



Contract Number

SAP Number

Public Works

Department Contract Representative	Jeremy Johnson, P.E., Engineering Manager
Telephone Number	(909) 387-8165
Contractor	City of Colton
Contractor Representative	Victor Ortiz, P.E., M.A.
Telephone Number	(909) 370-5065
Contract Term	Expires December 31, 2028
Original Contract Amount	\$181,000
Amendment Amount	\$0
Total Contract Amount	\$181,000
Cost Center	6650002000 H15201

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

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 a project to install streetlights, sidewalk, Americans with Disabilities Act (ADA) ramps, and curb and gutter on Olive Street, a shared jurisdiction road in the CITY, see Exhibit "A", which is attached hereto and incorporated herein by this reference, (hereinafter referred to as "PROJECT"); and

WHEREAS, the PROJECT consists of approximately 0.08 miles of improvements and is located in both an unincorporated area of the COUNTY and an 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, or repair of its streets and roads; and,

WHEREAS, the CITY has determined 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 \$1,219,000, and,

WHEREAS, the COUNTY share of PROJECT cost is estimated to be \$1,038,000, and the CITY's share of PROJECT cost is estimated to be \$181,000, 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, PROJECT costs will be funded with COUNTY'S Community Development Block Grant funds and CITY's remaining share of the PROJECT cost will be funded with CITY's local funds; and,

WHEREAS, COUNTY and CITY desire to set forth the responsibilities and obligations of each as they pertain to such participation, performance, 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 for the PROJECT in the preliminary design, survey, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.), construction, construction engineering, and inspection. Right-of-way activities are not anticipated for the PROJECTS and therefore are not included in this agreement.
- 1.2 Provide plans and specifications for the PROJECT for CITY's review and approval pursuant to paragraph 2.1 below.
- 1.3 Construct the PROJECT by contract in accordance with the plans and specifications of COUNTY, which have been reviewed and approved by CITY pursuant to paragraphs 1.2 and 2.1.
- 1.4 Arrange for relocation of all utilities which interfere with construction of the PROJECT within the entire PROJECT limits, subject to paragraph 3.10 below.
- 1.5 Obtain a no-cost permit from the CITY for work to be performed within the CITY's right-of-way.
- 1.6 Advertise, award, and administer the construction of the PROJECT, in accordance with the provisions of the California Public Contract Code.
- 1.7 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) days of COUNTY's receipt of written demand from CITY for such records. Inspection services and maintaining inspection and materials testing records shall be included as a PROJECT cost.
- 1.8 After bid opening for the PROJECT and prior to award of the construction contract, submit to the CITY an invoice for the estimated CITY share of the PROJECT's construction cost based on the COUNTY/CITY percentage share determined from the bid result.
- 1.9 Upon PROJECT completion, calculate actual COUNTY/CITY project share percentages based on the final contract work and cost, which shall include any changes made within the COUNTY and/or CITY jurisdiction, as provided in this Agreement.
- 1.10 Based on the COUNTY's percentage calculated pursuant to paragraph 1.9, pay its share of the actual PROJECT costs. The actual PROJECT costs shall include the cost of PROJECT preliminary engineering, design, survey, CEQA compliance, utility relocation work, construction, construction engineering, inspection and COUNTY overhead costs. COUNTY'S share of PROJECT costs is estimated to be \$1,038,000 and shall not exceed \$1,297,500 (25% increase over the COUNTY's PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.15.
- 1.11 Submit to the CITY an itemized accounting of actual project costs incurred by the COUNTY and, if said costs exceed the amount paid by CITY pursuant to paragraphs 1.8 and 2.4, an invoice for the remainder of the CITY's share of the actual project costs, up to the amount set forth in paragraph 2.4, as provided herein. Said invoice shall set forth all actual PROJECT costs incurred by COUNTY, together with adequate documentation of said expenditures and a copy of the overall CITY/COUNTY percentage share calculations. If the actual PROJECT costs incurred by

COUNTY are less than the amount paid by CITY pursuant to paragraphs 1.8 and 2.4, then COUNTY shall refund CITY the difference within thirty (30) days after issuance of the itemized accounting.

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 Provide a qualified CITY representative who has the authority to inspect PROJECT construction site upon notification by COUNTY via email and/or telephone that an inspection is needed within the CITY's limits and to discuss and attempt to resolve issues concerning the PROJECT with the COUNTY.
- 2.3 Within thirty (30) days after receipt of the invoice from the COUNTY pursuant to paragraph 1.8 above, pay to the COUNTY the invoiced amount.
- 2.4 Within sixty (60) days after receipt of the itemized accounting and invoice from the COUNTY pursuant to paragraph 1.11 above, pay to the COUNTY the remainder of CITY's share of the actual PROJECT costs based on the CITY percentage calculated pursuant to paragraph 1.11. The PROJECT costs shall include the cost of PROJECT preliminary engineering, design, survey, CEQA review and compliance, utility relocation work, construction, construction engineering, inspection, and COUNTY overhead costs. CITY's share of PROJECT costs is estimated to be \$181,000 and shall not exceed \$226,250 (25% increase over the PROJECT cost estimate) absent a written approval from the CITY's designated representative.

3.0 IT IS MUTUALLY AGREED:

- 3.1 Except for activities that are impossible to perform during COUNTY's performance of PROJECT work, before, during and after CITY's and COUNTY's acceptance of completed PROJECT, the COUNTY shall be responsible for performing any and all work (including, but not limited to, maintenance) for the COUNTY maintained highways in the PROJECT limits that are within the COUNTY unincorporated area and CITY shall be responsible for performing any and all work (including, but not limited to, maintenance) for CITY streets in the PROJECT limits that are in the CITY incorporated area.
- 3.2 COUNTY agrees to indemnify, defend (with counsel reasonably acceptable to CITY) and hold harmless the CITY and 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.
- 3.3 CITY agrees to indemnify, defend (with counsel reasonably acceptable to COUNTY) and hold harmless COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability resulting from CITY's negligent acts or omissions which arise from CITY's performance of its obligations under this Agreement.
- 3.4 In the event the COUNTY and/or the CITY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the COUNTY and/or CITY 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 COUNTY and CITY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrant that through their respective programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of COUNTY and CITY's performance of the terms, conditions or obligations of this Agreement.
- 3.7 The Parties acknowledge that actual PROJECT costs may ultimately exceed current estimates of PROJECT costs. Any additional PROJECT costs (including, but not limited to, additional PROJECT costs caused by 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 3.9 below) over the estimated total of the PROJECT's cost of \$1,219,000

- shall be borne by the COUNTY (whether the work is required in the COUNTY's or CITY's jurisdiction), up to 25% over the estimated total PROJECT cost.
- 3.8 If, upon opening of bids, it is found that the responsible and responsive low bid amount is over 25% more than the PROJECT's total estimated cost of \$1,219,000 COUNTY shall not award the contract and COUNTY and CITY shall endeavor to agree upon an alternative course of action, which shall include, but not be limited to, re-bidding of the PROJECT. If, after sixty (60) 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.
- 3.9 If either COUNTY or CITY 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 both Parties pursuant to paragraph 3.15 will be paid solely by the agency requesting the work.
- 3.10 In the case wherein 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 for work located within their respective boundaries.
- 3.11 In the event that either Party intends to cancel this Agreement, said Party shall notify the other Party, in writing, at a reasonable time prior to performance of PROJECT work to avoid any detrimental reliance by either Party.
- 3.12 In the event that change orders are required during the course of the PROJECT, said change orders must be delivered by fax or email and must be returned within two (2) business days. The CITY shall not unreasonably withhold approval of change orders.
- 3.13 This Agreement may be cancelled upon thirty (30) 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 of this Agreement, all PROJECT expenses occurred prior to the effective date of cancellation/termination 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/coordination 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 and after CEQA review/approval.
- 3.14 Except as provided in paragraphs 3.13 and 3.22 and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive termination, this Agreement shall terminate upon completion of the PROJECT.
- 3.15 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.
- 3.16 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.
- 3.17 Time is of the essence for each and every provision of this Agreement.
- 3.18 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 or against any Party. Any term referencing time, days or period for performance shall be deemed COUNTY 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.
- 3.19 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.

- 3.20 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.
- 3.21 This Agreement may be signed in counterparts, each of which shall constitute an original, and may be signed and transmitted with electronic signatures which shall be binding on the Party.
- 3.22 This Agreement will be effective on the date signed and approved by both Parties and shall terminate upon satisfaction of the terms identified in paragraph 3.14 or December 31, 2028, whichever occurs first.
- 3.23 All notices, approvals, consents, or other documents required or permitted under this 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, addressed as follows:

CITY:
City of Colton
160 S. 10th Street
Colton, CA 92324

COUNTY:
San Bernardino County
Department of Public Works
825 E. Third Street, Room 143
San Bernardino, CA 92415-0835

- 3.24 The Recitals are incorporated into the body of this Agreement.

SIGNATURES OF THE FOLLOWING PAGE

THIS AGREEMENT shall insure 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.

SAN BERNARDINO COUNTY

CITY OF COLTON

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

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

Title City Manager
(Print or Type)

By _____
Deputy

Dated: _____
City of Colton,
160 S 10th St, Colton,
Address 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.	► Noel Castillo, Director
Date _____	Date _____	Date _____

EXHIBIT A

FOR SAN BERNARDINO COUNTY/CITY OF COLTON SIDEWALK, ADA RAMP, CURB AND GUTTER, AND STREETLIGHT INSTALLATION PROJECT IN THE COLTON AREA

Road Name	Road Limits	County Length	City Length	Total Length	Scope of work
OLIVE STREET	JACKSON STREET TO RANCHO AVENUE	0.08	0.08	0.08	Sidewalk, ADA Ramp, Curb and Gutter, and Streetlight Installation
Total Project Miles		0.08	0.08	0.08	

EXHIBIT B

**ESTIMATE OF PROJECT COSTS FOR SAN BERNARDINO COUNTY/CITY OF COLTON
SIDEWALK, ADA RAMP, CURB AND GUTTER, AND STREETLIGHT INSTALLATION
PROJECT IN THE COLTON AREA**

Olive Street	Amount	County Share	City Share
Sidewalk, ADA Ramp, Curb and Gutter, and Streetlight Installation	\$1,219,000	\$1,038,000	\$181,000
Project Total	\$1,219,000	\$1,038,000	\$181,000