

**MAINTENANCE AGREEMENT
FOR MACARTHUR BOULEVARD UNDERCROSSING
IN THE CITY OF OAKLAND**

THIS AGREEMENT is made effective this _____ day of _____, 20__, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as “STATE” and the City of Oakland; hereinafter referred to as “CITY” and collectively referred to as “PARTIES”.

SECTION I

RECITALS

1. WHEREAS, Encroachment Permit Number 0416-NMC 1563 was issued to CITY to modify the MacArthur Boulevard undercrossing (Br No. 33-316) on State Route (SR) 580, hereinafter referred to as “PROJECT”, and
2. WHEREAS, PARTIES hereto mutually desire to identify the maintenance responsibilities for improvements of PROJECT constructed under the Encroachment Permit Number 04-NMC 1563, and
3. WHEREAS, the degree or extent of maintenance work to be performed, and the standards therefore, shall be in accordance with the provisions of Section 27 of the Streets and Highways Code and the then current edition of the State Maintenance Manual.
4. WHEREAS there is an existing Freeway Maintenance Agreement with CITY of Oakland; dated November 24, 1964. This agreement is not meant to replace or supersede the earlier agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

5. Exhibit A consists of plan drawings that delineate the areas within STATE right of way which are the responsibility of the CITY to maintain in accordance with this Maintenance Agreement.
6. If there is mutual agreement on the change in the maintenance duties between PARTIES, the PARTIES can revise the Exhibit A by a mutual written-execution of the exhibit.
7. CITY must obtain the necessary Encroachment Permits from STATE’s District 4 Encroachment Permit Office prior to entering STATE right of way to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.

8. VEHICULAR AND PEDESTRIAN UNDERCROSSINGS

- 8.1. STATE will maintain the entire structure of all STATE-constructed vehicular and pedestrian undercrossings of STATE freeways except as hereinafter provided.
- 8.2. CITY will maintain the roadway sections, including the traveled way, shoulders, curbs, sidewalks, wall surfaces (including eliminating graffiti), drainage installations, lighting installations and traffic service facilities that may be required for the benefit or control of traffic using that undercrossing.
- 8.3. CITY will request STATE's District Encroachment Permit Engineer to issue the necessary Encroachment Permit for any proposed change in minimum vertical clearances between CITY roadway surface and the structure that results from modifications to the roadway (except when said modifications are made by STATE). If the planned modifications will result in a reduction in the minimum clearance within the traveled way, an estimate of the clearance reduction must be provided to STATE's Transportation Permit Engineer prior to starting work. Upon completion of that work, a vertical clearance diagram will be furnished to STATE's Transportation Permit Engineer that shows revised minimum clearances for all affected movements of traffic, both at the edges of the traveled way and at points of minimum clearance within the traveled way.

9. WALLS AND COLUMNS - CITY is responsible for debris removal, cleaning and painting to keep CITY's side of any wall structure and column free of debris, dirt, and graffiti.

10. LANDSCAPED AREAS - CITY is responsible for the maintenance of any plantings or other types of roadside development lying outside of the area reserved for exclusive freeway use.

11. BICYCLE PATHS - CITY will maintain, at CITY expense, a safe facility for bicycle travel along the entire length of the path by providing sweeping and debris removal when necessary; and all signing and striping and pavement markings required for the direction and operation of that non-motorized facility. If constructed as permitted encroachments within STATE's right of way, permittee is solely responsible for all path improvements, all fences, guard railing, drainage facilities, slope and structural adequacy of any bicycle path located and constructed within STATE's right of way.

12. INTERCHANGE OPERATON - It is STATE's responsibility to provide efficient operation of freeway interchanges, including ramp connections to local streets and roads.

13. ELECTRICALLY OPERATED TRAFFIC CONTROL DEVICES

- 13.1. The cost of installation, operation, maintenance, repairs, replacement and energy costs of safety lighting, traffic signals or other necessary electrically operated traffic control devices placed at interchanges of SR 580 Freeway and CITY streets and roads and at ramp connections or SR 580 and CITY facilities shall be shared by the PARTIES as per existing Maintenance Agreement with CITY dated August 23, 1991.

- 13.2. The said cost shall be paid by CITY and the STATE shall reimburse the CITY their agreed upon share.
- 13.3. Timing of traffic signals, which shall be coordinated with CITY to the extent that no conflict is created with freeway operations, shall be the sole responsibility of STATE.
- 13.4. GPS- Based Time Source Receiver, Video Detector Camera, Bike Detection Camera, and Internally Illuminated Street Name Sign (IISNS) will own, operate and maintain at CITY's expense.

14. LEGAL RELATIONS AND RESPONSIBILITIES

- 14.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.
- 14.2. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of their officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
- 14.3. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including section but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

15. PREVAILING WAGES:

- 15.1. Labor Code Compliance- If the work performed on this Project is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. CITY must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. CITY agrees to include prevailing wage

requirements in its contracts for public work. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

- 15.2. Requirements in Subcontracts - CITY shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in CITY's contracts.

16. INSURANCE

- 16.1. CITY is self insured. CITY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming the STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement in a form satisfactory to STATE, along with a signed copy of the Agreement.

- 16.2. If the work performed on this Project is done under contract CITY shall require its contractors to maintain in force, during the term of this agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.

17. **TERMINATION** - This Agreement may be terminated by timely mutual written consent by PARTIES, and CITY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.

18. **TERM OF AGREEMENT** - This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES or until terminated by STATE for cause.

PARTIES are empowered by Streets and Highways Code Section 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals the day and year first above written.

THE CITY OF OAKLAND

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

MALCOLM DOUGHERTY
Director of Transportation

Initiated and Approved

By: _____
CITY Administrator

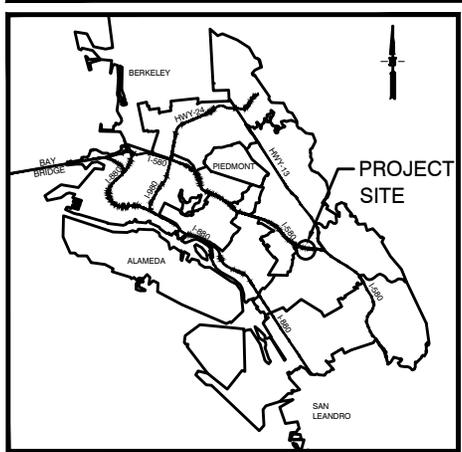
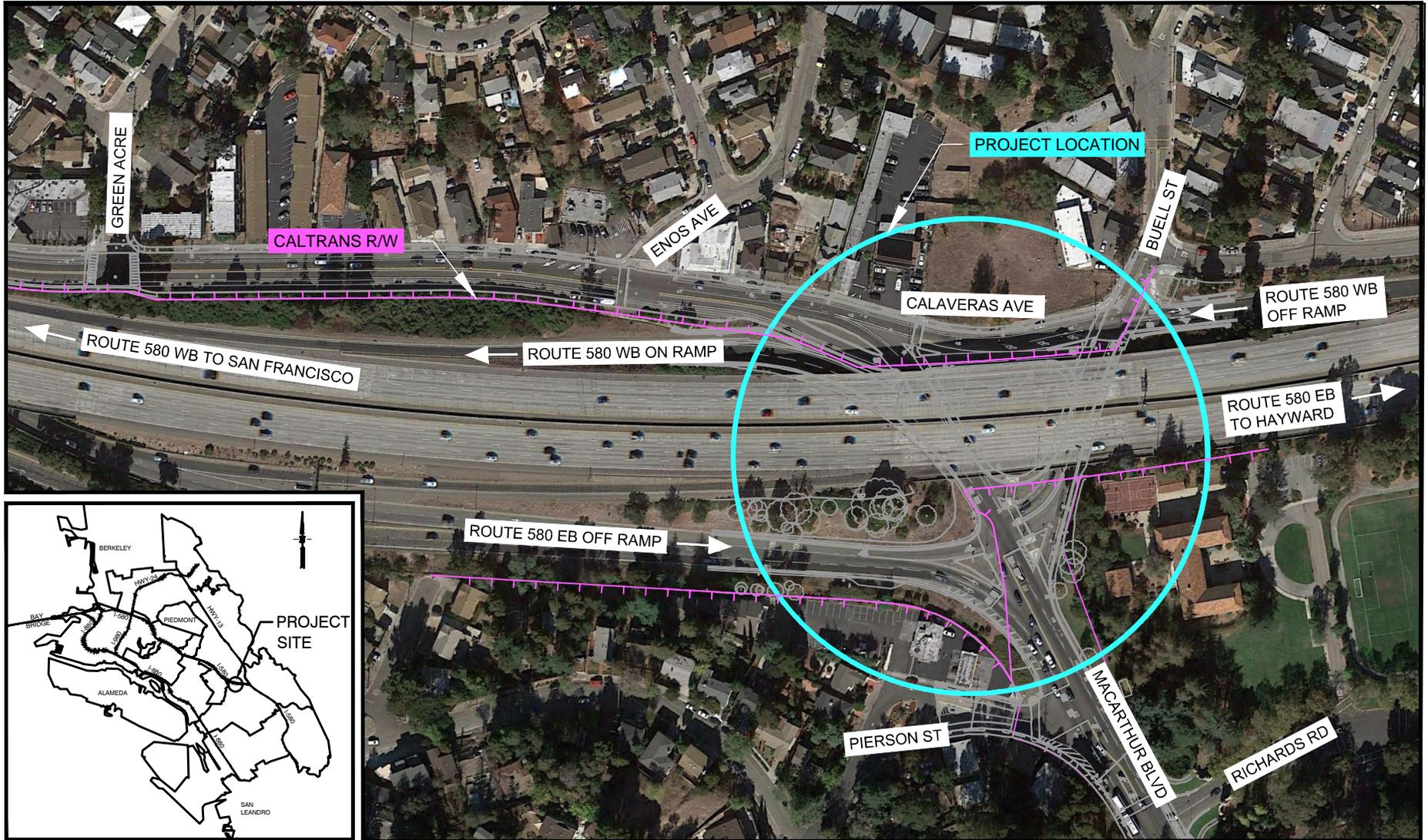
By: _____
DAVID AMBUEHL Date
Deputy District Director
Maintenance District 4

ATTEST:

By: _____
CITY Clerk

By: _____
CITY Attorney

EXHIBIT A



LOCATION MAP



CITY OF OAKLAND

BUREAU OF ENGINEERING AND CONSTRUCTION
 250 FRANK H. OGDEN PLAZA, SUITE 4314
 OAKLAND, CA 94612
 (510) 238-3437
 FAX (510) 238-7227

EXHIBIT A - MAINTENANCE AGREEMENT WITH CITY OF OAKLAND
 CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA
 04-ALA-580 39.7/40.3

PROJECT NO.
C478810

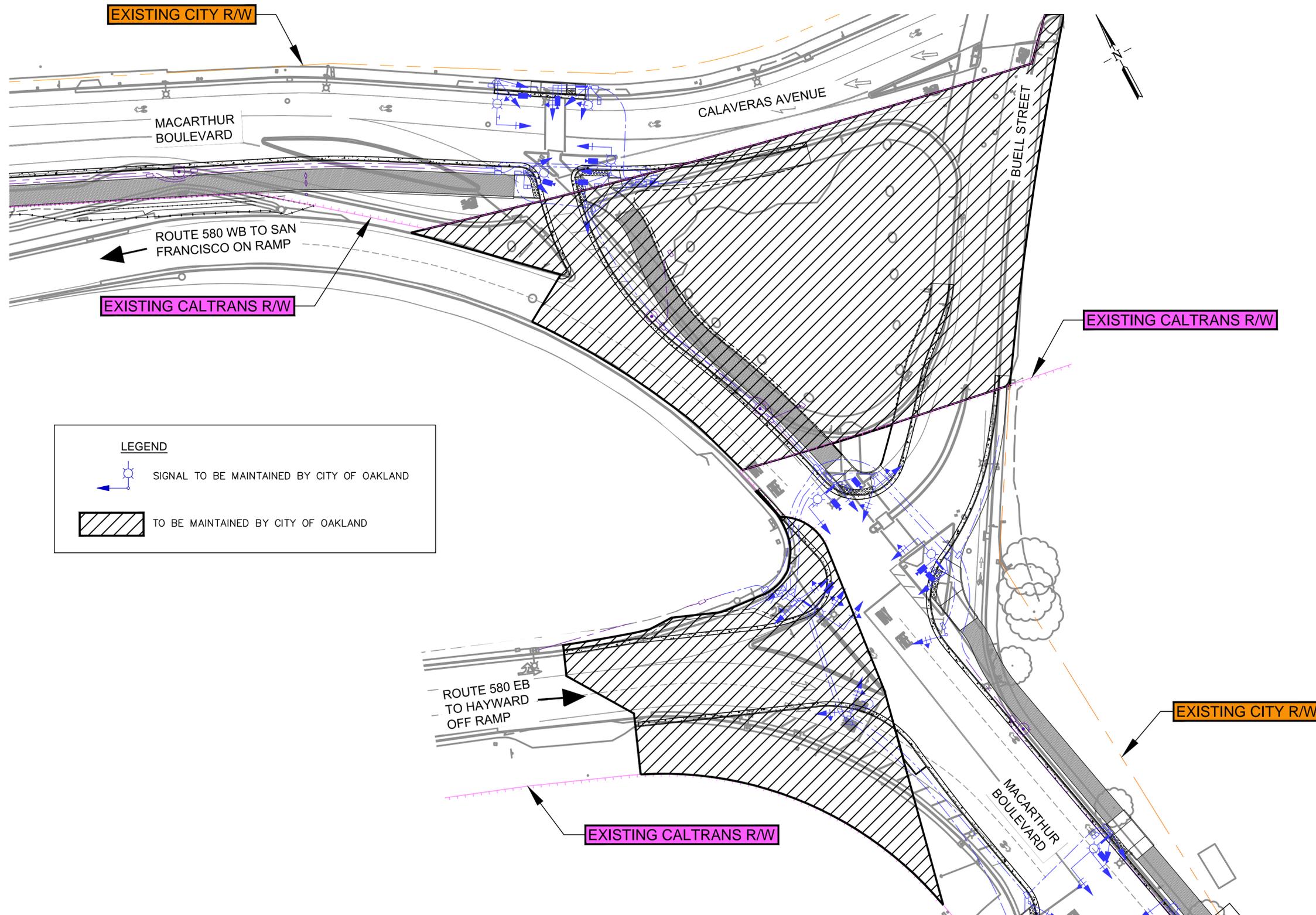
FEDERAL PROJECT NO.
 ATPL 5012(131)

SCALE: 1"=200'
 HOR: 1"=200'
 VERT: N/A
 DATE: 08/22/2017

SHEET NO.
MA-1
 1 OF 2

DRAWING NAME: \\sm-cak\work\Eng\4\2014\1071_OaklandLAMP\MaintenanceAgreementL-130_01_Location Map.dwg
 08/22/17
 PLOTTED BY: gmm

EXHIBIT A



LEGEND

 SIGNAL TO BE MAINTAINED BY CITY OF OAKLAND

 TO BE MAINTAINED BY CITY OF OAKLAND



CITY OF OAKLAND
 BUREAU OF ENGINEERING AND CONSTRUCTION
 250 FRANK H. OGAWA PLAZA, SUITE 4314
 OAKLAND, CA 94612
 (510) 238-3437
 FAX (510) 238-7227

EXHIBIT A - MAINTENANCE AGREEMENT WITH CITY OF OAKLAND
 CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA
 04-ALA-580 39.7/40.3

PROJECT NO.
C478810
 FEDERAL PROJECT NO.
 ATPL 5012(131)

SCALE: 1"=30'
 HOR: 1"=30'
 VERT: N/A

DATE: 08/22/2017

SHEET NO.
MA-2
 2 OF 2

DRAWING NAME: \\bak\ark\work\Eng\190141071_Oakland-LAMMPS\ENG\EXHIBITS\130_Maintenance Agreement\190_02_Maintenance.dwg
 PLOT DATE: 08-22-17
 PLOTTED BY: main