



Contract Number

SAP Number

Regional Parks Department

Department Contract Representative	<u>Beahta R. Davis</u>
Telephone Number	<u>909-387-2340</u>
Contractor	<u>San Bernardino County Flood Control District</u>
Contractor Representative	<u>Sameh Basta</u>
Telephone Number	<u>909-387-8040</u>
Contract Term	<u>October 1, 2023 – September 30, 2028</u>
Original Contract Amount	<u>Year One- \$120,000</u> <u>Year Two- \$120,000</u> <u>Year Three-\$150,000</u> <u>Year Four- \$180,000</u> <u>Year Five- \$200,000</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>\$770,000</u>
Cost Center	<u>6520002702</u>

This MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by and between the San Bernardino County Flood Control District (DISTRICT) and San Bernardino County (COUNTY), through its Regional Parks Department (Department). DISTRICT and COUNTY are collectively referred herein as "PARTIES" and individually as "PARTY."

RECITALS

WHEREAS, the Department determines that it is necessary to contract with DISTRICT to perform work on the Santa Ana River Trail (SART) and the Cucamonga Trail for the efficient maintenance, cleanup, or repair of the SART, Cucamonga Trail, and related appurtenances; and

WHEREAS, this routine maintenance work will be performed by DISTRICT staff or its contractors on a weekly basis and as may be requested by the Department, subject to reimbursement from COUNTY; and

WHEREAS, COUNTY and DISTRICT desire to set forth responsibilities and obligations of each as they pertain to the performance of routine and non-routine maintenance services by the DISTRICT on behalf of the Department on the SART and Cucamonga Trail; and

NOW, THEREFORE, DISTRICT and COUNTY mutually agree to the following terms and conditions:

1.0 DISTRICT RESPONSIBILITIES

- 1.1 DISTRICT shall utilize its on-call contractor list to perform Routine Maintenance, as defined below, as well as pre-approved Non-routine Maintenance, defined below, on the SART and Cucamonga Trail, subject to reimbursement from the COUNTY. DISTRICT shall ensure that contractor selection from the on-call list follows the applicable COUNTY procurement laws and policies. DISTRICT shall monitor the work performance and communicate any issues to the selected contractor. DISTRICT will provide a point of contact for the issues related to the trail maintenance services. (See Exhibit A for SART Phase I & II, Exhibit B for SART Phase III, Exhibit C for SART Phase IV, and Exhibit D for Cucamonga Trail).
 - 1.1.1 "Routine Maintenance" shall include, but not be limited to: debris cleanup, patrol for any obstructions and hazards from the trail, removing the obstructions and hazards from the trail, cleaning graffiti from trail asphalt, concrete, recreational infrastructure, and signage, repair, and replacement of signs, removal of broken amenities, repair of fencing, secure gates, bollards, and other security infrastructure, renting of equipment, brush and sweep clearing debris and sediment from the trail surface, trail repair, drainage facility maintenance, clean recreational benches, kiosks, and recreational infrastructure, pick up trash, empty of trash cans, replace trash can liners, remove any vegetation that hinders trail access, and general labor work.
 - 1.1.2 "Non- routine Maintenance" shall include, but not be limited to: emergency/safety work, crack sealing, asphalt repair, installation of new gates/security infrastructure, installation of traffic control devices, pavement markings, and striping, blocking OHV access, other miscellaneous maintenance work not typical of weekly maintenance.
- 1.2 DISTRICT will maintain ingress gates for flood facilities, chain link fencing, interior fencing that was established for the channel prior to the construction of the trail, graffiti on flood infrastructure, tree trimming, transient encampment removal, and any maintenance to the flood facility/channel improvements.
- 1.3 DISTRICT shall remove transient encampments according to the DISTRICT's Standard Operating Guidelines, as may be modified by the DISTRICT to comply with evolving case law and requests from civil rights organizations.
- 1.4 DISTRICT supervisory personnel shall provide (3) hours of inspection, per week, for the work completed by the DISTRICT's contractors under this MOU and shall exercise complete authority over all such employees, contractors, and personnel. DISTRICT shall immediately remove any contractor whose conduct or workmanship is unsatisfactory to COUNTY.
- 1.5 DISTRICT shall promptly report to Department any emergency or safety items related to the trail operation.
- 1.6 DISTRICT shall invoice the COUNTY quarterly for Routine Maintenance , following completion of such Routine Maintenance.
- 1.7 For Routine Maintenance, as defined above, the DISTRICT may undertake such work without first receiving a Department-issued Notice to Proceed.
- 1.8 For Non- routine Maintenance, as defined above, the Department must first issue a Notice to Proceed prior to the DISTRICT undertaking the work. For Non-routine Maintenance, the DISTRICT Engineer will submit the following to the Department for the Department's approval prior to proceeding with the work: (1) cost estimates based on the Notice to Proceed for larger repair work and/or additional work assignment, and (2) a schedule, including a schedule of workdays anticipated for the work. Upon completion of the work request under the Notice to Proceed, the DISTRICT shall submit to COUNTY an invoice, which shall include an itemized accounting of costs incurred by DISTRICT.

- 1.9 All work that shall be performed by the DISTRICT contractors shall comply with all applicable laws and COUNTY policies, including but not limited to, safety and environmental regulations. Should the DISTRICT contractor damage any part of the SART or Cucamonga Trail during the performance of its duties, the DISTRICT contractor shall be responsible for repair in a timely manner at no cost to the COUNTY.

2.0 COUNTY RESPONSIBILITIES

- 2.1 The Department shall provide the DISTRICT a written scope of work for the Routine Maintenance of each trail section, which scope will be used by the DISTRICT to procure services from the contractors on the DISTRICT's on-call list.
- 2.2 The Department shall provide the DISTRICT a written "Notice to Proceed" for any Non-routine Maintenance, signed by the Department's Authorized Representative as defined herein.
- 2.3 The Department will issue a Notice to Proceed within no more than five (5) working days to any reported emergency or safety concern. An emergency is defined as an urgent, unexpected, and usually dangerous situation that poses an immediate risk to health, life, property, or environment and requires immediate action.
- 2.4 Comply with any applicable California Environmental Quality Act (CEQA) requirements as well as completing the required CEQA documents, prior to issuing the Notice to Proceed to the DISTRICT.
- 2.5 After DISTRICT completes Routine Maintenance and any authorized Non-Routine Maintenance, and submits an itemized accounting of actual work costs incurred by DISTRICT during the prior quarter along with an invoice, the COUNTY shall reimburse DISTRICT within thirty (30) calendar days after receipt of invoice.
- 2.6 The Department will provide to DISTRICT a written notice of disputed work within ten (10) calendar days of completion of the requested work, or the Department shall be deemed to have accepted the work.
- 2.7 The Department shall continue to accept all operation responsibilities of the SART and Cucamonga Trail facilities including but not limited to measures for illegal Off Highway Vehicles (OHV) traffic on trail infrastructure, illegal access from trail infrastructure, and illegal trespassing on trail infrastructure. Both PARTIES agree that under this MOU, DISTRICT is only responsible for completing Routine Maintenance and authorized Non-routine Maintenance.
- 2.8 COUNTY shall maintain an enforcement contract with County Land Use Services / Code Enforcement through the duration of the MOU to provide law enforcement for the illegal activities on the SART and Cucamonga Trail, including OHV enforcement.

3.0 PAYMENT

- 3.1 COUNTY shall reimburse DISTRICT in accordance with this MOU up to a not-to-exceed amount of \$120,000 in year one and two, \$150,000 in year three and \$180,000 in year four and \$200,000 in year five, for a total of \$770,000 over the TERM of this MOU. The payment increases in years three, four and five are contingent upon the completion of SART, Reaches IV A, and IV B and C. If these phases of SART are not completed, the COUNTY reserves the right to maintain the amount from the previous year.
- 3.2 Payment will be made within thirty (30) calendar days of the COUNTY's receipt of the DISTRICT's invoice unless disputed within ten (10) calendar days as provided for herein.
- 3.3 Payment will be transferred from the COUNTY to the DISTRICT from the County General Fund.

4.0 AUTHORIZED REPRESENTATIVES

- 4.1 In order to coordinate tasks, supervise subordinate staff, and/or resolve any conflict which may arise in connection with this MOU, the PARTIES designate the following individuals to manage this MOU:
 - A. COUNTY/Department – Regional Parks Director or Designee
 - B. DISTRICT- Operations Superintendent

- 4.2 The PARTIES agree they will establish mutually satisfactory methods for the exchange of such information as may be necessary in order that each PARTY may perform its duties and functions under this MOU.
- 4.3 The PARTIES agree they will establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to mobilize problem resolution up through each PARTY's mutual chain of command, as deemed necessary.

5.0 TERM AND TERMINATION

- 5.1 The Term of this MOU shall be for five (5) years from October 1, 2023, to September 30, 2028, unless extended upon the mutual written agreement of the PARTIES.
- 5.2 This MOU may be terminated without cause upon sixty (60) calendar days' written notice by either of the Authorized Representatives, designated herein.
- 5.3 If, during the MOU, the COUNTY funds appropriated for the purposes of this MOU are reduced or eliminated, COUNTY may immediately terminate this MOU upon written notice to the DISTRICT.
- 5.4 In the event of termination, DISTRICT will only be reimbursed for costs and un-cancellable obligations incurred prior to the effective date of termination. DISTRICT will not be reimbursed for costs incurred after the effective date of termination.

6.0 INDEMNIFICATION AND INSURANCE REQUIREMENTS

6.1 Indemnification.

- 6.1.1 COUNTY agrees to indemnify, defend (with counsel reasonably approved by the DISTRICT) and hold harmless the DISTRICT and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU, but only to the extent actually caused by the negligent acts, errors or omissions of COUNTY and its authorized officers, employees, agents, and volunteers, and for any costs or expenses incurred by DISTRICT on account of any claim except where such indemnification is prohibited by law.
- 6.1.2 DISTRICT agrees to indemnify, defend (with counsel reasonably approved by the COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU, but only to the extent actually caused by the negligent acts, errors or omissions of the DISTRICT and its authorized officers, employees, agents, and volunteers, and for any costs or expenses incurred by COUNTY on account of any claim except where such indemnification is prohibited by law.
- 6.1.3 In the event COUNTY or DISTRICT is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this MOU, COUNTY and/or DISTRICT shall indemnify the other to the extent of its comparative fault. Notwithstanding indemnification for any claim, action, loss or damage involving a third PARTY, COUNTY and DISTRICT hereby waive any and all rights of subrogation recovery against each other.

- 6.2 **Insurance.** DISTRICT and COUNTY are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective 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 MOU.

7.0 GENERAL PROVISIONS

- 7.1 Interpretation.** Since the PARTIES or their agents have participated fully in the preparation of this MOU, the language of this MOU shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed 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 MOU.
- 7.2 Force Majeure.** The PARTIES shall be excused from strict performance hereunder, to the extent that such performance is impeded or prevented by occurrence of force majeure, which shall be deemed to include, without limitation, floods, earthquakes, other natural disasters, war, civil insurrection, riots, epidemics, pandemics, acts of any government (including judicial action), and other similar catastrophic events or acts of God which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.
- 7.3 Waiver.** No waiver of any default shall constitute a waiver of any other default of 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.
- 7.4 Jurisdiction.** This MOU shall be governed by the laws of the State of California. If a court of competent jurisdiction declares any portion of this MOU invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purposes of this MOU are frustrated. Any dispute or action to enforce any obligation under this MOU shall be filed and resolved in a Superior Court in San Bernardino County, California. In the event of litigation arising from this MOU, each PARTY to the MOU shall bear its own costs, including attorneys' fees.
- 7.5 Dispute Resolution.** In the event that a dispute arises between the PARTIES, the PARTIES shall first attempt to resolve the dispute through meetings with appropriate staff members. In the event that the dispute cannot be resolved at the staff level, the Chief Flood Control Engineer and the Director of the Regional Parks Department shall meet and informally confer to attempt to resolve the matter prior to either PARTY pursuing any legal remedies or filing a claim.
- 7.6 Successors and Assigns.** This MOU shall inure to the benefit of and to be binding upon the successors and assigns both PARTIES.
- 7.7 Amendment.** No supplement, modification, or amendment of this MOU shall be binding unless executed in writing and signed by the COUNTY and the DISTRICT.

8.0 NOTICES

All written notices provided for in this MOU or which either PARTY desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other PARTY as follows:

*San Bernardino County Flood Control District
825 East Third Street
San Bernardino, CA 92415*

*San Bernardino County
Regional Parks Department
268 W. Hospitality Lane, Suite 303
San Bernardino, CA 92408*

Notice shall be deemed communicated two (2) working days from the time of mailing if mailed as provided in this paragraph.

9.0 ELECTRONIC SIGNATURES

This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The PARTIES shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other mail 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 MOU upon request.

10.0 ENTIRE AGREEMENT

This MOU, including all Attachment, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the PARTIES hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this MOU not expressly set forth herein are of no force or effect. This MOU is executed without reliance upon any promise, warranty or representation by any PARTY or any representative of any PARTY other than those expressly contained herein. Each PARTY has carefully read this MOU and signs the same of its own free will.

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IN WITNESS WHEREOF, the PARTIES have each caused this MOU to be subscribed by its respective duly authorized officers, on its behalf.

IN WITNESS WEREOF, the parties hereto have caused their respective names to be subscribed by their respective proper officers hereto duly authorized.

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

SAN BERNARDINO COUNTY FLOOD CONTROL
DISTRICT

►

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

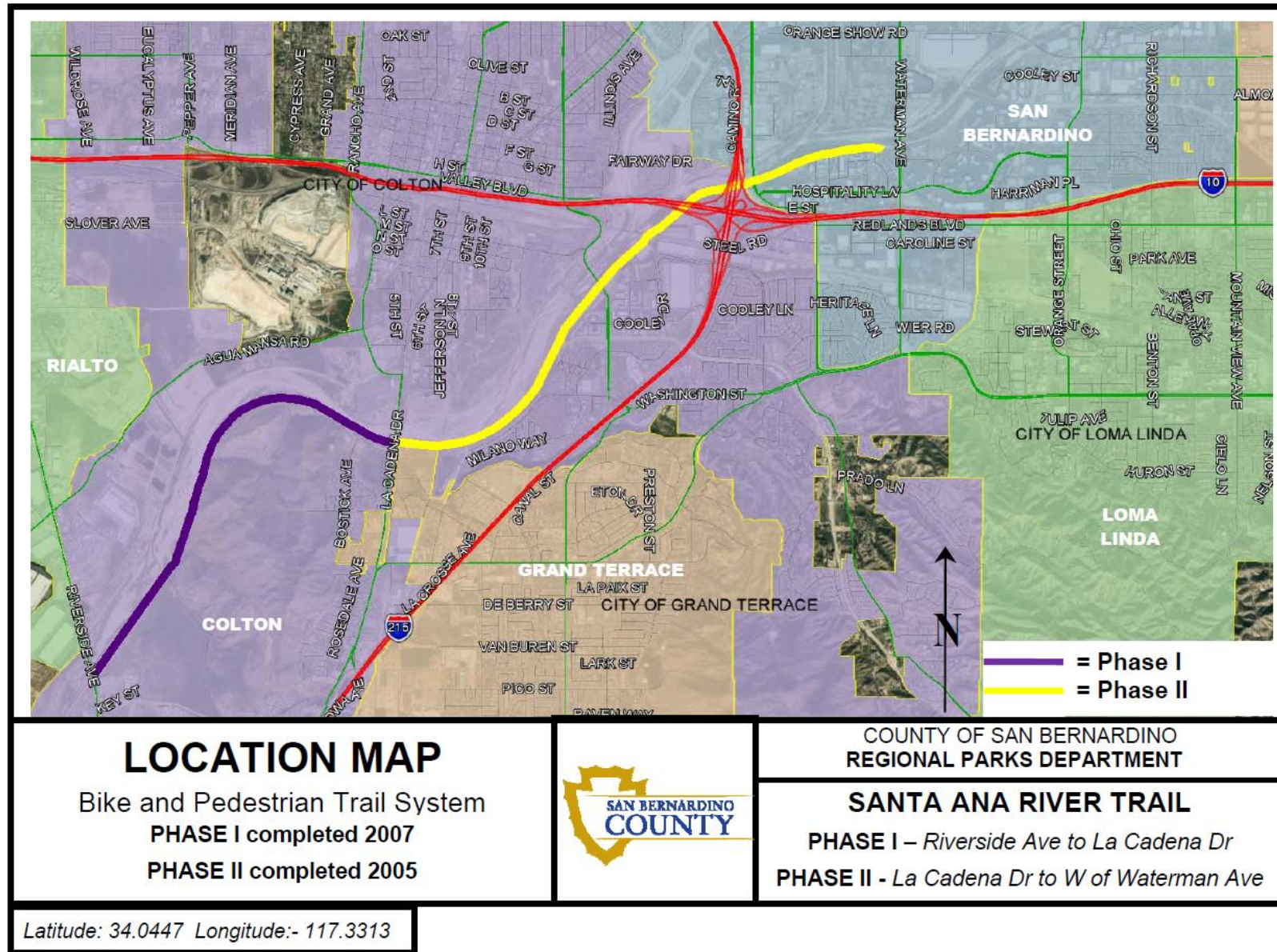
FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Suzanne Bryant, Deputy County Counsel	► Trevor Leja, Deputy Executive Officer	► Beahta R. Davis, Director Regional Parks Department
Date _____	Date _____	Date _____

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by District
► Sophie A Curtis, Deputy County Counsel	► Andy Silao, P.E.	► Brendon Biggs, Chief Flood Control Engineer San Bernardino County Flood Control District
Date _____	Date _____	Date _____

EXHIBIT A SART I & II



**EXHIBIT B
SART III**

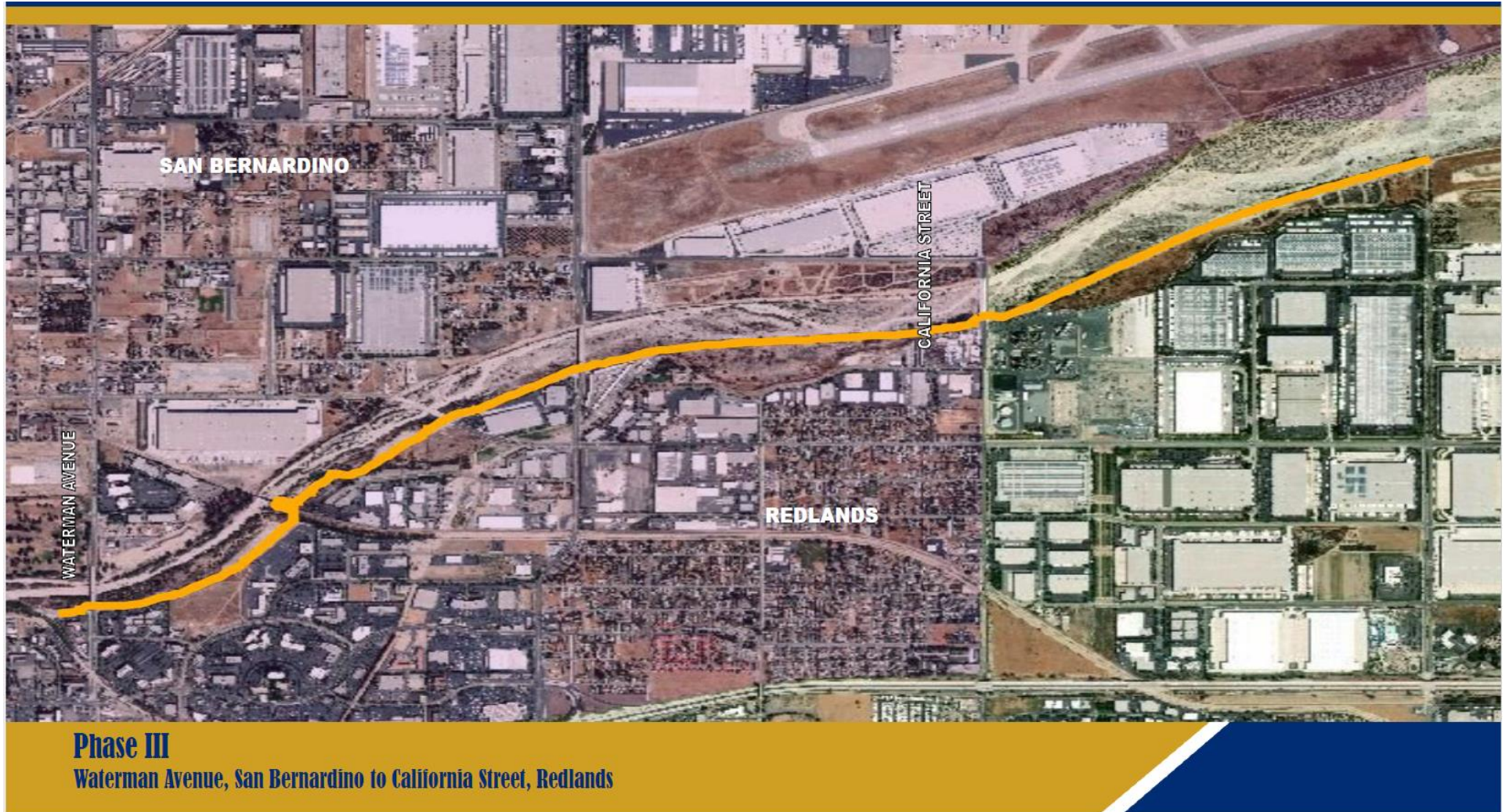


EXHIBIT C
SART IV, Reach A

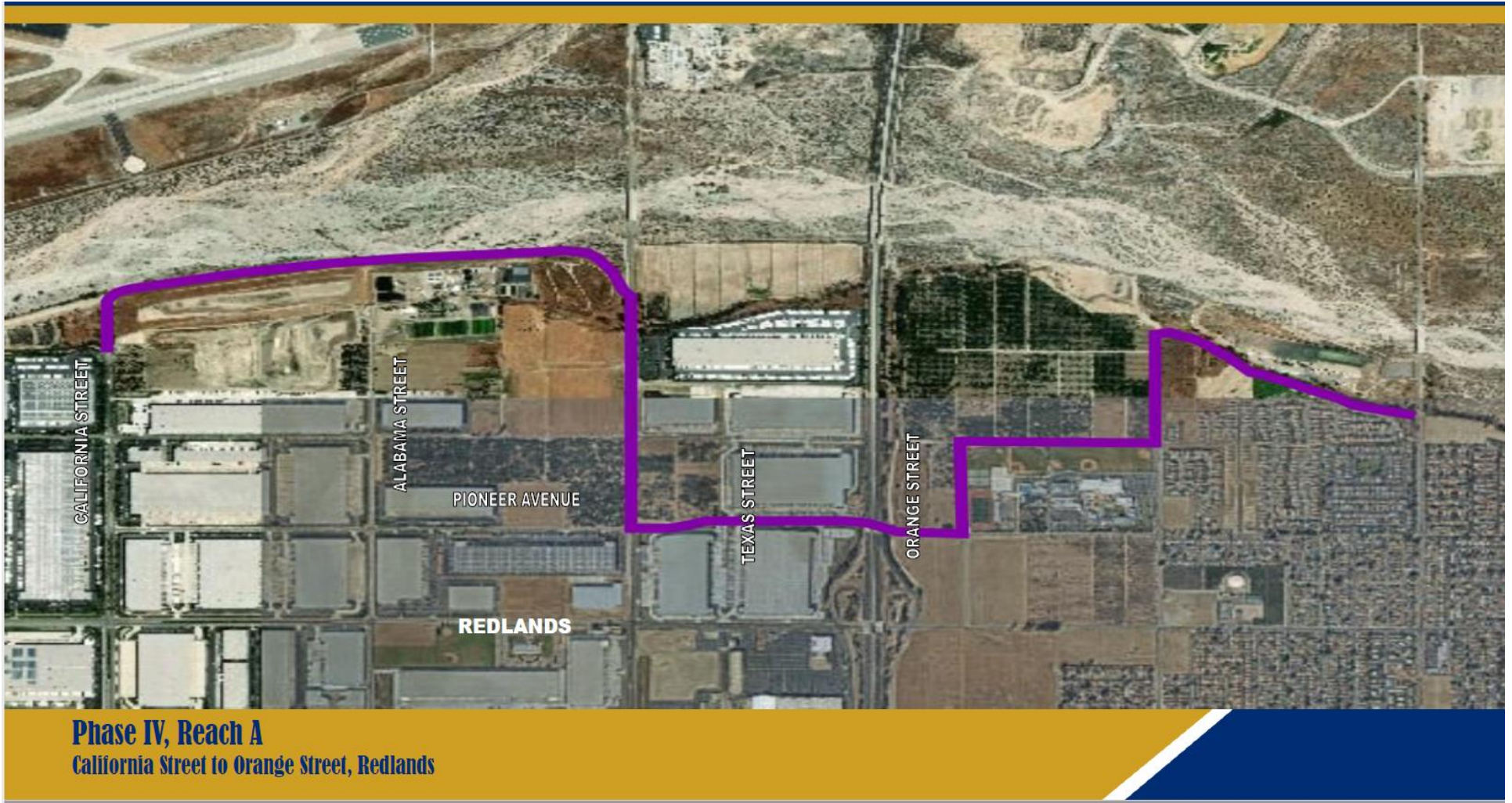


EXHIBIT C-1
SART IV Reach B & C



EXHIBIT D
Cucamonga Creek Trail

