

City of Needles, California

CITY COUNCIL UTILITY BOARD NPUA RDA Regular Special

Meeting Date: September 28, 2021

Title: Cooperative Agreement with City of Needles for Needles Highway Improvements

Background: San Bernardino County (COUNTY) and the City of Needles desire to cooperate and jointly participate in a pavement reconstruction project on Needles Highway, from 500 feet south of Park Road north to David Drive, in the Needles area known as Segment 1B which boundaries are within the City Limits and the federal Bureau of Land Management lands.

The Parties entered a Contract April 10, 2001, and Amendment No.1 on August 9, 2016, authorizing the County to implement and construct improvements on Needles Highway, from "N" Street northerly to the California/Nevada state line.

The AGREEMENT included three segments on Needles Highway: (1) from "N" Street to 600 feet north of Balboa Place (Segment "N"); (2) from 600 feet north of Balboa Place to 500 feet south of Park Road (Segment 1A); and (3) SEGMENT 1B, 600 feet south of Park Road north to David Dr.

The Project was awarded federal Public Lands Highways (PLH) Program funds to design and construct the Project and Segments N and 1A construction were completed under the AGREEMENT and the remaining federal Public Lands Highways (PLH) Program funds of \$2,192,587 will be used to construct SEGMENT 1B.

The AGREEMENT expired on December 30, 2020; and Streets and Highways Code sections 1685 and 1803 authorize CITY to contract with COUNTY for the maintenance, construction or repair of CITY streets and roads, if the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads; and the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads to contract with COUNTY for SEGMENT 1B.

The COUNTY and CITY desire to enter into this Cooperative Agreement for the construction of SEGMENT 1B utilizing the remaining \$2,192,587 of PLH funds, and the maintenance responsibilities for Segment 1A and SEGMENT 1B. This

Agreement will be effective on the date it is signed by both Parties and shall conclude on December 31, 2025.

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Approved: Not Approved: Tabled: Other:

AGENDA ITEM: 12

Fiscal Impact: The total amount of the project is estimated to be a remaining \$2,192,587 of PLH funds

Recommendation: I MOVE to have the mayor execute the Cooperate Agreement between the City of Needles and the County of San Bernardino for the Needles Hwy Improvements 1B.

Submitted By: Tammy Ellmore, Engineer Tech II

City Management Review:  **Date:** 9/21/21



Contract Number

SAP Number

Public Works

Department Contract Representative Harold Zamora, P.E., Engineering Manager
Telephone Number (909) 387-8166

Project	<u>Needles Highway Segment 1B</u>
Contractor	<u>City of Needles</u>
Contractor Representative	<u>Tammy Ellmore, Engineering Technician II</u>
Telephone Number	<u>(760) 326-5740 Ext. 150</u>
Contract Term	<u>Expiration 12/31/2025</u>
Original Contract Amount	<u>\$0</u>
Amendment Amount	<u>\$0</u>
Total Contract Amount	<u>\$0</u>
Cost Center	<u>6650002000 34H14876</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (COUNTY) and the City of Needles (CITY) (COUNTY and CITY are also each referred to herein as "Party" and collectively as "Parties"), desire to cooperate and jointly participate in a pavement reconstruction project on Needles Highway, from 500 feet south of Park Road north to David Drive, in the Needles area (hereinafter referred to as "SEGMENT 1B"); and,

WHEREAS, SEGMENT 1B is within the boundaries of the CITY and the federal Bureau of Land Management (BLM); and,

WHEREAS, the Parties entered into County Contract No. 01-257 ("AGREEMENT") on April 10, 2001 and Amendment No.1 on August 9, 2016, authorizing the County to implement and construct improvements on Needles Highway, from "N" Street northerly to the California/Nevada state line ("Project"); and,

WHEREAS, the AGREEMENT included three segments on Needles Highway: (1) from "N" Street to 600 feet north of Balboa Place (Segment "N"); (2) from 600 feet north of Balboa Place to 500 feet south of Park Road (Segment 1A); and (3) SEGMENT 1B; and permit requirement from the federal Bureau of Reclamation (BOR); and,

WHEREAS, the Project was awarded federal Public Lands Highways (PLH) Program funds to design and construct the Project; and,

WHEREAS, Segments N and 1A construction were completed under the AGREEMENT and the remaining federal Public Lands Highways (PLH) Program funds of \$2,192,587 will be used to construct SEGMENT 1B; and,

WHEREAS, the AGREEMENT expired on December 30, 2020; and,

WHEREAS, California Streets and Highways Code sections 1685 and 1803 authorize CITY to contract with COUNTY for the maintenance, construction or repair of CITY streets and roads, if the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads; and,

WHEREAS, the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads to contract with COUNTY for SEGMENT 1B; and,

WHEREAS, COUNTY and CITY desire to enter into this Cooperative Agreement for the construction of SEGMENT 1B utilizing the remaining \$2,192,587 of PLH funds, and the maintenance responsibilities for Segment 1A and SEGMENT 1B.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

- 1.1 Act as the Lead Agency in the finalization of design plans, construction engineering and inspection of SEGMENT 1B. Right-of-way acquisitions are not required. Design, California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliances were completed under the AGREEMENT, and therefore are not part of this Agreement.
- 1.2 Construct SEGMENT 1B by contract in accordance with the plans and specifications of COUNTY, which have been reviewed and approved by CITY.
- 1.3 Arrange for relocation of all utilities which interfere with construction of SEGMENT 1B within the entire SEGMENT 1B limits, pursuant to paragraph 3.8 below.
- 1.4 Obtain a no-cost permit from CITY for work within the CITY's right-of-way.
- 1.5 Advertise, award, administer, and fund the construction of SEGMENT 1B, in accordance with the provisions of California Public Contract Code applicable to counties.
- 1.6 Require its contractors and subcontractors to maintain and to comply throughout the term of any contract awarded by COUNTY with the insurance requirements described in COUNTY policy Numbers 11-07 and 11-07SP.
- 1.7 Provide adequate inspection of all items of work performed under the construction contract(s) with COUNTY's contractors or subcontractors for SEGMENT 1B and maintain adequate records of inspection and materials testing for review by CITY. COUNTY shall provide copies of any records of inspection and materials testing to CITY within ten (10) days of COUNTY's receipt of written demand from CITY for such records. This shall be included as a PROJECT cost.
- 1.8 Expend the PLH funds assigned to the PROJECT for SEGMENT 1B for the construction, construction engineering, inspection, and eligible administrative costs. SEGMENT 1B estimated total cost is \$2,192,587, and will be financed with the PLH funds assigned to COUNTY.

2.0 CITY AGREES TO:

- 2.1 Provide a no-cost permit to the COUNTY for its work in the CITY's right-of-way.
- 2.2 Provide a representative who shall have the authority to discuss and attempt to resolve issues concerning SEGMENT 1B with the COUNTY.
- 2.3 Except for activities that are impossible to perform during the construction phase of SEGMENT 1B, before, during, and after CITY's and COUNTY's acceptance of completed SEGMENT 1B, the CITY shall be responsible for performing any and all work (including, but not limited to, maintenance) for City streets in the SEGMENT 1B limits that are in the CITY incorporated area.
- 2.4 Obtain a Right-of-Way Grant/Temporary Use Permit through the BLM for the operation and maintenance of public land on Segment 1A and SEGMENT 1B within the City's jurisdiction; and pay the related fees/costs, if such fees are required.

3.0 IT IS MUTUALLY AGREED:

- 3.1 CITY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY, its officers, employees, agents, and volunteers from any and all claims, actions, or losses, damages, and/or liability arising out of CITY's negligent acts or omissions which arise from City's performance of its obligations under this Agreement.
- 3.2 COUNTY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the CITY, its officers, employees, agents, and volunteers from any and all claims, actions, or losses, damages, and/or liability arising out of COUNTY's negligent acts or omissions which arise from COUNTY's performance of its obligations under this Agreement.
- 3.3 In the event the CITY and/or the COUNTY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the CITY and/or COUNTY shall indemnify the other to the extent of its comparative fault.
- 3.4 In the event of litigation arising from this Agreement, each Party to the Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 3.1, 3.2 and 3.3.
- 3.5 CITY and COUNTY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrant that through their programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.
- 3.6 If either CITY or COUNTY requests additional work that is beyond the scope of the original SEGMENT 1B, and not considered by all parties to be a necessary part of SEGMENT 1B, said work, if approved by all parties, will be paid solely by the agency requesting the work.
- 3.7 In the event that change orders are required during the course of the SEGMENT 1B construction, COUNTY will be the responsible agency to authorize and approve the change order with consultation of the CITY's representative.
- 3.8 In the case wherein one of the Parties owns a utility that needs to be relocated for a project and that Party does not have prior rights for that utility, it will be the sole responsibility of that Party to relocate the utility at that Party's cost. This shall not be included as a SEGMENT 1B cost. In the case that a utility relocation is determined to be a SEGMENT 1B cost based on that utility having prior rights, the relocation of the utility will be included as a SEGMENT 1B cost for which the COUNTY and CITY will be responsible for funding within their jurisdictional boundaries.
- 3.9 This Agreement may be cancelled upon thirty (30) calendar days advance written notice by COUNTY to CITY in the event that COUNTY determines, in its sole discretion, that it is unable to secure sufficient funds to complete SEGMENT 1B.
- 3.10 Except as provided in Paragraph 3.9, and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive Agreement termination, this Agreement shall terminate upon completion of SEGMENT 1B.
- 3.11 This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.12 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between CITY and COUNTY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT, shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California.
- 3.13 Time is of the essence for each and every provision of this Agreement.
- 3.14 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 business days shall be deemed COUNTY business 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.

- 3.15 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.
- 3.16 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.
- 3.17 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.18 This Agreement will be effective on the date it is signed by both Parties and shall conclude on December 31, 2025.
- 3.19 The Recitals are incorporated into the body of this Agreement.

SIGNATURES ON THE FOLLOWING PAGE

SAN BERNARDINO COUNTY

CITY OF NEEDLES

►

Curt Hagman, Chairman, Board of Supervisors

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

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____
Deputy

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

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

Title _____
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Suzanne Bryant, Deputy County Counsel	► Andy Silao, P.E., Engineering Manager	► Brendon Biggs, Director
Date _____	Date _____	Date _____