

Agenda Report Reviewed by:
City Manager: 

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: October 15, 2019
To: Honorable Mayor and City Councilmembers
From: Kari Svanstrom, Planning Director *KS*
Subject: Approval of Resolution to Authorize the City Manager to sign a Maintenance Agreement with Caltrans for Ned Kahn Public Art
Recommendation: Adopt Resolution
Funding: Currently Budgeted: _____ Yes _____ No X N/A
Net General Fund Cost: _____
Amount: \$

INTRODUCTION:

The Ned Kahn "Sebastopol Portals" public art piece is in the Caltrans permitting process. Three separate permits / agreements are required before this artwork can be installed: a Copyright Agreement; Maintenance Agreement; and, an Encroachment Permit. Caltrans requires each agreement/permit to be done in sequence.

The Copyright agreement has been completed; this agreement included the overall review and approval of the proposed artwork, as well as structural review and approval by Caltrans. Caltrans had a significant delay in processing this agreement as they reviewed and revised their entire policy related to these agreements while processing the Sebastopol Portals project.

Staff is currently working to execute the Maintenance Agreement, an agreement to ensure that the artwork is maintained to both City and Caltrans standards. Once these are completed, the Encroachment Permit will be obtained.

The Maintenance Agreement requires a City Council resolution to authorize City staff to execute the agreement.

DISCUSSION:

The Maintenance Agreement (Attachment 1) includes requirements for the City to maintain the artwork if it becomes damaged, worn, or otherwise unsightly or unsafe. The agreement also includes provisions that allow the City to remove the artwork should the artwork become dangerous, or too expensive for the City to maintain, or for any other reason (the City's right to remove the artwork, should it become necessary, is also in provision is also included in the City's

contract with the Artist. The cost of any future maintenance once the piece is installed and accepted by the City and Caltrans is not included in the contract with the Artist, and would need to come from the City's Art In-lieu Fund.

The City's Public Art Ordinance (Section 17.130 of the Municipal Code) specifies that art in-lieu funds may be used for maintenance of public art:

"Public art in-lieu fee" means the fee paid to the City pursuant to this chapter equal to one percent of construction cost as defined herein. In-lieu fees shall be placed in the public art fund. The fund shall be used for public art on public property or private property with the owner's permission. The fund shall be used exclusively to:

- 1. Provide sites for works of art;*
- 2. Acquire and install works of art;*
- 3. Maintain works of art;***
- 4. Support the exhibition of art which is publicly accessible; or*
- 5. Administer the public art program.*

City staff reviewed the Maintenance Agreement with the Public Arts Committee. They noted that, in the review of the Ned Kahn piece the artist had noted that it should require minimal maintenance given its material, and how other similar pieces by the artists have withstood the test of time. They also recommended that for this, and future art pieces, should have a set-aside reserved in the Art Fund for maintenance of the artworks through time. Staff and the Committee will keep this in mind as funds are committed to future projects out of the fund. The balance of the fund is currently anticipated to be \$40,000-45,000 after the two commissioned public art pieces, so this can easily be done.

PUBLIC COMMENT:

No comments have been received as of the writing of this staff report.

RECOMMENDATION:

Adopt the Resolution.

ATTACHMENTS:

1. Resolution
2. Draft Maintenance Agreement

RESOLUTION NUMBER: -2019

CITY OF SEBASTOPOL

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL AUTHORIZING THE CITY MANAGER TO ENTER INTO A MAINTENANCE AGREEMENT WITH CALTRANS FOR THE "SEBASTOPOL PORTALS" SCULPTURE BY NED KAHN

WHEREAS, on October 5, 2016, November 2 and 16, 2016, and December 7, 2016, the Public Art Committee deliberated and considered public art proposals for the 2016 Public Art Initiative; and

WHEREAS, on December 7, 2016, the Public Art Committee deliberated and selected Ned Kahn as the artist to recommend to the City Council for this Initiative; and

WHEREAS, on February 7, 2017, the City Council heard the recommendation at its regularly scheduled meeting and City Council approved the selection of Ned Kahn as the artist for this Initiative ; and

WHEREAS, the Public Art Committee deliberated on the siting of the Ned Kahn sculpture, and recommended the site along Sebastopol Avenue/State Highway 12; and

WHEREAS, the City Council accepted the recommended site on Caltrans property near the Highway 12 bridge, and authorized staff to proceed with a contract with Ned Kahn for the artwork and for staff to collaborate with Caltrans for the chosen site; and

WHEREAS, staff and the artist have coordinated with Caltrans to execute the required Copyright Agreement and to prepare the required Maintenance Agreement to maintain the art work; and

WHEREAS, the City's Public Art Ordinance allows for public art funds to fund the on-going maintenance of City public art projects; and

WHEREAS, Caltrans requires City Council enter into the Maintenance Agreement before an encroachment permit can be issued for the art work's installation.

NOW, THEREFORE, BE IT RESOLVED that the City of Sebastopol City Council hereby authorizes the City Manager to enter into a Maintenance Agreement with Caltrans for the Ned Kahn "Sebastopol Portals" project.

The above and foregoing Resolution was duly passed, approved and adopted at a meeting by the City Council on the 15th day of October, 2019, by the following vote:

VOTE:

Ayes:

Noes:

Abstain:

Absent:

APPROVED: _____

Mayor Neysa Hinton

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney

**MAINTENANCE AGREEMENT
FOR TRANSPORTATION ART IN THE CITY OF SEBASTOPOL**

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 Sebastopol, hereinafter referred to as "CITY", and collectively referred to as "PARTIES".

SECTION I

RECITALS

1. WHEREAS, the PARTIES desire to work together to allocate their respective obligations relative to Transportation Art (which includes sculptural artwork placed upon a required engineered transportation feature that expresses unique attributes of a community's history, resources, or character) within STATE's right of way; and
2. WHEREAS, this Agreement addresses CITY's responsibility for maintaining the Transportation Art installed within the State Highway right of way State Route 12 at Laguna de Santa Rosa Bridge (Bridge No. 20-35), hereinafter referred to as "ART," as shown on Exhibit A, attached to and made a part of this Agreement; and
3. WHEREAS, the PARTIES hereto mutually desire to clarify the division of maintenance responsibility as defined in Section 27 of the California Streets and Highway Code that include, but are not limited to, providing emergency repair and maintenance (collectively hereinafter "MAINTAIN/MAINTENANCE") of ART at the location as shown on Exhibit A; and
4. WHEREAS, there are existing Freeway Maintenance Agreements between STATE and CITY, and this agreement is not intended to replace or supersede any other prior Freeway Maintenance Agreements.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:
 - 1.1. When a change to this agreement is necessary, the PARTIES will execute a formal amendment in writing by and through their authorized representatives.

- 1.2 EXHIBIT A consists of images that delineate the areas within STATE right of way, where ART will be located, what that ART involves, and what will be the responsibility of CITY to MAINTAIN in accordance with this Maintenance Agreement.
2. CITY's obligations hereunder, at CITY's expense, include the following:
 - 2.1. CITY shall MAINTAIN ART conforming to those plans pre-approved by STATE.
 - 2.2. CITY shall submit the final form of the plans for ART to STATE's District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE's right of way. All proposed ART must meet STATE's standards.
 - 2.3. CITY shall ensure ART is provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance. CITY shall coordinate said MAINTENANCE with STATE prior to the start of any work.
 - 2.4. An Encroachment Permit rider may be required for any changes to the scope of work allowed by this Agreement prior to the start of any work within STATE's right of way.
 - 2.5. CITY and CITY contractors will be required to obtain an Encroachment Permit from STATE prior to the start of any work within STATE's right of way. This includes, but is not limited to the installation, MAINTENANCE, restoration or removal of ART. A permit fee will be required of CITY's third party successors and CITY's contractor.
 - 2.6. CITY shall replace or repair damaged ART when observed or within thirty (30) calendar days of being notified in writing by STATE.
 - 2.7. CITY shall remove ART and restore STATE-owned areas to a safe and attractive condition acceptable to STATE, in the event this Agreement is terminated as set forth herein.
 - 2.8. CITY shall expeditiously MAINTAIN, replace, repair, remove, or restore ART if it has become unsightly.
 - 2.9. CITY shall MAINTAIN all ART within STATE highway right of way, as shown on Exhibit A for as long as it remains in place, at CITY's expense. MAINTENANCE includes, but is not limited to: (1) restoration or replacement of damaged ART; (2) removal of dirt, debris, graffiti, grown vegetation and weeds surrounding ART and the immediate area CITY uses to access and maintain ART; and (3) removal of any deleterious item or material on ART in an expeditious manner. Graffiti removal must conform to applicable STATE policies and guidelines that require prompt removal of offensive messages and timely removal of all other graffiti. MAINTENANCE practices must protect air and water quality as required by law. Should ART be removed, for

whatever reason, CITY, at no cost to the STATE, shall return the area where ART was in place to its original condition.

- 2.10. No work will be performed from the freeway or adjacent roadside, unless approved by STATE in the form of a separate Encroachment Permit. All work will be conducted from local streets or adjacent sidewalks. CITY shall be responsible for necessary traffic operations, traffic control and traffic/lane closures required for installation of ART and MAINTENANCE operations in the area.
 - 2.11 Other than STATE-approved ART, no alteration of the existing freeway structure or any other highway facility, including signage, will be permitted, unless pre-approved in writing by STATE. No landscaping shall be removed to accommodate ART unless approved by STATE.
 - 2.12 All work in connection with installation, MAINTENANCE, restoration, or removal, of ART; or, more generally, for the benefit of CITY will be done at no cost to STATE.
 - 2.13 CITY shall remove ART whenever, in the opinion of STATE, it creates a maintenance or operational concern. In the event CITY fails to remove ART in a timely manner, STATE may remove ART thirty (30) calendar days following written notification to CITY, and STATE will bill CITY for all costs of its removal and for the restoration of STATE-owned areas to their original condition.
 - 2.14 CITY may remove part or all of ART thirty (30) days following notification to STATE. CITY shall remove ART and restore STATE-owned areas to a safe and attractive condition acceptable to STATE.
 - 2.15 CITY is required to obtain from ARTIST, or any party CITY contracts with for the Art, an assignment of all copyright interests in the Art to STATE.
 - 2.16 CITY shall maintain all rights and obligations under this agreement with artists or any party it contracts with for ART in order to fulfill CITY's obligations under this Agreement. These rights and obligations include, but are not limited to, the ability to repair or restore ART, remove ART, and clean ART.
 - 2.17 ART located within STATE right of way becomes property of the STATE. If ART is removed from STATE right of way, it shall become property of the CITY.
3. STATE shall have the following obligations and rights under this Agreement:
- 3.1. Provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from MAINTENANCE responsibilities assumed under this Agreement. ART which in the

opinion of STATE becomes a safety or operational concern, will be removed, at no cost to STATE, by CITY.

- 3.2. Provide CITY the necessary Encroachment Permits from STATE's District 4 Encroachment Permit Office prior to CITY's entering STATE right of way to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.
- 3.3. Provide CITY's contractor and ART artist(s) an Encroachment Permit from STATE prior to the start of any work within STATE's right of way. A permit fee will be required for CITY's contractor and for ART artist(s).
- 3.4. STATE reserves the right to remove ART, partially or in its entirety, or alter parts thereof due to emergency, construction, rehabilitation, or other necessary activities affecting these transportation facilities without any obligation, compensation to, or approval of CITY.
- 3.5. STATE reserves the right to remove or alter any ART that presents an immediate safety hazard to the public, as determined by STATE, without delay or advance notification to CITY.
- 3.6. STATE will not be responsible for the cost of any maintenance, repair, restoration or replacement of ART which is damaged by anything STATE does or does not do in the course of STATE's duties related to highway operations and activities. STATE will not be responsible for any damages caused by any vandalism or accidents on the roadway.
- 3.7. STATE will notify CITY thirty (30) days in advance of any planned work that may impact the Art. If the work required is due to a public safety hazard, this notification period does not apply, and STATE will notify CITY as soon as practicable of the planned or performed work.

4. LEGAL RELATIONS AND RESPONSIBILITIES

- 4.1. 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.
- 4.2. If during the term of this Agreement, CITY should cease to MAINTAIN ART to the satisfaction of STATE as provided by this Agreement or if in the opinion of the STATE the ART creates an unsatisfactory condition, STATE may either undertake to perform that MAINTENANCE on behalf of CITY at CITY's expense or direct CITY to remove or itself remove ART at CITY's sole expense and restore STATE's right of way to its

prior condition. CITY hereby agrees to pay said STATE expenses, within thirty (30) calendar days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing ART, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) calendar days within which to affect that cure.

- 4.3. 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 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.

5. PREVAILING WAGES

- 5.1. Labor Code Compliance- If the work performed on this ART 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.
- 5.2. 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

6. INSURANCE

- 6.1 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.

- 6.2 If the work performed under this Agreement is done by CITY's contractor(s), CITY shall require its contractor(s) 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.
7. **TERMINATION** – This Agreement may be terminated by mutual written consent by the PARTIES, and CITY failures to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.
8. **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.

The PARTIES are empowered by Streets and Highways Code Sections 114 and 130 to enter into this Agreement, 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 SEBASTOPOL

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY: _____
CITY Administrator *Manager*

BOB FRANZOIA
Acting Director of Transportation

Initiated and Approved

By: _____
~~Department~~ Director
Planey

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

Approved as to Form:

Approved as to Form:

By: _____
~~Deputy~~ CITY Attorney

By: _____
Attorney
Department of Transportation

EXHIBIT A

Maintenance Agreement #: _____
Sonoma County - (City of Sebastopol)
Son-12-PM 9.6
(Br No. 20-35)

Transportation Art Location Highway 12 at Laguna de Santa Rosa Bridge in Sebastopol Bridge No. 20-35



PROJECT LOCATION - AERIAL VIEW

EXHIBIT A

Maintenance Agreement #: _____
Sonoma County - (City of Sebastopol)
Son-12-PM 9.6
(Br No. 20-35)



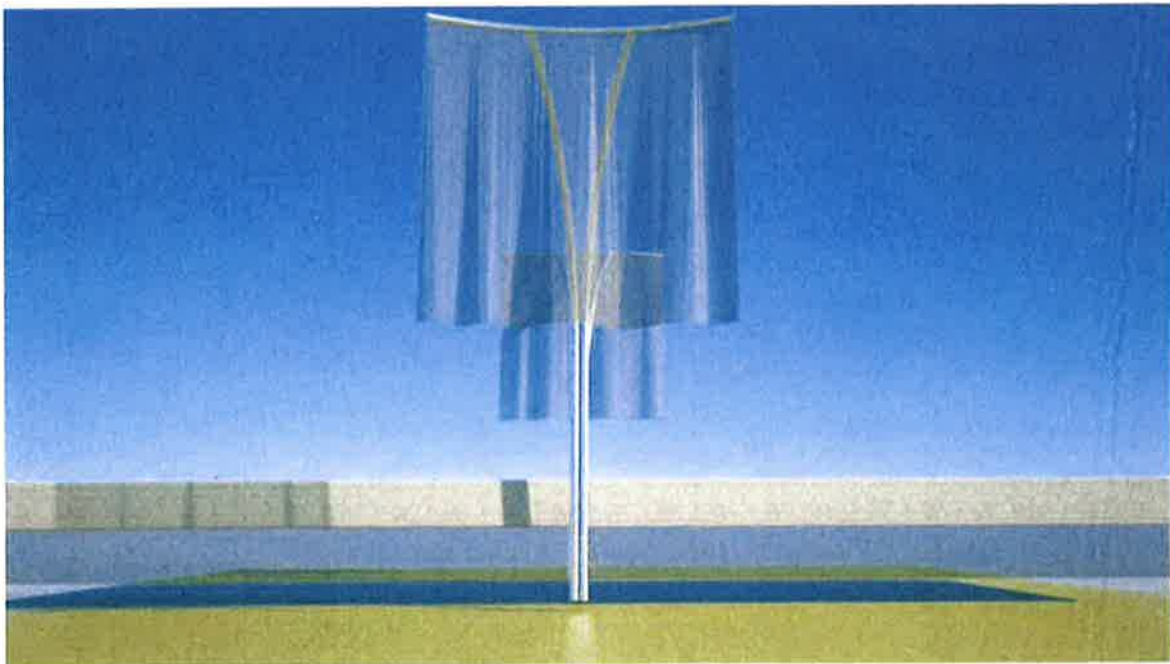
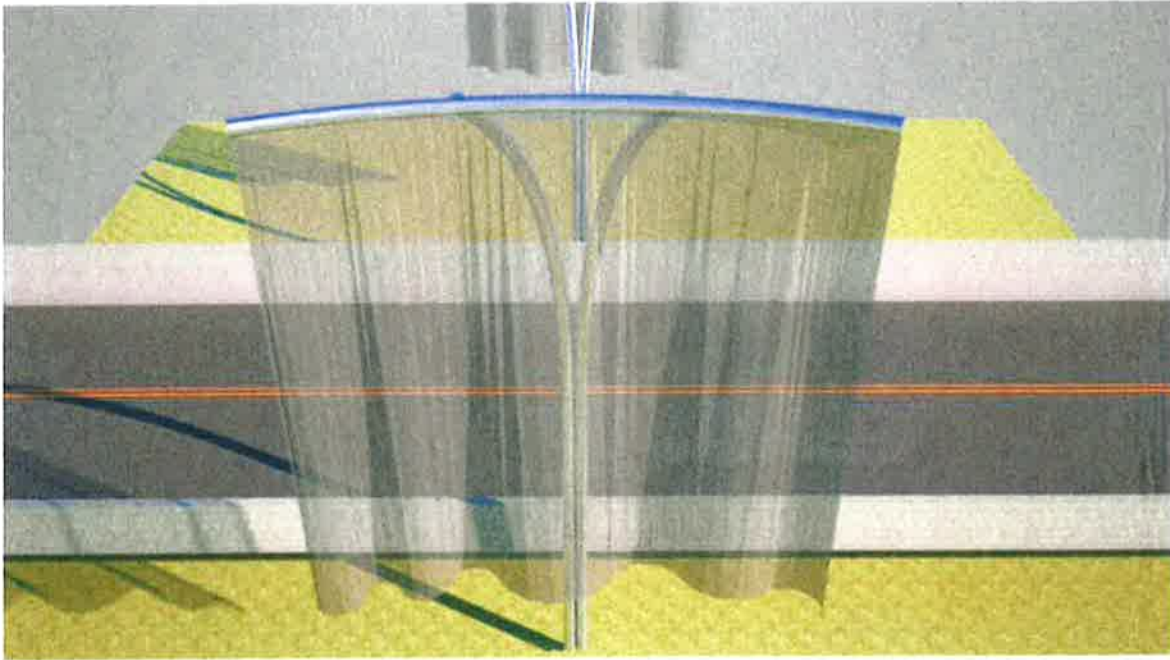
Final Artist Rendering Driver's Perspective - Ground Plane, Hwy-12



Final Artist Rendering - Elevated Plane, Hwy-12

EXHIBIT A

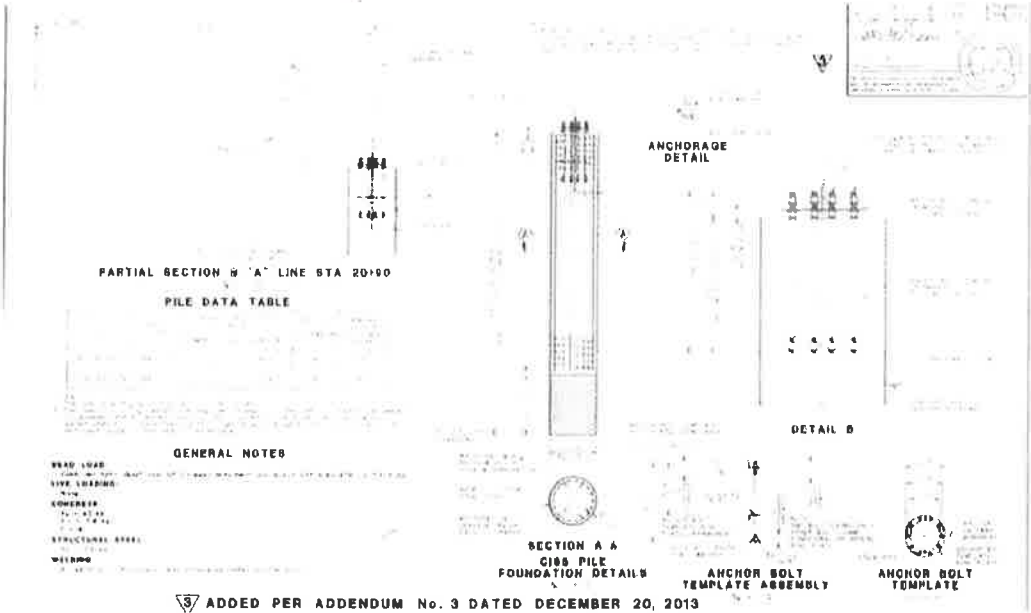
Maintenance Agreement #: _____
Sonoma County - (City of Sebastopol)
Son-12-PM 9.6
(Br No. 20-35)



Final Artwork - Artist Rendering

EXHIBIT A

Maintenance Agreement #: _____
Sonoma County - (City of Sebastopol)
Son-12-PM 9.6
(Br No. 20-35)



ADDED PER ADDENDUM No. 3 DATED DECEMBER 20, 2013



Existing Column Footings for Sebastopol Portals

EXHIBIT A

Maintenance Agreement #: _____
Sonoma County - (City of Sebastopol)
Son-12-PM 9.6
(Br No. 20-35)



Sebastopol Portals Proposed Location Plan