



Contract Number

SAP Number

Public Works

Department Contract Representative	Jeremy Johnson, P.E., Engineering Manager
Telephone Number	(909) 387-8165
Project	Rancho Avenue
Contractor	City of Colton
Contractor Representative	Victor Ortiz, City Engineer
Telephone Number	(909) 370-5065
Contract Term	Expiration 12/31/2028
Original Contract Amount	\$180,000
Amendment Amount	\$0
Total Contract Amount	\$180,000
Cost Center	6650002000 H15172
Grant Number (if applicable)	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (COUNTY) and the City of Colton (CITY), (COUNTY and CITY are also each referred to herein as "Party" and collectively referred to herein as "Parties") desire to cooperate and jointly participate in Reche Canyon Road and Other Roads Pavement Improvement Project located in the Colton area, more specifically, Rancho Avenue, from 0.19 mile south of Valley Boulevard northward for 0.16 mile (hereinafter referred to as "PROJECT"); and,

WHEREAS, California Streets and Highways Code section 1685 and 1803 authorizes CITY to contract with COUNTY for the maintenance, construction, or repair of CITY streets and roads, if the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads; and,

WHEREAS, the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads to contract with COUNTY for the PROJECT; and,

WHEREAS, the total PROJECT cost is estimated to be \$4,688,882; and,

WHEREAS, CITY's share of PROJECT cost is estimated to be \$180,000 and the COUNTY's share of PROJECT cost is estimated to be \$4,508,882, as more particularly set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference; and,

WHEREAS, the above described costs are proportioned based on the work to be performed within each Party's jurisdiction; and,

WHEREAS, CITY and COUNTY desire to set forth the responsibilities and obligations of each as they pertain to such participation, and to the design, construction, and funding of the proposed PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

- 1.1 Act as the Lead Agency in the design, utility relocation, construction, construction engineering, inspection, and California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 *et seq.*). Right-of-Way services are not anticipated and therefore not included in this agreement.
- 1.2 Provide plans and specifications and all necessary construction engineering for the PROJECT to CITY, for CITY's prior review and approval pursuant to paragraph 2.1 below.
- 1.3 Construct the PROJECT by contract in accordance with the plans and specifications provided by COUNTY, which have been reviewed and approved by CITY.
- 1.4 Arrange for relocation of all utilities which interfere with construction of the entire PROJECT limits.
- 1.5 Obtain a no-cost permit from the CITY for work within the CITY's right-of-way.
- 1.6 Advertise, award, and administer the construction of the PROJECT, in accordance with the provisions of California Public Contract Code applicable to counties.
- 1.7 Require COUNTY's contractors to maintain and to comply throughout the term of any contract awarded by COUNTY with the insurance requirements described in County Policy Numbers 11-07 and 11-07SP. Additionally, require its contractor to name CITY as an additional insured on its insurance policies and to name the CITY as co-obligee on the performance and payment bonds provided for the PROJECT.
- 1.8 Provide adequate inspection of all items of work performed under the construction contract(s) with COUNTY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by CITY. COUNTY shall provide copies of any records of inspection and materials testing to CITY within ten (10) business days of COUNTY's receipt of written demand from CITY for such records. This shall be included as a PROJECT cost.
- 1.9 Include compliance with any applicable requirements of CEQA, as well as completing the required CEQA documentation.
- 1.10 Pay COUNTY's proportionate share of the cost of the PROJECT. The cost of the PROJECT shall include the cost of design, construction, construction engineering, inspection, CEQA compliance, and COUNTY overhead cost for the PROJECT. COUNTY's proportionate share of cost for the PROJECT is estimated at \$4,508,882 (96% of PROJECT). COUNTY shall be responsible for its share of any PROJECT cost increases pursuant to paragraph 3.7, 3.8, and 3.9 below.
- 1.11 Submit to the CITY an itemized accounting of actual PROJECT costs incurred by COUNTY and a statement for CITY's proportionate share of PROJECT costs, as provided herein. Costs shall be amended following CITY and COUNTY acceptance of the final construction cost accounting. In no event shall CITY's proportionate share of cost of PROJECT exceed \$180,000 absent a written amendment to this Agreement approved pursuant to paragraph 3.13.

2.0 CITY AGREES TO:

- 2.1 Review, approve, and provide comments, if necessary, for the PROJECT's plans and specifications provided by the CITY for PROJECT work to be performed in the COUNTY's jurisdiction.
- 2.2 Provide a no cost permit to the COUNTY for its work in the CITY's right-of-way.
- 2.3 Provide a qualified CITY representative who has the authority to discuss and resolve PROJECT issues; and the authority to inspect PROJECT construction site upon notification by COUNTY via email and/or telephone that an inspection is required within the CITY's limits.

- 2.4 Pay CITY's proportionate share of the PROJECT cost. The PROJECT cost shall include the cost of design, utility relocation, construction, construction engineering, inspection, CEQA compliance and COUNTY overhead cost. The CITY's proportionate share of cost for the PROJECT is estimated at \$180,000 (4% of PROJECT).
- 2.5 Pay to COUNTY, on a reimbursement basis, its share of PROJECT costs, including its jurisdictional share of any PROJECT cost increases pursuant to paragraphs 3.7, 3.8, and 3.9 below, within sixty (60) calendar days after receipt of an itemized statement as set forth in paragraph 1.11 of this Agreement, setting forth all actual PROJECT costs incurred by COUNTY, together with adequate documentation of said expenditures. In no event shall CITY's proportionate share of PROJECT cost exceed \$180,000, absent a written amendment to this Agreement approved pursuant to Paragraph 3.13.
- 3.0 IT IS MUTUALLY AGREED:
- 3.1 After CITY's and COUNTY's acceptance of completed PROJECT, the COUNTY shall be responsible for performing any maintenance for that portion of the PROJECT that is in the County Maintained Road System and within the COUNTY unincorporated area, and the CITY shall be responsible for performing any maintenance for the PROJECT that is in the CITY incorporated area.
- 3.2 CITY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY, its officers, employees, agents, and volunteers from any and all claims, actions, or losses, damages, and/or liability arising out of CITY's performance of its obligations under this Agreement.
- 3.3 COUNTY agrees to indemnify and hold harmless the CITY, its officers, employees, agents, and volunteers from any and all claims, actions, or losses, damages, and/or liability arising out of COUNTY's performance of its obligations under this Agreement.
- 3.4 In the event the CITY and/or the COUNTY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the CITY and/or COUNTY shall indemnify the other to the extent of its comparative fault.
- 3.5 In the event of litigation arising from this Agreement, each Party to the Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 1.6, 3.2, 3.3 and 3.4 indemnification.
- 3.6 CITY and COUNTY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrant that through their programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.
- 3.7 The Parties acknowledge that final PROJECT costs may ultimately exceed the current estimate of PROJECT costs. Any additional PROJECT costs resulting from increased bid prices, change orders, or arising from unforeseen site conditions, including Utility relocation (but not from requested additional work by the COUNTY or CITY, which is addressed in paragraph 3.8 below) over the estimated total of PROJECT cost of \$4,688,882 (which is the sum of \$180,000 from CITY and \$4,508,882 from COUNTY), shall be borne by each Party in proportion to where the work actually lies (based on jurisdiction), as part of the Parties' respective obligations to pay the cost for the PROJECT.
- 3.8 If either CITY or COUNTY requests additional work that is beyond the scope of the original PROJECT and not considered by all Parties to be a necessary part of the PROJECT, said work, if approved by all Parties, will be paid solely by the agency requesting the work.
- 3.9 In the case where one of the Parties owns a utility that needs to be relocated for the PROJECT and that Party does not have prior rights for that utility, it will be the sole responsibility of that Party to relocate the utility at that Party's cost. This shall not be included as a PROJECT cost. In the case that a utility relocation is determined to be a PROJECT cost based on that utility having prior rights, the relocation of the utility will be included as a project cost for which the COUNTY and CITY will be responsible for funding within their jurisdictional boundaries.
- 3.10 Contract Change Orders forms will be delivered by fax or email, must be approved and signed by COUNTY, and returned within two (2) business days. The COUNTY shall not unreasonably withhold approval of change orders. If a COUNTY disapproved or modified change order is later

- found to be a cost of the PROJECT, then the COUNTY shall be responsible for any costs, awards, judgments, or settlements associated with the disapproved or modified change order.
- 3.11 This Agreement may be cancelled upon thirty (30) calendar days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after COUNTY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, all PROJECT costs required to be paid by the Parties prior to the effective date of cancellation shall be paid by the Parties in the same proportion to their contribution for the PROJECT. The Parties recognize and agree that the provisions governing utility relocation and construction are dependent upon the Parties first satisfying CEQA. As provided in this paragraph, the Agreement may be cancelled with or without cause, before, during or after CEQA review/approval.
- 3.12 Except as provided in Paragraph 3.11, and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive Agreement termination, this Agreement shall terminate upon completion of the PROJECT and payment of final billing by the CITY for its share of the PROJECT costs. The PROJECT shall be deemed complete upon both PARTIES recording a Notice of Completion with any and all appropriate jurisdictions.
- 3.13 This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.14 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between CITY and COUNTY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT, shall be instituted and tried in the appropriate state court, located in the county of San Bernardino, California.
- 3.15 Time is of the essence for each and every provision of this Agreement.
- 3.16 Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for any or against any Party. Any term referencing business days shall be deemed COUNTY workdays. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 3.17 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.18 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this agreement is frustrated.
- 3.19 This Agreement may be signed in counterparts, each of which shall constitute an original. The Parties shall be entitled to sign and transmit an electronic signature of the Agreement (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Party an original signed Agreement upon request.
- 3.20 This Agreement will be effective on the date it is signed by both Parties and shall conclude upon satisfaction of the terms identified in paragraph 3.12, or December 31, 2028 (whichever occurs first).
- 3.21 The Recitals are true and correct and incorporated into the body of this Agreement.

SIGNATURES ON THE FOLLOWING PAGE:

SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____
Deputy

CITY OF COLTON

By ► _____
(Authorized signature - sign in blue ink)

Name William R. Smith
(Print or type name of person signing contract)

Title City Manager
(Print or Type)

Dated: _____

Address 650 N. La Cadena Drive
Colton, CA 92324

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____ Aaron Gest, Deputy County Counsel	► _____ Andy Silao, P.E., Engineering Manager	► _____ Noel Castillo, Director
Date _____	Date _____	Date _____

EXHIBIT A
ESTIMATE OF PROJECT COSTS
FOR SAN BERNARDINO COUNTY/CITY OF COLTON
RECHE CANYON ROAD PAVEMENT IMPROVEMENT PROJECT

Rancho Avenue	TOTAL PROJECT COST	SAN BERNARDINO COUNTY SHARE	CITY OF COLTON SHARE
Construction (including contingencies)	\$3,908,882	\$3,758,882	\$150,000
All Other Costs such as Preliminary Engineering, Design, Environmental Clearance, Construction Engineering, etc.	\$ 780,000	\$ 750,000	\$ 30,000
Total	\$4,688,882	\$4,508,882	\$180,000