

SERVICE AGREEMENT BY AND BETWEEN

COUNTY OF SAN DIEGO

AND

CITY OF ESCONDIDO

FOR

MONTIEL ROAD ROADWAY RESURFACING

This Roadway Resurfacing Service Agreement ("Agreement") is entered into as of the last date of signature below, by and between the County of San Diego, a political subdivision of the State of California (hereinafter "COUNTY"), and the City of Escondido, a California municipal corporation, (hereinafter "CITY") for Roadway Resurfacing of Montiel Road, located within the jurisdictional boundaries of CITY. The COUNTY and CITY are sometimes hereinafter referred to individually as the "PARTY" and collectively as the "PARTIES".

- A. Pursuant to Government Code section 54981 the legislative body of the CITY is authorized to contract with the legislative body of the COUNTY for the performance of municipal services within the territory of the CITY.
- B. The COUNTY currently has a North County Metro Roadway Resurfacing Project, comprising of segments of Montiel Road, which total approximately .51 miles, which excludes work outside of the COUNTY'S jurisdiction ("COUNTY PROJECT").
- C. The CITY currently has jurisdiction over portions of these segments to County Limit, which total approximately 0.27 miles, adjacent to the COUNTY PROJECT.
- D. COUNTY and CITY have mutually agreed that the CITY portion of Montiel Road is in need of roadway resurfacing (0.27 miles).
- E. The CITY limit is either side of the COUNTY PROJECT "Exhibit A", which is attached hereto and incorporated by this reference. All improvements being proposed within CITY limits shall be referred to as CITY PROJECT.
- F. The Roadway Resurfacing project will consist of asphalt concrete mill and inlay. The existing surface will be milled to a depth of 2 inches to remove surface distresses and irregularities. Two inches of polymer modified hot mix asphalt concrete will then be placed within the milled section. Incidental work will include and not be limited to repair of base failures (digouts), dike replacement, utility coordination and signing and striping the roadway.
- G. The COUNTY and CITY desire to have one agency take the lead role in the implementation of the roadway improvements in an interest to coordinate the improvements located in the two jurisdictions and to reduce overall costs by processing the two separate jurisdictional improvements as one project.
- H. The COUNTY will provide the administrative, technical, managerial, and support services necessary for the implementation of the CITY PROJECT. The CITY will fund project work up to an amount of two hundred eighty-eight thousand, five hundred sixteen dollars and eighteen cents (\$288,516.18) as well as changes to the CITY PROJECT completed with prior CITY approval. The COUNTY will fund one hundred percent (100%) of the cost of the COUNTY PROJECT.

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

**DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 1) "CITY PROJECT" refers to the portion of the resurfacing work located within the jurisdictional boundaries of the City of Escondido, totaling approximately 0.27 miles of Montiel Road, as shown in Exhibit A. This includes all improvements proposed within CITY limits and funded by the CITY under this Agreement.
- 2) "COUNTY PROJECT" refers to the portion of the resurfacing work located within the jurisdictional boundaries of the County of San Diego, totaling approximately 0.51 miles of Montiel Road, as part of the COUNTY's North County Metro Roadway Resurfacing Project, excluding work outside of COUNTY jurisdiction.
- 3) "Construction Contract" refers to the contract awarded by the COUNTY for its FY26 Roadway Maintenance Program, which includes both the CITY PROJECT and COUNTY PROJECT as part of a single coordinated resurfacing effort. The COUNTY will manage this contract and provide administrative, technical, and managerial support for implementation of the CITY PROJECT.

**AGREEMENT**

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

**SECTION 1 • COUNTY AGREES:**

1. To act as the lead agency on behalf of the CITY for the overall development and implementation of the CITY PROJECT. The COUNTY is providing services for which the CITY will reimburse COUNTY as shown on Exhibit "B", which is attached hereto and incorporated by this reference.
2. To prepare, or cause to be prepared, detailed plans, specifications and estimates documents ("PS&E") for CITY PROJECT and submit to the CITY for review and approval at appropriate stages of development. Final plans for improvements shall be prepared to the COUNTY standards and signed by a Civil Engineer registered in the State of California. Deviations from standards shall be coordinated with and approved by the CITY.
3. To identify and locate all utility facilities within the limits of the CITY PROJECT as part of its design responsibility. If any existing public and/or private utility facilities conflict with CITY PROJECT construction, the CITY and COUNTY shall coordinate and cooperate in good faith to make all necessary arrangements with the owners of such facilities for their protection, adjustment, relocation, or removal. The CITY and COUNTY shall, in good faith, coordinate and cooperate to require the utility owner and/or its contractors performing the relocation work within the CITY's right of way to obtain a CITY encroachment permit prior to the performance of said relocation work. The CITY and COUNTY shall, in good faith, coordinate and cooperate in the effort to establish prior rights related to utility encroachments into each jurisdiction's right-of-way. In the case that any utility companies are determined to have prior rights, the cost of relocating utilities shall be borne by the CITY.

4. To make written application to CITY for a Public Right-of-Way Permit authorizing entry into CITY's right of way for the purposes of constructing CITY PROJECT.
5. In accordance with Exhibit "C", Agreement Designating Lead Agency, which is attached hereto and incorporated by this reference, to act as the Lead Agency under the California Environmental Quality Act ("CEQA") for the CITY PROJECT. To advertise, award and administer a public works contract for the construction of the CITY PROJECT in accordance with all applicable federal, state or County statutes, ordinances, orders, governmental requirements, laws or regulations, including but not limited to the COUNTY public construction codes, California Labor Code, and California Public Contract Code.
6. To furnish a representative to perform the function of Resident Engineer during construction of the CITY PROJECT.
7. To furnish qualified support staff to assist the Resident Engineer; such assistance shall include, but not be 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. To construct the CITY PROJECT in accordance with CITY approved PS&E documents.
9. To submit any contract change order that causes the amount of the CITY PROJECT improvements to exceed \$288,516.18 (as shown in Exhibit B) to CITY for review and approval prior to final authorization by COUNTY.
10. To furnish the CITY as-built plans, within one hundred and eighty (180) days following the completion and mutual acceptance of the CITY PROJECT and the recorded date for Notice of Completion of the Construction Contract.
11. To furnish the CITY a final reconciliation of project expenses within ninety (90) days following the completion and mutual acceptance of the CITY PROJECT and the recorded date for Notice of Completion of the Construction Contract. If final costs associated with the CITY PROJECT improvements are in excess of the deposit provided in Section 2, the COUNTY shall include a final bill with the financial reconciliation. If final costs associated with the CITY PROJECT improvements are less than the deposit provided in Section 2, the COUNTY shall reimburse the CITY for the difference with the financial reconciliation.

**SECTION 2 • CITY AGREES:**

1. To fund one hundred percent (100%) of the cost of the CITY PROJECT. CITY agrees that should unforeseen circumstances arise which result in an increase of any costs over those shown in "Exhibit B", CITY will in good faith amend this Agreement to include any such costs under this Agreement, subject to City Council approval if applicable.
2. To deposit with the COUNTY, within 30 days of executing this agreement, full value (\$288,516.18) (the "Deposit"), as provided in "Exhibit B".
3. CITY agrees to approve the COUNTY or its contractors Public Right-of-Way Permit application authorizing entry onto CITY's right of way to perform all surveys and other field activities required for preparation of the PS&E, utility coordination, and construction of the CITY PROJECT, if the proposed work meets CITY design and access requirements, within 45 days of the application being deemed complete. The CITY agrees to reimburse the COUNTY for COUNTY, or its

contractor's, cost to obtain such permit and for any requirements of said permit not required by COUNTY's Construction Contract.

4. In support of the COUNTY's resurfacing activities within CITY boundaries, the CITY agrees to waive all applicable Right-of-Way Encroachment permit fees, including inspection fees and traffic control review fees, specifically for work the CITY PROJECT. This waiver of permit applies only to work conducted during normal City working hours, defined as Monday through Friday, 7:00 AM to 4:00 PM. Any work conducted outside of normal working hours shall require a Noise Variance Permit, which is subject to approval and issuance by the CITY. If approved, the COUNTY shall require the awarded contractor to submit for a Noise Variance Permit with the City, with a minimum of 96 hours' notice prior to such work. Issuance of a Noise Variance Permit is not guaranteed. If the Noise Variance Permit is not approved, the COUNTY shall coordinate with the CITY to reschedule the work within approved working hours or explore alternative compliance measures.
5. Provide a representative to coordinate with the COUNTY's Project Manager during the development and the construction of CITY PROJECT, and to verify facilities are constructed as required by this Agreement, if applicable.
6. To provide oversight of the CITY PROJECT, to provide reviews and approvals, as appropriate, of submittals by the COUNTY, and to cooperate in processing of the CITY PROJECT.
7. To pay within 45 days of receipt, the invoice for final reconciled cost in excess of the deposit amount for the CITY PROJECT submitted by the COUNTY for services rendered in accordance with this Agreement, subject to City Council approval if applicable.
8. The City agrees that it shall be legally obligated to pay the full cost of the CITY PROJECT, including any costs associated with change orders reasonably necessary to complete the project, and that this liability shall not be reduced, excused or defended on the basis of the failure or refusal of the City Council to approve an amendment to this Agreement or budget necessary funds to pay the liability.
9. City agrees that the COUNTY shall not be liable to the CITY for any cost increases or liabilities resulting from any alleged errors or omissions in site investigation, utility coordination, engineering review, or other activities associated with, use in, and including the PSE for the CITY PROJECT and that the COUNTY makes no representations or warranties regarding quality of work or materials for the CITY PROJECT. CITY is a third-party beneficiary of the CITY PROJECT work to be included in the COUNTY contract per Section 1 and the COUNTY agrees to assign any warranties or other contractual rights it may have to the CITY for the CITY PROJECT portion of the work.

**SECTION 3 • IT IS MUTUALLY AGREED AS FOLLOWS:**

1. The total cost to CITY to complete PS&E documents, construction, including construction survey, inspection and a material testing for CITY PROJECT, including soft costs and contingency, is estimated to be, two hundred and eighty-eight thousand, five hundred and eighteen dollars and eighteen cents (\$288,516.18) as detailed in "Exhibit B".
2. COUNTY shall not be obligated to commence construction of the CITY PROJECT until after receipt of the CITY's deposit as required in Section 2.
3. During any portion of the CITY PROJECT, if a cost overrun exceeding ten percent (10%) of the COUNTY Construction Cost Estimate is identified, the COUNTY and CITY shall endeavor to agree

upon a course of action in a timely manner to avoid construction delay, contractor mobilization or similar costs.

4. Construction by the COUNTY of improvements referred to herein which lie within CITY rights of way shall not be commenced until a Public Right-of-Way Permit to the COUNTY, or COUNTY's contractor, authorizing such work has been issued by the CITY.
5. Parties shall obtain and/or cause any agent, subcontractor or other representative of that Party to maintain insurance at its own cost and expense and keep in force and effect during the term of this Agreement, including all extensions, policies of insurance or programs of self-insurance with policy limits in sufficient amounts to cover any and all potential liability of such Party hereunder. The COUNTY shall ensure that any contractor or subcontractors working on the CITY PROJECT will name City of Escondido, its respective elected officials, officers, employees, agents, and representatives as additional insureds under all policies of insurance, and that additional insured certificates be provided to the CITY as specifically set forth in "Exhibit D," City of Escondido Insurance Requirements. The COUNTY shall also ensure that any contractor or subcontractor working on the CITY PROJECT will agree to defend and indemnify City of Escondido, its respective elected officials, officers, employees, agents, and representatives against any claims arising out of the CITY PROJECT, with the exception of claims arising out of the CITY'S sole negligence or willful misconduct. 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. The COUNTY shall have no liability for any claims within the scope of insurance provided by the COUNTY's contractor, and any insurance or self-insurance maintained by the COUNTY shall not be obligated for any such insured claims.
6. Upon completion and acceptance of the CITY PROJECT, the CITY shall be responsible for the ongoing maintenance of all improvements constructed within CITY jurisdiction. The COUNTY shall be responsible for the maintenance of improvements constructed within COUNTY jurisdiction as part of the COUNTY PROJECT. The CITY shall assume maintenance responsibility for the CITY PROJECT upon receipt of a Notice of Completion of the Construction Contract from the COUNTY.
7. 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.
8. 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 other party shall have the option to terminate this Agreement for default. Termination by CITY for default after the award of a construction contract shall not excuse CITY from paying for the CITY PROJECT work completed prior to termination. If the COUNTY's contractor has the legal right to complete work per the awarded contract, the CITY's termination for default shall not excuse the CITY from liability to the contractor for completion or damages for failure to allow completion of the CITY PROJECT.
9. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the same shall be deemed severable from the remainder of this Agreement, and the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
10. This Agreement is to be construed in accordance with the laws of the State of California.

11. Neither the CITY nor COUNTY shall assign this Agreement without the written consent of the other party.
12. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided by this Agreement shall be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.
13. This Agreement is the result of negotiations between the parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by CITY or COUNTY shall have no importance or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against the party that prepared it in its final form.
14. Any waiver by the COUNTY or CITY of any breach by any other party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other provision hereof. Failure on the part of the COUNTY or CITY to require from any other party exact, full and complete compliance with any of the provisions of this Agreement shall not be construed as in any manner changing the terms hereof, or stopping the COUNTY or CITY from enforcing this Agreement.
15. This Agreement and the Exhibits herein contain the entire agreement between the PARTIES, and are intended by the PARTIES to completely state the Agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto, not expressly set forth in this Agreement, is null and void.
16. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or affect the legal liability of any party to the Agreement by imposing any standard of care with respect to the maintenance of roads different from the standard of care imposed by law.
17. The 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.
18. The CITY PROJECT shall be awarded and completed in conformity with all applicable federal, State, and COUNTY laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. The COUNTY as the Party responsible for overseeing the contract work shall ensure compliance with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation. In addition to any applicable federal or State laws, rules, or regulations, the COUNTY shall comply with CITY requirements imposed for access to CITY right-of-way and design requirements included in the PSE at the request of the CITY.
19. Any party may propose amendments to this Agreement by providing written notice of such amendments to the other party. This Agreement may only be amended by a written amendment signed by each party's administrator.
20. This Agreement only applies to the CITY PROJECT described herein and does not set forth any additional current or future obligations or agreements between the parties, except that the parties may by written amendment amend the scope of this Agreement.



21. This Agreement shall become effective on the date all of the parties have signed this Agreement and be in force until the latter of two years from the execution date or the completion and final payment by CITY for CITY PROJECT.
22. The COUNTY or CITY may, by written notice stating the extent and effective date, terminate this Agreement for convenience in whole or in part, at any time prior to the award of a construction contract for the CITY PROJECT by the COUNTY.
23. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument.
24. 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:**

County of San Diego, Department of Public Works  
Attn: Samir Nuhaily, Deputy Director of Public Works  
5510 Overland Ave, Suite 370  
San Diego, CA 92123  
Phone: (619) 507-7754

**CITY:**

Escondido  
Jonathan Schauble, City Engineer  
201 N Broadway  
Escondido, CA 92025

**Attachments:**

1. EXHIBIT A – PROJECT MAP
2. EXHIBIT B – CITY ESTIMATED PROJECT COSTS
3. EXHIBIT C – AGREEMENT DESIGNATING THE COUNTY OF SAN DIEGO AS THE LEAD AGENCY FOR PROJECT
4. EXHIBIT D – CITY OF ESCONDIDO INSURANCE REQUIREMENTS

IN WITNESS WHEREOF, this Agreement is executed by the City of Escondido and the County of San Diego, acting by and through their authorized officers.

COUNTY OF SAN DIEGO

CITY OF ESCONDIDO

BY: \_\_\_\_\_  
ANDREW POTTER  
Executive Officer/ Clerk of the Board of Supervisors  
DATE: \_\_\_\_\_

Signed by:  
BY: Dane White  
DANE WHITE  
Mayor  
DATE: 10/30/2025

Approved as to form this \_\_\_\_ day of \_\_\_\_\_, 2025.

BY: \_\_\_\_\_  
THOMAS BOSWORTH  
County Counsel

Approved as to form this <sup>29</sup> day of October, 2025.

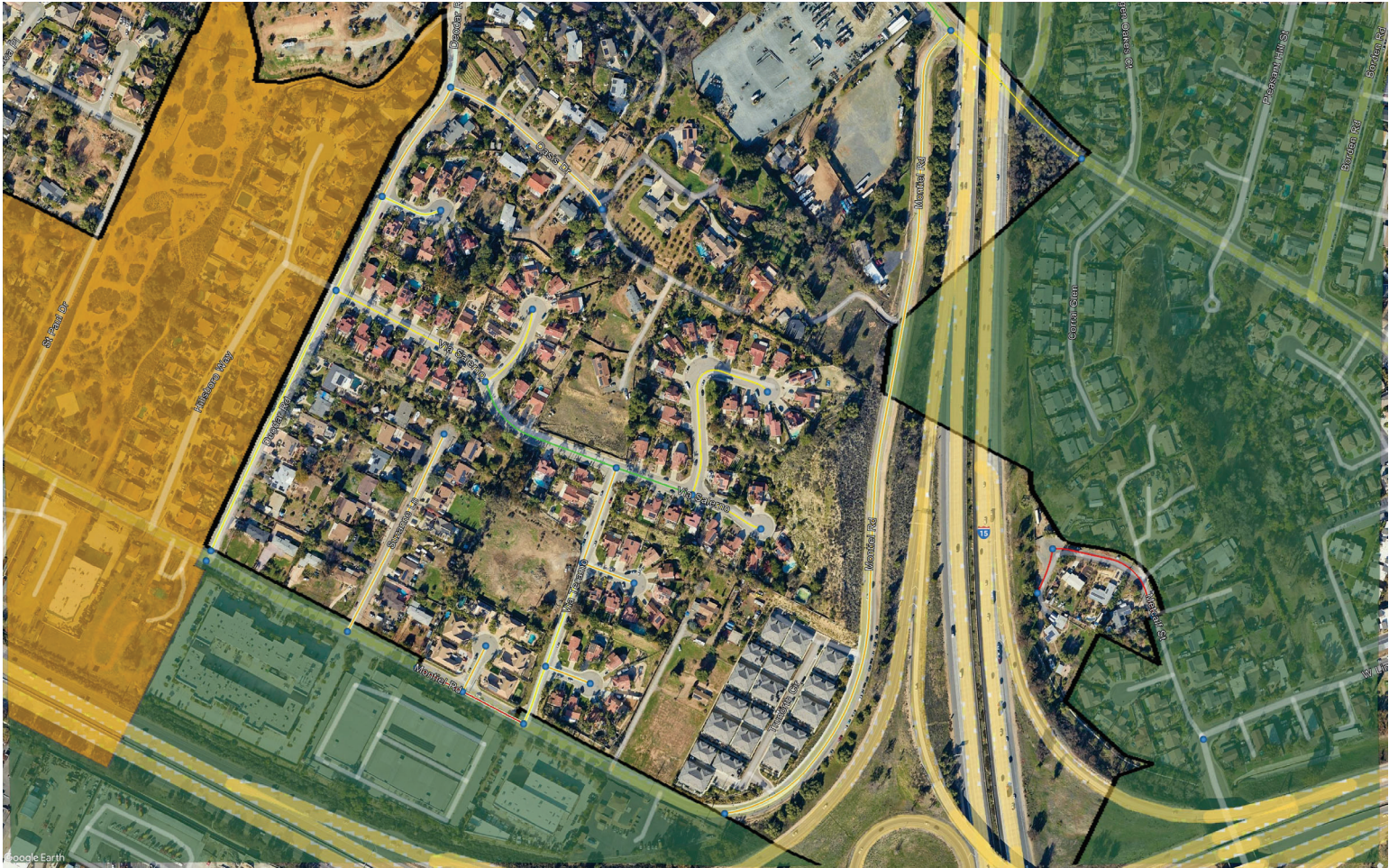
MICHAEL R. MCGUINNESS , City Attorney

BY:  \_\_\_\_\_  
City Attorney



## Exhibit A- Project Map

# County DPW Resurfacing Exhibit Montiel Rd



## Exhibit B- City Estimated Project Costs

SUPERVISORIAL DISTRICT 5										
County Planning Group	Road Name	FROM	TO	# LANES	Area (SY)	Treatment	PCI	Est Construction Cost	Est Total Cost (Const + 28% Soft Cost)	City Length (MI)
NORTH COUNTY METRO (ISL)	MONTIEL RD	SUZANNE LN	105 FT W/O TRUNORTH CIR	1 to 2	4,635	2" Mill/Inlay	18	\$185,765	\$237,779.61	0.24
NORTH COUNTY METRO (ISL)	MONTIEL RD	ESCONDIDO CITY ENTER	ESCONDIDO CITY LEAVE	2	989	2" Mill/Inlay	18	\$39,638	\$50,736.58	0.05
				<b>2</b>	<b>5,624</b>			<b>\$225,403.27</b>	<b>\$288,516.18</b>	<b>0.29</b>

Mill Inlay						
No.	Code	Item Description	Qty	Unit	Cost	Total
1		Prepare Water Pollution Control Program	1	LS	\$2,000	\$2,000
2		Construction Site Management	1	LS	\$10,000	\$10,000
3		Plane Asphalt Concrete Pavement (Full Width)	5,624	SY	\$4.75	\$26,714
4		Replace Asphalt Concrete Surfacing	94	CY	\$275	\$25,777
5		Tack Coat	2.1	TON	\$800	\$1,644
6		HMA Type A	812	TON	\$145	\$117,701
7		Pavement Delineation	1	LS	\$2,000.00	\$2,000
8		Field Orders	1	DLR	\$2,000	\$2,000
Base Subtotal						\$187,836
Contingency (20%)						\$37,567
Base Total						<b>\$225,403</b>

\$40.08

## Exhibit C- Agreement Designating the County of San Diego as the Lead Agency for Project

**EXHIBIT C****AGREEMENT DESIGNATING THE COUNTY OF SAN DIEGO AS THE LEAD AGENCY FOR PROJECT**

This Agreement is made between the County of San Diego (County) and City of Escondido (City) under Title 14 California Code of Regulations 15051(d), designating the County as the lead agency under the California Environmental Quality Act (CEQA) for the City Project.

WHEREAS, the County and City desire the County to carry out the City Project pursuant to Montiel Road Resurfacing project;

WHEREAS, the City currently has jurisdiction over a portion of the roadway where the City Project is located, and the City will fund one hundred percent (100%) of the City Project;

WHEREAS, both parties are public agencies that may each carry out or approve portions of the project, and both may have substantial claim to act as lead agency under CEQA;

NOW THEREFORE, the parties agree that the County will act as the CEQA lead agency for the environmental review of the project and will have all discretion to fulfill the obligations of a CEQA lead agency with respect to the project.

IN WITNESS WHEREOF, this Agreement is executed by the City of Escondido and the County of San Diego, acting by and through their authorized officers.

COUNTY OF SAN DIEGO

Escondido

BY: \_\_\_\_\_  
ANDREW POTTER  
Executive Officer/ Clerk of the Board of Supervisors  
DATE: \_\_\_\_\_

Signed by:  
BY: Dane White  
1105E8C30EB8413...  
DANE WHITE  
Mayor  
DATE: 10/30/2025

Approved as to form this \_\_\_\_ day of  
\_\_\_\_\_, 2025.

BY: \_\_\_\_\_  
THOMAS BOSWORTH  
County Counsel

Approved as to form this 29 day of  
October, 2025.

MICHAEL MCGUINNESS

Signed by:  
By: Elyse Dayrit  
852C43F0F1F9448...  
City Attorney

## Exhibit D- City of Escondido Insurance Requirements



**Exhibit D****INSURANCE REQUIREMENTS**

The Parties shall obtain and cause any agent, subcontractor, or other representative providing work for or in relation to the Project to maintain insurance at its own cost and expense and keep in force and effect during the term of this Agreement, including all extensions, policies of insurance or programs of self-insurance with policy limits in sufficient amounts to cover any and all potential liability of such Party hereunder. Insurance required by this Agreement shall meet the following requirements:

- a. CONTRACTOR shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work, and the results of such Work, by CONTRACTOR, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:

- (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 0001 11188 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR's employees, and personal and advertising injury, and damages because of injury or destruction of tangible property, including loss of use resulting there from, with limits no less than \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than \$3,000,000, or (ii) the general aggregate shall be at least \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage.

- (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned autos (Code 9), including damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under CONTRACTOR's control and engaged in the Work, with limits no less than \$3,000,000 combined single limit per accident for bodily injury and property damage.

- (3) *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (4) If CONTRACTOR maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONTRACTOR.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
  - (1) *Compliance with General Condition Requirements.* Insurance coverage shall comply with and meet all requirements set forth in Article 5.2 of General Conditions
  - (2) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-:VII, or as approved by the CITY.
  - (3) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability additional insured endorsement shall be at least as broad as ISO Form CA 20 01.

- (4) *Primary Coverage.* CONTRACTOR's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (5) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
- (6) *Subcontractors.* If applicable, CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONTRACTOR shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
- (7) *Waiver of Subrogation.* CONTRACTOR hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its agents, representatives, employees and subcontractors.
- (8) *Self-Insurance.* CONTRACTOR may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONTRACTOR shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONTRACTOR's (i) net worth and (ii) reserves for payment of claims of liability against CONTRACTOR are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONTRACTOR's utilization of self-insurance shall not in any way limit the liabilities assumed by CONTRACTOR pursuant to this Agreement.

(9) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.

- c. *Verification of Coverage.* At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements within this Agreement, including the types and limits of insurance coverage CONTRACTOR must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to any provisions within this Agreement concerning indemnification.
- f. *Compliance.* Failure to comply with any of the insurance requirements in this Agreement, including but not limited to a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of this Agreement, including, without limitation, the obligation to defend and indemnify the CTY and the City Engineer. In the event that CONTRACTOR fails to comply with any insurance requirement set forth in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONTRACTOR to stop Work

## **ATTACHMENT A**

under this Agreement and/or withhold any payment that becomes due to CONTRACTOR until CONTRACTOR demonstrates compliance with the insurance requirements in this Agreement.