



Contract Number

SAP Number

Public Works

Department Contract Representative	<u>Arlene Chun, M.S., P.E.,</u> <u>Engineering Manager</u>
Telephone Number	<u>(909) 387-8165</u>
Project	<u>Lenwood Road and Other Roads</u>
Contractor	<u>City of Barstow</u>
Contractor Representative	<u>Domingo Gonzales</u>
Telephone Number	<u>(760) 255-5156</u>
Contract Term	<u>January 31, 2023-December 31,</u> <u>2027</u>
Original Contract Amount	<u>\$64,800</u>
Amendment Amount	<u>\$0</u>
Total Contract Amount	<u>\$64,800</u>
Cost Center	<u>6650002000 H15209</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (COUNTY) desires to conduct pavement preventative maintenance and rehabilitation on roadway surfaces on various roads in the Lenwood and Hinkley areas.

WHEREAS, the 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 a project to apply a chip seal and/or overlay on the existing pavements of shared jurisdiction roads in the CITY, see Exhibit "A" for the list of proposed roads, which is attached hereto and incorporated herein by this reference, (hereinafter referred to as "PROJECT"); and

WHEREAS, the PROJECT consists of approximately 2.62 miles of pavement maintenance, is located in the unincorporated area of the COUNTY and the incorporated area of the CITY, and will be performed by the COUNTY's Department of Public Works Road Operations labor force; 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 legislative body of CITY determines 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, it is anticipated that COUNTY's share of PROJECT costs will be funded by COUNTY's Senate Bill 1 Road Maintenance and Road Rehabilitation Account funds; 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 \$2,600,000; and,

WHEREAS, COUNTY share of PROJECT cost is estimated to be \$2,535,200, and the CITY's share of PROJECT cost is estimated to be \$64,800, 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, 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, which will be performed by the County's Department Public Works Road Operations labor force, in the 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 Obtain a no-cost permit from the CITY for work performed within the CITY's right-of-way.
- 1.3 Provide adequate inspection of all items of work performed.
- 1.4 Pay its share of actual PROJECT costs. The actual PROJECT costs shall include, but is not limited to, the cost of PROJECT construction, supervision, inspection, material testing, CEQA compliance, and COUNTY overhead costs. COUNTY's share of PROJECT costs is estimated to be \$2,535,200.
- 1.5 Upon PROJECT completion, submit to the CITY an invoice for actual PROJECT costs incurred in the CITY jurisdiction.

2.0 CITY AGREES TO:

- 2.1 Provide a qualified representative who shall have the authority to discuss and attempt to resolve issues concerning the PROJECT with the County.
- 2.2 Provide a no-cost permit to the COUNTY for its work in the CITY's right-of-way.
- 2.3 Within thirty (30) days after receipt of the invoice from the COUNTY pursuant to paragraphs 1.6 and 1.7 above, pay to the COUNTY the invoiced amount, currently estimated to be **\$Error!**
Reference source not found..

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 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 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 approved by 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 3.8 below)) over the estimated total of the PROJECT's cost of \$2,600,000 (which is the sum of \$2,535,200 from COUNTY and \$64,800 from CITY) shall be borne by each PARTY based upon where the work is required (i.e. whether the work is required in the COUNTY's or CITY's jurisdiction) up to the amounts set forth in Section 1.6 and 2.3, respectively.
- 3.8 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 3.11 will be paid solely by the agency requesting the work.
- 3.9 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.
- 3.10 In the event that either Party intends to cancel this Agreement, said Party shall notify the other Party at a reasonable time prior to performance of PROJECT work to avoid any detrimental reliance by either Party.
- 3.11 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) 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.
- 3.12 This Agreement may be cancelled upon thirty (30) days advance written notice of either Party. In the event of cancellation as provided herein, 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.
- 3.13 Except as provided in paragraphs 3.12 and 3.21 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 and payment of final billing by the CITY for its share of the PROJECT costs pursuant to paragraph 2.3

- 3.14 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.
- 3.15 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.
- 3.16 Time is of the essence for each and every provision of this Agreement.
- 3.17 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.
- 3.18 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.
- 3.19 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.
- 3.20 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.
- 3.21 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 3.13 or December 31, 2027, whichever occurs first.
- 3.22 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

►

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

CITY OF BARSTOW

By ►

(Authorized signature - sign in blue ink)

Willie A. Hopkins, Jr.

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

Title City Manager
(Print or Type)

Dated: 5/08/2023

City of Barstow,
220 East Mountain View St,
Suite# A

Address 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

►

Brendon Biggs, Director

Date _____

EXHIBIT A

**FOR SAN BERNARDINO COUNTY/CITY OF BARSTOW
CHIP SEAL AND OVERLAY PROJECT IN THE LENWOOD AREA**

Road Nam	Road Limits	County Length	City Length	Total Length	Scope of work
LENWOOD ROAD	JASPER ROAD TO BURLINGTON ROAD	2.12	0.50	2.62	CHIP SEAL
Total Project Miles		2.12	0.50	2.62	

Exhibit B

**ESTIMATE OF PROJECT COSTS
FOR SAN BERNARDINO COUNTY/CITY OF BARSTOW
CHIP SEAL AND OVERLAY PROJECT IN THE LENWOOD AREA**

Lilac Avenue	Amount	County Share	City Share
Chip Seal	\$2,600,000	\$ 2,535,200	\$ 64,800
Project Total	\$2,600,000	\$ 2,535,200	\$ 64,800