



**Contract Number**

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**SAP Number**

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## Public Works

<b>Department Contract Representative</b>	Sundaramoorthy (Sri) Srirajan, P.E., Engineering Manager - Transportation Planning Division
<b>Telephone Number</b>	(909) 387-8166
<b>Project</b>	Alder Avenue Pavement Reconstruction
<b>Contractor</b>	City of Fontana
<b>Contractor Representative</b>	Keith Kramer, Public Works Director
<b>Telephone Number</b>	(909) 350-6644
<b>Contract Term</b>	11/17/2020 – 12/31/2023
<b>Original Contract Amount</b>	\$1,135,000
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	\$1,135,000
<b>Cost Center</b>	6650002000 14H14978

### 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, the County of San Bernardino (COUNTY) and the City of Fontana (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 pavement reconstruction and an Americans with Disabilities Act (ADA) curb ramp project and other related improvements on Alder Avenue, from 0.08 miles south of Taylor Avenue north to San Bernardino Avenue, in the Fontana area (hereinafter referred to as PROJECT); and

WHEREAS, the COUNTY has determined that the CITY owns approximately five sewer manholes (hereinafter referred to as "manholes") within the PROJECT area that require height adjustment to the level of the pavement resulting from the PROJECT; 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 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 from COUNTY Senate Bill 1 Road Maintenance and Rehabilitation Account funds and CITY's share of PROJECT costs will be financed through its local funds; and

WHEREAS, the total PROJECT cost is estimated to be \$2,250,000; and

WHEREAS, COUNTY's share of PROJECT cost is estimated to be \$1,115,000 and the CITY's share of PROJECT cost is estimated to be \$1,135,000, as more particularly set forth in Exhibit "A", 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, and to the design, construction, 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 in the design, survey, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.), construction, construction engineering, and inspection of the PROJECT.
- 1.2 At its own cost, design and perform all right-of-way acquisition related work inside the unincorporated COUNTY 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 (subject to paragraph 3.9 below), 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 CITY's review and approval.
- 1.4 Construct the PROJECT by contract in accordance with the plans and specifications of COUNTY, which have been reviewed and approved by CITY.
- 1.5 Obtain a no-cost permit from the CITY for work 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 applicable to the COUNTY; and initially fund the PROJECT construction costs with CITY reimbursing COUNTY for its share of cost upon PROJECT completion.
- 1.7 Require its contractor to maintain and to comply throughout the term of any contract awarded by COUNTY with the insurance requirements described in County Policy Numbers 11-07 and 11-07SP.
- 1.8 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. This shall be included as a PROJECT cost.
- 1.9 Calculate overall PROJECT COUNTY/CITY share based on the final construction contract cost, which shall include changes made to COUNTY and/or CITY jurisdictions pursuant to paragraphs

3.7, 3.8, 3.9, and 3.10 below. Calculation of PROJECT costs shall be based on work performed within each party's jurisdiction.

- 1.10 Based on the COUNTY percentage calculated pursuant to paragraph 19, pay its share of the actual PROJECT costs. The actual PROJECT costs shall include the cost of PROJECT design, survey, CEQA compliance, construction, construction engineering, inspection and COUNTY overhead costs. COUNTY's share of PROJECT costs is estimated to be \$1,115,000 and shall not exceed \$1,393,750 (25% increase over the COUNTY's PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17.
- 1.11 Upon CITY'S and COUNTY'S acceptance of the PROJECT, submit to CITY an itemized accounting of actual PROJECT costs incurred by COUNTY and an invoice for CITY's share of the actual PROJECT costs relative to work performed in the CITY's jurisdiction. Said invoice shall set forth all actual PROJECT costs incurred by COUNTY, together with adequate documentation of said expenditure and a copy of the overall CITY/COUNTY share calculation spreadsheet.

2.0 CITY AGREES TO:

- 2.1 Review and approve the plans and specifications of the PROJECT.
- 2.2 At its own cost and not included in this PROJECT cost, perform all right-of-way acquisition related work inside the CITY'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 (subject to paragraph 3.9 below), 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 COUNTY for its work in the CITY's right-of-way.
- 2.4 Based on CITY percentage calculated pursuant to paragraph 1.9, pay to the COUNTY, on a reimbursement basis, its share of the actual PROJECT costs. The actual PROJECT costs shall include the cost of PROJECT design, survey, CEQA compliance, construction, construction engineering, inspection and COUNTY overhead costs. CITY shall pay all actual costs incurred by COUNTY associated with the adjustments to the CITY's manholes, regardless of the estimated cost or estimated number of manholes identified, even if they are higher than the estimated cost. CITY's share of PROJECT costs is currently estimated to be \$1,135,000 and shall not exceed \$1,418,750 (25% increase over the PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17. CITY shall be responsible for the sum of \$1,135,000, plus its jurisdictional share of any PROJECT cost changes, pursuant to paragraph 1.9 above. Upon CITY's review and approval of invoice, CITY shall pay such costs within sixty (60) days after receipt of the itemized invoice as set forth in paragraph 1.11 of this Agreement.
- 2.5 Provide a representative who shall have the authority to discuss and attempt to resolve issues concerning the PROJECT with the COUNTY.

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 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 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, which paragraphs shall survive the termination 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 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 \$2,250,000 (which is the sum of \$1,115,000 from COUNTY and \$1,135,000 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 1.10 and 2.4, 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 3.17 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 As design progresses, if it is found by COUNTY's Director of Public Works, or the Director's designee, that a cost overrun of 25% or more of the estimated total of the PROJECT costs will occur, COUNTY shall provide CITY notice of this fact and COUNTY and CITY shall endeavor to agree upon an alternative course of action, including amending the cost estimates. If, after thirty (30) days of COUNTY notice, an alternative course of action is not mutually agreed upon in writing between the COUNTY and CITY, this Agreement shall be deemed to be terminated by mutual consent.
- 3.11 COUNTY shall notify CITY 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 construction cost shown in Exhibit A, COUNTY 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 construction cost shown in Exhibit A or the Amended Exhibit A pursuant to paragraph 3.10 of the Agreement, COUNTY shall not award the contract unless: 1) COUNTY receives written permission from the CITY's City Engineer 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 thirty (30) 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, 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.
- 3.15 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 COUNTY awards a contract to construct the PROJECT. 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 CITY for its share of the PROJECT costs.
- 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 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.
- 3.21 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 December 31, 2023 (whichever occurs first).
- 3.25 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.

**[SIGNATURES ON THE FOLLOWING PAGE]**

COUNTY OF SAN BERNARDINO

City of Fontana

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

▶  
\_\_\_\_\_  
Curt Hagman, Chairman, 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 Mark Denny  
*(Print or type name of person signing contract)*

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

Title City Manager  
*(Print or Type)*

By \_\_\_\_\_  
Deputy

Dated: \_\_\_\_\_

Address 8353 Sierra Avenue

Fontana, CA 92335

**FOR COUNTY USE ONLY**

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

▶  
Suzanne Bryant, County Counsel

▶  
Andy Silao, P.E.

▶  
Brendon Biggs, Director

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**

DESCRIPTION	AMOUNT	COUNTY OF SAN BERNARDINO SHARE	CITY OF FONTANA SHARE
Construction	\$1,745,000	\$855,000	\$890,000
All Other Costs such as design, survey, CEQA compliance, construction, construction engineering, inspection and County overhead	\$505,000	\$260,000	\$245,000
<b>TOTAL</b>	<b>\$2,250,000</b>	<b>\$1,115,000</b>	<b>\$1,135,000</b>