



**Contract Number**

\_\_\_\_\_

**SAP Number**

\_\_\_\_\_

## Public Works

<b>Department Contract Representative</b>	<u>Jeremy Johnson, P.E., Engineering Manager</u>
<b>Telephone Number</b>	<u>(909) 387-8165</u>
<b>Project</b>	<u>Rimrock Road Pavement Improvement Project</u>
<b>Contractor</b>	<u>City of Barstow</u>
<b>Contractor Representative</b>	<u>Rochelle Clayton, City Manager</u>
<b>Telephone Number</b>	<u>(760) 255-5195</u>
<b>Contract Term</b>	<u>Expiration 12/31/2029 or Project Completion and Final Payment (whichever occurs first)</u>
<b>Original Contract Amount</b>	<u>Not-to-Exceed \$1,500,000</u>
<b>Amendment Amount</b>	<u>\$0</u>
<b>Total Contract Amount</b>	<u>Not- to -Exceed \$1,500,000</u>
<b>Cost Center</b>	<u>6650002000 52002445 H15313</u>
<b>Grant Number (if applicable)</b>	<u>_____</u>

### IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (COUNTY) and the City of Barstow (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 the Rimrock Road Pavement Improvement Project located on Rimrock Road, from H Street east to Agarita Avenue, in the Barstow area (hereinafter referred to as "PROJECT"); and,

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

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, the total PROJECT cost is estimated to be \$6,300,000; and,

WHEREAS, CITY's share of PROJECT cost is estimated to be \$4,800,000 and the COUNTY's share of PROJECT cost is estimated to be \$1,500,000 and shall not exceed this amount, 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 CITY AGREES TO:

- 1.1 Act as the Lead Agency in the design, surveying, construction staking, 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 COUNTY, for COUNTY'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 CITY, which have been reviewed and approved by COUNTY.
- 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 COUNTY for work within the COUNTY'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 cities and require, as well as 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 from any and all claims, actions, losses, damages, and/or liability arising out of CITY's obligations set forth in this paragraph.
- 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 Require CITY's contractors and subcontractors to pay the minimum of prevailing wages as applicable.
- 1.9 Provide all construction inspection and materials testing required under the construction contract(s) with the CITY's contractors and subcontractors for the PROJECT. The CITY shall maintain complete and accurate records of all inspection activities and materials testing performed for the PROJECT. At the COUNTY's discretion and upon written request, the COUNTY may review such inspection and materials testing records; however, the COUNTY shall have no obligation to conduct inspections, testing, or reviews. Upon receipt of a written request from the COUNTY, the CITY shall provide copies of the requested inspection and materials testing records within ten (10) business days. All costs associated with inspection, testing, and recordkeeping shall be included as PROJECT costs.
- 1.10 Include compliance with any applicable requirements of CEQA, as well as completing the required CEQA documentation.
- 1.11 Pay CITY's proportionate share of the cost of the PROJECT. The cost of the PROJECT shall include the cost of design, surveying, construction staking, construction, construction engineering,

inspection, CEQA compliance, and CITY overhead cost for the PROJECT. CITY's proportionate share of cost for the PROJECT is estimated at \$4,800,000 (76.2% of PROJECT).

- 1.12 Submit to COUNTY an itemized accounting of actual PROJECT costs incurred by CITY and a statement for COUNTY's proportionate share of PROJECT costs, as provided herein. In no event shall COUNTY's proportionate share of cost of PROJECT exceed \$1,500,000 absent a written amendment to this Agreement approved pursuant to paragraph 3.11.
- 1.13 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 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 Within forty-eight hours of request by the CITY during construction and only if an issue is identified within the COUNTY's right-of-way, provide a qualified COUNTY representative with authority to discuss and resolve COUNTY-related issues and, as requested by the CITY, to inspect the PROJECT work located within the COUNTY's limits. All PROJECT management, construction engineering, inspection, and lead-agency responsibilities remain with the CITY. For purposes of this provision, "issue" shall be interpreted broadly and shall include any matter the CITY, in its sole discretion, determines requires COUNTY input or coordination.
- 2.4 Pay COUNTY'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 CITY overhead cost. COUNTY's proportionate share of cost for the PROJECT is an amount not to exceed \$1,500,000 (approximately 23.8% of PROJECT).
- 2.5 Pay to CITY, on a reimbursement basis, its share of PROJECT costs within sixty (60) calendar days after receipt of an itemized statement as set forth in paragraph 1.12 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 PROJECT cost exceed \$1,500,000 absent a written amendment to this Agreement approved pursuant to Paragraph 3.11.

## 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, 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 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.
- 3.8 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.
- 3.9 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 except as provided herein. In the event the awarded contractor fails to complete the work, completes only part of the work, or dissolves, CITY shall pursue all available remedies against the contractor's faithful performance and completion bonds. COUNTY shall remain responsible for its proportionate share of costs for any completed work up to the maximum contribution amount specified herein. CITY's pursuit of bonding company remedies shall not relieve COUNTY of its obligation to pay for its proportionate share of completed PROJECT elements. In the event of cancellation as provided herein, including termination pursuant to this paragraph 3.9, 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 (COUNTY's share of cost shall not exceed \$1,500,000). 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.
- 3.10 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 COUNTY 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.
- 3.11 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.
- 3.12 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.
- 3.13 Time is of the essence for each and every provision of this Agreement.
- 3.14 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.
- 3.15 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.
- 3.16 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.
- 3.17 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.

3.18 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 3.10, or December 31, 2029 (whichever occurs first).

3.19 The Recitals are true and correct and incorporated into the body of this Agreement.

SIGNATURES ON THE FOLLOWING PAGE:

SAN BERNARDINO COUNTY

CITY OF BARSTOW

►  
\_\_\_\_\_  
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

By ► \_\_\_\_\_  
(Authorized signature - sign in blue ink)

Name Rochelle Clayton  
(Print or type name of person signing contract)

Title City Manager  
(Print or Type)

Dated: \_\_\_\_\_

Address 220 East Mountain View Street  
Suite# A  
Barstow, CA 92311

**FOR COUNTY USE ONLY**

Approved as to Legal Form  
► \_\_\_\_\_  
Aaron Gest, Deputy County Counsel  
Date \_\_\_\_\_

Reviewed for Contract Compliance  
► \_\_\_\_\_  
Andy Silao, P.E., Engineering Manager  
Date \_\_\_\_\_

Reviewed/Approved by Department  
► \_\_\_\_\_  
Noel Castillo, Director  
Date \_\_\_\_\_

**EXHIBIT A**  
**ESTIMATE OF PROJECT COSTS**  
**FOR SAN BERNARDINO COUNTY/CITY OF BARSTOW**  
**PAVEMENT IMPROVEMENT PROJECT**

**RIMROCK ROAD**

DESCRIPTION	TOTAL PROJECT COST	SAN BERNARDINO COUNTY SHARE	CITY OF BARSTOW SHARE
All Other Costs such as design, survey, CEQA compliance, construction engineering, inspection and CITY overhead	\$ 630,000	\$ 150,000	\$ 480,000
Construction and Contingency	\$5,670,000	\$1,350,000	\$ 4,320,000
<b>Total</b>	<b>\$6,300,000</b>	<b>\$1,500,000</b>	<b>\$4,800,000</b>