



**Contract Number**

**SAP Number**

## Public Works

<b>Department Contract Representative</b>	Jeremy Johnson, P.E., Engineering Manager
<b>Telephone Number</b>	(909) 387-8165
<b>Project</b>	Old Waterman Canyon Road and Other Roads
<b>Contractor</b>	City of San Bernardino
<b>Contractor Representative</b>	Azzam Jabsheh, City Engineer
<b>Telephone Number</b>	(909) 384-7251
<b>Contract Term</b>	Expires April 30, 2030
<b>Original Contract Amount</b>	\$339,000
<b>Amendment Amount</b>	\$0
<b>Total Contract Amount</b>	\$339,000
<b>Cost Center</b>	6650002141 TX1821
<b>Grant Number (if applicable)</b>	n/a

### IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County (COUNTY) and the City of San Bernardino (CITY) (COUNTY and CITY are also each referred to herein as "Party" and collectively referred to herein as "Parties") desire cooperate and jointly participate in a pavement improvement project on Old Waterman Canyon Road and Other Roads in the San Bernardino area:

WHEREAS, the road list for the PROJECT is shown on Exhibit "A", attached hereto and incorporated herein by this reference; and,

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

WHEREAS, California Streets and Highways Code sections 1685 and 1803 authorize 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, and repair of its streets and roads; and,

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

WHEREAS, it is anticipated that COUNTY's share of PROJECT costs will be from COUNTY Measure I Local Street Pass-Through funds - San Bernardino Mountains; and the CITY's share of PROJECT costs will be financed through its local funds; and,

WHEREAS, the total PROJECT cost is estimated to be \$1,805,000; and,

WHEREAS, COUNTY's share of PROJECT cost is estimated to be \$1,466,000 and the CITY's of PROJECT cost is estimated to \$339,000, as more particularly set forth in Exhibit "B", 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 in each Party's jurisdiction; and,

WHEREAS, COUNTY and CITY 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 preliminary engineering, design, survey, construction, construction engineering, inspection, and California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 *et seq.*) of the PROJECT.
- 1.2 If required for the PROJECT, at its own cost, design and perform all right-of-way acquisition related work inside the unincorporated COUNTY jurisdiction that is determined to be necessary for the PROJECT. Right-of-way acquisition related work includes, but is not limited to, right-of-way document preparation (legal description and plat), appraisal, acquisition, temporary construction easements, utility easements, utility relocations, site clearance activities, plant/tree/fence/wall removal, and relocation/replacement, legal negotiations, eminent domain proceedings, property settlements, and all right-of-way capital costs (actual cost of right-of-way).
- 1.3 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.
- 1.4 Construct the PROJECT by contract in accordance with the plans and specifications provided by COUNTY, which have been reviewed and approved by CITY pursuant to paragraphs 1.3 and 2.1.
- 1.5 Arrange for relocation of all utilities which interfere with construction of the PROJECT pursuant to paragraph 1.2 above.
- 1.6 Obtain a no-cost permit from the CITY for work within the CITY's right-of-way.
- 1.7 Advertise, award, and administer the construction of the PROJECT, in accordance with the provisions of California Public Contract Code applicable to counties.
- 1.8 Require COUNTY's contractor 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 a co-obligee on the performance and payment bonds provided for the PROJECT.
- 1.9 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.
- 1.10 Include compliance with any applicable requirements of CEQA, as well as completing the required CEQA documentation.
- 1.11 Pay COUNTY's proportionate share of the cost of the PROJECT. The cost of the PROJECT shall include the cost of preliminary engineering, 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 \$1,466,000 (approximately 81.2% of PROJECT, see Exhibit B). COUNTY shall be responsible for its share of any PROJECT cost increases pursuant to paragraph 3.7, 3.9, and 3.12 below.

- 1.12 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 \$423,750 (CITY's estimated share of cost for PROJECT plus twenty-five percent (25%)) absent a written amendment to this Agreement approved pursuant to Paragraph 3.16

## 2.0 CITY AGREES TO:

- 2.1 Review, approve, and provide comments, if necessary, for the PROJECT's plans and specifications provided by the COUNTY for PROJECT work to be performed in the CITY's jurisdiction.
- 2.2 If required for the PROJECT, at its own cost and not included in this PROJECT cost, perform all right-of-way acquisition related work within the CITY's jurisdiction that is determined to be necessary for the PROJECT. Right-of-way acquisition related work includes, but is not limited to, right-of-way document preparation (legal description and plat), appraisal, acquisition, temporary construction easements, utility easements, utility relocations, site clearance activities, plant/tree/fence/wall removal and relocation/replacement, legal negotiations, eminent domain proceedings, property settlements, and all right-of-way capital costs (actual cost of right-of-way).
- 2.3 Provide a no cost permit to the COUNTY for its work in the CITY's right-of-way.
- 2.4 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.
- 2.5 Pay CITY's proportionate share of the PROJECT cost. The PROJECT cost shall include the cost of preliminary engineering, design, construction, construction engineering, inspection, CEQA compliance and COUNTY overhead cost. CITY's proportionate share of cost for the PROJECT is estimated at \$339,000 (approximately 18.8% of PROJECT, see Exhibit B).
- 2.6 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, 3.9 and 3.12 below, 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 COUNTY, together with adequate documentation of said expenditures. In no event shall CITY's proportionate share of PROJECT cost exceed \$423,750 (CITY's estimated share of cost for the PROJECT plus twenty-five percent (25%)) absent a written amendment to this Agreement approved pursuant to Paragraph 3.16.

## 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 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 \$1,805,000 (which is the sum of \$339,000 from CITY and \$1,466,000 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 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 As design progresses, if it is found by COUNTY, that a cost overrun of more than twenty-five percent (25%) of the estimated total of the PROJECT costs will occur, COUNTY shall provide CITY notice of this fact and COUNTY and CITY shall endeavor to agree upon an alternative course of action, including amending the amounts and Exhibit B with the revised cost estimates. If, after thirty (30) days of COUNTY notice, an alternative course of action is not mutually agreed upon in writing between the Parties, this Agreement shall be deemed to be terminated by mutual consent.
- 3.11 COUNTY shall notify CITY of the bids received and the amounts thereof. If either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party as a reasonable time prior to the awarding of a contract to construct the PROJECT to avoid any detrimental reliance by either Party, contractor, or potential contractor.
- 3.12 If after opening bids for the PROJECT, it is found that the responsive and responsible low bid amount is twenty-five percent (25%) or less over the construction cost shown in Exhibit B, COUNTY may award the contract.
- 3.13 If, upon opening of bids, it is found that the responsive and responsible low bid amount is over twenty-five percent (25%) more than the construction cost shown in Exhibit B, COUNTY shall not award the contract unless: 1) COUNTY receives written permission from the CITY's Director of Public Works or his designee, to proceed with the award; and 2) COUNTY's Board of Supervisors approves the award of the construction contract. If the above-described conditions are not met, the COUNTY and CITY shall endeavor to agree upon an alternative course of action, including re-bidding of the PROJECT. If, after thirty (30) days of the bid opening, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.
- 3.14 Contract Change Orders forms will be delivered by fax or email, must be approved and signed by CITY, and returned within two (2) business days. The CITY shall not unreasonably withhold approval of change orders. If a CITY disapproved or modified change order is later found to be a cost of the PROJECT, then the CITY shall be responsible for any costs, awards, judgments, or settlements associated with the disapproved or modified change order.
- 3.15 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, including

termination pursuant to this paragraph 3.15 or paragraphs 3.10 or 3.13 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.

- 3.16 Except as provided in Paragraph 3.15, 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.
- 3.17 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.
- 3.18 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.
- 3.19 Time is of the essence for each and every provision of this Agreement.
- 3.20 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.
- 3.21 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.
- 3.22 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.
- 3.23 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.
- 3.24 All notices, approvals, consents, or other documents required or permitted under the Agreement shall be in writing and, except as otherwise provided herein, shall be effective upon personal delivery or three calendar days after deposit in the United States mail, certified, with first class postage, fully prepaid, and addressed as follows:

City of San Bernardino  
Public Works Department  
290 North D Street  
San Bernardino, CA 92401

San Bernardino County Public Works  
Attn: Transportation Division  
825 E. Third Street, Rm 143  
San Bernardino, CA 92415-0835

- 3.25 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 3.16, or April 30, 2030 (whichever occurs first).
- 3.26 The Recitals are true and correct and incorporated into the body of this Agreement.

SIGNATURE ON THE FOLLOWING PAGE

SAN BERNARDINO COUNTY

CITY OF SAN BERNARDINO

►

\_\_\_\_\_  
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 \_\_\_\_\_  
William Gallardo  
(Print or type name of person signing contract)

Title \_\_\_\_\_  
Interim City Manager  
(Print or Type)

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

Address \_\_\_\_\_  
290 North D Street  
San Bernardino, CA 92401

**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

### FOR SAN BERNARDINO COUNTY/CITY OF SAN BERNARDINO PAVEMENT IMPROVEMENT AND ADA CURB RAMP UPDATE PROJECTS IN THE SAN BERNARDINO AREA

#### Old Waterman Canyon Road and Other Roads – Road List

Road Name	Road Limits	County Mile	City Mile	Total Miles	Scope of Work
<b>City of San Bernardino Road</b>					
OLD WATERMAND CANYON ROAD	1.52M N,SH18 N/.52M	0.00	0.52	0.52	Mill and Overlay
<b>County Only Roads</b>					
CANYON LANE	0.14M S,DALE LN NLY/DALE LN	0.14	0.00	0.14	Mill and Overlay
DALE LANE	OLD WATERMAN CANYON RD NE/FORREST LN	0.15	0.00	0.15	Mill and Overlay
FORREST LANE	0.05M N,HILLVIEW RD NW 0.22M	0.22	0.00	0.22	Mill and Overlay
FORREST LANE	HILLVIEW ROAD N 0.05M	0.05	0.00	0.05	Mill and Overlay
HILLVIEW ROAD	OLD WATERMAN CANYON RD E 0.28M	0.28	0.00	0.28	Mill and Overlay
OLD WATERMAN CANYON ROAD	1.37M N,SH18 N 0.15M	0.15	0.00	0.15	Mill and Overlay
OLD WATERMAN CANYON ROAD	2.04M N,SH18N/CL,SH18	0.89	0.00	0.89	Mill and Overlay
OLD WATERMAN CANYON ROAD	CL SH 18 NLY 0.26M	0.26	0.00	0.26	Mill and Overlay
PARKLAND ROAD	OLD WATERMAN CANYON RD E/SH18 ACCESS	0.11	0.00	0.11	Slurry III
	<b>Old Waterman Canyon Rd Total Project Miles:</b>	<b>2.25</b>	<b>0.52</b>	<b>2.77</b>	

## **EXHIBIT B**

### **ESTIMATE OF PROJECT COSTS** **FOR SAN BERNARDINO COUNTY/CITY OF SAN BERNARDINO** **PAVEMENT IMPROVEMENT PROJECT** **IN THE SAN BERNARDINO AREA**

<b>Old Waterman Canyon Road and Other Roads</b>	<b>Amount</b>	<b>County Share</b>	<b>City Share</b>
Construction (including contingencies)	\$1,458,000	\$1,184,000	\$ 274,000
All Other Costs Such as Preliminary Engineering, Design, Environmental Clearance, Construction Engineering, etc.	\$ 347,000	\$ 282,000	\$ 65,000
<b>TOTAL</b>	<b>\$1,805,000</b>	<b>\$1,466,000</b>	<b>\$339,000</b>

### **ANTICIPATED PROJECT MILESTONES**

<b>PROJECT</b>	<b>PHASE</b>	<b>BEGIN- Actual/(Forecast)</b>	<b>END- Actual/(Forecast)</b>
Old Waterman Canyon Road and Other Roads	Design	Spring 2025	(Summer 2025)
	Construction	(Fall 2025)	(Fall 2025)