

**SOLANO COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD AGENDA ITEM**

TO: **Members of the Governing Board**

SUBJECT: **PUBLIC IMPROVEMENT AGREEMENT WITH CITY OF VACAVILLE FOR INTERSECTION IMPROVEMENTS AT VACAVILLE CENTER ENTRY DRIVE AT NORTH VILLAGE PARKWAY**

REQUESTED ACTION:

- Information** **OR** **Approval**
 Consent **OR** **Non-Consent**

SUMMARY:

Approval is requested of a revised Public Improvement Agreement with the City of Vacaville for Intersection Improvements at the main driveways to the Vacaville Center and the Vacaville Classroom Building (Annex). The Board originally approved the Agreement on November 2, 2016. The intersection improvements are a California Environmental Quality Act (CEQA) mitigation requirement of the Biotechnology and Science Building Project.

CONTINUED ON THE NEXT PAGE

STUDENT SUCCESS IMPACT:

- Help our students achieve their educational, professional and personal goals
- Basic skills education
- Workforce development and training
- Transfer-level education
- Other: Enhance safety and security for students, faculty, and staff

<hr/> SUPERINTENDENT'S RECOMMENDATION: <hr/> <p style="text-align: center;">Lucky Lofton Executive Bonds Manager</p> <hr/> PRESENTER'S NAME <hr/> <p style="text-align: center;">4000 Suisun Valley Road Fairfield, CA 94534</p> <hr/> ADDRESS <hr/> <p style="text-align: center;">(707) 863-7855</p> <hr/> TELEPHONE NUMBER <hr/> <p style="text-align: center;">Yulian Ligioso Vice President, Finance & Administration</p> <hr/> VICE PRESIDENT APPROVAL <hr/> <p style="text-align: center;">November 7, 2016</p> <hr/> DATE SUBMITTED TO SUPERINTENDENT-PRESIDENT	<hr/> <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL <input type="checkbox"/> NOT REQUIRED <input type="checkbox"/> TABLE <hr/> <hr/> <p style="text-align: center;">Celia Esposito-Noy, Ed.D. Superintendent-President</p> <hr/> <p style="text-align: center;">November 7, 2016</p> <hr/> DATE APPROVED BY SUPERINTENDENT-PRESIDENT
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SUBJECT: **PUBLIC IMPROVEMENT AGREEMENT WITH CITY OF
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SUMMARY:

CONTINUED FROM THE PREVIOUS PAGE

City staff subsequently requested a few minor revisions to the Agreement language:

1. Several spelling corrections and deletion of a duplicated word.
2. Added the name of the project 'Vacaville Center Intersection Improvements Project' to Section 2 and deleted 'in a good and workmanlike manner'.
3. Section 13: Added the word 'some of' to the first sentence, to indicate that the project is not entirely upon District property. Some of it is in the public right-of-way.

The District has reviewed these changes with District Counsel and determined that these are not material changes.

The Board is asked to approve the attached revised Public Improvement Agreement with the City of Vacaville for intersection improvements.

The Agreement is available online at: <http://www.solano.edu/measureq/planning.php>.

PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT is made and entered on the date last written below, by and between Solano Community College District hereinafter referred to as "SCCD", and the CITY OF VACAVILLE, a municipal corporation, hereinafter referred to as "City".

WHEREAS, SCCD proposes to construct intersection improvements which includes a signal installation, located at North Village Parkway at SCCD Vacaville Center main entry drive and hereinafter referred to as the "Project"; and

WHEREAS, SCCD is proceeding with construction of a new Biotechnology and Science Building as approved by the agency of jurisdiction, Division of the State Architect, of which development the Project is a CEQA required mitigation measure, and

WHEREAS, the City Engineer shall approve the issuance of encroachment permits for construction of utility connections for the Biotechnology and Science Building on condition that SCCD first enter into and execute this Agreement with City.

NOW THEREFORE, THE DEVELOPER AGREES AS FOLLOWS:

1. **Warranty of Project.** SCCD hereby warrants that the development of the Project according to the plans and specifications to be submitted for the Project, will not adversely affect any portion of adjacent properties.

2. **Completion of Improvements.** SCCD shall construct the Project in accordance with said plans and specifications Vacaville Center Intersection Improvements Project as approved by the City and shall complete the Project within eight (8) months following the City's final approval of plans and specifications. In the event SCCD fails to complete the improvements within this time period, or any extended time period approved in writing by the City, City shall mail SCCD a written Notice of Default. In the event SCCD fails to perform all work necessary to complete the improvements or any portion thereof that remain incomplete within a reasonable period after the date the Notice of Default was mailed, but not exceeding ninety (90) days, City may, at its option, complete or cause to be completed the improvements. SCCD, and/or SCCD's surety shall pay to City on demand all costs and expenses incurred by City to complete the improvements including, without limitation, costs of suit and reasonable attorneys' and expert fees.

3. **Date of Completion.** Acceptance of the public improvements constructed by the Project shall be made by the Director of Public Works when all grading and public improvements are completed in accordance with the plans and specifications, including completion of a punch list. The City's periodic inspection of the Project shall not be construed to bind the City to accept said improvements, or waive any defect in the same or any breach of this Agreement.

4. **Fees.** SCCD shall, upon execution of this Agreement, be liable to the City

for plan check and inspection fees, clean-up deposit, and any other deposits, fees or conditions as required by City ordinance, resolution or as required by the City Engineer in connection with the design approval, inspection and/or acceptance of the completed Project.

5. **Security.** SCCD shall, upon execution of this Agreement, deposit with the City a good and sufficient surety bond to secure the faithful performance of this Agreement and every part thereof by the SCCD, in the sum of Four Hundred Eighty Three Thousand Eight Hundred Thirty Dollars (\$483,830).

If SCCD files a surety bond, said bond shall be in a form approved by the City, shall be in favor of City, and shall be issued by a surety company acceptable to City and duly authorized to transact surety insurance in the State of California. In the event of any default by SCCD of SCCD's obligations herein, SCCD's surety shall be responsible for the payment to City of all direct and indirect costs incurred by City to complete all of the improvements and/or repair any defects or failures in the improvements, any and all damages sustained by City as a result of such default, and any and all costs and expenses incurred by City to collect on such bond including, without limitation, costs of suit and reasonable attorneys' and expert fees. Any additions, alterations or modifications to this Agreement or the plans and specifications referred to herein, including any extension of time within which the work hereunder may be completed, shall not release or exonerate any surety or sureties on the bond given in connection with this Agreement, and SCCD's surety expressly waives the provisions of Section 2819 of the California Civil Code.

6. **Release of Security.** The City Engineer shall release of a portion of the performance security required hereunder upon application by the SCCD, but in no case shall the security be reduced to less than two hundred percent (200%) of the remaining work. The procedures for the partial release of the performance security shall be as outlined in the City's Standard Specifications.

The performance security shall be fully released only upon acceptance of the improvements by the Director of Public Works.

7. **Revisions.** Revisions to the approved plans and specifications may be initiated by either party hereto, in accordance with the process set forth in the City's Standard Specifications. SCCD shall be liable for additional plan check and inspection fees and/or such other fees as may be required by resolution of the City Council for all revisions initiated by SCCD, unless the City Engineer determines that the proposed revisions will not involve a significant amount of City staff time or expense to the City. SCCD may appeal to the City Council any revisions to the approved plans or specifications initiated by the City Engineer by filing an appeal application, including payment of a processing fee as established by resolution of the City Council, with the City Clerk within ten (10) calendar days following receipt of the City Engineer's written request to revise the plans or specifications.

8. **Warranty of Improvements.** SCCD agrees to require its contractor to repair any defects or failures in the improvements arising from faulty or defective construction of the improvements, which may appear within a period of one (1) year after City's acceptance of the improvements. In the event SCCD's contractor fails to remedy any and all defects or failures within ten (10) days after being notified of the defects or failures in writing by City, City may, at its option, repair or cause to be repaired such defects or failures and be entitled to recover the cost thereof as provided below. Notwithstanding the foregoing, in the event any defects or failures in the improvements result in a condition that in the City's sole and exclusive judgment constitutes an immediate hazard to public health or safety or to any person or property, City shall have the right to immediately repair or cause to be repaired such defects or failures, with or without prior notice to SCCD, SCCD's surety and/or SCCD's contractor's surety. SCCD's surety and/or SCCD's contractor's surety shall pay to City on demand all costs and expenses incurred by City to repair any defects or failures including, without limitation, costs of suit and reasonable attorneys' and expert fees.

9. **Ownership and Cost of Improvements.** The improvements constructed as part of the Project that are located within the public right-of-way shall become the sole and exclusive property of the City upon City's acceptance of the improvements. The improvements shall be constructed at SCCD's sole cost and expense, and no payment of any kind shall be made therefor by City.

10. **Insurance.** Prior to the commencement of any work on the improvements, SCCD agrees to have its Contractors hold and maintain the policies of insurance set forth in EXHIBIT A, entitled "INSURANCE", which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by City's Risk Manager as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by City's Risk Manager. SCCD agrees to provide City with a copy of said policies, endorsements, certificates and/or binders before work commences under this Agreement.

11. **Indemnification.** SCCD will indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation attorney's fees, expert and consultant fees and all other costs and fees of litigation) of every nature that the City may incur because of any legal action arising from the construction of the Project. For the purposes of Section 2782 of the California Civil Code, the parties recognize and agree that this Agreement is not a construction contract.

12. **Assignability.** This Agreement may not be assigned by SCCD without the prior written consent of City. Any attempt to assign this Agreement without City's prior written consent shall be void. Any approved assignment or transfer of SCCD's rights or obligations hereunder shall be deemed to be for all of SCCD's rights or obligations.

13. **Successors in Interest.** SCCD certifies that SCCD owns full legal title to the property upon which some of the improvements are to be constructed and is authorized to agree

to all conditions and requirements of this Agreement without limitation or constraint. This Agreement shall be binding on SCCD, its officials, employees and agents of SCCD. The parties agree that SCCD’s agreements and obligations contained herein are covenants that run with the SCCD’s property, in accordance with Section 1468 of the California Civil Code. The burden of said covenants shall be binding upon SCCD’s constituents, successors, transferees and assigns, for the benefit of the SCCD’s property to be served by the improvements.

14. **No Agency or Joint Venture.** Neither SCCD nor any of SCCD’s officers, employees, agents, contractors or subcontractors are or shall be considered to be agents or joint venturers of City in connection with the performance of this Agreement.

15. **Notices.** All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

TO CITY:	Public Works Department City of Vacaville 650 Merchant Street Vacaville, CA 95688 ATTENTION: City Engineer
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TO SCCD:	Solano Community College District 4000 Suisun Valley Rd Fairfield, CA 94534 ATTENTION: Executive Bonds Manager
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Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

16. **Venue.** In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Solano or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

17. **Interpretation.** Each party has reviewed this Agreement and any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting party. This Agreement shall be construed as if both parties drafted it. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this Agreement.

18. **Warranty of Signatory Authority.** The person or persons signing this Agreement for SCCD below, hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of SCCD and to fully bind the SCCD thereby to all obligations and requirements of this Agreement.

19. **Entire Agreement; Amendments.** This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement.

IN WITNESS WHEREOF, the parties have hereto set their signatures as of the date last written below.

CITY OF VACAVILLE

By: _____
SHAWN. CUNNINGHAM
Director of Public Works

Date: _____

Approved as to form:

MELINDA C.H. STEWART
City Attorney

SHANA FABER
Assistant City Attorney

SOLANO COMMUNITY COLLEGE DISTRICT

By: _____
LUCKY LOFTON
Executive Bonds Manager

Date: _____

EXHIBIT A

INSURANCE

Prior to the commencement of any work on the improvements required by this Agreement, and until one year after the improvements are completed and accepted by the City, SCCD's contractor(s) shall maintain the following insurance against liabilities arising out of any and all activities performed by or on behalf of SCCD and SCCD's contractor(s) in connection with the construction of the improvements and the Project:

Minimum Scope of Insurance:

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.

Minimum Limits of Insurance:

Developer shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease, and in the aggregate.

Deductibles and Self-Insurance Retentions:

Any deductibles or self-insured retentions exceeding \$50,000 must be declared to and approved by the City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as insureds with respect to the liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of SCCD, and with respect to liability arising out of work or operations by or on behalf of SCCD including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the SCCD's Contractor's insurance or as a separate owner's policy.

2. For any claims related to the improvements or the Project, SCCD's Contractor's

Insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be in excess of SCCD's Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Verification of Coverage:

SCCD shall furnish City with original certificate and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements stated in this clause. All certificates and endorsements are required to be received and approved by the City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting coverage required by these specifications at any time.

All insurance documents are to be sent to:

City of Vacaville
Attn.: Risk Manager
650 Merchant Street
Vacaville, CA 95688

Subcontractors:

SCCD's Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated above.

ENDORSEMENT

THIS ENDORSEMENT, EFFECTIVE _____ A.M. _____, 200__,
FOR POLICY NUMBER _____, IS ISSUED TO THE CITY OF
VACAVILLE, CALIFORNIA BY _____ FOR
(PROJECT DESCRIPTION OR TITLE)_____.

ADDITIONAL INSURED

IT IS HEREBY UNDERSTOOD AND AGREED THAT THE CITY OF VACAVILLE, ITS OFFICERS, OFFICIALS, EMPLOYEES AND VOLUNTEERS ARE NAMED AS ADDITIONAL INSUREDS ON THE GENERAL AND AUTOMOTIVE LIABILITY INSURANCES.

PRIMARY INSURANCE

IT IS FURTHER UNDERSTOOD AND AGREED THAT THE INSURANCE AFFORDED BY THIS POLICY SHALL BE CONSIDERED PRIMARY INSURANCE AS RESPECTS ANY OTHER VALID AND COLLECTIBLE INSURANCE THE CITY OF VACAVILLE MAY POSSESS, INCLUDING ANY SELF INSURED RETENTION THE CITY MAY HAVE, AND ANY OTHER INSURANCE THE CITY DOES POSSESS SHALL BE CONSIDERED EXCESS INSURANCE ONLY.

CANCELLATION CLAUSE

THIRTY (30) DAYS WRITTEN NOTICE OF CANCELLATION SHALL BE GIVEN TO THE CITY OF VACAVILLE IN THE EVENT OF CANCELLATION AND/OR REDUCTION IN COVERAGE OF ANY NATURE. SUCH NOTICE SHALL BE SENT TO:

City of Vacaville
Attn: Risk Manager
650 Merchant Street
Vacaville, CA 95688

THIS PARAGRAPH SUPERSEDES THE CANCELLATION CLAUSE IN THE CERTIFICATE OF INSURANCE. ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Authorized Representative

Telephone Number