



San Bernardino County
Flood Control District

F A S

STANDARD CONTRACT

last checked 3-3-09
took copy to Patty, she
will check up on it let us
know.

OK See
attached email
for status 6-2-09
pending 7/21

188-08 Enter doc #/Rec date

9 orig's w/ Pink given to
Tom Fujiwara 11/19/08 ck'd
12-15-08 NOT

☒ New ☐ Change ☐ Cancel		Vendor Code		Dist. SC		A		Contract Number	
Flood Control District		Public Works		Dist. 097		Orgn. 097		Contractor's License No.	
Flood Control District Contract Representative		Melissa Walker		Telephone		387-8120		Total Contract Amount	
								\$4,000,000	
☐ Revenue		☒ Encumbered		☐ Unencumbered		☐ Other:		Contract Type	
If not encumbered or revenue contract type, provide reason:									
Commodity Code		Contract Start Date		Contract End Date		Original Amount		Amendment Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
RFF	092	092	200	2445	78F02082	\$4,000,000			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
Project Name				Estimated Payment Total by Fiscal Year					
Alabama Street at				FY 08/09		Amount \$4,000,000		I/D	
City Creek									
Road Improvements									

THIS AGREEMENT is entered into in the State of California by and between the San Bernardino County Flood Control District, hereinafter called the District, and

Name
City of San Bernardino
Address
300 North D Street
San Bernardino, CA 92418
Telephone
909 384-5211
Federal ID No. or Social Security No.

hereinafter called **SAN BERNARDINO**

Name
City of Redlands
Address
35 Cajon Street
Redlands, CA 92373
Telephone
909 798-7655
Federal ID No. or Social Security No.

hereinafter called **REDLANDS**

Auditor/Controller-Recorder Use Only

☐ Contract Database	☐ FAS
Input Date	Keyed By

Alabama Street at City Creek Road Improvements

Per. 1/19

Lisa Caldera

From: Jane Weathers ✓

Sent: Tuesday, March 03, 2009 1:17 PM

To: Lisa Caldera

Cc: Patty Baker ✓

Subject: FW: FAS Standard Contract Alabama St@City Creek Rd.pdf - Adobe Acrobat Professional

Lisa,

Please see the response below from Tom Fujiwara regarding the document you left with Patty.

Thank you,

Jane
x4147

From: Tom Fujiwara

Sent: Tuesday, March 03, 2009 1:12 PM

To: Patty Baker

Cc: Rosemary Hoerning; Jane Weathers

Subject: RE: FAS Standard Contract Alabama St@City Creek Rd.pdf - Adobe Acrobat Professional

The agreement is still being revised by the agencies involved in the agreement, so the previously approved one is no longer any good. A new one will be forthcoming in the near future.

Tom T. Fujiwara, P.E.
Assistant City Engineer

City of Redlands
Municipal Utilities and Engineering Department
P.O. Box 3005
35 Cajon Street, Suite 15A
Redlands, CA 92373-1505

(909) 798-7584, xt. 7
Fax (909) 798-7670

From: Patty Baker

Sent: Tuesday, March 03, 2009 12:53 PM

To: Tom Fujiwara

Cc: Rosemary Hoerning; Jane Weathers

Subject: FAS Standard Contract Alabama St@City Creek Rd.pdf - Adobe Acrobat Professional

Tom,

Lisa from the City Clerk's office came by with this document. She stated that they have not received the signed original. Do you know anything about this?

Patty

*Talked w/ Jane
Revised contract
See env-194-09*

3/3/2009



San Bernardino County
Flood Control District

F A S

STANDARD CONTRACT

9 origs w/Pink given to
Tom Fujiwara 11/19/08

OFFICIAL USE ONLY

☒ New ☐ Change ☐ Cancel	Vendor Code	SC	Dist.	A	Contract Number
Flood Control District		Dist.		Orgn.	Contractor's License No.
Public Works		097		097	
Flood Control District Contract Representative		Telephone		Total Contract Amount	
Melissa Walker		387-8120		\$4,000,000	
Contract Type ☐ Revenue ☒ Encumbered ☐ Unencumbered ☐ Other:					
If not encumbered or revenue contract type, provide reason:					
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.
RFF	092	092	200	2445	78F02082
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.
Project Name			Estimated Payment Total by Fiscal Year		
Alabama Street at			FY	Amount	I/D
City Creek			08/09	\$4,000,000	
Road Improvements					

THIS **AGREEMENT** is entered into in the State of California by and between the San Bernardino County Flood Control District, hereinafter called the **District**, and

Name

City of San Bernardino

Address

300 North D Street

San Bernardino, CA 92418

Telephone

909 384-5211

Federal ID No. or Social Security No.

hereinafter called

SAN BERNARDINO

Name

City of Redlands

Address

35 Cajon Street

Redlands, CA 92373

Telephone

909 798-7655

Federal ID No. or Social Security No.

hereinafter called

REDLANDS

Auditor/Controller-Recorder Use Only

☐ Contract Database	☐ FAS
Input Date	Keyed By

Name

City of Highland

Address

27215 Baseline

Highland, CA 92346

Telephone

909 864-6861

Federal ID No. or Social Security No.

hereinafter called

HIGHLAND

Name

Inland Valley Development Agency

Address

294 So. Leland-Norton Way, Suite 1

San Bernardino, CA 92408

Telephone

909 382-4100

Federal ID No. or Social Security No.

hereinafter called

IVDA

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH

WHEREAS, the San Bernardino County Flood Control District (hereinafter referred to as **DISTRICT**), the City of San Bernardino (hereinafter referred to as **SAN BERNARDINO**), the City of Redlands (hereinafter referred to as **REDLANDS**), Inland Valley Development Agency (hereinafter referred to as **IVDA**) and the City of Highland (hereinafter referred to as **HIGHLAND**) are signatories to this **AGREEMENT**, and all shall be collectively known as "the **PARTIES**"; and

WHEREAS, the **PARTIES** desire to cooperate and jointly participate with their proportionate cost shares in environmental mitigation, construction and construction engineering for road and drainage improvements, including the installation of drainage culverts and bank protection at the Alabama Street crossing at City Creek (hereinafter referred to as **PROJECT**); and

WHEREAS, while the **PROJECT** is a road improvement project, the **DISTRICT** recognizes there is a benefit to the **DISTRICT** by improving an existing obstruction to the **DISTRICT**'s City Creek facility; and

WHEREAS, the **PROJECT** will be of mutual benefit to the **PARTIES**; and

WHEREAS, **PARTIES** desire to commence construction of the **PROJECT** in spring 2009; and

WHEREAS, construction plans, special provisions and cost estimates for the **PROJECT** shall be approved by the **PARTIES** prior to advertising for construction bids on the **PROJECT**; and

WHEREAS, total projected costs for the **PROJECT** is approximately \$4,000,000, while Federal Highways Administration (hereinafter referred to as **FHWA**) has approved funding of \$3,159,542 per the **FHWA** Damage Assessment Form to cover permanent restoration and reconstruction engineering; and

WHEREAS, the **DISTRICT** has received approval for funding from **FHWA** (88.53% of approved **PROJECT** costs) and State Office of Emergency Services (hereinafter referred to as **State OES**) (8.6% of approved **PROJECT** costs) for the **PROJECT**; and

WHEREAS, the **DISTRICT** has received approval from **FHWA** for the funding of the permanent restoration work and will coordinate with **FHFWA** and **State OES** for reimbursement claims for the **PROJECT**; and

WHEREAS, an estimated \$3,068,862 of the **PROJECT** costs will be funded by the grants from **FHWA** and **State OES**; and,

WHEREAS, on June 3, 2008 the County Board of Supervisors approved a loan from the County of San Bernardino Transportation Department to the **DISTRICT** to proceed with the **PROJECT**; and

WHEREAS the **DISTRICT** will repay the loan upon reimbursements from **FHWA** and **State OES**; and

WHEREAS, approximately \$840,458 of the **PROJECT** costs are not covered by the grant and local match will be shared proportionately between the **PARTIES**; and,

WHEREAS, the **DISTRICT** and **HIGHLAND** desire to provide initial funding for the **PROJECT**; and

WHEREAS, the **DISTRICT** will provide initial funding of \$2,447,056 and **HIGHLAND** will provide initial funding of \$994,260 for the current approved total **PROJECT** cost which covers permanent restoration and construction engineering; and

WHEREAS, the **DISTRICT** will reimburse **HIGHLAND** an amount above its proportionate final cost share funded initially upon receipt of grant funds from **FHWA** and **State OES**; and

WHEREAS, the **DISTRICT**, **SAN BERNARDINO**, **REDLANDS**, **IVDA** and **HIGHLAND** desire to fund the final local match for the grant and any of the **PROJECT** costs not covered by the grant funds; and

WHEREAS, the total currently estimated proportionate shares of the **PROJECT** cost after grant funding are: **DISTRICT** 4.66% (\$186,228), **SAN BERNARDINO** 4.66% (\$186,228), **IVDA** 4.66% (\$186,228), **REDLANDS** 4.66% (\$186,228), and **HIGHLAND** 4.66% (\$186,228), as shown in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, the **DISTRICT** will borrow up to \$3,000,000 in funding from the County of San Bernardino Transportation Department by a separate resolution; and,

WHEREAS, the **PARTIES** desire to pay the **DISTRICT** their local share, net of grant funding, upon the approval or amendment of **PROJECT** contracts; and

WHEREAS, the **DISTRICT** shall retain the grant funds for the **PROJECT** as reimbursement of costs incurred, but not billed to **PARTIES**; and

WHEREAS, the **PARTIES** recognize that **PROJECT** costs and grant funds are estimated and subject to change and that it is the intent of the **PARTIES** that the **PARTIES** shall pay for their true share of costs, net of grant funding, pursuant to the cost sharing percentages indicated in Exhibit "A"; and

WHEREAS, the **PARTIES** desire to set forth responsibilities and obligations of each as pertains to such participation and to the completion of the proposed **PROJECT**.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 **DISTRICT AGREES TO**

- 1.1 Act as the Lead Agency to oversee and administer the construction and construction engineering of the **PROJECT**.
- 1.2 Pay its proportionate share of the **PROJECT** cost, and any cost increases pursuant to Section 6.13 below, and shall cover any cash flow needs of the **PROJECT** resulting from the lapse of time between the incurring of costs and receipt of grant funds.

- 1.3 Construct the **PROJECT** by **AGREEMENT** in accordance with the plans and specifications of the **DISTRICT** who will seek approval from **SAN BERNARDINO, REDLANDS, IVDA** and **HIGHLAND**.
- 1.4 Arrange for relocation of any utilities, which interfere with construction of the **PROJECT** within the unincorporated area of the **PROJECT** site.
- 1.5 Obtain no-cost permits from **SAN BERNARDINO, REDLANDS** and **HIGHLAND** for work within the respective right-of-way of each.
- 1.6 Advertise, award, administer, and fund the construction of the **PROJECT**, in accordance with the California Public Contract Code.
- 1.7 Require its contractors to maintain Workers' Compensation Insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the contractor and all risks to such persons under this **AGREEMENT**. Comprehensive General Liability to include contractual coverage and Automobile Liability Insurance to include coverage for owned, hired and non-owned vehicles. The Comprehensive General and Automobile Liability policies shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) and shall name the **PARTIES** as additional insured.

Waiver of Subrogation Rights – Contractors shall require the carriers of the above required coverages to waive all rights of subrogation against the **DISTRICT**, its officers, employees, agents, volunteers, contractors and subcontractors

Policies Primary and Non-Contributory – All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the **DISTRICT**.

- 1.8 Provide adequate inspection of all items of work performed under the construction contract(s) with the **DISTRICT's** contractors or subcontractors for the **PROJECT** and maintain adequate records of inspection and materials testing for review by **SAN BERNARDINO, REDLANDS, IVDA** and **HIGHLAND**. The **DISTRICT** shall provide copies of any records of inspection and materials testing to **SAN BERNARDINO, REDLANDS, IVDA** and **HIGHLAND** within ten (10) days of the **DISTRICT's** receipt of written demand from **SAN BERNARDINO, REDLANDS, IVDA** and/or **HIGHLAND** for such records.
- 1.9 All **PROJECT** costs including the cost of **PROJECT** construction, construction engineering, and overhead costs shall be paid for by the **PARTIES** on a net basis, calculated by subtracting the anticipated grant reimbursement (currently estimated at 97.13% of total approved **PROJECT** costs) from the gross costs incurred. The **DISTRICT** shall submit requests for funding and final costs to **FHWA** and **State OES** and shall retain all grant funds as reimbursement for costs incurred but not billed to **PARTIES**.
- 1.10 After acceptance of the construction work by the **PARTIES**, the **DISTRICT** shall be responsible for the maintenance of the completed flood control related improvement within the **DISTRICT's** right-of-way.
- 1.11 Submit to **SAN BERNARDINO, REDLANDS, IVDA** and **HIGHLAND** a final itemized accounting of actual **PROJECT** costs incurred by the **DISTRICT** to date and which have not already been paid by **SAN BERNARDINO, REDLANDS, IVDA** and **HIGHLAND** and a statement for **SAN BERNARDINO, REDLANDS, IVDA** and **HIGHLAND** proportionate share of the **PROJECT** costs as provided herein. Costs shall be amended and paid for by the **PARTIES**.

- 1.12 Pay its proportionate share of the **PROJECT** costs if the grant funding is relinquished, deobligated or otherwise not funded.
- 1.13 Provide initial funding of \$2,447,056 for the current approved **PROJECT** cost which covers permanent restoration and construction engineering.
- 1.14 Reimburse **HIGHLAND** the amount above its proportionate final cost share funded initially upon receipt of grant funds from **FHWA** and **State OES**.
- 1.15 The **DISTRICT** will borrow, as needed, up to \$3,000,000 in funding from the County of San Bernardino Transportation Department by a separate agreement.

2.0 **SAN BERNARDINO AGREES TO:**

- 2.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, its proportionate share of the anticipated net local match and the anticipated **PROJECT** costs not covered by the grant funds, of the **PROJECT** cost including environmental mitigation, and any cost increases pursuant to Section 6.14 below, within thirty (30) days after receipt of a final itemized statement as set forth in Section 1.11 of this **AGREEMENT** setting forth all actual **PROJECT** costs incurred by the **DISTRICT** to date and which have not already been paid by **SAN BERNARDINO, REDLANDS, IVDA, and HIGHLAND**, together with adequate documentation of said expenditures.
- 2.2 Provide a no-cost permit to the **DISTRICT** for its work in **SAN BERNARDINO's** right-of-way.
- 2.3 Pay for and assist in coordinating relocation of any unknown or unforeseen utilities, which interfere with construction of the **PROJECT** within the **SAN BERNARDINO's** area of the **PROJECT** site.
- 2.4 After the acceptance of the construction by the **PARTIES, SAN BERNARDINO** shall be responsible for the maintenance of the completed improvement within **SAN BERNARDINO's** right-of-way.
- 2.5 Pay one fifth of any and all mitigation costs associated with this **PROJECT**.
- 2.6 Pay its proportionate share of the **PROJECT** costs if the grant funding is relinquished, deobligated or otherwise not funded.

3.0 **REDLANDS AGREES TO:**

- 3.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, its proportionate share of the anticipated net local match and the anticipated **PROJECT** costs not covered by the grant funds, of the **PROJECT** cost including environmental mitigation, and any cost increases pursuant to Section 6.14 below, within thirty (30) days after receipt of a final itemized statement as set forth in Section 1.11 of this **AGREEMENT**, setting forth all actual **PROJECT** costs incurred by the **DISTRICT** to date and which have not already been paid by **SAN BERNARDINO, REDLANDS, IVDA, and HIGHLAND**, together with adequate documentation of said expenditures.
- 3.2 Provide a no-cost permit to the **DISTRICT** for its work in **REDLANDS'** right-of-way.
- 3.3 Pay for and assist in coordinating relocation of any unknown or unforeseen utilities, which interfere with construction of the **PROJECT** within the **REDLANDS'** area of the **PROJECT** site.

- 3.4 After acceptance of the construction by the **PARTIES, REDLANDS** shall be responsible for the maintenance of the completed improvement within **REDLANDS'** right-of-way.
- 3.5 Pay one fifth of any and all mitigation costs associated with this **PROJECT**.
- 3.6 Pay its proportionate share of the **PROJECT** costs if the grant funding is relinquished, deobligated or otherwise not funded.

4.0 **IVDA AGREES TO:**

- 4.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, its proportionate share of the anticipated net local match and the anticipated **PROJECT** costs not covered by the grant funds, of the **PROJECT** cost including environmental mitigation, and any cost increases pursuant to Section 6.14 below, within thirty (30) days after receipt of a final itemized statement as set forth in Section 1.11 of this **AGREEMENT** setting forth all actual **PROJECT** costs incurred by the **DISTRICT** to date and which have not already been paid by **SAN BERNARDINO, REDLANDS, IVDA, and HIGHLAND**, together with adequate documentation of said expenditures.
- 4.2 Provide a no-cost permit to the **DISTRICT** for its work in **IVDA's** right-of-way.
- 4.3 Pay or and assist in coordinating relocation of any unknown or unforeseen utilities, which interfere with construction of the **PROJECT** within the **IVDA's** area of the **PROJECT** site.
- 4.4 After acceptance of the construction by the **PARTIES, IVDA** shall be responsible for the maintenance of the completed improvement within **IVDA's** right-of-way.
- 4.5 Pay one fifth of any and all mitigation costs associated with this **PROJECT**.
- 4.6 Pay its proportionate share of the **PROJECT** costs if the grant funding is relinquished, deobligated or otherwise not funded.

5.0 **HIGHLAND AGREES TO:**

- 5.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, its initial funding share (\$994,260) of the **PROJECT** cost including environmental mitigation, and any cost increases pursuant to Section 6.14 below, within thirty (30) days after receipt of a final itemized statement as set forth in Section 1.11 of this **AGREEMENT** setting forth all actual **PROJECT** costs incurred by the **DISTRICT** to date and which have not already been paid by **SAN BERNARDINO, REDLANDS, IVDA, and HIGHLAND**, together with adequate documentation of said expenditures.
- 5.2 Provide a no-cost permit to the **DISTRICT** for its work in **HIGHLAND's** right-of-way.
- 5.3 Pay for and assist in coordinating relocation of any unknown or unforeseen utilities, which interfere with construction of the **PROJECT** within the **HIGHLAND's** area of the **PROJECT** site.
- 5.4 After acceptance of the construction by the **PARTIES, HIGHLAND** shall be responsible for the maintenance of the completed improvement within **HIGHLAND's** right-of-way.
- 5.5 Pay one fifth of any and all mitigation costs associated with this **PROJECT**.
- 5.5 Pay its proportionate share of the **PROJECT** costs if the grant funding is relinquished, deobligated or otherwise not funded.

6.0 IT IS FURTHER UNDERSTOOD AND AGREED:

- 6.1 This **AGREEMENT** shall become effective upon approval by the **PARTIES**.
- 6.2 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**.
- 6.3 This **AGREEMENT** is contingent upon the ability of the **DISTRICT** to borrow funds as set forth in Section 1.6 above.
- 6.4 The **DISTRICT** agrees to indemnify and hold harmless **SAN BERNARDINO, REDLANDS, IVDA** and **HIGHLAND**, their officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent act or omission of the **DISTRICT**, its officers, employees, agents or volunteers in connection with the **DISTRICT**'s performance of its obligations under this **AGREEMENT**.
- 6.5 **SAN BERNARDINO** agrees to indemnify and hold harmless the **DISTRICT, REDLANDS, IVDA** and **HIGHLAND**, their officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent act or omission of **SAN BERNARDINO**, its officers, employees, agents or volunteers in connection with **SAN BERNARDINO**'s performance of its obligations under this **AGREEMENT**.
- 6.6 **REDLANDS** agrees to indemnify and hold harmless the **DISTRICT, SAN BERNARDINO, IVDA** and **HIGHLAND**, their officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent act or omission of **REDLANDS** its officers, employees, agents or volunteers in connection with **REDLANDS**' performance of its obligations under this **AGREEMENT**.
- 6.7 **IVDA** agrees to indemnify and hold harmless the **DISTRICT, SAN BERNARDINO, REDLANDS** and **HIGHLAND**, their officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent act or omission of **IVDA** its officers, employees, agents or volunteers in connection with **IVDA**' performance of its obligations under this **AGREEMENT**

- 6.8 **HIGHLAND** agrees to indemnify and hold harmless the **DISTRICT, SAN BERNARDINO, REDLANDS,** and **IVDA,** their officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent act or omission of **HIGHLAND** its officers, employees, agents or volunteers in connection with **HIGHLAND's** performance of its obligations under this **AGREEMENT.**
- 6.9 The **PARTIES** agree to waive all rights subrogation against each other.
- 6.10 The **DISTRICT, SAN BERNARDINO, REDLANDS** and **HIGHLAND** are self-insured public entities for purposes of Professional Liability, General Liability, and Workers' Compensation. The **DISTRICT, SAN BERNARDINO, REDLANDS** and **HIGHLAND** warrant that through their programs of self-insurance, they have adequate Professional Liability, General Liability and Workers' Compensation to provide coverage for liabilities arising out of the **PARTIES** performance of this **AGREEMENT.**
- 6.11 After opening of bids, estimate of cost will be revised based on actual bid prices
- 6.12 The **PARTIES** acknowledge that final **PROJECT** costs may ultimately exceed current estimates of **PROJECT** costs and that final **PROJECT** cost reimbursements from **FHWA** and **State OES** may vary from current estimates. Any additional net **PROJECT** costs resulting from increased bid prices or change orders (but not from unforeseen conditions or requested additional work by a **PARTY** which are addressed in Section 6.14 and 6.15 below) or from shortfalls in **FHWA/State OES** revenue shall be borne at 20% equally by the **DISTRICT, SAN BERNARDINO, IVDA, HIGHLAND** and **REDLANDS;** as part of the **PARTIES'** respective obligations to pay for **PROJECT** costs.
- 6.13 If after opening of bids for the **PROJECT** the submitted bids indicate a cost overrun of no more than 15% of the estimate, **DISTRICT** may award the **AGREEMENT,** and the cost of construction shall be borne pro rata by the **PARTIES** as part of the **PARTIES'** respective obligations to pay for **PROJECT** costs.
- 6.14 If, upon opening of bids, it is found that the costs exceed 15% of the cost of construction, **PARTIES** shall endeavor to agree upon an alternative course of action. If, after thirty (30) days, an alternative course of action is not mutually agreed upon in writing, this **AGREEMENT** shall be deemed to be terminated by mutual consent.
- 6.15 Additional work/costs arising from unforeseen site conditions (e.g. relocating a Utility that the **PARTIES** were not aware of) will be paid by the **PARTIES** in proportion to the location of said work. If any **PARTY** requests additional work that is beyond the scope of the original **PROJECT,** said work will be paid solely by the agency requesting the work at the construction contract unit costs. The **PARTIES** recognize that **IVDA** is merely a funding source and as such has no jurisdiction over items that may be deemed to be unforeseen site conditions and as such, **IVDA** shall not be responsible for the payment of any additional work/costs arising from unforeseen site conditions.
- 6.16 In the event that change orders are required during the course of the **PROJECT,** said change orders must be in form and substance as set forth in attached Exhibit "B" of this **AGREEMENT** and approved by the **PARTIES.** Contract Change Order forms will be delivered by fax and must be returned within two working days.
- 6.17 This **AGREEMENT** may be cancelled upon thirty (30) days written notice of any **PARTY,** provided however, that no **PARTY** may cancel this **AGREEMENT** after the **DISTRICT** lets a contract to construct the **PROJECT.** In the event of cancellation as provided in this paragraph, the **PROJECT** costs required to be paid by the **PARTIES** prior to the effective date of cancellation shall be paid by the **DISTRICT** in the proportion provided herein.

- 6.18 Except with respect to the **PARTIES'** operation, maintenance and indemnification obligations contained herein, this **AGREEMENT** shall terminate upon completion of the **PROJECT** and payment of final billing by the **PARTIES** for their shares of the **PROJECT**, or within 1 (one) year from the Effective Date of this **AGREEMENT**.
- 6.19 This **AGREEMENT** contains the entire agreement of the **PARTIES** with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This **AGREEMENT** may only be modified in writing signed by all **PARTIES**.
- 6.20 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 purpose of this **AGREEMENT** is 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. In the event of litigation arising from this **AGREEMENT**, each **PARTY** to the **AGREEMENT** shall bear its own costs, including attorney fees. This provision concerning costs shall not apply to costs or attorney's fees relative to Paragraphs 6.10 through 6.13.
- 6.21 Time is of the essence for each and every provision of this **AGREEMENT**.
- 6.22 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 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 **AGREEMENT**.
- 6.23 No supplement, modification, or amendment of this **AGREEMENT** shall be binding unless executed in writing and signed by all **PARTIES**.
- 6.24 No waiver of any default shall constitute a waiver of any other default or brief, 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 **PARTIES** any contractual rights by custom, estoppel, or otherwise.
- 6.25 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.
- 6.26 **PARTIES** shall accept all payments via electronic funds transfer (EFT) directly deposited into the **PARTIES** designated checking or other bank account. **PARTIES** shall promptly comply with directions and accurately complete forms provided by **DISTRICT** required to process EFT payments. This shall inure to the benefit of and be binding upon the successors and assigns of all **PARTIES**.
- 6.27 This **AGREEMENT** may be signed in counterparts, each of which shall constitute an original.
- 6.28 This **AGREEMENT** shall inure to the benefit of and be binding upon the successors and assigns of all **PARTIES**.

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf the of the **IVDA** and the Cities of **SAN BERNARDINO, REDLANDS** and **HIGHLAND** by their duly authorized officers and the **DISTRICT** has caused the same to be duly executed in its name and in its behalf by its duly authorized representatives, effective as of the date hereunder written.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

► _____
PAUL BIANE, Board Chairman

Dated: _____

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

Dena M. Smith, Secretary

By: _____
Deputy

Approved as to Legal Form

► _____
Counsel

Date _____

Reviewed by Contract Compliance

► _____

Date _____

Presented to Board for Signature

► _____
Department Head

Date _____

Rev 080307

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf the of the **IVDA** and the Cities of **SAN BERNARDINO, REDLANDS** and **HIGHLAND** by their duly authorized officers and the **DISTRICT** has caused the same to be duly executed in its name and in its behalf by its duly authorized representatives, effective as of the date hereunder written.

City of San Bernardino

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

▶

(Authorized signature - sign in blue ink)

Name Fred Wilson

(Print or type name of person signing contract)

Title City Manager

(Print or Type)

Dated: _____

Address 300 N. "D" Street

San Bernardino, CA 92418

Approved as to Legal Form

▶

City Counsel

Date

Attested by City Clerk

▶

City Clerk

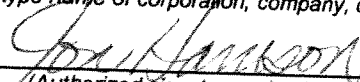
Date

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf the of the **IVDA** and the Cities of **SAN BERNARDINO, REDLANDS** and **HIGHLAND** by their duly authorized officers and the **DISTRICT** has caused the same to be duly executed in its name and in its behalf by its duly authorized representatives, effective as of the date hereunder written.

City of Redlands

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

► 
(Authorized signature - sign in blue ink)

Name Jon Harrison
(Print or type name of person signing contract)

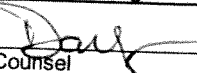
Title Mayor
(Print or Type)

Dated: November 18, 2008

Address 35 Cajon Street

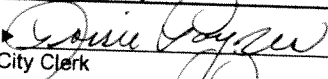
Redlands, CA 92373

Approved as to Legal Form

► 
City Counsel

Date 19 Nov 2008

Attested by City Clerk

► 
City Clerk

Date November 18, 2008

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf the of the IVDA and the Cities of **SAN BERNARDINO, REDLANDS** and **HIGHLAND** by their duly authorized officers and the **DISTRICT** has caused the same to be duly executed in its name and in its behalf by its duly authorized representatives, effective as of the date hereunder written.

City of Highland

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

► _____
(Authorized signature - sign in blue ink)

Name Ross Jones

(Print or type name of person signing contract)

Title Mayor

(Print or Type)

Dated: _____

Address 27215 Baseline

Highland, CA 92346

Approved as to Legal Form

► _____
City Counsel

Date _____

Attested by City Clerk

► _____
City Clerk

Date _____

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf the of the **IVDA** and the Cities of **SAN BERNARDINO, REDLANDS** and **HIGHLAND** by their duly authorized officers and the **DISTRICT** has caused the same to be duly executed in its name and in its behalf by its duly authorized representatives, effective as of the date hereunder written.

Inland Valley Development Agency

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

►

(Authorized signature - sign in blue ink)

Name Donald L. Rogers

(Print or type name of person signing contract)

Title Interim Executive Director

(Print or Type)

Dated: _____

Address 294 So. Leyland-Norton Way, Suite 1

San Bernardino, CA 92408

Approved as to Legal Form

►

Counsel _____

Date _____

EXHIBIT "A"

ESTIMATE OF CONSTRUCTION COSTS

FOR CITY OF SAN BERNARDINO, CITY OF REDLANDS, CITY OF HIGHLAND,
SAN BERNARDINO INTERNATIONAL AIRPORT AUTHORITY,
SAN BERNARDINO DISTRICT FLOOD CONTROL DISTRICT
FOR ALABAMA STREET AT CITY CREEK ROAD IMPROVEMENTS

DESCRIPTION	TOTAL COST OF PROJECT	FHWA/State OES SHARE	DISTRICT SHARE	SAN BERNARDINO SHARE	REDLANDS SHARE	IVDA SHARE	HIGHLAND SHARE
Grant/Local Match	\$3,159,542	\$3,068,862	\$18,136	\$18,136	\$18,136	\$18,136	\$18,136
% per agency		97.13%	0.574%	0.574%	0.574%	0.574%	0.574%
Not Covered by grant	\$840,458	\$0	\$168,092	\$168,092	\$168,092	\$168,092	\$168,092
% per agency		0%	20%	20%	20%	20%	20%
TOTALS	\$4,000,000	\$3,068,862	\$186,228	\$186,228	\$186,228	\$186,228	\$186,228
% per agency		76.72%	4.66%	4.66%	4.66%	4.66%	4.66%

PROJECT costs and/or FHWA/State OES share may be increased or decreased.

EXHIBIT "B"

CONTRACT CHANGE ORDER REVIEW/APPROVAL

PROJECT:

ALABAMA STREET AT CITY CREEK ROAD IMPROVEMENTS
SAN BERNARDINO DISTRICT CONTRACT # _____

File: _____

Proposed Contract Change Order No. _____ has been reviewed in accordance with the existing agreements with the San Bernardino County Flood Control District, City of San Bernardino, City of Redlands, Inland Valley Development Agency and the City of Highland for the above project and the following shall apply:

DATE OF CITY/DISTRICT ACTION: ____/____/____

- ☐ APPROVED for Implementation with 100% Participation
- ☐ APPROVED Subject to Comments/Revisions Accompanying this Document
- ☐ APPROVED With Limited Funding Participation by the City/District
- ☐ _____ % of Actual Cost to be Funded by the City/District
- ☐ The City/District Participation Not to Exceed \$ _____

☐ DISAPPROVED - Not Acceptable to the City/District

Note: Approval under any of the above conditions shall in no case be constructed as an agreement to increase the total financial participation beyond that prescribed in the existing SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, CITY OF SAN BERNARDINO, CITY OF HIGHLAND, INLAND VALLEY DEVELOPMENT AGENCY, and CITY OF REDLANDS agreements without separate amendment to said agreements. Net increases in costs deriving from this and previously approved Contract Change Orders shall not cause the total construction costs to exceed the sum of the authorized contract total and contingency amounts.

Comments, as follows and/or attached, are conditions of the above action? ☐ YES ☐ NO

CITY/DISTRICT: _____

CITY/DISTRICT REPRESENTATIVE NAME AND TITLE: _____

CITY/DISTRICT REPRESENTATIVE SIGNATURE: _____

Distribution:

Signed Original Returned to San Bernardino County Flood Control District's Resident Engineer (FAX # 909-370-5154)