



Contract Number

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	Melissa L. Walker P.E.
Telephone Number	(909) 387-7997
Contractor	City of San Bernardino
Contractor Representative	
Telephone Number	
Contract Term	June 2, 2020 - September 30, 2024
Original Contract Amount	\$45,000 per project; not to exceed \$100,000 per fiscal year
Amendment Amount	
Total Contract Amount	\$500,000
Cost Center	1920002522

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH

WHEREAS, flood control facilities, access roads, and related appurtenances within the jurisdiction of the City of San Bernardino (**CITY**) need occasional maintenance and repair; and

WHEREAS, Section 54981 of the California Government Code authorizes the legislative body of any local agency to contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former; and

WHEREAS, the San Bernardino County Flood Control District Act authorizes the San Bernardino County Flood Control District (**DISTRICT**) to contract with **CITY** for the maintenance, construction, or repair of **CITY** flood control facilities, access roads, and related appurtenances within **CITY's** jurisdiction if the **CITY's** legislative body determines that it is necessary for the more efficient maintenance and repair of said facilities, access roads, and appurtenances; and

WHEREAS, the **CITY's** legislative body finds it necessary for the more efficient maintenance and repair of its flood control facilities, access roads, and related appurtenances to contract with **DISTRICT** for **DISTRICT** to sometimes perform said work, including but not limited to **EMERGENCY WORK** (as defined in the Agreement

below), on **CITY's** flood control facilities, access roads, and related appurtenances (**DISTRICT CONTRACT WORK**); and

WHEREAS, **CONTRACT WORK** will be performed by **DISTRICT** staff and/or **DISTRICT** contractors; and

WHEREAS, **DISTRICT CONTRACT WORK** will not exceed \$45,000 per project and **CITY** will reimburse **DISTRICT** for all costs incurred by **DISTRICT** in performing such **DISTRICT CONTRACT WORK** requested by **CITY** and completed by **DISTRICT**; and

WHEREAS, the San Bernardino County Flood Control District Act also authorizes **DISTRICT** to contract with **CITY** for **CITY** to perform maintenance, construction, or repair of **DISTRICT** flood control facilities, access road, and related appurtenances within **CITY's** sphere of influence as defined by the San Bernardino County Local Agency Formation Commission (**CITY's SPHERE**); and

WHEREAS, **DISTRICT** finds it necessary for the more efficient maintenance and repair of its flood control facilities, access roads, and related appurtenances to contract with **CITY** for **CITY** to sometimes perform said work, including but not limited to **EMERGENCY WORK** (as defined in the Agreement below), on **DISTRICT's** flood control facilities, access roads, and related appurtenances located within **CITY's SPHERE (CITY CONTRACT WORK)**; and

WHEREAS, **CONTRACT WORK** will be performed by **CITY** staff and/or **CITY** contractors; and

WHEREAS, **CITY CONTRACT WORK** will not exceed \$45,000 per project and **DISTRICT** will reimburse **CITY** for all costs incurred by **CITY** in performing **CITY CONTRACT WORK** as requested by **DISTRICT** and completed by **CITY**; and

WHEREAS, **DISTRICT** and **CITY** desire to set forth their respective responsibilities and obligations as they pertain to the work described in this Agreement.

NOW, THEREFORE, **DISTRICT** AND **CITY** MUTUALLY AGREED AS FOLLOWS:

SECTION I

1.0 For **DISTRICT CONTRACT WORK** provided to **CITY**:

DISTRICT AGREES TO:

- 1.1 Schedule requested **DISTRICT CONTRACT WORK** upon receipt of a written "Notice to Proceed" from **CITY** and to provide to **CITY** a schedule of work days anticipated for the **DISTRICT CONTRACT WORK** for **CITY's** concurrence. **DISTRICT**, through its designated, authorized representative identified in Paragraph 3.5.2 and in its sole discretion, shall decide whether to approve or disapprove an individual Notice to Proceed and provide specific services to **CITY**.
- 1.2 Utilize **DISTRICT's** Department of Public Works labor force or contractors in providing services under this Agreement.
- 1.3 Obtain a no-cost permit from **CITY** for any **DISTRICT CONTRACT WORK** to be performed within **CITY's** right-of-way.
- 1.4 Upon completion of each individual **DISTRICT CONTRACT WORK** assignment, submit to **CITY** an itemized accounting of actual **DISTRICT CONTRACT WORK** costs incurred by **DISTRICT** and an invoice for any related costs.
- 1.5 **DISTRICT** shall require all contractors and vendors providing **CONTRACT WORK** to have appropriate and adequate insurance coverage for the mutual protection and benefit of the **PARTIES**. Except for Workers' Compensation, Errors and Omissions and Professional Liability

policies, **DISTRICT** shall require and ensure that all **DISTRICT** contractors performing **CONTRACT WORK** shall have insurance policies that contain endorsements naming the **CITY** and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the **CITY** to vicarious liability but shall allow coverage for the **CITY** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85

- 1.6 Enforce **DISTRICT's** contractors to comply with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages

CITY AGREES TO:

- 1.7 Provide **DISTRICT** a written Notice to Proceed for any authorized work requested by **CITY**.
- 1.8 Provide a no-cost permit to **DISTRICT** for its work within **CITY's** right-of-way.
- 1.9 After **DISTRICT** completes each individual **DISTRICT CONTRACT WORK** assignment and submits an itemized accounting of actual **DISTRICT CONTRACT WORK** costs incurred by **DISTRICT** along with an invoice, to reimburse **DISTRICT** for **DISTRICT CONTRACT WORK** costs within sixty (60) days after receipt of invoice.
- 1.10 Provide a qualified representative who shall have the authority to discuss and attempt to resolve any issues or disputes which may arise concerning the **DISTRICT CONTRACT WORK** with the **DISTRICT**.
- 1.11 Comply with any applicable California Environmental Quality Act (**CEQA**) requirements as well as completing any required **CEQA** documents.

SECTION II

2.0 FOR CITY CONTRACT WORK PROVIDED TO DISTRICT:

CITY AGREES TO:

- 2.1 Schedule the requested **CITY CONTRACT WORK** upon receipt of a written "Notice to Proceed" from the **DISTRICT** and provide to **DISTRICT** a schedule of work days anticipated for the **CITY CONTRACT WORK** for **DISTRICT's** concurrence. **CITY**, through its designated, authorized representative identified in Paragraph 3.5.2 and in its sole discretion, shall decide whether to approve or disapprove an individual Notice to Proceed and provide specific services to **DISTRICT**.
- 2.2 Utilize **CITY's** labor force or contractors in providing services under this Agreement.
- 2.3 Obtain a no-cost permit from **DISTRICT** for any **CITY CONTRACT WORK** within **DISTRICT's** right-of-way.
- 2.4 Upon completion of each **CITY CONTRACT WORK** assignment, submit to **DISTRICT** an itemized accounting of **CITY CONTRACT WORK** costs incurred by **CITY** and an invoice for any related costs.
- 2.5 **CITY** shall require all contractors and vendors providing **CONTRACT WORK** to have appropriate and adequate insurance coverage for the mutual protection and benefit of the **PARTIES**. Except for Workers' Compensation, Errors and Omissions and Professional Liability policies, **CITY** shall require and ensure that all **CITY** contractors performing **CONTRACT WORK** shall have insurance

policies that contain endorsements naming the **COUNTY** and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the **COUNTY** to vicarious liability but shall allow coverage for the **COUNTY** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

- 2.6 Enforce **CITY's** contractors to comply with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages.

DISTRICT AGREES TO:

- 2.7 Provide **CITY** a written Notice to Proceed for any authorized work requested by **DISTRICT**.
- 2.8 Provide a no-cost permit to **CITY** for its work within **DISTRICT's** right-of-way.
- 2.9 After **CITY** completes each individual **CITY CONTRACT WORK** assignment and submits an itemized accounting of actual **CITY CONTRACT WORK** costs incurred by **CITY**, along with an invoice, to reimburse **CITY** for **CITY CONTRACT WORK** costs within sixty (60) days after receipt of invoice.
- 2.10 Provide a qualified representative who shall have the authority to discuss and attempt to resolve any issues or disputes which may arise concerning the **CITY CONTRACT WORK** with the **CITY**.
- 2.11 Comply with any applicable **CEQA** requirements as well as completing any required **CEQA** documents.

SECTION III

3.0 IT IS MUTUALLY AGREED:

- 3.1 **DISTRICT CONTRACT WORK** and **CITY CONTRACT WORK** may include, but shall not be limited to: maintenance or emergency repair of flood control facilities, access road, and related appurtenances, as well as providing heavy equipment for storm debris cleanup, repair of fencing, minor basin excavation and facility repair, culvert repair, and miscellaneous drainage repairs.
- 3.2 The cost any individual project performed as **DISTRICT CONTRACT WORK** or **CITY CONTRACT WORK** shall not exceed forty-five thousand dollars (\$45,000).
- 3.3 The total cost for all work performed pursuant to Section 1.0 shall not exceed one hundred thousand dollars (\$100,000) per fiscal year, absent a prior written amendment to this Agreement. The total cost for all work performed pursuant to Section 2.0 shall not exceed one hundred thousand dollars (\$100,000) per fiscal year, absent a prior written amendment to this Agreement.
- 3.4 **CITY** or **DISTRICT** is only responsible to provide the **CONTRACT WORK** of facilities identified in the Notice to Proceed from the requesting party (**CITY** or **DISTRICT**) and agreed to by the party performing the work (**CITY** or **DISTRICT**). After completion of **CONTRACT WORK** on any particular facility, the requesting party (**CITY** or **DISTRICT**) shall be responsible for all future maintenance and repair work, unless the party performing the work (**CITY** or **DISTRICT**) receives a future request to provide additional **CONTRACT WORK** under this Agreement, followed by an approval of a written Notice to Proceed.
- 3.5 The requesting party (**CITY** or **DISTRICT**) shall prepare and submit to the party performing the work (**CITY** or **DISTRICT**) a Notice to Proceed that outlines the work requested within the scope and budget limitations of this Agreement.

3.5.1 The Notice to Proceed shall include the location of such work (i.e., the flood control facility or facilities and/or or access road(s)), the scope of the work, the requested schedule, the level of service required (if necessary), and other pertinent terms and details for the project within the scope of this Agreement.

3.5.2 The **DISTRICT** Chief Flood Control Engineer or Interim Chief Flood Control Engineer and the **CITY** Director of Public Works/City Engineer shall each have the authority to provide estimates and approve **CONTRACT WORK** projects up to \$45,000 per project, subject to the overall annual maximum amount of \$100,000 per party specified in Section 3.3, above.

3.5.3 The party requested to perform the work shall provide cost estimates and project schedules for review by the requesting party using Board of Supervisors (**BOARD**)/ City Council (**COUNCIL**) approved labor and equipment rates that include fringe and overhead for actual employee classifications, Department equipment rates that will recover the depreciation expenses and the maintenance and repair cost of the equipment used for the proposed work assignment and estimated material costs. If requested, the estimate of cost will be provided to the requesting party prior to the commencement of work.

3.5.4 Neither party is required to perform work tasks under this Agreement and each party's representative identified in Paragraph 3.5.2 may decline to perform the requested work in his or her sole discretion.

3.6 All of the **DISTRICT's** revenues as defined below, have been pledged to secure the payment of the principal and interest on certain bonds and refunding bonds (Bonds) issued by the **DISTRICT** in May 2007. The pledge constitutes a first lien on the revenues for the payment of the Bonds. Any payments under this Agreement are subject to the prior pledge of revenues described above. **DISTRICT** payments pursuant to this Agreement will be made to the extent there are sufficient funds available after payment of the Bonds. For purposes of this paragraph, "revenues" shall mean all income and revenue received by the **DISTRICT** from the operation or ownership of the flood and storm water control and conservation facilities (Flood Control System) of the **DISTRICT** (including but not limited to, all real and personal property, or any interest therein, and all additions, improvements, betterments and extensions thereto), determined in accordance with Generally Accepted Accounting Principles, including all ad valorem property taxes received by the **DISTRICT** pursuant to Article XIII A of the Constitution of the State of California and Section 95 et seq. of the California Revenue and Taxation Code, all rents, royalties and license and permit fees and charges received by the **DISTRICT**, investment income and all other money howsoever derived by the **DISTRICT** from the operation or ownership of the Flood Control System or arising from the Flood Control System, but excluding (a) ad valorem property taxes levied to pay any voter approved general obligation indebtedness of the **DISTRICT**, (b) assessments levied pursuant to Section 43-7 or Section 43-26.9 of the San Bernardino County Flood Control Act (Cal. Water Code App. Sect. 43-1 et seq.), and (c) grants, advances or contributions in aid of construction, except to the extent such grants are unrestricted and available for any expenditure of the **DISTRICT**.

4.0 IT IS FURTHER UNDERSTOOD AND AGREED:

4.1 The Effective Date of this Agreement shall be the first date on which the **CITY's** Council and **DISTRICT's** governing board (the San Bernardino County Flood Control District Board of Supervisors) have both approved the Agreement.

4.2 This Agreement shall terminate on September 30, 2024, except with respect to the indemnification obligations contained herein, which shall survive termination of this Agreement.

4.3 Insurance and Indemnification

4.3.1 **DISTRICT** and **CITY** are authorized self-insured or partially self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Worker's Compensation and warrant that through their respective programs of self-insurance and insurance, they have adequate coverage or resources to protect against liabilities arising out of performance of the terms, conditions or obligations of this Agreement.

4.3.2 Neither **CITY** nor any officer or employee of **CITY** shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of **DISTRICT** or its contractors under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of **DISTRICT** under this Agreement. It is also understood and agreed that, pursuant to Government Code, Section 895.4, **DISTRICT** shall fully indemnify, defend and hold **CITY** harmless from any liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of any acts or omissions on the part of **DISTRICT** or its contractors under or in connection with any work, authority or jurisdiction delegated to or determined to be the responsibility of **DISTRICT** under this Agreement.

4.3.3 Neither **DISTRICT** nor any officer or employee of **DISTRICT** shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of **CITY** or its contractors under or in connection with any work, authority or jurisdiction delegated to or determined to be the responsibility of **CITY** under this Agreement. It is also understood and agreed that, pursuant to Government Code, Section 895.4, **CITY** shall fully indemnify, defend and hold **DISTRICT** harmless from any liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of any acts or omissions on the part of **CITY** or its contractors under or in connection with any work, authority or jurisdiction delegated to or determined to be the responsibility of **CITY** under this Agreement.

4.3.4 In the event **DISTRICT** and/or **CITY** is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, **DISTRICT** and/or **CITY** shall indemnify the other to the extent of its comparative fault.

4.3.5 **CITY** and **DISTRICT** agree to waive all rights of subrogation against each other.

4.4 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 days after deposit in the United States mail, certified, with first class postage, fully prepaid, addressed as follows:

City of San Bernardino
290 North D Street
San Bernardino, CA 92401
Attn: City Engineer

San Bernardino County
Flood Control District
825 E. 3rd Street
San Bernardino, CA 92415-0835
Attn: Chief Flood Control Engineer

4.5 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.

4.6 This Agreement shall be governed by the laws of the State of California. 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 purposes of this Agreement are frustrated. Any dispute or action to enforce any obligation under this Agreement shall be filed and resolved in the appropriate Superior Court in the County of San Bernardino, California. In the event of litigation arising from this Agreement, each party to the Agreement shall bear its own

costs, including attorney's fees. This provision concerning costs shall not apply to costs or attorney's fees relative to Paragraph 4.3.

- 4.7 This Agreement contains the entire Agreement of the **Parties** with respect to subject matter hereof, and supersedes all other prior negotiations, understandings or contracts. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by **CITY** and **DISTRICT**.
- 4.8 This Agreement may be terminated, with or without cause, by either **CITY** or **DISTRICT** upon thirty (30) days advance written notice by the party wishing to terminate, provided however, that any such cancellation shall not be effective as to any existing obligations pursuant to any **CONTRACT WORK** authorized prior to notice of cancellation. In the event of cancellation as provided herein, all **CONTRACT WORK** costs incurred and required to be paid by either of the **Parties** prior to the effective date of cancellation shall be paid by the **Parties** in the same proportion to their contribution for the **CONTRACT WORK**.
- 4.9 This Agreement may be signed in counterparts, each of which shall constitute an original
- 4.10 This Agreement shall inure to the benefit of and to be binding upon the successors and assigns both **Parties**.

WITNESS WHEREOF, this Agreement, has been fully executed on behalf of **DISTRICT** and **CITY** by their duly authorized representatives.

SAN BERNARDINO COUNTY FLOOD CONTROL
DISTRICT

►

Curt Hagman, Chairman, 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

By _____
Deputy

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

By ► _____
(Authorized signature - sign in blue ink)

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

Title _____
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form

►

Sophie Akins, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►

Andy Silao, P.E.

Date _____

Reviewed/Approved by District

►

Brendon Biggs, Interim Chief Flood Control
Engineer

Date _____