



Contract Number

20.301

SAP Number

Public Works

Table with contract details: Department Contract Representative (Sundaramoorthy (Sri) Srirajan, M.S., P.E., Engineering Manager – Transportation Planning Division), Telephone Number ((909) 387-8166), Project (Pavement Rehabilitation Tippecanoe and Other Roads), Contractor (City of Highland), Contract Term (4/28/2020 – 6/30/2023), Original Contract Amount (\$1,516,000), Amendment Amount, Total Contract Amount (\$1,516,000), Cost Center (6650002000/H15056).

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino (COUNTY) and the City of Highland (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 pavement rehabilitation on Tippecanoe Avenue and other roads as described in Exhibit "A", which is attached hereto and incorporated herein by this reference (PROJECT); and

WHEREAS, the PROJECT is located in the unincorporated area of the COUNTY and the incorporated area of the CITY; and

WHEREAS, CITY has secured approval of a grant from the California Department of Resources Recycling and Recovery (CalRecycle) promoting the use of rubberized asphalt hot mix for pavement rehabilitation, hereafter CalRecycle grant, in the amount of \$190,000 that will benefit the City of San Bernardino, County of San Bernardino and City of Highland, to pay a portion of the Project costs;

WHEREAS, CalRecycle grant amounts will be used proportionately to reduce the Parties cost share for the Project;

WHEREAS, California Streets and Highways Code section 1710 authorizes COUNTY to contract with CITY for CITY's maintenance, construction or repair of COUNTY highways, the cost being paid by COUNTY; and

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

WHEREAS, it is anticipated that the funding for the design and construction phase of the PROJECT will be from COUNTY's Senate Bill 1 Road Maintenance and Rehabilitation Account (RMRA) and CalRecycle grant funds and CITY Measure I, RMRA, Community Development Block Grant, General fund, and CalRecycle grant funds; and

WHEREAS, the total estimated cost for the PROJECT is \$5,614,000; and

WHEREAS, COUNTY's share of cost is estimated at \$1,516,000 and CITY's share of cost is estimated at \$4,098,000,000 as set forth in Exhibit "B", attached hereto and incorporated herein by this reference; and

WHEREAS, the above-described costs are proportioned based on work done in each Party's jurisdiction; and

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

1.0 CITY AGREES TO:

- 1.1 Act as the Lead Agency in the CalRecycle grant management, design, construction, construction engineering, inspection and California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.) of the PROJECT. Right-of-way activities are not anticipated for the PROJECT and therefore are not part of this Agreement.
- 1.2 Provide plans and specifications and all necessary construction engineering for the PROJECT to COUNTY, for COUNTY's prior review and approval pursuant to paragraph 2.3, below.
- 1.3 Construct the PROJECT by contract in accordance with the plans and specifications of CITY, which have been reviewed and approved by COUNTY pursuant to paragraphs 1.2 and 2.3, to the satisfaction of and subject to concurrence of COUNTY.
- 1.4 Arrange for relocation of all utilities which interfere with construction of the PROJECT within the entire PROJECT limits, pursuant to paragraph 3.9 below.
- 1.5 Obtain a no-cost permit from COUNTY for work within the COUNTY's right-of-way, which permit approval shall not be unreasonably withheld, delayed or conditioned.
- 1.6 Advertise, award, administer, and initially fund the construction of the PROJECT, in accordance with the provisions of California Public Contract Code applicable to cities and require, as well as reasonably enforce, CITY's contractors to comply with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages. CITY shall indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its officers, employees, volunteers, and agents as provided in paragraphs 3.2 and 3.4, below.
- 1.7 CITY shall require all contractors and vendors working on the PROJECT to have appropriate and adequate insurance coverage for the mutual protection and benefit of the Parties. Except for Workers' Compensation, Errors and Omissions and Professional Liability policies, CITY shall require and ensure that all CITY contractors/subcontractors for the PROJECT shall have insurance policies that contain endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- 1.8 Reserved.

- 1.9 Provide adequate inspection of all items of work performed under the construction contract(s) with CITY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by COUNTY. CITY shall provide copies of any records of inspection and materials testing to COUNTY within ten (10) business days of CITY's receipt of written demand from COUNTY for such records. This shall be included as a PROJECT cost.
- 1.10 The City Manager shall designate and provide a qualified representative who shall have the authority to discuss and resolve issues concerning the PROJECT with the COUNTY. The PROJECT Resident Engineer shall be a qualified Professional Engineer currently licensed in the State of California with relevant experience with similar project.
- 1.11 Be responsible for its proportionate share of the costs of the PROJECT. The full cost of the PROJECT shall include the cost of CalRecycle grant management, design, construction, construction engineering, inspection, and CEQA compliance for the PROJECT. CITY's proportionate share of cost for the PROJECT is estimated at \$4,098,000 (see Exhibit B). CITY shall be responsible for the sum of \$4,098,000 plus its share of any PROJECT cost increases pursuant to paragraphs 3.7, 3.9 and 3.11 below.
- 1.12 Upon CITY's and COUNTY's acceptance of the PROJECT, submit to the COUNTY an itemized accounting of actual PROJECT costs incurred by CITY and statement for COUNTY'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 COUNTY's proportionate share of cost of PROJECT exceed \$1,895,000 (which is COUNTY's estimated share of cost for PROJECT plus twenty-five percent) absent a written amendment to this Agreement approved pursuant to paragraph 3.16.
- 1.13 Include compliance with any applicable requirements of CEQA, as well as completing the required CEQA documentation.
- 1.14 Accept all payments from COUNTY via electronic funds transfer (EFT) directly deposited into the CITY's designated checking or other bank account. The CITY shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

2.0 COUNTY AGREES TO:

- 2.1 Pay to the CITY its proportionate share of the cost of the PROJECT. The full cost of the PROJECT shall include the cost of PROJECT CalRecycle grant management, design, construction, construction engineering, inspection, and CEQA compliance. COUNTY's proportionate share of costs for the PROJECT is estimated at \$1,516,000 (see Exhibit B).
- 2.2 Pay to CITY, on a reimbursement basis, its proportionate share of PROJECT costs, including its jurisdictional share of any PROJECT cost increases pursuant to paragraphs 3.7, 3.9 and 3.11 below, within ninety (90) 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 CITY, together with adequate documentation of said expenditures. In no event shall COUNTY's proportionate share of cost of PROJECT exceed \$1,895,000 (which is COUNTY's estimated share of cost for the PROJECT plus twenty-five percent) absent a written amendment to this Agreement approved pursuant to Paragraph 3.16.
- 2.3 Provide a no-cost permit to the CITY for its work in COUNTY's right-of-way, which permit approval shall not be unreasonably withheld, delayed or conditioned.
- 2.4 Review and approve the plans and specifications of the PROJECT pursuant to paragraph 2.3, above, which review and approval shall not be unreasonably withheld, delayed or conditioned.

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 the PROJECT that is in the County Maintained Road System and within the COUNTY's jurisdictional territory that is not incorporated into the CITY and the CITY shall be responsible for performing any maintenance for the PROJECT that is in the CITY's 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 resulting from CITY's negligent acts or omissions that arise from 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 resulting from COUNTY's negligent acts or omissions which arise from 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 3.2, 3.3 and 3.4.
- 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 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 \$5,614,000 (which is the sum of \$4,098,000 ,000 from CITY and \$1,516,000 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 a 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 CITY shall notify COUNTY of the bids received and the amounts thereof. Within ten (10) business days thereafter, CITY and COUNTY shall determine the cost of the PROJECT. In the event that either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party prior to the awarding of a contract so as to avoid detrimental reliance by any Party, contractor or potential contractor.
- 3.11 If after opening bids for the PROJECT, it is found that a cost overrun of 25% or less of the estimated PROJECT costs will occur, CITY may award the contract.
- 3.12 If, upon opening of bids, it is found that a cost overrun exceeding 25% of the estimated PROJECT costs will occur, CITY shall not award any contracts for the PROJECT. Rather CITY and COUNTY shall endeavor to agree upon an alternative course of action, including re-bidding of the PROJECT. If, after thirty (30) calendar days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.
- 3.13 In the event that change orders are required during the course of the PROJECT, said change orders must be in form and substance as set forth in attached Exhibit "C" of this Agreement and approved by both CITY and COUNTY. Contract change order forms will be delivered by fax and must be returned within fifteen (15) business days. The COUNTY shall not unreasonably withhold, delay or condition 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 disapproval or modified change order. For COUNTY, contract change orders (Exhibit C) must be approved by COUNTY in accordance with paragraph 2.3, above.

- 3.14 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 CITY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, including termination pursuant to paragraph 3.10 or 3.12 above, 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.
- 3.15 Except as provided in Paragraph 3.14, 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 COUNTY for its proportional share of the PROJECT costs.
- 3.16 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.
- 3.17 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.
- 3.18 Time is of the essence for each and every provision of this Agreement.
- 3.19 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 business 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.
- 3.20 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.
- 3.21 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.
- 3.22 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.23 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 3.15 or June 30, 2023 (whichever occurs first).
- 3.24 The Recitals are incorporated into the body of this Agreement.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both Parties.

IN WITNESS WHEREOF, the Parties to these presents have hereunto set their hands.

COUNTY OF SAN BERNARDINO

▶ Curt Hagman
Curt Hagman, Chairman, Board of Supervisors

Dated: **MAY 19, 2020**

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

By K.S.M.
Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino
Deputy



CITY OF HIGHLAND

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

By Joseph A. Hughes
(Authorized signature - sign in blue ink)

Name Joseph A. Hughes
(Print or type name of person signing contract)

Title City Manager
(Print or Type)

Dated: 05.13.2020

Address 27215 Base Line Street
Highland, CA 92346

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ see attached
Suzanne Bryant, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

▶ Andy Silao
Andy Silao, P.E.

Date 5/13/2020

Reviewed/Approved by Department

▶ Brendon Biggs
Brendon Biggs, Interim Director

Date 5-14-2020

COUNTY OF SAN BERNARDINO



Curt Hagman, Chairman, 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
of the County of San Bernardino

By _____
Deputy

CITY OF HIGHLAND

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

By _____
(Authorized signature - sign in blue ink)

Name Joseph A. Hughes
(Print or type name of person signing contract)

Title City Manager
(Print or Type)

Dated: _____

Address 27215 Base Line Street
Highland, CA 92346

FOR COUNTY USE ONLY

Approved as to Legal Form

Suzanne Bryant, Deputy County Counsel

Date MAY 7, 2020

Reviewed for Contract Compliance

Andy Silao, P.E.

Date _____

Reviewed/Approved by Department

Brendon Biggs, Interim Director

Date _____

EXHIBIT A

ROAD REHABILITATION LIST (County)

| Road Number | Road Name | Limits |
|-------------|-------------------|---------------------------------------|
| 867950010 | WARD STREET | WATERMAN AVE E/COOLEY STREET |
| 254100010 | COOLEY STREET | MONTEREY AVE N/FIFTH STREET |
| 254100020 | COOLEY STREET | FIFTH STREET N/SIXTH STREET |
| 758250016 | SIXTH STREET | 0.03M W,PEDLEY RD E/TIPPECANOE AVENUE |
| 818750040 | TIPPECANOE AVENUE | THIRD STREET N/VINE STREET |

ROAD REHABILITATION LIST (City)

| Road Number | Road Name | Limits |
|-------------|-------------------------------|--|
| 1 | Atlantic Avenue | 255' East of Boulder Ave to East End |
| 2 | Alabama Street (east half) | 3rd Street to South City Limit |
| 3 | Tippecanoe Avenue (east half) | 3rd Street to Vine Street |
| 4 | Chanticleer Road | Gold Buckle Road to 1567' n/o Gold Buckle Road |
| 5 | Santa Ana Canyon Road | 585' e/o Weaver Street to Aplin Street |
| 6 | Golden Oak Lane | Streater Street to Autumn Chase Drive |
| 7 | Sycamore Drive | Streater Street to Autumn Chase Drive |
| 8 | Highland Grove Lane | Chanticleer Road to Weaver Street |
| 9 | Lochnivar Court | Chanticleer Road to Weaver Street |
| 10 | Starpine Circle | Water Street to North End |
| 11 | Willow Creek Lane | West End to Clover Hill Road |
| 12 | Willow Oak Lane | Canyon Oak Drive to East End |
| 13 | Greenspot Road | Orange Street to Church Street |
| 14 | Greenspot Road | 630' e/o Weaver Street to Alta Vista |
| 15 | Boulder Avenue | San Manuel Village Entrance to Greenspot Road |

EXHIBIT B

**ESTIMATE OF PROJECT COSTS AND
ESTIMATED CALRECYCLE REIMBURSEMENT
FOR COUNTY OF SAN BERNARDINO/CITY OF HIGHLAND
PAVEMENT REHABILITATION
IN THE HIGHLAND/SAN BERNARDINO AREA**

| DESCRIPTION | AMOUNT | COUNTY OF SAN BERNARDINO SHARE | CITY OF HIGHLAND SHARE |
|---|--------------------|--------------------------------|------------------------|
| Construction | \$4,678,053 | \$1,263,000 | \$3,415,053 |
| All Other Costs Such as Preliminary Engineering, Design, Environmental Clearance, Construction Engineering and Project Management etc.. | \$935,947 | \$253,000 | 682,947 |
| TOTAL | \$5,614,000 | \$1,516,000 | \$4,098,000 |
| CalRecycle Reimbursement | -\$159,510 | -\$38,690 | -\$120,820 |
| NET TOTAL COST AFTER CalRecycle REIMBURSEMENT | \$5,454,490 | \$1,477,310 | \$3,977,180 |

