



Contract Number

23-932

SAP Number

Public Works

Department Contract Representative	<u>Arlene Chun, M.S., P.E., Engineering Manager</u>
Telephone Number	<u>(909) 387-8165</u>
Contractor	<u>City of Rialto</u>
Contractor Representative	<u>Henry Garcia, Interim City Manager</u>
Telephone Number	<u>(909) 820-2689</u>
Contract Term	<u>Expiration January 31, 2026</u>
Original Contract Amount	<u>\$82,100</u>
Amendment Amount	<u>\$0</u>
Total Contract Amount	<u>\$82,100</u>
Cost Center	<u>6650002000 H152XX</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (COUNTY) and the City of Rialto (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 Pavement Reconstruction and Americans with Disabilities Act (ADA) Curb Ramp Update Project located on Easton Street, from 0.01 miles west of North Brampton Avenue east to Filmore Avenue, in the Rialto area (hereinafter referred to as "PROJECT"); and,

WHEREAS, the road segment and the ADA curb ramp list for the PROJECT are shown in Exhibit "A", which is attached hereto and incorporated herein by this reference; 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 the maintenance, construction, or repair of COUNTY roads; and,

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

WHEREAS, the total PROJECT cost is estimated to be \$1,230,041; and,

WHEREAS, COUNTY share of PROJECT cost is estimated to be \$82,100, and the CITY's share of PROJECT cost is estimated to be \$1,147,941, 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 Gas Tax funds and CITY's remaining share of the PROJECT cost will be funded with CITY's local funds; 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 preliminary engineering, design, survey, California Environmental Quality Act (CEQA) review and compliance (Public Resources Code section 21000 et seq.), utility relocation work, construction, construction engineering, and inspection 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 CITY 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 for the PROJECT for COUNTY's review and approval pursuant to paragraph 2.1 below.
- 1.4 Construct the PROJECT by contract in accordance with the plans and specifications of CITY, which have been reviewed and approved by COUNTY pursuant to paragraphs 1.3 and 2.1.
- 1.5 Arrange for relocation of all utilities which interfere with construction of the PROJECT within the entire PROJECT limits, subject to paragraph 3.9 below.
- 1.6 Obtain a no-cost permit from the COUNTY for work to be performed within the COUNTY's right-of-way.
- 1.7 Advertise, award, and administer the construction of the PROJECT, in accordance with the provisions of the California Public Contract Code.
- 1.8 Provide adequate inspection of all items of work performed under the construction contract(s) with CITY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by COUNTY. CITY shall provide copies of any records of inspection and materials testing to COUNTY within ten (10) days of CITY's receipt of written demand from COUNTY for such records. This shall be included as a PROJECT cost.
- 1.9 After bid opening for the PROJECT and prior to award of the construction contract, submit to the COUNTY an invoice for the estimated COUNTY share of the PROJECT's construction cost based on the COUNTY/CITY percentage share determined from the bid result.
- 1.10 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.
- 1.11 Based on the CITY's percentage calculated pursuant to paragraph 1.10, 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 CITY overhead costs. CITY'S share of PROJECT costs is estimated to be \$1,147,941 and shall not exceed \$1,434,926 (25% increase over the CITY's PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17.
- 1.12 Submit to the COUNTY an itemized accounting of actual project costs incurred by the CITY and, if said costs exceed the amount paid by COUNTY pursuant to paragraphs 1.9 and 2.6, an invoice

for the remainder of the COUNTY's share of the actual project costs, up to the amount set forth in paragraph 2.6, as provided herein. Said invoice shall set forth all actual PROJECT costs incurred by CITY, together with adequate documentation of said expenditures and a copy of the overall CITY/COUNTY percentage share calculation spreadsheet. If the actual PROJECT costs incurred by CITY are less than the amount paid by COUNTY pursuant to paragraphs 1.9 and 2.6, then CITY shall refund COUNTY the difference within thirty (30) days after issuance of the itemized accounting.

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 If required for the PROJECT, at its own cost and not included in this PROJECT cost, perform all right-of-way acquisition related work inside the COUNTY'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 CITY for its work in the COUNTY's right-of-way.
- 2.4 Provide a qualified COUNTY representative who has the authority to inspect PROJECT construction site upon notification by CITY via email and/or telephone that an inspection is needed within the COUNTY's limits.
- 2.5 Within thirty (30) days after receipt of the invoice from the CITY pursuant to paragraph 1.9 above, pay to the CITY the invoiced amount.
- 2.6 Within sixty (60) days after receipt of the itemized accounting and invoice from the CITY pursuant to paragraph 1.12 above, pay to the CITY the remainder of COUNTY's share of the actual PROJECT costs based on the COUNTY percentage calculated pursuant to paragraph 1.12. 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 CITY overhead costs. COUNTY's share of PROJECT costs is estimated to be \$82,100, and shall not exceed \$102,625 (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 the construction phase of PROJECT, before, during and after CITY's and COUNTY's acceptance of the 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 the 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 approved by 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 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 an increase in engineering cost, higher 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 the PROJECT's cost of \$1,230,041 (which is the sum of \$82,100 from COUNTY and \$1,147,941 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 paragraphs 1.12 and 2.6.
- 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 3.17 will be paid solely by the Party 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 As design progresses, if it is found or determined by CITY representatives, that a cost overrun of over 25% of the estimated total PROJECT cost will occur, CITY shall provide COUNTY notice of this fact and CITY and COUNTY shall endeavor to agree upon an alternative course of action, including amending the cost estimates. If, after thirty (30) days of CITY notice, an alternative course of action is not mutually agreed upon in writing between the CITY and COUNTY, this Agreement shall be deemed to be terminated by mutual consent.
- 3.11 CITY shall notify COUNTY of the bids received and the amounts thereof. In the event that either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party at 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 25% or less over the PROJECT's construction cost shown in Exhibit B, CITY may award the contract.
- 3.13 If, upon opening of bids, it is found that the responsive and responsible low bid amount is over 25% more than the PROJECT's construction cost shown in Exhibit B or the Amended Exhibit B pursuant to paragraph 3.10 of the Agreement, CITY shall not award the contract unless: 1) CITY receives written permission from the COUNTY's Department of Public Works Director, or 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, COUNTY and CITY shall endeavor to agree upon an alternative course of action, including 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.
- 3.14 In the event that change orders are required during the course of the PROJECT, copies of change orders must be delivered by fax or email to COUNTY who will review and respond within two (2) days of issuance by CITY. The COUNTY 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) days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after CITY awards a contract to construct. In the event of cancellation as provided herein, including termination pursuant to

paragraphs 3.10, 3.11 and 3.13 above, 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 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.

- 3.16 Except as provided in paragraphs 3.15 and 3.24, 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 COUNTY for its share of the PROJECT costs or refund by CITY pursuant to paragraph 1.12.
- 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 or against any Party. Any term referencing time, days or period for performance 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 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 3.16 or January 31, 2026 (whichever occurs first).
- 3.25 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 Rialto
150 S. Palm Avenue
Rialto, CA 92376
Attn: Engineering Services Department

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

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

THIS AGREEMENT shall inure 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 RIALTO

► Dawn Rowe
Dawn Rowe, Chair, Board of Supervisors

Dated: AUG 22 2023
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By Lynna Monell
Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County
Deputy



(Print or type name of corporation, company, contractor, etc.)

By ► [Signature]
(Authorized signature - sign in blue ink)

Name Henry Garcia
(Print or type name of person signing contract)

Title Interim City Manager
(Print or Type)

Dated: _____
Address City of Rialto,
150 S. Palm Avenue, Rialto, CA 92376

Attest:

By ► [Signature]
Barbara McGee, City Clerk

Approved as to Legal Form:

By ► [Signature]
Eric Vail, City Attorney

FOR COUNTY USE ONLY

Approved as to Legal Form
► SEE ATTACHED
Aaron Gest, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
► [Signature]
Andy Silao, P.E.
Date 8/10/2023

Reviewed/Approved by Department
► [Signature]
Brendon Biggs, Director
Date 8-11-23

THIS AGREEMENT shall inure 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 RIALTO

►

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

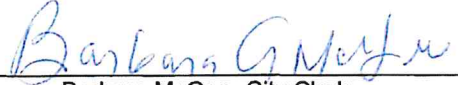
(Print or type name of corporation, company, contractor, etc.)

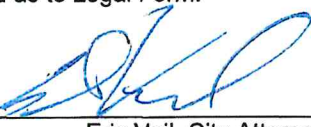
By ► 
(Authorized signature - sign in blue ink)

Name Henry Garcia
(Print or type name of person signing contract)


Title Interim City Manager
(Print or Type)

Dated: _____
City of Rialto,
Address 150 S. Palm Avenue, Rialto, CA 92376

Attest:
By ► 
Barbara McGee, City Clerk

Approved as to Legal Form:
By ► 
Eric Vail, City Attorney

FOR COUNTY USE ONLY

Approved as to Legal Form
► 
Aaron Gest, Deputy County Counsel
Date 8/10/23

Reviewed for Contract Compliance
► _____
Andy Silao, P.E.
Date _____

Reviewed/Approved by Department
► _____
Brendon Biggs, Director
Date _____

EXHIBIT A

Road Name	Road Limits	Total Length	Scope of work
EASTON STREET	.01M W, N BRAMPTON AVENUE E/FILLMORE AVENUE	0.09	Reconstruction
Total Miles		0.09	

Curb Ramp List

Ramp Location	Cross Street	Ramp Location
EASTON STREET	BRAMPTON AVENUE	SE
EASTON STREET	BRAMPTON AVENUE	SW
EASTON STREET	FILLMORE AVENUE	SE
EASTON STREET	FILLMORE AVENUE	SW

EXHIBIT B

EASTON STREET

Description	Amount	County Share	City Share
Preliminary Engineering, Design, Survey, Environmental Clearance, Construction, Construction Engineering, etc.	\$1,230,041	\$82,100	\$1,147,941
Total	\$ 1,230,041	\$ 82,100	\$ 1,147,941