



Contract Number

23-542

SAP Number

Public Works

Department Contract Representative	Arlene Chun, M.S., P.E., Engineering Manager
Telephone Number	(909) 387-8165
Project	Chestnut Avenue
Contractor	City of Fontana
Contractor Representative	Jeffrey Kim, Engineering Manager
Telephone Number	(909) 350-6724
Contract Term	Expiration December 31, 2028
Original Contract Amount	\$87,015.50
Amendment Amount	\$0
Total Contract Amount	\$87,015.50
Cost Center	6650002000 H15213

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County ("COUNTY") and the City of Fontana ("CITY") (COUNTY and CITY may also be referred to herein individually as a "Party" or collectively as "Parties") desire to cooperate and jointly participate in the Chestnut Avenue Pavement Reconstruction Update Project designed and constructed by CITY (hereinafter referred to as "PROJECT"); and,

WHEREAS, the PROJECT road list ("PROJECT ROAD") is 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 to contribute to the design and construction of the PROJECT as it relates to a portion of a PROJECT ROAD that is located both in the boundaries of CITY and

COUNTY as more fully described in Exhibit "B," which is attached hereto and incorporated herein by reference ("COUNTY PROJECT PORTION"); and,

WHEREAS, the total PROJECT cost is estimated to be \$3,850,479 ("TOTAL PROJECT COST"); and,

WHEREAS, the COUNTY's share of PROJECT cost related to the COUNTY PROJECT PORTION is estimated to be \$87,015.50, ("COUNTY SHARE"), and the CITY's share of the remainder of the PROJECT cost is estimated to be \$3,763,463.00 ("CITY SHARE"), as more particularly set forth in Exhibit "C", which is attached hereto and incorporated herein by this reference; and,

WHEREAS, the COUNTY SHARE and CITY SHARE are apportioned to each Party based on the work to be performed in each Party's jurisdiction and are equivalent to the percentages listed in Exhibit "C" of the TOTAL PROJECT COST (collectively, "CONSTRUCTION PERCENTAGE SHARES"); and,

WHEREAS, the COUNTY SHARE of TOTAL PROJECT COST will be funded with COUNTY's Senate Bill 1 Road Maintenance and Rehabilitation Account funds ("SB 1 ACCOUNT FUNDS") and Discretionary General Funds, and the CITY SHARE of remaining TOTAL PROJECT COST will be funded with CITY's SB 1 ACCOUNT FUNDS; and,

WHEREAS, CITY and COUNTY desire to set forth their responsibilities and obligations 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, final design, 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 ("RIGHT-OF-WAY WORK") inside the CITY jurisdiction that is determined to be necessary by the CITY in its sole discretion for the PROJECT. RIGHT-OF-WAY 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 Contract with an appropriately licensed engineer or designer to prepare plans and specifications for construction of the PROJECT ("CONSTRUCTION DOCUMENTS") and provide CONSTRUCTION DOCUMENTS to COUNTY for COUNTY's review and approval pursuant to paragraph 2.1 below. CITY shall obtain all final approvals for the CONSTRUCTION DOCUMENTS and the PROJECT from all authorities having jurisdiction over the PROJECT.
- 1.4 Contract with an appropriately licensed general contractor for the construction of the PROJECT in accordance with the CONSTRUCTION DOCUMENTS, which have been reviewed and approved by COUNTY pursuant to paragraph 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 Solicit and award contracts necessary for the design and construction of the PROJECT, in accordance with applicable law, including, without limitation, the 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 part of the TOTAL PROJECT COST, to be paid proportionately according to CITY SHARE and COUNTY SHARE.

- 1.9 After the completion of the solicitation process for the PROJECT and before the CITY's Council awards a contract for the construction of the PROJECT, submit to the COUNTY an invoice for the estimated COUNTY SHARE based on the CONSTRUCTION PERCENTAGE SHARES applied to the total value of the contract to be awarded.
- 1.10 Upon PROJECT completion, calculate actual and final PROJECT costs ("FINAL COSTS") and the respective COUNTY SHARE and CITY SHARE by applying the CONSTRUCTION PERCENTAGE SHARES to the final contract work and cost, which shall include any changes made within the COUNTY and/or CITY jurisdiction, as provided in this Agreement. The FINAL COSTS shall include the cost of PROJECT preliminary engineering, design, survey, CEQA compliance, utility relocation work, final design, construction, construction engineering, and inspection of the PROJECT.
- 1.11 The CITY SHARE is currently estimated to be \$3,763,463 and shall not exceed \$4,704,328.75 (25% increase over the CITY's PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17.
- 1.12 After completion of the PROJECT and calculation of the FINAL COSTS, submit to the COUNTY an itemized accounting of actual project costs incurred by the CITY and the final COUNTY SHARE and CITY SHARE, and, if said costs exceed the amount paid by COUNTY pursuant to paragraphs 1.10 and 2.6, an invoice for the remainder of the COUNTY SHARE of the FINAL 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 a calculation spreadsheet for the COUNTY SHARE and CITY SHARE. If the actual PROJECT costs incurred by CITY are less than the amount paid by COUNTY pursuant to paragraphs 1.10 and 2.6, then CITY shall refund COUNTY the difference within thirty (30) days after issuance of the itemized accounting of FINAL COSTS.

2.0 COUNTY AGREES TO:

- 2.1 Review, approve, and provide comments, if necessary, for the CONSTRUCTION DOCUMENTS 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 the TOTAL PROJECT COST, perform all RIGHT-OF-WAY WORK inside the COUNTY's jurisdiction that is determined to be necessary for the PROJECT by COUNTY in its sole discretion.
- 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 sixty (60) days after receipt of the invoice from the CITY pursuant to paragraph 1.10 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 the COUNTY SHARE of the FINAL COSTS based on the COUNTY PERCENTAGE SHARE calculated pursuant to paragraph 1.12.
- 2.7 The COUNTY SHARE is currently estimated to be \$87,016 and shall not exceed \$108,769 (25% increase over the PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17.

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 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 related to either Party's obligation to indemnify and defend the other Party as set forth in paragraph 3.2, 3.3, and 3.4 of this Agreement.
- 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 the FINAL COSTS may ultimately exceed current estimates of the TOTAL PROJECT COST. 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 PROJECT COST shall be the sole responsibility of 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 Party 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 sole 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 and the COUNTY and/or CITY will be responsible for funding for work located within their respective boundaries.
- 3.10 As design progresses, if it is found by CITY 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. Following termination of the Agreement, CITY shall have no responsibility whatsoever to perform any construction work for the PROJECT in the COUNTY limits the Parties shall have the right to payment of PROJECT expenses up to the date of termination as set forth in paragraph 3.15.
- 3.11 RESERVED
- 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 "C", as may be amended, 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 "C", as may be amended, CITY shall not award the contract that includes work to be performed within the COUNTY limits unless: 1) CITY receives written permission from the COUNTY's Department of Public Works Director, or designee, to proceed with the award. If the aforementioned condition is 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, subject to the Parties right to payment of PROJECT expenses up to the date of termination as set forth in paragraph 3.15.
- 3.14 In the event that change orders are required during the course of the PROJECT, copies of change orders shall be delivered to COUNTY within two (2) business days of issuance by CITY. 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 terminated 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 termination 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 termination shall be paid by the Parties in the same proportion to their CONSTRUCTION PERCENTAGE SHARES. CITY shall provide an invoice to COUNTY for all such costs incurred up to the date of termination in an amount not to exceed the product of the total costs and the COUNTY PERCENTAGE SHARE up to and until the date of termination. 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 the COUNTY SHARE of the FINAL COSTS, or a 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.
- 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, 2028 (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:

COUNTY:

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: Public Works/Engineering Department

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

► 

Dawn Rowe, Chair, Board of Supervisors

JUN 13 2023

Dated: _____

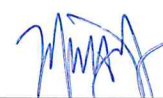
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

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

Deputy



CITY OF FONTANA

By ► 

(Authorized signature - sign in blue ink)

Matthew Ballantyne

Name _____

(Print or type name of person signing contract)

Title City Manager

(Print or Type)

Dated: _____

City of Fontana

Address 8353 Sierra Ave, Fontana, CA 92335

FOR COUNTY USE ONLY

Approved as to Legal Form

► **SEE ATTACHED**

Aaron Gest, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

► 

Andy Silao, P.E., Engineering Manager

Date 6/6/2023

Reviewed/Approved by Department

► 

Brendon Biggs, Director

Date 6/6/2023

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: Public Works/Engineering Department

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

CITY OF FONTANA

►

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)
Matthew Ballantyne

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

Title City Manager

(Print or Type)

Dated: _____

Address City of Fontana
8353 Sierra Ave, Fontana, CA 92335

FOR COUNTY USE ONLY

Approved as to Legal Form

► 

Aaron Gest, Deputy County Counsel

Date 6/6/23

Reviewed for Contract Compliance

► _____
Andy Silao, P.E., Engineering Manager

Date _____

Reviewed/Approved by Department

► _____
Brendon Biggs, Director

Date _____

EXHIBIT A

**PROJECT ROAD LENGTHS
FOR SAN BERNARDINO COUNTY/CITY OF FONTANA CHESTNUT AVENUE PAVEMENT
RECONSTRUCTION PROJECT IN THE FONTANA AREA
(CHESTNUT AVENUE ONLY)**

Road Name	Road Limits	County Length	City Length	Total Length	Scope of work
CHESTNUT AVENUE	ILEX ST E/ COTTONWOOD AVE	0.10	0.10	0.20	Reconstruction
Total Project Miles		0.10	0.10	0.20	

EXHIBIT B

PROJECT LIMITS

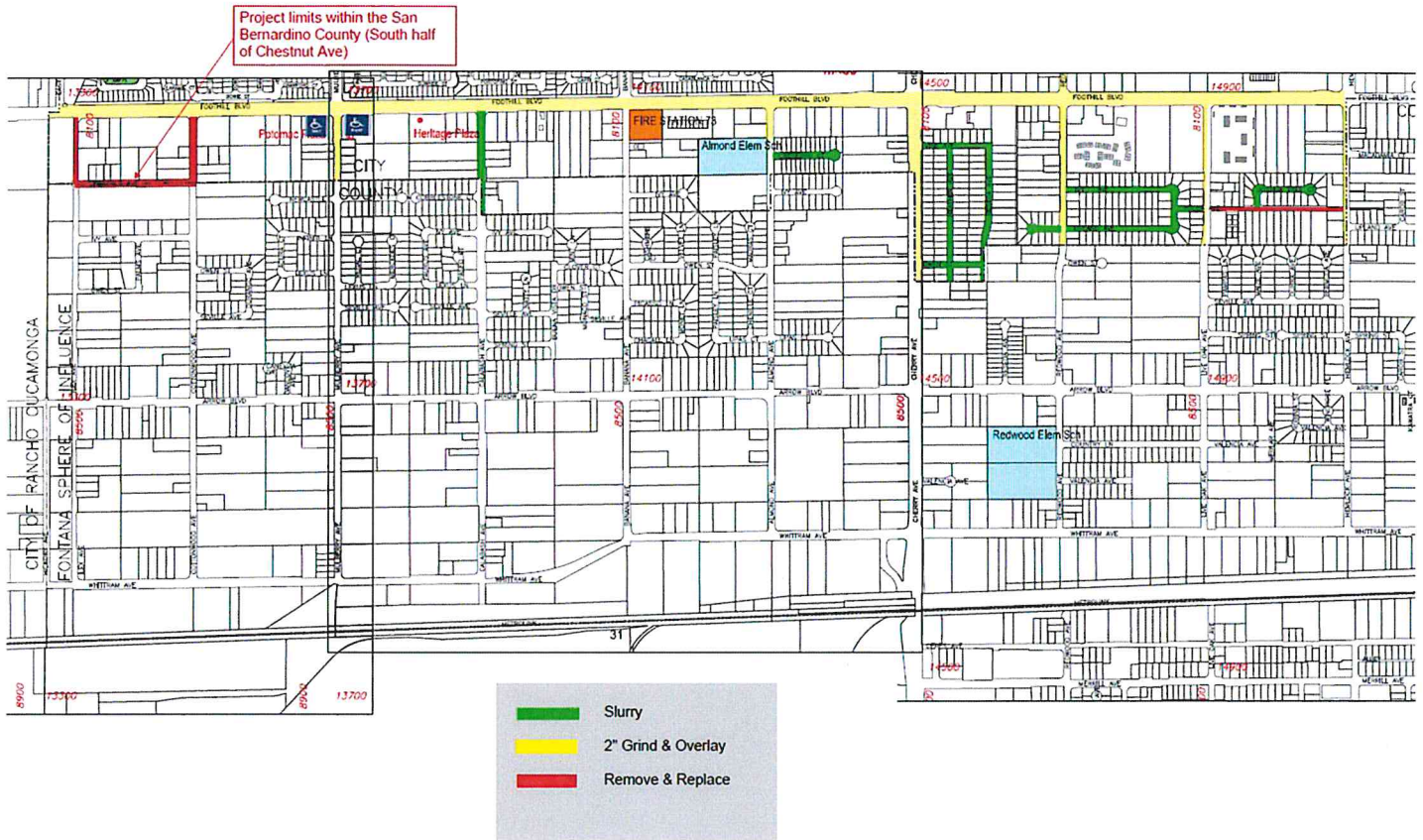


EXHIBIT C

**ESTIMATE OF PROJECT COSTS
FOR SAN BERNARDINO COUNTY/CITY OF FONTANA CHESTNUT AVENUE PAVEMENT
RECONSTRUCTION PROJECT IN THE FONTANA AREA**

Project	Amount	County Share (South half of Chestnut Ave)	City Share
Construction (including contingencies)	\$3,500,435.00	\$79,105.00	\$3,421,330.00
All Other Costs Such as Preliminary Engineering, Design, Environmental Clearance, Construction Engineering, etc.	\$350,043.50	\$7,910.50	\$342,133.00
PROJECT TOTAL	\$3,850,478.50	\$87,015.50	\$3,763,463.00
CONSTRUCTION PERCENTAGE SHARES	100%	2.2%	97.8%