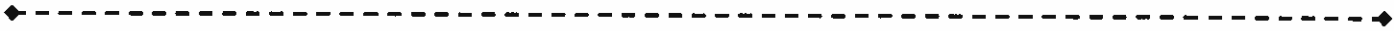




City of Needles, California Request for City Council Action



CITY COUNCIL UTILITY BOARD NPUA RDA Regular Special

Meeting Date: February 25, 2020

Title: Accept the Public Works Agreement between the County of San Bernardino Department of Public Works - Transportation and the City of Needles for the 5-year mutual aid agreement.

Background: City of Needles has observed that many of its street facilities and related appurtenances within its jurisdictional area need occasional maintenance and repair. Streets and Highways Code section 1685 and 1803 authorize City to contract with the County of San Bernardino for the maintenance, construction or repair of City streets, if the legislative body of the City determines that it is necessary for the more efficient maintenance, construction, or repair of said streets including Emergencies.

Public projects of sixty thousand dollars (\$60,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order per Public Contract Code 22032 and not exceed (\$75,000) per project.

County is solely responsible for determining whether Contract Work to be performed by City staff and/or City contractors for County is maintenance or emergency work and complying with all applicable Public Contract Code requirements prior to requesting the performance of Contract Work by City.

County will reimburse City for all cost incurred by City in performing Contract Work requested by County and City will reimburse County for all cost incurred by County in performing Contract Work requested by City. Work completed by City and or County the City desires to set forth the responsibilities and obligations of each as they pertain to the work described in the attached agreement. Contract has been reviewed and approved by the City Attorney.



Approved: Not Approved: Tabled: Other:

Fiscal Impact: None

Recommendation: Accept the Public Works Agreement between the County of San Bernardino Department of Public Works – Transportation for a 5 years agreement, expiring in 2025 and authorize the Mayor to execute said agreement.

Submitted By: Tammy Ellmore, Engineering Tech II

City Management Review: Rick

Date: 2/19/20

#9



Contract Number

SAP Number

San Bernardino County, Department of Public Works – Transportation

Department Contract Representative	<u>Melissa L. Walker</u>
Telephone Number	<u>(909) 387-7997</u>
Contractor	<u>City of Needles</u>
Contractor Representative	<u>City Engineer</u>
Telephone Number	<u>(760) 326-2113</u>
Contract Term	<u>5 years, Beginning April 21, 2020 and ending on June 30, 2025</u>
Original Contract Amount	<u>\$75,000 per project not to exceed \$100,000 for each party per fiscal year</u>
Amendment Amount	<u></u>
Total Contract Amount	<u></u>
Cost Center	<u>6650002000</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the City of Needles (CITY) has observed that many of its street facilities and related appurtenances within its jurisdictional area need occasional maintenance and repair; and

WHEREAS, Streets and Highways Code sections 1685 and 1803 authorize CITY to contract with the County of San Bernardino (COUNTY) for the maintenance, construction or repair of CITY streets, if the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of said streets; and

WHEREAS, COUNTY and CITY are sometimes individually referred to in this Agreement as PARTY and collectively referred to as PARTIES; and

WHEREAS, the legislative body of CITY has determined that it is necessary for the more efficient maintenance and repair of its street facilities and related appurtenances within CITY to contract with COUNTY for COUNTY to sometimes perform said work, including emergency work, on CITY street facilities and related appurtenances located within the incorporated area of CITY (hereinafter referred to as "CITY FACILITIES CONTRACT WORK"); and

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

WHEREAS, public projects of sixty thousand dollars (\$60,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order per Public Contract Code section 22032; and

WHEREAS, **CITY FACILITIES CONTRACT WORK** to be performed by **COUNTY** staff and/or **COUNTY** contractors will only be maintenance or emergency work as those terms are defined in the Public Contract Code, and shall not exceed seventy-five thousand dollars (\$75,000) per project; and

WHEREAS, **CITY** is solely responsible for determining whether **CITY FACILITIES CONTRACT WORK** to be performed by **COUNTY** staff and/or **COUNTY** contractors is maintenance or emergency work and complies with all applicable Public Contract Code requirements prior to requesting the performance of **CITY FACILITIES CONTRACT WORK** by **COUNTY**; and

WHEREAS, **CITY** will reimburse **COUNTY** for all costs incurred by **COUNTY** in performing **CITY FACILITIES CONTRACT WORK** requested by **CITY** and completed by **COUNTY**; and

WHEREAS, Streets and Highways Code section 1710 authorizes **COUNTY** to contract with **CITY** for the **CITY's** maintenance, construction or repair of **COUNTY** highways; and

WHEREAS, **COUNTY** has determined that it is necessary for the more efficient maintenance and repair of its highway facilities and related appurtenances to contract with **CITY** for **CITY** to sometimes perform said work, which includes emergency work, on **COUNTY** highway facilities and related appurtenances located within **CITY's** sphere of influence as defined by the San Bernardino County Local Agency Formation Commission (hereinafter referred to as "**COUNTY FACILITIES CONTRACT WORK**"); and

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

WHEREAS, **COUNTY FACILITIES CONTRACT WORK** to be performed by **CITY** staff and/or **CITY** contractors will only be for maintenance or emergency work as those terms are defined in the Public Contract Code, and shall not exceed seventy-five thousand dollars (\$75,000) per project; and

WHEREAS, **COUNTY** is solely responsible for determining whether **COUNTY FACILITIES CONTRACT WORK** to be performed by **CITY** staff and/or **CITY** contractors is maintenance or emergency work and complies with all applicable Public Contract Code requirements prior to requesting the performance of **COUNTY FACILITIES CONTRACT WORK** by **CITY**; and

WHEREAS, **COUNTY** will reimburse **CITY** for all costs incurred by **CITY** in performing **COUNTY FACILITIES CONTRACT WORK** requested by **COUNTY** and completed by **CITY**; and

WHEREAS, **COUNTY** and **CITY** desire to set forth the responsibilities and obligations of each as they pertain to the work described in this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

SECTION I

1.0 For CITY FACILITIES CONTRACT WORK provided to CITY:

COUNTY AGREES TO:

1.1 Schedule requested **CITY FACILITIES CONTRACT WORK** upon receipt of a written "Notice to Proceed" from **CITY** and to provide to **CITY** a schedule of workdays anticipated for the work for

- CITY** concurrence. **COUNTY**, through its authorized representative identified in Paragraph 4.5 and in its sole discretion, shall decide whether to approve or disapprove an individual "Notice to Proceed" and provide specific services to **CITY**.
- 1.2 Utilize **COUNTY's** Department of Public Works labor force and/or contractors in providing services under this Agreement.
 - 1.3 Obtain a no-cost permit from **CITY** for any **CITY FACILITIES CONTRACT WORK** to be performed within **CITY's** right-of-way. **COUNTY's** Director of Public Works, or the Director's designee, shall have the authority to obtain a permit from **CITY** for **CITY FACILITIES CONTRACT WORK**.
 - 1.4 Upon completion of each individual work assignment, submit to **CITY** an itemized accounting of actual **CITY FACILITIES CONTRACT WORK** costs incurred by **COUNTY** and an invoice for such costs.
 - 1.5 **COUNTY** shall require all contractors and vendors providing **CITY FACILITIES CONTRACT WORK** to have appropriate and adequate insurance coverage for the mutual protection and benefit of the **PARTIES**. Except for Workers' Compensation, Errors and Omissions and Professional Liability policies, **COUNTY** shall require and ensure that all **COUNTY** contractors performing **CITY FACILITIES CONTRACT WORK** shall have insurance policies that contain endorsements naming the **CITY** and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the **CITY** to vicarious liability but shall allow coverage for the **CITY** to the full extent provided by the policy.
 - 1.6 Enforce **COUNTY's** contractors to comply with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages.
 - 1.7 When applicable, **COUNTY** shall fill out and submit to the California Department of Industrial Relations a PWC-100 form.

CITY AGREES TO:

- 1.8 Provide **COUNTY** a written "Notice to Proceed" for any **CITY FACILITIES CONTRACT WORK** requested by **CITY**.
- 1.9 Provide a no-cost permit to **COUNTY** for its work within **CITY's** right-of-way.
- 1.10 After **COUNTY** completes each individual **CITY FACILITIES CONTRACT WORK** assignment and submits an itemized accounting of actual **CITY FACILITIES CONTRACT WORK** costs incurred by **COUNTY** along with an invoice, to reimburse **COUNTY** for **CITY FACILITIES CONTRACT WORK** costs within sixty (60) calendar days after receipt of invoice.
- 1.11 Provide a qualified representative who shall have the authority to discuss and attempt to resolve any issues or disputes which may arise concerning the **CITY FACILITIES CONTRACT WORK** with the **COUNTY**.
- 1.12 Comply with any applicable California Environmental Quality Act (CEQA) requirements as well as completing the required CEQA documents.
- 1.13 Determine whether **CITY FACILITIES CONTRACT WORK** to be performed by **COUNTY** staff and/or **COUNTY** contractors for **CITY** is maintenance or emergency work and comply with all applicable Public Contract Code requirements prior to requesting the performance of **CITY FACILITIES CONTRACT WORK** by **COUNTY**.

SECTION II

2.0 For **COUNTY FACILITIES CONTRACT WORK** provided to **COUNTY**:

CITY AGREES TO:

- 2.1 Schedule requested **COUNTY FACILITIES CONTRACT WORK** upon receipt of a written "Notice to Proceed" from the **COUNTY** and provide to **COUNTY** a schedule of workdays anticipated for the **COUNTY FACILITIES CONTRACT WORK** for **COUNTY's** concurrence. **CITY**, through its authorized representative identified in Paragraph 4.5 and in its sole discretion, shall decide whether to approve or disapprove an individual "Notice to Proceed" and provide specific services to **COUNTY**.
- 2.2 Utilize **CITY's** labor force and/or contractors in providing services under this Agreement.

- 2.3 Obtain a no-cost permit from **COUNTY** for work within **COUNTY's** right-of-way. **CITY's** Director of Public Works, or the Director's designee, shall have the authority to obtain a permit from **COUNTY** for **COUNTY FACILITIES CONTRACT WORK**.
- 2.4 Upon completion of each **COUNTY FACILITIES CONTRACT WORK** assignment, submit to **COUNTY** an itemized accounting of **COUNTY FACILITIES CONTRACT WORK** costs incurred by **CITY** and an invoice for such costs.
- 2.5 **CITY** shall require all contractors and vendors providing **COUNTY FACILITIES CONTRACT WORK** to have appropriate and adequate insurance coverage for the mutual protection and benefit of the **PARTIES**. Except for Workers' Compensation, Errors and Omissions and Professional Liability policies, **CITY** shall require and ensure that all **CITY** contractors performing **COUNTY FACILITIES CONTRACT WORK** shall have insurance policies that contain endorsements naming the **COUNTY** and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the **COUNTY** to vicarious liability but shall allow coverage for the **COUNTY** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- 2.6 Enforce **CITY's** contractors to comply with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages.
- 2.7 Accept all payments from **COUNTY** via electronic funds transfer (EFT) directly deposited into the **CITY's** designated checking or other bank account. **CITY** shall promptly comply with directions and accurately complete forms provided by **COUNTY** required to process EFT payments.
- 2.8 When applicable, **CITY** shall fill out and submit to the California Department of Industrial Relations a PWC-100 form.

COUNTY AGREES TO:

- 2.9 Provide **CITY** a written "Notice to Proceed" for any authorized **COUNTY FACILITIES CONTRACT WORK** requested by **COUNTY**.
- 2.10 Provide a no-cost permit to **CITY** for its work within **COUNTY's** right-of-way.
- 2.11 After **CITY** completes each individual **COUNTY FACILITIES CONTRACT WORK** assignment and submits an itemized accounting of actual **COUNTY FACILITIES CONTRACT WORK** costs incurred by **CITY** along with an invoice, to reimburse **CITY** for **COUNTY FACILITIES CONTRACT WORK** costs within sixty (60) calendar days after receipt of invoice.
- 2.12 Provide a qualified representative who shall have the authority to discuss and attempt to resolve any issues or disputes which may arise concerning the **COUNTY FACILITIES CONTRACT WORK** with the **CITY**.
- 2.13 Comply with any applicable CEQA requirements as well as completing the required CEQA documents.
- 2.14 Determine whether **COUNTY FACILITIES CONTRACT WORK** to be performed by **CITY** staff and/or **CITY** contractors for **COUNTY** is maintenance or emergency work and comply with all applicable Public Contract Code requirements prior to requesting the performance of **COUNTY FACILITIES CONTRACT WORK** by **CITY**.

SECTION III

3.0 IT IS MUTUALLY AGREED:

- 3.1 **CITY FACILITIES CONTRACT WORK** and **COUNTY FACILITIES CONTRACT WORK** (at times individually referred to simply as "**FACILITIES CONTRACT WORK**") shall include only maintenance or emergency work associated with the following facilities: streets/highways, appurtenant fencing, culvert or drainage facilities. **FACILITIES CONTRACT WORK** may include, but is not limited to, the grading and application of soil stabilization product on dirt roads, as well as providing heavy equipment for storm debris cleanup, striping, chip sealing, maintenance or emergency paving.
- 3.2 The cost for each **FACILITIES CONTRACT WORK** project shall not exceed seventy-five thousand dollars (\$75,000).

- 3.3 The total cost for all work performed pursuant to Section 1.0 shall not exceed one hundred thousand dollars (\$100,000) per fiscal year, absent a prior written amendment to this Agreement. The total cost for all work performed pursuant to Section 2.0 shall not exceed one hundred thousand dollars (\$100,000) per fiscal year, absent a prior written amendment to this Agreement.
- 3.4 **CITY or COUNTY** is only responsible to provide the **FACILITIES CONTRACT WORK** identified in the "Notice to Proceed" from the requesting party (**CITY or COUNTY**) and agreed to by the non-requesting party (**CITY or COUNTY**). After completion of **FACILITIES CONTRACT WORK** on any particular facility, the requesting party (**CITY or COUNTY**) shall be responsible for all future maintenance and repair work associated with the **FACILITIES CONTRACT WORK**, unless the non-requesting party (**CITY or COUNTY**) receives a future request to provide additional **FACILITIES CONTRACT WORK** under this Agreement, followed by an approval of a written "Notice to Proceed."
- 3.5 The **PARTIES** shall comply with all applicable laws and regulations, including, but not limited to, all applicable Public Contract Code (e.g. bidding requirements), Labor Code (e.g. prevailing wage requirements), Business and Professions Code (e.g. licensing requirements), and Civil Code requirements (e.g. payment bond requirements).

SECTION IV

4.0 IT IS FURTHER UNDERSTOOD AND AGREED:

- 4.1 The requesting party (**CITY or COUNTY**) shall prepare and submit to the non-requesting party (**CITY or COUNTY**) a "Notice to Proceed" that outlines the work requested within the scope and budget limitations of this Agreement. The Notice to Proceed shall include the location (street(s) or highway(s)) the work shall take place on, the scope of the work, the requested schedule, the level of service required (if necessary), and other pertinent terms and details for the project within the scope of this Agreement. The **COUNTY** Director of Public Works and the **CITY** Director of Public Works/City Engineer shall have the authority to prepare and submit a "Notice to Proceed," as well as provide estimates and approve all **FACILITIES CONTRACT WORK** projects under this Agreement. The non-requesting party shall develop cost estimates and project schedules for review by the requesting party using **COUNTY/CITY**-approved labor and equipment rates that include fringe and overhead for actual employee classifications, equipment rates that will recover the depreciation expenses and the maintenance and repair cost of the equipment used for the proposed work assignment and estimated material costs. If requested, the estimate of cost will be provided to the requesting party prior to the commencement of work. The non-requesting party is under no obligation to perform work tasks and the non-requesting party's representative identified in Paragraph 4.5 may decline to perform the requested work for any reason or for no reason.
- 4.2 The Effective Date of this Agreement shall be the first date on which all of the following has occurred: (1) the **CITY's** Council and **COUNTY's** Board have approved the Agreement; and (2) the authorized representative of each has signed the Agreement.
- 4.3 Insurance and Indemnification
COUNTY and **CITY** are authorized self-insured or partially self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Worker's Compensation and warrant that through their respective programs of self-insurance and insurance, they have adequate coverage or resources to protect against liabilities arising out of performance of the terms, conditions or obligations of this Agreement.
Neither **CITY** nor any officer, employee, agent, or volunteer of **CITY** shall be responsible for any damage or liability arising out of, pertaining to, or relating to any acts or omissions on the part of **COUNTY** or its contractors under or in connection with any work, authority or jurisdiction delegated to and performed by **COUNTY** or its contractors under this Agreement. It is also understood and agreed that, pursuant to Government Code section 895.4, **COUNTY** shall fully indemnify, defend (with counsel approved by **CITY**) and hold **CITY** and its officers, employees, agents, and volunteers harmless from any liability imposed for injury (as defined by Government Code section 810.8) arising out of, pertaining to, or relating to any acts or omissions on the part of **COUNTY** or

its contractors under or in connection with any work, authority or jurisdiction delegated to and performed by **COUNTY** or its contractors under this Agreement.

Neither **COUNTY** nor any officer, employee, agent or volunteer of **COUNTY** shall be responsible for any damage or liability arising out of, pertaining to, or relating to any acts or omissions on the part of **CITY** or its contractors under or in connection with any work, authority or jurisdiction delegated to and performed by **CITY** or its contractors under this Agreement. It is also understood and agreed that, pursuant to Government Code section 895.4, **CITY** shall fully indemnify, defend (with counsel approved by **COUNTY**) and hold **COUNTY** and its officers, employees, agents, and volunteers harmless from any liability imposed for injury (as defined by Government Code section 810.8) arising out of, pertaining to, or relating to any acts or omissions on the part of **CITY** or its contractors under or in connection with any work, authority or jurisdiction delegated to and performed by **CITY** or its contractors under this Agreement.

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

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

4.4 No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by **CITY** and **COUNTY**.

4.5 All notices, approvals, consents or other documents required or permitted under this Agreement shall be in writing and, except as otherwise provided herein, shall be effective upon personal delivery or three calendar days after deposit in the United States mail, certified, with first class postage, fully prepaid, addressed as follows:

City of Needles
817 Third Street
Needles, CA 92363
Authorized Representative:
City Engineer

County of San Bernardino
825 East Third Street
San Bernardino, CA 92415
Authorized Representative:
Director of Public Works

4.6 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a **PARTY** shall give the other **PARTY** any contractual rights by custom, estoppel, or otherwise.

4.7 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, California. In the event of litigation arising from this Agreement, each **PARTY** to the Agreement shall bear its own costs, including attorney's fees. This provision concerning costs shall not apply to costs or attorney's fees relative to paragraphs 4.3.

4.8 This Agreement contains the entire Agreement of the **PARTIES** with respect to subject matter hereof, and supersedes all other prior negotiations, understandings or contracts. This Agreement may only be modified in writing, signed by authorized representatives of both **CITY** and **COUNTY**.

4.9 This Agreement may be terminated, with or without cause, by either **CITY** or **COUNTY** upon thirty (30) calendar days advance written notice by the party wishing to terminate, provided however, that any such cancellation shall not be effective as to any existing obligations pursuant to any **FACILITIES CONTRACT WORK** authorized prior to notice of cancellation. In the event of cancellation as provided herein, all **FACILITIES CONTRACT WORK** costs required to be paid by the **PARTIES** prior to the effective date of cancellation shall be paid by the **PARTIES** as provided in this Agreement.

- 4.10 Except with respect to the indemnification obligations contained herein which shall survive the termination of this Agreement, this Agreement shall take effect on the date it is signed by both parties, and shall terminate on June 30, 2025, unless it is terminated early as provided in Paragraph 4.9.
- 4.11 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 4.12 The Recitals preceding the terms of this Agreement are incorporated into the terms hereof by this reference and constitute constructive terms of this Agreement.
- 4.13 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.

IN WITNESS WHEREOF, **COUNTY** and **CITY** have each caused this Agreement to be subscribed by its respective duly authorized officers on its behalf.

COUNTY OF SAN BERNARDINO		CITY OF NEEDLES <i>(Print or type name of corporation, company, contractor, etc.)</i>	
▶		By ▶	
Curt Hagman, Chairman, Board of Supervisors		<i>(Authorized signature - sign in blue ink)</i>	
Dated: _____		Name Jeffrey Williams, Mayor <i>(Print or type name of person signing contract)</i>	
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE HAIRMAN OF THE BOARD		Dated: _____	
Lynna Monell Clerk of the Board of Supervisors of the County of San Bernardino		Attest: _____ Dale Jones, City Clerk <i>(Print or Type)</i>	
By _____ Deputy		Approved as to Legal Form SBEMP _____ John O. Pinkney, City Attorney	

FOR COUNTY USE ONLY

Approved as to Legal Form ▶ Suzanne Bryant, Deputy County Counsel Date _____	Reviewed for Contract Compliance ▶ Mohammad Ali, P.E., Chief – Contracts Date _____	Reviewed/Approved by Department ▶ Brendon Biggs, Interim Director, Department of Public Works Date _____
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