



Contract Number

SAP Number

Department of Public Works

Department Contract Representative	Chris Nguyen, P.E. Engineering Manager
Telephone Number	909-387-7940
Consultant	West Valley Water District
Consultant Representative	Linda Jadeski
Telephone Number	909-875-1804
Contract Term	8/22/2023 – 7/11/2025
Original Contract Amount	\$423,000
Amendment Amount	0
Total Contract Amount	\$423,000
Cost Center	2142-665-TX1795

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County (COUNTY) Department of Public Works (DEPARTMENT) is currently preparing plans and specifications for the Bloomington Avenue Pavement and Storm Drain Improvement project, from Cedar Avenue to 0.11 miles northeast of Larch Avenue (hereinafter referred to as "PROJECT"), in the Bloomington area; and

WHEREAS, COUNTY shall be solely responsible for the design and construction work associated with the PROJECT; and

WHEREAS, during the PROJECT's design phase, DEPARTMENT staff determined that improvements to Bloomington Avenue will impact West Valley Water District (DISTRICT) waterlines, water meters, fire hydrants and appurtenant structures and relocation of these facilities is required for the construction of the PROJECT; and

WHEREAS, by virtue of the construction of the PROJECT, the existing waterlines, water meters, fire hydrants and appurtenant structures along Bloomington Avenue will need to be relocated (hereinafter referred to as RELOCATION) as they are now in conflict with the proposed design of the PROJECT; and

WHEREAS, the above described waterlines, water meters, fire hydrants and appurtenant structures are owned and operated by DISTRICT (DISTRICT FACILITIES); and

WHEREAS, in accordance with California Streets and Highways Code section 1463, the COUNTY has informed DISTRICT of the required RELOCATION; and

WHEREAS, it has been determined that DISTRICT has prior rights for the portion of the DISTRICT FACILITIES within the PROJECT area and therefore the COUNTY shall bear one hundred percent (100%) of the cost of RELOCATION, as well as design work (including preparation of plans and specifications) and relocation construction costs (hereinafter referred to as RELOCATION COSTS) which are estimated to be \$423,000 (see Exhibit A, attached hereto and incorporated herein by this reference); and

WHEREAS, COUNTY shall perform the design work for the RELOCATION at COUNTY's cost and expense; and

WHEREAS, DISTRICT shall perform the construction work for the RELOCATION at COUNTY's cost and expense; and

WHEREAS, COUNTY shall advance to DISTRICT the estimated RELOCATION COSTS, which includes a ten percent (10%) contingency deposit, a ten percent (10%) charge for DISTRICT administrative costs (labor, materials, transportation, supervision, engineering (including review of plans and specifications), contract administration, plan checking, material submittal review, contractor coordination, accounting and inspection costs); and

WHEREAS, COUNTY and DISTRICT desire to set forth the responsibilities and obligations of each as they pertain to such participation and to the construction and funding of RELOCATION.

NOW, THEREFORE, the COUNTY and DISTRICT mutually agree to the following terms and conditions:

A. COUNTY AGREES TO:

- A.1** Act as the Lead Agency in the design of the PROJECT and RELOCATION, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.), and construction of the PROJECT.
- A.2** Advertise, award and administer the construction of the PROJECT in accordance with the provisions of the California Public Contract Code applicable to counties.
- A.3** Require the COUNTY's contractor for the PROJECT 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.
- A.4** Pay for one hundred percent (100%) of RELOCATION COSTS, estimated to be \$423,000 (see Exhibit A). The RELOCATION COSTS shall include the cost of RELOCATION construction, inspection, contingency and DISTRICT administrative fees. COUNTY's payment to DISTRICT shall not exceed \$423,000 without a written amendment to this Agreement approved by the parties pursuant to paragraph C.6. The parties acknowledge that the amounts set forth on Exhibit "A" are a good faith estimate of the costs to design and relocate the DISTRICT FACILITIES. The actual cost will not be known until completion of RELOCATION work and receipt of all invoices. DISTRICT will use commercially reasonable efforts to minimize costs. However, the parties recognize and agree that the costs of RELOCATION may be greater than estimated on Exhibit "A" and additional costs may be warranted for a variety of reasons, including, but not limited to, unforeseen circumstances or the need for work not contemplated in Exhibit "A." COUNTY shall advance to DISTRICT the estimated amount of \$423,000 within ten (10) calendar days of the effective date of this Agreement.
- A.5** Provide adequate inspection of all items of work performed under the RELOCATION for the PROJECT and maintain adequate records of inspection.
- A.6** Issue a no-cost permit for the RELOCATION. The parties agree that the DISTRICT should be placed in the same position with respect to the relocated DISTRICT FACILITIES as exist with respect to the existing DISTRICT FACILITIES. Thus, DISTRICT shall be deemed to have prior rights with respect to the relocated DISTRICT FACILITIES in the

same fashion and to the same extent as now exist to the existing DISTRICT FACILITIES and the permit shall so provide.

- A.7** Provide construction surveying and staking services required for construction of RELOCATION.

B. DISTRICT AGREES TO:

- B.1** Act as the Lead Agency on the construction of RELOCATION.
- B.2** Review, approve and sign RELOCATION plans prepared by COUNTY.
- B.3** Prepare all general, special and technical provisions required to advertise RELOCATION for bid.
- B.4** Advertise, award, and administer the construction of the RELOCATION, which shall be in accordance with the provisions of the California Public Contract Code applicable to Counties.
- B.5** Apply for a permit from COUNTY'S Department of Public Works for the RELOCATION work occurring in COUNTY right-of-way at no cost to the DISTRICT. Any and all permits shall not be unreasonably withheld or conditioned.
- B.6** DISTRICT shall perform the RELOCATION work substantially in accordance with DISTRICT approved water RELOCATION plans. Substantial deviations (as determined by both DISTRICT and COUNTY) from the DISTRICT's plan described herein that would not result in costs exceeding the estimated amount of \$423,000 are subject to the review and approval of the COUNTY's Director of the Department of Public Works through the use of the change order set forth in Exhibit "B," which is attached hereto and incorporated herein by this reference. Contract Change Order forms will be delivered by email to COUNTY's Contract Representative. COUNTY shall review receipt of a change order to approve or disapprove the change order. In the event COUNTY disapproves of a change order COUNTY shall provide to DISTRICT within such five (5) day business period a detailed explanation as to why COUNTY disapproved the subject change order. Substantial deviations that would result in costs exceeding the estimated amount of \$423,000 will require an amendment to this Agreement pursuant to Paragraph C.6. The provisions of Paragraph A.4 shall apply with respect to approval of change orders and amendments to this Agreement. It is understood and agreed that COUNTY will not be responsible for the payment for any oversizing of DISTRICT FACILITIES in the new location. This payment principle applies to all RELOCATION work, including the work identified in the DISTRICT's plan, as well as work identified in any COUNTY/DISTRICT approved change order. In addition, COUNTY is not responsible for the payment for any betterment, including but not limited to oversizing, associated with change order work, unless the betterment is required by State law or regulation.
- B.7** DISTRICT agrees to perform the RELOCATION work with DISTRICT's contractor and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion in compliance with all applicable laws, regulations, ordinances, and permits.
- B.8** RELOCATION work performed by DISTRICT's contractor is a public work under the definition of Labor Code section 1720(a) and is therefore subject to the Prevailing Wage Laws, including, but not limited to Senate Bill 854 requirements. DISTRICT shall verify compliance with the Prevailing Wage Laws, including compliance with the Senate Bill 854 requirements, in the administration of its contracts related to any and all RELOCATION work. By its execution of this Agreement, DISTRICT certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work..." If the Services/Scope of Work are being performed as part of an

applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, DISTRICT agrees that any work performed by DISTRICT’s contractor(s) shall fully comply with such Prevailing Wage Laws.

- B.9** Participate with the COUNTY in scheduling and coordinating the construction of the RELOCATION. The parties will schedule the initiation of the construction of the RELOCATION within thirty (30) days of COUNTY’s issuance of the permit described in Paragraph B.3, above; provided that DISTRICT’s contractor is able to begin construction at that time, and if not, as soon thereafter as possible.
- B.10** Provide a qualified DISTRICT representative to inspect RELOCATION and who shall have the authority to discuss and resolve issues concerning the RELOCATION with the COUNTY. Representative must be able to resolve issues in a timely manner to avoid delay claims.
- B.11** Submit to COUNTY an itemized accounting of actual RELOCATION COSTS incurred by DISTRICT within thirty (30) days of completion of the RELOCATION. Said accounting will identify the oversizing costs as well as any other costs described in Paragraph B.6 that are not the responsibility of COUNTY. In the event actual RELOCATION costs are less than the \$423,000 collected from COUNTY, DISTRICT shall refund the difference to COUNTY with the itemized accounting. In the event the actual RELOCATION costs are greater than the \$423,000 collected from COUNTY, DISTRICT shall notify the COUNTY of such costs. If an amendment that increases COUNTY’s share of costs of \$423,000 is approved by the parties pursuant to this Agreement, then COUNTY will pay the difference between \$423,000 and the amended amount within sixty (60) calendar days. Upon completion of RELOCATION, the ten percent (10%) charge for DISTRICT administrative costs is nonrefundable.
- B.12** In the event DISTRICT discovers hazardous materials as part of the RELOCATION within the COUNTY Highway right-of-way, the County and District shall determine the best course for remediation and disposal as required by the federal, state or local law. The cost of which shall be reimbursed by Change Order form in Exhibit "B" by County. In no event shall COUNTY be responsible for the identification and remediation of any hazardous materials, or the associated costs thereof, discovered outside of COUNTY Highway right-of-way, unless otherwise required by the federal, state or local law.
- B.13** DISTRICT shall not charge against the 10% contingency without COUNTY Director of Public Works’ written approval, which approval shall not be unreasonably withheld. DISTRICT shall email such a request to the COUNTY’s Director of the Department of Public Works. COUNTY shall have five (5) business days from receipt of a request to approve or disapprove of such requests. In the event COUNTY disapproves of such requests within the five (5) business day period, COUNTY shall provide to DISTRICT within such five (5) day business period a detailed explanation as to why COUNTY disapproved of such request and what COUNTY reasonably requires in order to approve the request.
- B.14** Conduct inspections, including the final inspection, of the RELOCATION work and perform any necessary testing. Inspections and testing shall be included as a RELOCATION cost. The parties acknowledge that inspections are for the protection of DISTRICT’s interests and under no circumstances be construed to impose liability or responsibility of any nature on DISTRICT to any party other than COUNTY (if any). No contractor, subcontractor, materialmen, laborer, or any other person shall rely, or have a right to rely, upon any inspection by DISTRICT’s representative other than COUNTY.
- B.15** Submit a Notice of Completion to COUNTY within thirty (30) days of the completion of the RELOCATION work described herein.
- B.16** DISTRICT shall own the relocated DISTRICT FACILITIES. DISTRICT shall be responsible for lifetime maintenance, operation, protection of the DISTRICT FACILITIES and RELOCATION in accordance with any County, State, or Federal regulations. DISTRICT shall be solely responsible for any and all liabilities associated with any RELOCATION work and DISTRICT FACILITIES prior, during, and after completion of the RELOCATION of the DISTRICT FACILITIES.

B.17 Accept all payments from COUNTY via electronic funds transfer (EFT) directly deposited into DISTRICT's designated checking or other bank account. DISTRICT shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

C. IT IS MUTUALLY AGREED:

C.1 DISTRICT agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability resulting from the DISTRICT's negligent acts or omissions which arise from the DISTRICT's performance of its obligations under this Agreement.

COUNTY agrees to indemnify, defend (with counsel approved by DISTRICT) and hold harmless the DISTRICT and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability resulting from COUNTY's negligent acts or omissions which arise from the COUNTY's performance of its obligations under this Agreement.

In the event the COUNTY and/or DISTRICT is found to be comparatively at fault for any claim, action, lost or damage which results from their respective obligations under the Agreement, the COUNTY and/or DISTRICT shall indemnify the other to the extent of its comparative fault.

C.2 In the event of any litigation or other action between the parties arising out of or relating to this Agreement or the breach thereof, each party shall bear its own costs, including attorney(s) fees. This paragraph does not apply to costs or attorney(s) fees relative to Paragraph C.1, indemnification.

C.3 COUNTY is a self-insured public entity for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of COUNTY's performance of this Agreement.

DISTRICT warrants that it has adequate coverage or resources to protect against liabilities arising out of DISTRICT's performance of this Agreement. DISTRICT is a member of the Association of California Water Agencies Joint Powers Insurance Authority ("JPIA"). The JPIA is a partnership of water agencies which provides risk sharing pools to meet the needs of its member agencies for property and liability purposes. DISTRICT has added to its policy through the JPIA, this Agreement. DISTRICT has concurrently herewith named COUNTY as an additional insured on such JPIA policy. DISTRICT agrees to cause the DISTRICT's contractor to obtain and maintain general liability, automobile liability and workers compensation/employer liability coverage. The amounts and specific coverages are on file with the DISTRICT and copies of such insurance requirements will be provided to COUNTY upon written request. DISTRICT shall cause the COUNTY to be named as an additional insured on the general liability insurance and the automotive liability insurance and named as indemnified parties under all indemnifications, hold harmless provisions, waivers and releases in favor of DISTRICT

Waiver of Subrogation Rights – DISTRICT shall require the carriers of required coverages to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit DISTRICT and DISTRICT's employees or agents from waiving the right of subrogation prior to a loss or claim. DISTRICT hereby waives all rights of subrogation against COUNTY. Said obligations in regard to the waiver of subrogation rights shall also apply to COUNTY in the event COUNTY utilizes carriers of required coverages.

- C.4** This Agreement may be terminated by either party, with or without cause, upon thirty (30) days advance written notice to the other party, provided, however, that neither party may terminate this Agreement after DISTRICT has awarded a contract to construct the RELOCATION work. In the event of termination as provided herein, all PROJECT costs required to be paid by the COUNTY prior to the effective date of termination shall be paid by the COUNTY.
- C.5** This Agreement shall terminate upon receipt of a Notice of Completion of the PROJECT and satisfaction of Paragraph B.6, or July 11, 2025 (whichever occurs first). The obligations described in Paragraphs B.16, B.17, C.1 and C.2, shall survive termination of this Agreement.
- C.6** 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 the Agreement shall be binding unless executed in writing and signed by both parties.
- C.7** This Agreement shall be governed by the laws of the State of California. Any action or proceeding between DISTRICT 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 in the County of San Bernardino, California.
- C.8** The parties acknowledge that final RELOCATION COSTS may ultimately exceed the current estimate for RELOCATION COSTS. COUNTY shall be solely responsible for any additional RELOCATION COSTS associated with the RELOCATION due to any cause, including, but not limited to, unforeseen site conditions, increased bid prices, increased quantities and/or change orders over the estimated RELOCATION COSTS of \$423,000. If DISTRICT requests additional work that is beyond the scope of the original RELOCATION and COUNTY approves the additional work, said work will be paid solely by the DISTRICT.
- C.9** DISTRICT shall notify COUNTY of the bids received and the amounts thereof.
- C.10** In the event that change orders for the RELOCATION work are required during the course of the PROJECT, said change orders must be in form and substance as set forth in the attached Exhibit "B" of this Agreement and approved by COUNTY and DISTRICT. Contract Change Order forms will be delivered by electronic mail and must be returned within five (5) working days. COUNTY shall not unreasonably withhold approval of change orders. If a COUNTY disapproved or modified change order is later found to be an additional cost for the RELOCATION, then COUNTY shall be responsible for such costs, awards, judgments or settlements associated with the disapproved or modified change order.
- C.11** 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. Unless otherwise provided, any term referencing time, days, or period for performance shall be deemed work days. 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.
- C.12** 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, estoppels, or otherwise.
- C.13** 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.
- C.14** Nothing contained in this Agreement shall be construed as a relinquishment of any rights now held by the DISTRICT or COUNTY.
- C.15** This Agreement will be effective on the date it is signed by all parties.
- C.16** The Recitals of this Agreement are incorporated herein by reference.

- C.17** This Agreement, including all Attachment, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will.
- C.18** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail 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.

[Signatures on next page]

IN WITNESS WHEREOF, the San Bernardino County and Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

West Valley Water District

(Print or type name of corporation, company, contractor, etc.)

▶ _____
Dawn Rowe, Chair, Board of Supervisors

By ▶ _____
(Authorized signature – sign in blue ink)

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

Name _____
(Print or type name of person signing contract)

Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

Title _____
(Print or Type)

By _____
Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form
▶ _____
Aaron Gest, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
▶ _____
Andy Silao, P.E.
Date _____

Reviewed/Approved by Department
▶ _____
Brendon Biggs, Director
Date _____

EXHIBIT A

[ESTIMATE OF PROJECT COSTS]

EXHIBIT B

CONTRACT CHANGE ORDER REVIEW/APPROVAL

PROJECT: Bloomington Avenue Road Reconstruction and Drainage Improvements

COUNTY OF SAN BERNARDINO CONTRACT # XX-XXXX

File: TX1795 (Yard 3, Bloomington Ave)

Proposed Contract Change Order No. _____ has been reviewed in accordance with the existing agreements with the West Valley Water District (District) and County of San Bernardino for the above project and the following shall apply:

DATE OF _____ ACTION: ____/____/____

- APPROVED for Implementation with 100% Participation by _____
- APPROVED Subject to Comments/Revisions Accompanying This Document
- APPROVED With Limited Funding Participation by _____
 - _____ % of Actual Cost to be Funded by _____
 - _____ Participation Not to Exceed \$ _____
- DISAPPROVED -Not Acceptable to _____

Note: Approval under any of the above conditions shall in no case be construed as agreement to increase the total financial participation beyond that prescribed in the existing District and County agreement without a separate amendment to said agreement. Net increases in costs deriving from this and previously approved Contract Change Orders shall not cause the total construction costs to exceed the sum of the authorized contract total and contingency amounts.

Comments, as follows and/or attached, are conditions of the above action? YES NO

SIGNED: _____

TITLE: _____

Distribution:
Signed Original Returned to Resident Engineer
Signed Original for _____ File