

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

June 15, 2010

**FROM: GRANVILLE M. BOWMAN, Flood Control Engineer
Flood Control District**

**SUBJECT: AGREEMENT WITH CITIES OF SAN BERNARDINO, HIGHLAND, REDLANDS
AND THE INLAND VALLEY DEVELOPMENT AGENCY FOR ROAD
IMPROVEMENTS ON ALABAMA STREET AT CITY CREEK**

RECOMMENDATION(S)

Approve **Agreement No. 10-352** with the City of San Bernardino, City of Highland, City of Redlands and the Inland Valley Development Agency to improve the road and culvert crossing at Alabama Street at City Creek.

(Affected Districts: Third, Fifth)

(Presenter: Granville M. Bowman, Flood Control Engineer, 387-7906)

BACKGROUND INFORMATION

Approval of this item will approve an agreement with the City of San Bernardino, City of Highland, City of Redlands (collectively referred to as Cities) and the Inland Valley Development Agency (IVDA) to improve the road and culvert crossing at Alabama Street at City Creek.

The road improvement project at Alabama Street at City Creek impacts portions of the Cities and IVDA. During the October 2004 and January 2005 storms, the Alabama Street crossing at City Creek was severely damaged by heavy storm flows. Alabama Street is a vital link between the Cities and is an alternate route should closures occur on the 210 Freeway.

The Cities and IVDA seek to participate with Flood Control District (District) in the environmental mitigation, construction engineering and construction for road and drainage improvements, including the installation of drainage culverts and bank protection at the Alabama Street crossing of City Creek (Project). This Project will increase the capacity of the culvert crossing to provide for the containment of 100-year storms. The proposed agreement authorizes the District to act as lead agency for the design and construction of the Project. The design and environmental agreement with the Cities and the IVDA was approved in February 2006. P&D Consultant was hired for the design phase and the plans are being finalized.

The Project is estimated at \$4,100,000. The Federal Highways Administration (FHWA) and the State Office of Emergency Services (OES) have agreed to reimburse up to \$3,068,862 for a

Page 1 of 2

cc: Flood-Walker w/ agree for Sig
Contractor c/o Dept w/ agree
ACR-Acct Pay Mgr w/ agree
EBIX-BPO c/o Risk w/ agree
Flood-Bowman
County Counsel-Runyan
Risk-Eisel
CAO-Valdez
File - w/ agree
jr 6/17/10

ITEM 116

Record of Action of the Board of Directors

APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
County Flood Control District

MOTION	<u>SECOND</u>	<u>ABSENT</u>	<u>MOVED</u>	<u>AYE</u>	<u>AYE</u>
	2	3		4	5

LAURA H. WELCH, SECRETARY

BY _____

DATED: June 15, 2010

**BOARD OF DIRECTORS
AGREEMENT WITH CITIES OF SAN BERNARDINO, HIGHLAND,
REDLANDS AND THE INLAND VALLEY DEVELOPMENT AUTHORITY
FOR ROAD IMPROVEMENTS ON ALABAMA STREET AT CITY
CREEK
JUNE 15, 2010
PAGE 2 OF 2**

major portion of the Project. The District is working with representatives from both agencies to increase the reimbursement amount up to potentially \$3,885,200 (97.13% of the Project's cost). Currently, the Cities and IVDA have expressed financial hardship for providing funds for this Project, and have requested the District provide initial funding for the construction cost in order not to lose the FHWA and OES funding.

On June 3, 2008 (Item No. 40), the San Bernardino County Board of Supervisors granted the District authority to borrow up to \$3,000,000 from the County of San Bernardino Transportation Department (Item No. 40) with the understanding the funds will be reimbursed upon receipt of grant funds from FHWA and OES. However, the District is now able to advance up to \$3,000,000 of the Project so this Project can be funded per the schedule. The amount loaned is not expected to materially impact the Transportation Division, as reimbursements from FHWA and OES are expected to be received within 60 to 90 days of expenditure. The City of Highland will provide initial funding of \$994,260 to be reimbursed less its proportionate final cost share upon receipt of grant funds from FHWA and OES. The Cities and IVDA will share the project costs not covered by the two grants (currently estimated at \$206,228 each).

The District will provide its share of costs from funds included in the District's Fiscal Year 2009-10 budget. The Zone 2 Advisory Committee has approved the use of these funds for this Project.

FINANCIAL IMPACT

Approval of this item will not result in any costs to the County General Fund. The total construction cost for the Project is estimated at \$4,100,000. The District will provide an initial advance of \$2,487,056, which is available in the Zone-2, Fiscal Year 2009-10 Flood Control budget (RFF 092 092 200 2445 78F02082). The City of Highland will provide an initial advance of \$994,260, a portion of which will be reimbursed and the City of Redlands, City of San Bernardino, and IVDA will each fund an estimated \$206,228 for a total amount to be received by the District of \$1,612,944. The Federal Highways Administration and State Office of Emergency Services will reimburse up to \$3,068,862 of the project costs. After all reimbursements have been received, the District's share of project costs is estimated at \$206,228.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott M. Runyan, Deputy County Counsel, 387-9022) on April 19, 2010; Risk Management (John Eisel, Risk Management Assessment Officer, 386-9024) on September 8, 2009; and the County Administrative Office (Beatriz Valdez, Principal Administrative Analyst, 387-5301) on May 25, 2010.



**San Bernardino County
FLOOD CONTROL DISTRICT**

F A S

STANDARD CONTRACT

OFFICIAL USE ONLY

☒ New ☐ Change ☐ Cancel	Vendor Code	SC	Dept.	A	Contract Number 10-352	
Flood Control District Flood Control District		Dept. 097	Orgn. 097	Contractor's License No.		
Flood Control District Representative Melissa Walker		Telephone (909) 387 - 8120		Total Contract Amount \$1,612,944		
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 RFF	Dept. 092	Organization 092	Appr.	Obj/Rev Source 8842	GRC/PROJ/JOB No. 78F2082	Amount \$1,612,944
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name Alabama Street at City Creek Road Improvements			Estimated Payment Total by Fiscal Year			
			FY 09/10	Amount \$1,612,944	I/D	

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

hereinafter called **SAN BERNARDINO**

Address

300 North D Street

San Bernardino, CA 92418

Telephone

909 384-5211

Federal ID No. or Social Security No.

Name

City of Redlands

hereinafter called **REDLANDS**

Address

35 Cajon Street

Redlands, CA 92373

Telephone

909 798-7655

Federal ID No. or Social Security No.

Auditor/Controller-Recorder Use Only

☐ Contract Database	☐ FAS
Input Date	Keyed By

Name City of Highland hereinafter called HIGHLAND
 Address 27215 Baseline
Highland, CA 92346
 Telephone 909-864-6861 Federal ID No. or Social Security No. _____

Name Inland Valley Development Agency hereinafter called IVDA
 Address 294 So. Leland-Norton Way, Suite 1
San Bernardino, CA 92408
 Telephone 909-382-4100 Federal ID No. or Social Security No. _____

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 equal cost shares in environmental mitigation, construction and construction engineering for road 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 2010; 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 current projected cost for the **PROJECT** is approximately \$4,100,000 (current **PROJECT** cost estimate), while Federal Highways Administration (hereinafter referred to as **FHWA**) has approved funding a portion of the project cost originally estimated at \$3,159,542 (original **PROJECT** cost estimate) 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 the 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 **FHWA** and **State OES** for reimbursement claims for the **PROJECT**; and

WHEREAS, an estimated \$3,068,862 of the **PROJECT** costs have been approved to be funded by the grants from **FHWA** and **State OES** and the required local match for the grant is \$90,680; and,

WHEREAS, approximately \$940,458 of the **PROJECT** costs are currently not covered by the grants and local match and will be shared equally among the **PARTIES**; and,

WHEREAS, on June 3, 2008 the County Board of Supervisors, pursuant to Streets and Highways Code section 1686 approved a loan from the County of San Bernardino Transportation Department to the **DISTRICT** in the amount of \$3,000,000 to proceed with the **PROJECT** (Resolution No. 2008-101); and

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

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

WHEREAS, the **DISTRICT** will provide initial funding of \$2,487,056 and **HIGHLAND** will provide initial funding of \$994,260 for the current estimated total **PROJECT** cost; and

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

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

WHEREAS, the total estimated shares of the **PROJECT** cost after grant funding are: **DISTRICT** 5.03% (\$206,228), **SAN BERNARDINO** 5.03% (\$206,228), **IVDA** 5.03% (\$206,228), **REDLANDS** 5.03% (\$206,228), and **HIGHLAND** 5.03% (\$206,228), as shown in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, the **PARTIES** desire to pay the **DISTRICT** their equal share of the **PROJECT** cost; 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 share of final project costs, net of grant funding, pursuant to the cost sharing percentages indicated in Exhibit "A" with any additional grant funds obtained for the **PROJECT** prorated and subtracted from each **PARTY's** share of the **PROJECT** costs; and

WHEREAS, the **PARTIES** desire to set forth responsibilities and obligations of each as they pertain 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 environmental mitigation, construction and construction engineering of the **PROJECT**.
- 1.2 Pay its equal share of the **PROJECT** costs (\$206,228) as set forth in Exhibit "A", including any proportionate cost increases pursuant to section 6.13 below.
- 1.3 Construct the **PROJECT** pursuant to the terms of this **AGREEMENT** in accordance with the plans and specifications of the **DISTRICT**. **DISTRICT** shall forward the plans and specifications to **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 Proceed with construction advertisement upon obligation of **FHWA** and State **OES** grant funds.
- 1.7 Advertise, award, administer, and fund the construction of the **PROJECT**, in accordance with the California Public Contract Code.
- 1.8 Require its contractors to maintain adequate Workers' Compensation, General Liability, Auto Liability and other insurance pursuant to **DISTRICT** standard practice.
- 1.9 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 after the **DISTRICT's** receipt of written demand from **SAN BERNARDINO, REDLANDS, IVDA and/or HIGHLAND** for such records.
- 1.10 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 the current **PROJECT** cost estimate or 74.85% of the original **PROJECT** cost estimate) from the gross costs incurred.
- 1.11 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**.
- 1.12 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.
- 1.13 Submit to **SAN BERNARDINO, REDLANDS, IVDA and HIGHLAND** a final itemized accounting of actual **PROJECT** costs incurred by the **DISTRICT** and which have not already been paid by **SAN BERNARDINO, REDLANDS, IVDA and HIGHLAND** and a statement for the outstanding share of the **PROJECT** costs owed by **SAN BERNARDINO, REDLANDS, IVDA and HIGHLAND**.
- 1.14 Pay its equal share of the **PROJECT** costs if the grant funding is reduced, relinquished, deobligated or otherwise not funded in the amount of 20% of the cost of the **PROJECT**.

- 1.15 Provide initial funding of \$2,487,056 for the current estimated **PROJECT** cost which covers permanent restoration and construction engineering.
- 1.16 Upon receipt of grant funds from **FHWA** and **State OES**, reimburse **HIGHLAND** the difference between its final cost share and the amount **HIGHLAND** initially funded at **PROJECT** approval, and reimburse **DISTRICT** the difference between its final cost share and the amount **DISTRICT** initially funded at **PROJECT** approval.
- 1.17 The **DISTRICT** can borrow, as needed, up to \$3,000,000 in funding from the County of San Bernardino Transportation Department.

2.0 **SAN BERNARDINO AGREES TO:**

- 2.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, the amount of \$206,228, its equal share of the anticipated net local match and the anticipated **PROJECT** costs not covered by the grant funds, as set forth in Exhibit "A". Also pay to the **DISTRICT** any cost increases pursuant to section 6.13 below, within thirty (30) days after receipt of a final itemized statement as set forth in section 1.13 of this **AGREEMENT** setting forth all actual **PROJECT** costs incurred by the **DISTRICT** 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 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 its equal share of the **PROJECT** costs if the grant funding is reduced, relinquished, deobligated or otherwise not funded in the amount of 20% of the cost of the **PROJECT**.

3.0 **REDLANDS AGREES TO:**

- 3.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, the amount of \$206,228, its equal share of the anticipated net local match and the anticipated **PROJECT** costs not covered by the grant funds, as set forth in Exhibit "A". Also pay to the **DISTRICT** any cost increases pursuant to section 6.13 below, within thirty (30) days after receipt of a final itemized statement as set forth in section 1.13 of this **AGREEMENT** setting forth all actual **PROJECT** costs incurred by the **DISTRICT** 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 its equal share of the **PROJECT** costs if the grant funding is reduced, relinquished, deobligated or otherwise not funded in the amount of 20% of the cost of the **PROJECT**.

4.0 IVDA AGREES TO:

- 4.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, the amount of \$206,228, its equal share of the anticipated net local match and the anticipated **PROJECT** costs not covered by the grant funds, as set forth in Exhibit "A". Also pay to the **DISTRICT** any cost increases pursuant to section 6.13 below, within thirty (30) days after receipt of a final itemized statement as set forth in section 1.13 of this **AGREEMENT** setting forth all actual **PROJECT** costs incurred by the **DISTRICT** which have not already been paid by **SAN BERNARDINO, REDLANDS, IVDA, and HIGHLAND**, together with adequate documentation of said expenditures.
- 4.2 Pursuant to the terms and conditions of a separate Right-of Entry Agreement by and between the San Bernardino International Airport Authority (SBIAA), **IVDA** and **DISTRICT**, **IVDA** will provide a permit to the **DISTRICT** for its work on SBIAA property.
- 4.3 Pay its equal share of the **PROJECT** costs if the grant funding is reduced, relinquished, deobligated or otherwise not funded in the amount of 20% of the cost of the **PROJECT**.

5.0 HIGHLAND AGREES TO:

- 5.1 Pay to the **DISTRICT**, after bid opening and prior to award of contract to successful bidder, the amount of \$206,228, its equal share of the anticipated net local match and the anticipated **PROJECT** costs not covered by the grant funds, as set forth in Exhibit "A". Also pay to the **DISTRICT** any cost increases pursuant to section 6.13 below, within thirty (30) days after receipt of a final itemized statement as set forth in section 1.13 of this **AGREEMENT** setting forth all actual **PROJECT** costs incurred by the **DISTRICT** 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 its equal share of the **PROJECT** costs if the grant funding is relinquished, deobligated or otherwise not funded in an amount not to exceed 20% of the estimated cost of the **PROJECT**.
- 5.6 Pay to **DISTRICT**, after bid opening and prior to award of contract to successful bidder, funding in the amount of \$788,032. The amount described in this paragraph is in addition to the amount described in section 5.1. Upon **DISTRICT's** receipt of grant funds from **FHWA** and State **OES**, **DISTRICT** shall reimburse **HIGHLAND** the difference between its final cost share and the amount **HIGHLAND** initially funded at **PROJECT** approval.

6.0 IT IS FURTHER UNDERSTOOD AND AGREED:

- 6.1 This **AGREEMENT** shall become effective upon approval by the **PARTIES**. The Effective Date of this **AGREEMENT** shall be the first date on which all of the following has occurred: (1) the **PARTIES** Councils and Boards have approved the **AGREEMENT**; (2) the authorized representative of each has signed the **AGREEMENT**; and (3) a fully executed copy of the **AGREEMENT** has been submitted to all **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 American Recovery and Reinvestment Act Funding (ARRA)

Use of ARRA Funds and Requirements. This Agreement may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alternation, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for waiver must be made to the District for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage requirements. The contractors must contact the District contact if they have any questions regarding the applicability or implementation of the ARRA Buy American and wage

rate requirements. The contractors will also be required to provide detailed information regarding compliance with the Buy American requirements they have under ARRA. The information may be required as frequently as monthly or quarterly. The contractors agree to fully cooperate in providing information or documents as requested by the District pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

The contractors may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have their subcontractors also register in the same database. The contractors must contact the District with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards. In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. The contractors agree to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, the contractors agree to separately identify to each subcontractor and document at the time of subcontract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

The contractors may be required to provide detailed information regarding expenditures so that the District may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. The contractors agree to fully cooperate in providing information or documents as requested by the District pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

- 6.4 This **AGREEMENT** is contingent upon the ability of the **DISTRICT** to borrow funds as set forth in section 1.17 above.
- 6.5 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**.
- 6.6 **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**.
- 6.7 **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**.

- 6.8 **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's** performance of its obligations under this **AGREEMENT**.
- 6.9 **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**.
- 6.10 In the event the **DISTRICT** and/or **SAN BERNARDINO** and/or **REDLANDS** and/or **IVDA** and/or **HIGHLAND** is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the **AGREEMENT**, the **DISTRICT** and/or **SAN BERNARDINO** and/or **REDLANDS** and/or **IVDA** and/or **HIGHLAND** shall indemnify the other **PARTIES** to the extent of its comparative fault.
- 6.11 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**.
- 6.12 After opening of bids, estimate of cost will be revised based on actual bid prices
- 6.13 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 requested additional work by a **PARTY** which is addressed in section 6.19 below) or from shortfalls in **FHWA/State OES** revenue shall be borne equally by the **PARTIES**, as part of said **PARTIES'** respective obligations to pay for **PROJECT** costs.
- 6.14 If after opening of bids for the **PROJECT** the submitted bids indicate a cost overrun of no more than 15% of the current **PROJECT** cost estimate, **DISTRICT** may award the **AGREEMENT**, and the cost of construction shall be borne equally by the **PARTIES** as part of said **PARTIES'** respective obligations to pay for **PROJECT** costs.
- 6.15 If, upon opening of bids, it is found that the costs exceed 15% of the current **PROJECT** cost estimate, **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.
- 6.16 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 If a Contract Change Order arises from unforeseen site conditions (e.g. relocating a utility that the **PARTIES** were not aware of) it will be paid by the responsible **PARTIES**, upon approval of the Contract Change Order as set forth in section 6.16, in proportion to the location of said work.
- 6.18 The **DISTRICT** shall notify all **PARTIES** of administrative overrun of quantities on the construction bid sheet if it appears that the 10 percent construction contingency will be exceeded.
- 6.19 If any **PARTY** requests additional work that is beyond the scope of the original **PROJECT**, said work will be paid solely by the **PARTY** requesting the work at the construction contract unit costs.
- 6.20 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.
- 6.21 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 equally by the **PARTIES**.
- 6.22 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**.
- 6.23 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**.
- 6.24 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 attorneys' fees regardless of who is the prevailing **PARTY**. This provision concerning costs shall not apply to costs or attorney's fees relative to Paragraphs 6.5 through 6.10.
- 6.25 Time is of the essence for each and every provision of this **AGREEMENT**.
- 6.26 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**.
- 6.27 No supplement, modification, or amendment of this **AGREEMENT** shall be binding unless executed in writing and signed by all **PARTIES**.

- 6.28 **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.
- 6.29 This **AGREEMENT** may be signed in counterparts, each of which shall constitute an original.
- 6.30 This **AGREEMENT** shall inure to the benefit of and be binding upon the successors and assigns of all **PARTIES**.

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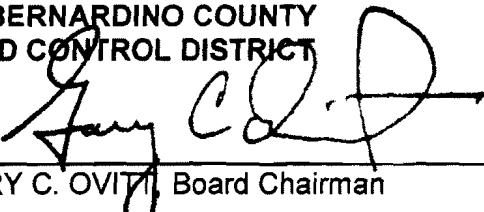
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ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf 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 on its behalf by its duly authorized representatives, effective as of the date hereunder written.

**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**


GARY C. OVITT, Board Chairman

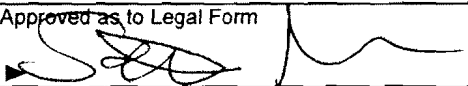
Dated: JUN 15 2010

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


Laura H. Welch, Secretary

By _____
Deputy

Approved as to Legal Form

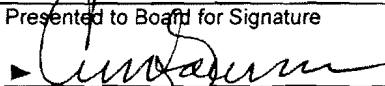

Counsel

Date 5-19-10

Reviewed by Contract Compliance


Date 5/27/10

Presented to Board for Signature

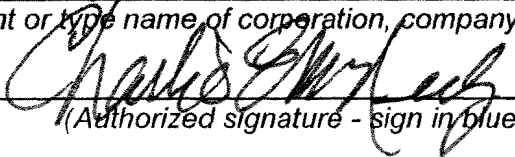

Date 6/1/2010

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf of the IVDA, the **DISTRICT**, and the cities of **REDLANDS** and **HIGHLAND** by their duly authorized officers and the **City of SAN BERNARDINO** has caused the same to be duly executed in its name and on 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)

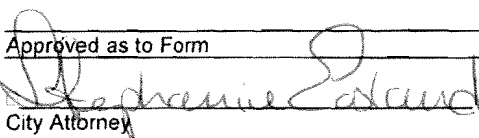
Name Charles E. McNeely
(Print or type name of person signing contract)

Title City Manager
(Print or Type)

Dated: 4/13/10

Address 300 N. "D" Street
San Bernardino, CA 92418

Approved as to Form


City Attorney

Date 3-31-10

Attested by City Clerk


City Clerk

Date 4/13/10

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf of the **IVDA**, the **DISTRICT**, and the cities of **SAN BERNARDINO** and **HIGHLAND** by their duly authorized officers and the **City of REDLANDS** has caused the same to be duly executed in its name and on 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.)

► Pat Gilbreath

(Authorized signature - sign in blue ink)

Name Pat Gilbreath

(Print or type name of person signing contract)

Title Mayor

(Print or Type)

Dated: December 15, 2009

Address 35 Cajon Street

Redlands, CA 92373

Approved as to Legal Form

►

City Attorney

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 of the **IVDA**, the **DISTRICT**, and the cities of **SAN BERNARDINO** and **HIGHLAND** by their duly authorized officers and the **City of REDLANDS** has caused the same to be duly executed in its name and on 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.)

► Pat Gilbreath
(Authorized signature - sign in blue ink)

Name Pat Gilbreath
(Print or type name of person signing contract)

Title Mayor
(Print or Type)

Dated: December 15, 2009

Address 35 Cajon Street
Redlands, CA 92373

Approved as to Legal Form _____

► _____
City Attorney

Date _____

Attested by City Clerk _____

► [Signature]
City Clerk

Date December 15, 2009

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the IVDA, the DISTRICT, and the cities of SAN BERNARDINO, and REDLANDS by their duly authorized officers and City of HIGHLAND has caused the same to be duly executed in its name and on 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 Penny Lilburn

(Print or type name of person signing contract)

Title Mayor

(Print or Type)

Dated: 12/08/2009

Address 27215 Baseline

Highland, CA 92346

Approved as to Legal Form

City Attorney

Date

Attested by City Clerk

City Clerk

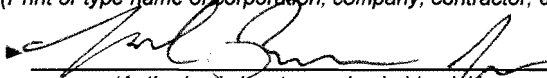
Date

ALABAMA STREET AT CITY CREEK – ROAD IMPROVEMENTS

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf of the cities of **SAN BERNARDINO, REDLANDS** and **HIGHLAND** and the **DISTRICT** by their duly authorized officers and the **IVDA** has caused the same to be duly executed in its name and on 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. Leland Norton Way, Suite 1
San Bernardino, CA 92408

Approved as to Legal Form

► _____

Counsel

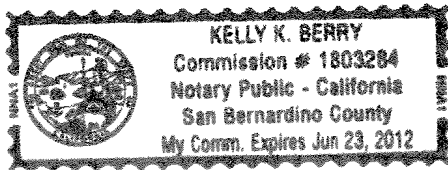
Date _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
)
County of San Bernardino)

On April 19, 2010, before me, Kelly K. Berry, Notary Public, personally appeared Michael P. Burrows, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Kelly K. Berry

Signature of Notary Public

***** OPTIONAL *****

Though the information below is not required by law, it may prove valuable to persons relying on this document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: San Bernardino County Flood Control District FAS Standard Contract [Alabama Street at City Creek Road Improvements]

Document Date: Revised 1-13-2009

Number of Pages: eighteen (18)

Signer(s) Other Than Named Above: Representatives from the City of San Bernardino, City of Redlands, City of Highland and San Bernardino County Flood Control District

Capacity(ies) Claimed by Signer

Signer's Name: Michael P. Burrows

- ☐ Individual
☐ Corporate Officer – Title(s):
☐ Partner -- ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: Assistant Director

RIGHT
THUMBPRINT
OF SIGNER

Top of thumb here

Signer is Representing: Inland Valley Development Agency

EXHIBIT "A"

ESTIMATE OF PROJECT COSTS

**FOR CITY OF SAN BERNARDINO, CITY OF REDLANDS, CITY OF HIGHLAND,
INLAND VALLEY DEVELOPMENT AGENCY AND THE
SAN BERNARDINO COUNTY 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*
Anticipated Grant/Local Match Per Grant Approval	\$3,159,542	\$3,068,862	\$18,136	\$18,136	\$18,136	\$18,136	\$18,136
		97.13%	0.574%	0.574%	0.574%	0.574%	0.574%
Project Cost Not Covered by Grant	\$940,458	\$0	\$188,092	\$188,092	\$188,092	\$188,092	\$188,092
		0%	20%	20%	20%	20%	20%
GROSS PROJECT COST PER PARTY	\$4,100,000	\$3,068,862	\$206,228	\$206,228	\$206,228	\$206,228	\$206,228
		74.85%	5.03%	5.03%	5.03%	5.03%	5.03%

Project cost is an estimate and is subject to revision based on actual costs upon project completion. FHWA and State OES grant amounts may be increased based upon future approval of additional grant funds, which will proportionately reduce the PARTIES share of the PROJECT costs.

*The City of Highland's initial project funding is in the amount of \$994,260. The **DISTRICT** will reimburse **HIGHLAND** an amount above its final cost share for the amount of initial **PROJECT** funding upon receipt of grant funds from **FHWA** and **STATE OES**.

EXHIBIT "B"

CONTRACT CHANGE ORDER REVIEW/APPROVAL

PROJECT:

ALABAMA STREET AT CITY CREEK ROAD IMPROVEMENTS
SAN BERNARDINO FLOOD CONTROL 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 agreement without separate amendment to said agreement. 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)