but not limited to, the performance of maintenance of the Roundabout. The foregoing indemnity shall apply regardless of whether or not any of the Oakland Indemnified Parties has prepared, supplied or approved plans and/or specifications for the Project or the Roundabout and regardless whether any insurance is applicable to any Claim or Claims.

b. Oakland shall indemnify, defend and hold San Leandro, and its Councilmembers, officers, agents, contractors and employees (the "**San Leandro Indemnified Parties**") harmless from a Claim or Claims, which may arise from, or in any manner relate to, any work performed, or services provided, under this Agreement by Oakland, or Oakland's contractors, subcontractors, agents or employees. The foregoing indemnity shall apply regardless of whether or not any of the San Leandro Indemnified Parties has prepared, supplied or approved plans and/or specifications for the Project or the Roundabout and regardless whether any insurance is applicable to any Claim or Claims.

12. <u>Notices</u>. Any notice relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or five (5) calendar days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

To San Leandro:	City of San Leandro 835 E. 14th Street San Leandro, CA 94577 Attn: Engineering and Transportation Department Director
To City:	City of Oakland Department of Transportation 250 Frank H. Ogawa Plaza, Suite 4314 Oakland, CA 94612 Attn: Director of Transportation
With copy to:	Office of the City Attorney One Frank H. Ogawa Plaza, 6th Floor Oakland, CA 94612 Attn: Supervising City Attorney for Real Estate

13. <u>Miscellaneous</u>.

a. <u>Modification; Waiver</u>. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent to commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the Party making the waiver.

b. <u>Section Headings</u>. Section headings as used herein are for convenience only and shall not be deemed to be a part of such section and shall not be construed to change the meaning thereof.

c. <u>Governing Law</u>. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action, cause of action, lawsuit, claim, or legal proceeding of any kind related to or arising under this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

d. <u>No Limitations on Cities' Police (or Authorized) Powers</u>. Nothing herein is intended to, nor does, limit the San Leandro's or Oakland's police power, nor limit the ability of the Parties, and/or their authorized agents, employees, contractors, officials, representatives, volunteers, and/or other third-party vendors from taking any and all actions authorized under federal, state, or local law.

e. <u>Exhibits</u>. Any and all exhibits and schedules attached hereto, or to be attached hereto, are hereby incorporated and made a part of this Agreement by this reference.

f. <u>Severability</u>. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect.

g. <u>Authority</u>. Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

h. <u>No Agency Relationship</u>. Neither Party, nor any of a Party's agents, contractors, or subcontractors are, or shall be, considered to be agents of the other Party in connection with the performance of any of the Parties' obligations under this Agreement.

i. <u>Attorneys' Fees and Costs</u>. Either Party may bring a lawsuit to enforce or require performance of the terms of this Agreement, and the prevailing Party in such suit or proceeding shall be entitled to recover from the other Party its reasonable costs and expenses, including attorneys' fees.

j. <u>Time of Essence</u>. Time is of the essence of each and every provision of this Agreement.

k. <u>Complete Agreement</u>. This Agreement represents the complete understandings and agreements of the Parties and no prior oral or written understandings are in force and effect.

l. <u>No Third Party Beneficiaries</u>. This Agreement is not intended to, and does not, create any private rights of action to third parties; no third parties are the intended beneficiaries of this Agreement.

m. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Remainder of page intentionally blank; signatures on following pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SAN LEANDRO:

City of San Leandro,

a municipal corporation

By:

Frances Robustelli City Manager

Attest:

By:

Kelly Clancy Acting City Clerk

Approved as to form and legality:

By:

Richard Pio Roda City Attorney

[Signatures continue on following page]

OAKLAND:

City of Oakland,

a municipal corporation

By:

Edward D. Reisksin City Administrator

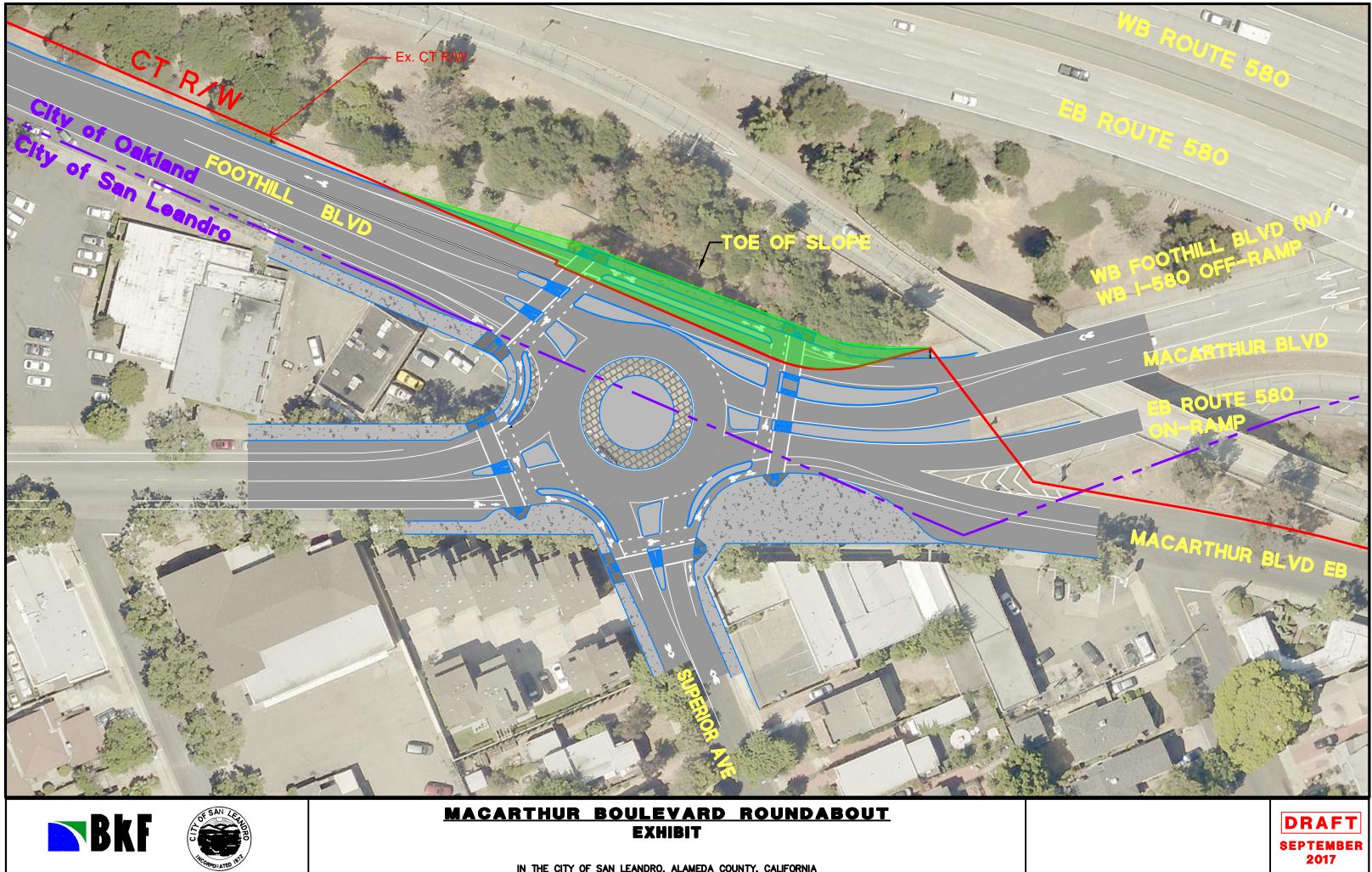
Approved as to form and legality:

By:

JoAnne Dunec Deputy City Attorney

EXHIBIT A

Depiction of Roundabout with City Jurisdiction Boundary

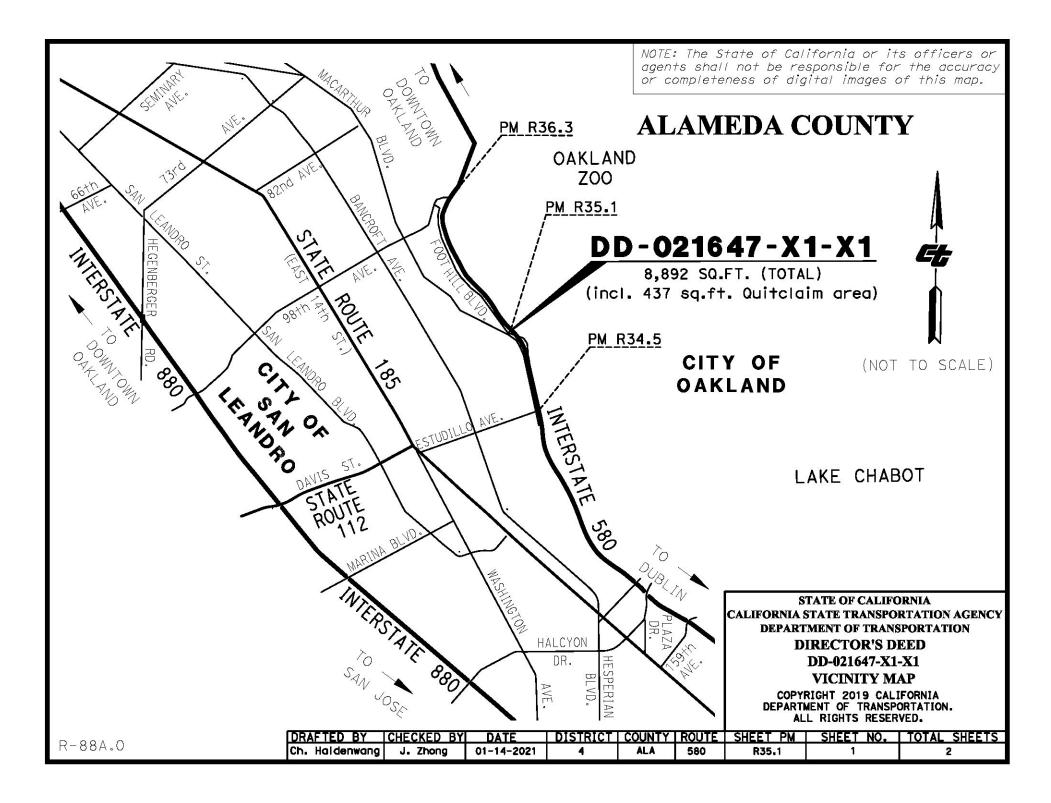




IN THE CITY OF SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

EXHIBIT B

Plat of Caltrans Property



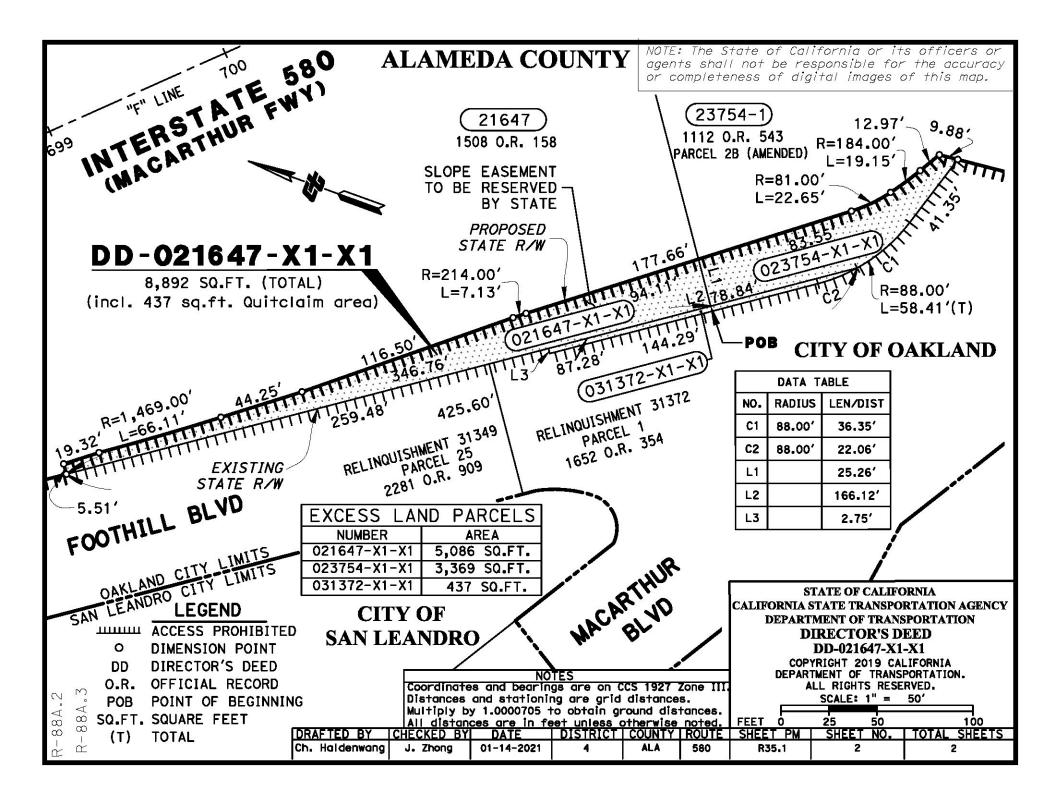


EXHIBIT C

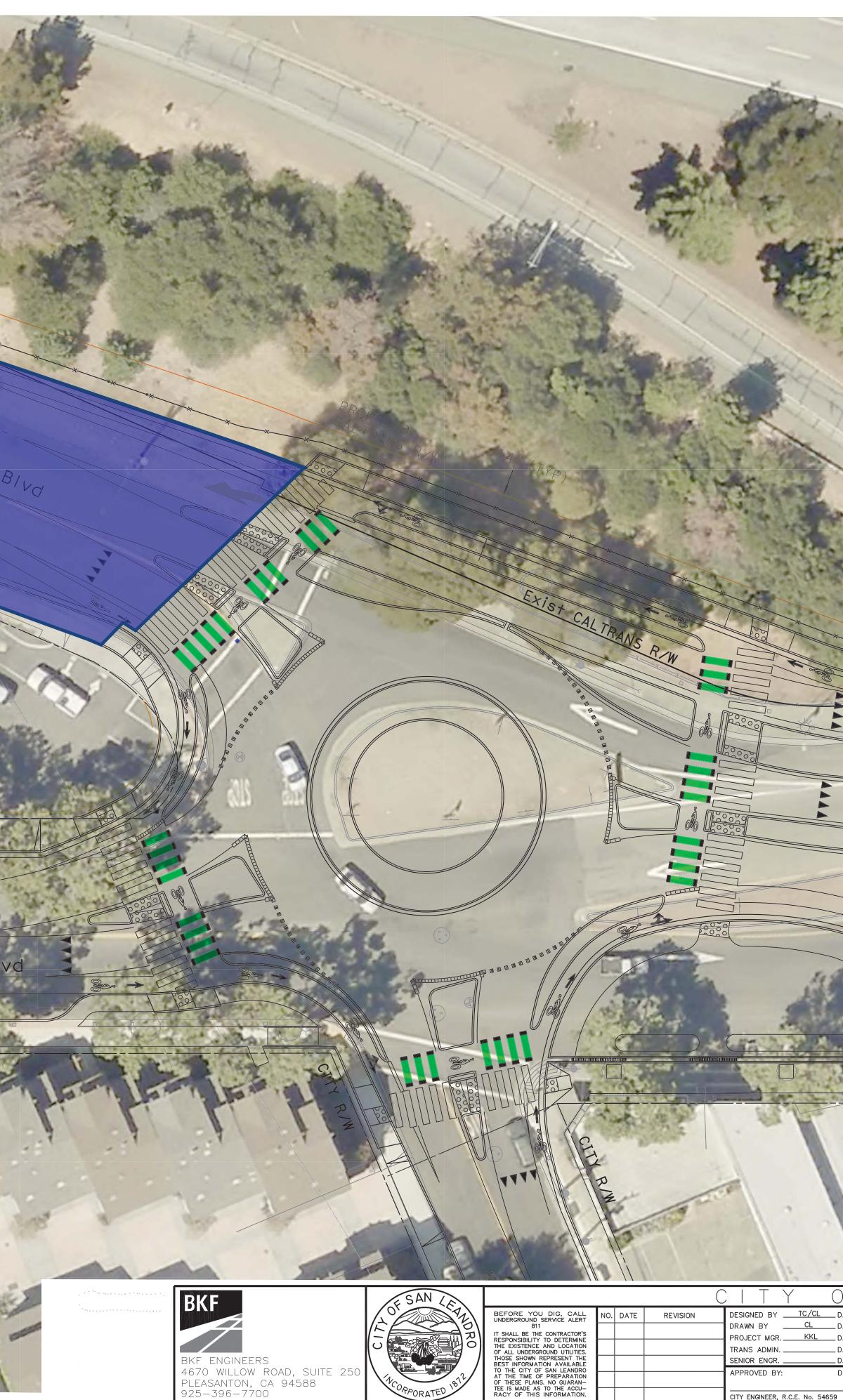
Diagram Depicting Roundabout Maintenance Area

The City of Oakland shall only be responsible for future maintenance of the improvements to be constructed as part of the MacArthur Blvd / Superior Ave Roundabout Project within the area hatched in blue above.

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ENIOR ENGR

PROVED BY:

ENGINEER, R.C.E. No. 54659

FORMATION AVAILAB

FOOTHILL BIVD 110 BIVD EXHIBIT C Ν DATE <u>4/30/2</u> MACARTHUR BLVD / SUPERIOR AVE _DATE <u>4/30/21</u> SHEET____OF___ __ DATE <u>4/30/21</u> ROUNDABOUT JOB NO. 20147113 MAINTENANCE AREA EXHIBIT 1" = 20' SCALE_ _CASE_ DWG_