

E. Approval of a Participation Service Agreement with the County of Riverside Transportation Department for Da Vall Drive and 30th Avenue Slurry Seal Improvements

Recommendation: To approve a participation service agreement for the construction of the Da Vall Drive and 30th Avenue Slurry Seal Improvements project in the amount of \$37,000 and, assign the County of Riverside Transportation Department as lead agency on behalf of the city; and authorize the City Manager to execute the agreement.

SERVICE AGREEMENT BY AND BETWEEN

COUNTY OF RIVERSIDE

AND

CITY OF CATHEDRAL CITY

FOR

DA VALL DRIVE AND 30th AVENUE SLURRY SEAL IMPROVEMENTS

This Agreement is entered into this _____ day of _____, 20____, by and between the County of Riverside, a political subdivision of the State of California, on behalf of its Transportation Department (hereinafter "COUNTY") and the City of Cathedral City, a municipal corporation, (hereinafter "CITY") for slurry seal improvements located within the jurisdictional boundaries of CITY. The COUNTY and CITY are sometimes hereinafter referred to individually as a "PARTY" and collectively as the "PARTIES".

RECITALS

- A. WHEREAS, CITY has determined to seal the existing asphalt surface on Da Vall Drive and 30th Avenue which consists of the following segments: segment 1 is Da Vall Drive from 1322' S 30th Avenue to 30th Avenue (approximately 1322 linear feet by 37 feet wide), segment 2 is 30th Avenue from Da Vall Drive to 650' E Da Vall Drive (approximately 650 linear feet by 25 feet wide) in the Cathedral City area of Riverside County (hereinafter "CITY PROJECT").
- B. WHEREAS, CITY has determined that it requires construction services to place the slurry seal on Da Vall Drive and 30th Avenue as shown in Exhibit A and that a slurry seal will be applied that consists of the application of a mixture of water, asphalt emulsion, aggregate, and chemical additives to an existing asphalt concrete pavement surface.
- C. WHEREAS, COUNTY is fully qualified to administer the work that includes traffic control, rout and seal random cracks, replacement of any pavement markings, including cross walks, striping and raised pavement markers.
- D. WHEREAS, COUNTY has slurry seal improvement projects within the jurisdictional boundaries of COUNTY along the COUNTY and CITY boundary, which slurry seal improvement projects are sometimes hereinafter

referred to collectively as "COUNTY PROJECT".

E. WHEREAS, CITY will benefit from the cost savings associated with a larger improvement project, and CITY desires to work with the COUNTY to construct the CITY PROJECT, together with the COUNTY PROJECT since COUNTY has extensive experience in the development and implementation of similar type projects.

F. WHEREAS, COUNTY will therefore provide the administrative, technical, managerial, and support services necessary for the implementation of the CITY PROJECT as part of the COUNTY PROJECT.

G. WHEREAS, COUNTY and CITY desire to define herein the terms and conditions under which said CITY PROJECT is to be administered, engineered, coordinated, and constructed.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the PARTIES hereto agree as follows:

SECTION 1 • COUNTY AGREES to:

1. Act as the lead agency on behalf of the CITY for the overall implementation of the CITY PROJECT. The COUNTY is providing services on a reimbursable basis and has no obligation to fund any portion of the CITY PROJECT. Nothing in this Agreement is intended to commit the COUNTY to provide replacement funding for or to continue with the CITY PROJECT, if funds are not available.
2. Furnish CITY with Maps, Plans, Specifications & Estimate (PS&E) documents for the CITY PROJECT. Final plans for improvements are prepared to COUNTY standards and signed by a Civil Engineer registered in the State of California. Deviations from standards shall be coordinated with and approved by CITY. COUNTY shall not begin construction within CITY until CITY has approved the CITY PROJECT portion of the PS&E documents, which approval shall not be unreasonably withheld.
3. Direct COUNTY's contractor to identify any existing surface utility facilities within the limits of the CITY PROJECT and to protect the facilities as detailed in the Special Provisions of the PS&E.
4. Direct COUNTY's contractor to make written application to CITY for an encroachment permit authorizing entry into CITY right of way for the purposes of constructing COUNTY PROJECT and CITY PROJECT.
5. Advertise, award, and administer a public works contract for the construction of the COUNTY PROJECT and the CITY PROJECT in accordance with all applicable federal, state or local statutes, ordinances,

orders, governmental requirements, laws or regulations, including but not limited to the local agency public construction codes, California Labor Code, and California Public Contract Code, and in accordance with the encroachment permits issued by CITY.

6. Furnish a representative to perform the function of Resident Engineer during construction of CITY PROJECT.

7. Furnish qualified support staff to assist the Resident Engineer in, but not limited to, construction surveys, soils and compaction tests, measurement and computation of quantities, testing of construction materials, checking submittals, preparation of estimates and reports, preparation of as-built drawings, and other inspection and staff services necessary to assure that the construction is performed in accordance with the PS&E documents.

8. Construct the CITY PROJECT in accordance with approved PS&E documents.

9. Submit any contract change order that causes the construction contract to exceed 10% of the contract bid amount for CITY PROJECT improvements to CITY for review and approval prior to final authorization by COUNTY. If any contract change order causes the construction contract to change by less than 10% of the bid amount for CITY PROJECT, COUNTY is authorized by CITY's approval of this Agreement to move forward with such change.

10. Furnish CITY a final reconciliation of CITY PROJECT expenses within ninety (90) days following the completion and acceptance of the COUNTY PROJECT and CITY PROJECT construction contract. If final costs associated with the CITY PROJECT are in excess of the Deposit provided in Section 2, COUNTY shall include a final bill with the financial reconciliation. If final costs associated with the CITY PROJECT are less than the Deposit provided in Section 2, COUNTY shall include a reimbursement for the difference with the financial reconciliation.

11. Provide CITY one complete set of reproducible as-built plans and all contract documents including calculations, estimates, and other documents produced as part of this contract within ninety (90) days after completion and acceptance of the CITY PROJECT.

SECTION 2 • CITY AGREES to:

1. Fund one hundred percent (100%) of the cost of the CITY PROJECT, as shown in Exhibit "B". CITY agrees

that should unforeseen circumstances arise which result in an increase of any costs over those shown in Exhibit "B", CITY will pay such costs pursuant to Subsection 9 and Subsection 10 of Section 1.

2. Deposit with COUNTY, prior to COUNTY start of work and upon written request by COUNTY, Thirty-Seven Thousand Dollars and Zero Cents (\$37,000.00) (the "Deposit"), which represents one hundred percent (100%) of the estimated costs to complete construction including construction administration, inspection and materials testing and contingency for CITY PROJECT, as provided in Exhibit "B".
3. Prepare and approve CEQA clearance for the CITY PROJECT.
4. Issue, at no cost to COUNTY or its contractor, upon proper application by COUNTY or COUNTY's contractor, an encroachment permit authorizing entry onto CITY right-of-way to complete construction, including traffic control, construction survey, inspection and materials testing for the COUNTY PROJECT and CITY PROJECT.
5. Provide at no cost to the COUNTY, oversight of the CITY PROJECT, to provide prompt reviews and approvals, as appropriate, of submittals by COUNTY, and to cooperate in timely processing of the CITY PROJECT.
6. Provide at no cost to COUNTY, a representative to coordinate and assist the COUNTY Resident Engineer during the construction of the CITY PROJECT and to verify facilities are constructed as required by this Agreement.
7. Pay COUNTY for any final costs associated with the CITY PROJECT that are in excess of the Deposit as determined pursuant to Subsection 10 of Section 1.

SECTION 3 • IT IS MUTUALLY AGREED AS FOLLOWS:

1. If upon opening of bids for construction of the CITY PROJECT the bids indicate a cost overrun of no more than ten percent (10%) of the construction cost estimate will occur, as described in Exhibit "B", COUNTY may award the contract.
2. If upon opening of bids it is found that a cost overrun exceeding ten percent (10%) of the construction cost estimate will occur, COUNTY and CITY shall endeavor to agree upon an alternative course of action. If, after fourteen (14) calendar days from the date of bid opening, an alternative course of action is not agreed upon, this Agreement shall be deemed to be terminated by mutual consent. COUNTY shall reimburse CITY

with any unspent portion of the Deposit within forty-five (45) days of termination.

3. COUNTY and CITY acknowledge and agree that any funding shortfall for the completion of the CITY PROJECT will be the sole responsibility of CITY. Nothing in this Agreement is intended to commit the COUNTY to funding any portion of CITY PROJECT or shall be construed as obligating the COUNTY to provide replacement funding for any anticipated funding or to continue with the CITY PROJECT, if funds are no longer available. In the event that adequate funds are not available to move forward or to complete CITY PROJECT, PARTIES agree to meet and confer and collectively work to identify adequate funding for CITY PROJECT.
4. The total cost to CITY to complete construction, including construction administration, inspection and materials testing and a contingency for CITY PROJECT is estimated to be Thirty-Seven Thousand Dollars and Zero Cents (\$37,000.00) as detailed in Exhibit "B".
5. COUNTY shall not be obligated to commence the CITY PROJECT until after receipt of CITY's Deposit as required in Section 2.
6. Construction by COUNTY of improvements for CITY PROJECT shall not be commenced until an Encroachment Permit to COUNTY, or COUNTY's contractor, authorizing such work has been issued by CITY.
7. COUNTY shall cause COUNTY's contractor to maintain in force, until completion and acceptance of the slurry seal improvements, a policy of Commercial Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability, in the amount of \$2,000,000 minimum single limit coverage, and a policy of Automobile Liability Insurance in the amount of \$1,000,000 minimum. Endorsements to each policy shall be required which name CITY, its officers, agents and employees, as additionally insured. COUNTY shall also require COUNTY's contractor to maintain Worker's Compensation Insurance. COUNTY shall cause COUNTY's contractor to provide Certificates of Insurance and Additional Insured Endorsements which meet the requirements of this section to CITY prior to the start of construction.
8. Ownership and title to all materials, equipment, and appurtenances installed as part of this Agreement will be automatically vested with the jurisdiction in which the improvements reside, and no further agreement will be necessary to transfer ownership.

9. CITY shall be responsible for the maintenance of the improvements provided by CITY PROJECT within CITY right of way except as specified in this Agreement or future agreements.
10. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by all PARTIES and no oral understanding or agreement not incorporated herein shall be binding on each PARTY hereto.
11. Neither COUNTY nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of any act or omission of CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is further agreed that pursuant to Government Code Section 895.4, CITY shall fully indemnify and hold COUNTY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any act or omission of CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.
12. Neither CITY nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of any act or omission of COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. It is further agreed that pursuant to Government Code Section 895.4, COUNTY shall fully indemnify and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any act or omission of COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement.
13. In the event that either PARTY defaults in the performance of any of its obligations under this Agreement or materially breaches any of the provisions of this Agreement, the non-breaching PARTY shall have the option to terminate this Agreement upon ninety (90) days written notice to the other PARTY. Should the Agreement be terminated as provided herein, CITY shall reimburse COUNTY for service performed pursuant to this Agreement up through the date of termination and COUNTY shall reimburse CITY with any unspent/remaining portion of the Deposit within forty-five (45) days of termination.
14. CITY and COUNTY shall retain or cause to be retained for audit, all records and accounts relating to the CITY PROJECT for a period of minimum three (3) years from the date of Notice of Completion of the CITY PROJECT.
15. This Agreement may be executed in any number of counterparts, each of which will be an original, but all

of which together will constitute one instrument. Each PARTY to this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The PARTIES further agree that the electronic signatures of the PARTIES included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the PARTY using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the PARTIES. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

16. All notices, demands, invoices, and other communications required or permitted hereunder shall be in writing and delivered to the following addresses or such other address as the PARTIES may designate:

COUNTY:

Riverside County Transportation Department

Attn: Dennis Acuna

Director of Transportation

4080 Lemon Street, 8th Floor

Riverside, CA 92501

Phone: (951) 955-6740

CITY:

Cathedral City

Attn: Armondo J. Garcia Baldizzone

City Engineer

68700 Avenida Lalo Guerrero

Cathedral City, CA 92234

Phone: (760) 770-0329

[Signature Page Follows]

APPROVALS

COUNTY Approvals

RECOMMENDED FOR APPROVAL:

Dennis Acuna

Director of Transportation

APPROVED AS TO FORM:

COUNTY COUNSEL

By _____

DANIELLE MALAND

Deputy County Counsel

APPROVAL BY THE BOARD OF SUPERVISORS

PRINTED NAME

Chair, Riverside County Board of Supervisors

ATTEST:

KIMBERLY A. RECTOR

Clerk of the Board (SEAL)

CITY OF CATHEDRAL CITY Approvals

APPROVED BY:

Charles P. McClendon

PRINTED NAME

City Manager

APPROVED AS TO FORM:

Eric S. Vail

PRINTED NAME

City Attorney

ATTEST:

Tracey R. Hermosillo

PRINTED NAME

City Clerk

EXHIBIT A

VICINITY/ CITY PROJECT MAP

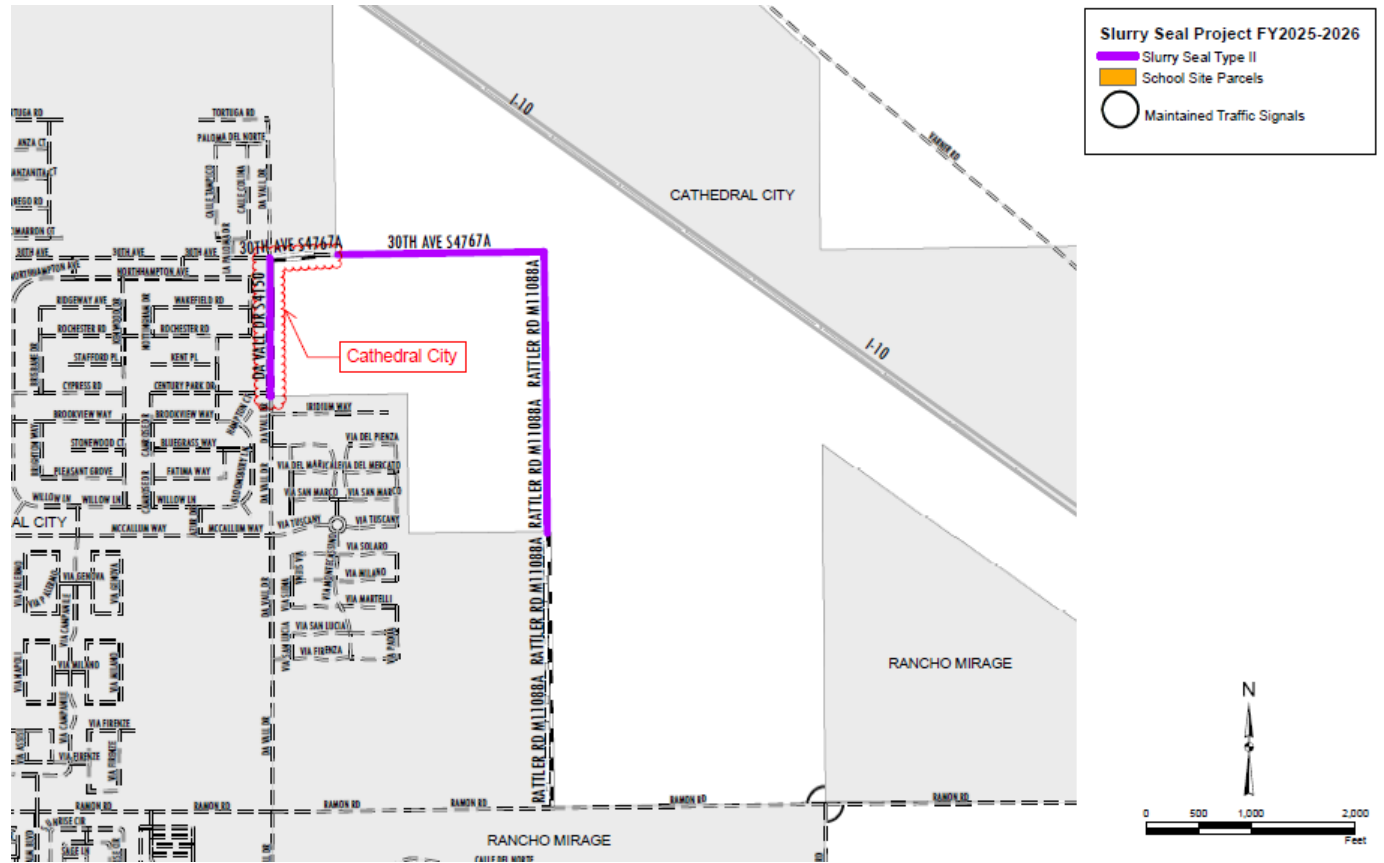


EXHIBIT B

CITY PROJECT BUDGET

ESTIMATED COSTS:

TASK	COSTS
Construction	\$29,000.00
Contingency	\$3,000.00
Administration, Inspection & Materials Testing	\$5,000.00
TOTAL COST	\$37,000.00