



**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**
399 Elmhurst Street • Hayward, CA 94544-1307
(510) 670-5480

June 18, 2012

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE AND EXECUTE AN AGREEMENT WITH, AND ACCEPT FUNDS FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES FOR THE COST OF COMPLETING CHIP SEAL REPAIRS ON DYER ROAD BETWEEN ALTAMONT PASS ROAD AND THE ENTRANCE TO DYER RESERVOIR CONSTRUCTION AREA

RECOMMENDATION:

Approve and execute an agreement with the California Department of Water Resources to reimburse Alameda County Public Works Agency for applying chip seal on portions of Dyer Road between Altamont Pass Road and the entrance to the Dyer Reservoir construction area, in the amount no less than \$45,210.

SUMMARY/DISCUSSION:

The California Department of Water Resources (DWR), as part of their South Bay Aqueduct Improvement and Enlargement Project, have been utilizing Dyer Road, a County of Alameda maintained Road, specifically pertinent to the construction related to the Dyer Reservoir. As a condition of Alameda County Public Works Agency issuing DWR road permit for their project, Alameda County requested that DWR, after completion of the construction of Dyer Reservoir, provide the necessary chip seal work on the pavement of the impacted portion of Dyer Road. However, since Alameda County already has a chip seal program in place, it was agreed that Dyer Road be included in its chip seal program, with the condition that DWR will reimburse Alameda County for the actual cost incurred within 30 days of completion of the work.

FINANCING:

There will be no impact on the County General Fund. The amount that will be collected from DWR will be held in the County's Road Fund, Org 270401, Prog 50600, Acct 452420.

Yours truly,



Daniel Woldesenbet, Ph.D, P.E.
Director of Public Works

- c: Andrew Massey, Deputy County Counsel
- Patrick O'Connell, Auditor-Controller
- Crystal Hishida Graff, Clerk of the Board
- Bill Lepere, Public Works Agency
- Art Carrera, Public Works Agency

DYER ROAD CHIP SEAL AGREEMENT

This Agreement is entered into this _____ day
of _____,

2012, by and between the DEPARTMENT OF WATER RESOURCES, hereinafter referred to as "DWR," and the COUNTY OF ALAMEDA, hereinafter referred to as "COUNTY."

RECITALS

WHEREAS, DWR has begun construction of the South Bay Aqueduct (SBA) Improvement and Enlargement Project (Project) to improve and expand the existing SBA facilities;

WHEREAS, a component of the Project is the construction of Dyer Reservoir, a 325 acre-foot on-line storage facility located east of Dyer Road, for which construction is ninety-nine percent completed;

WHEREAS, a component of the Project is to raise the existing SBA Dyer Canal between the Dyer Back Surge Pool (near the terminus of Dyer Road) and Altamont Pass Road. Dyer Canal construction began July 29, 2011 and will continue through scheduled completion in Spring 2013;

WHEREAS, DWR and its contractor(s) use Dyer Road to access the construction areas of both the Dyer Reservoir and Canal Liner Raising Project;

WHEREAS, in conjunction with DWR's Project, Zone 7 Water Agency (Zone 7) planned to construct a new water treatment plant off of Dyer Road, which has been delayed;

WHEREAS, after construction of the new water treatment plant, Zone 7 planned an overall repair of Dyer Road, but Zone 7 currently has no timeline for completion of its construction;

WHEREAS, Dyer Road is a public road, lies within the jurisdiction of COUNTY, and is maintained by Alameda County Public Works (ACPWA);

WHEREAS, potholes have developed on Dyer Road during construction of Dyer Reservoir;

WHEREAS, in February 2011 ACPWA repaired potholes on Dyer Road, and DWR has agreed to monitor and repair construction related potholes and perform necessary base repairs within the paved limits of Dyer Road at DWR's expense to a condition as specified in Exhibit B, through the duration of construction activities;

WHEREAS, as a condition of obtaining an Alameda County road closure permit, COUNTY requested DWR provide a plan to chip seal Dyer Road between Altamont Pass Road and the entrance to the Dyer Reservoir construction area (approximately one mile), as shown on attached Exhibit C following completion of all Project construction activities;

WHEREAS, COUNTY has more experience and the means to chip seal Dyer Road and is willing to chip seal Dyer Road upon completion of (i) all Project construction activities, and (ii) DWR repair of potholes to a condition as specified in Exhibit B;

WHEREAS, because Zone 7's planned overall repair has no expected completion date, and to satisfy COUNTY's request for a plan to chip seal Dyer Road upon completion of DWR construction activities in Spring 2013, DWR and COUNTY wish to enter into an Agreement specifying the terms and conditions and mutual obligations to chip seal Dyer Road upon completion of DWR's construction activities;

AGREEMENTS

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, the parties agree as follows:

- A. DWR shall provide COUNTY a Project Completion Notice within 30 days of completing all construction activities for the Project. DWR's completed construction activities will include repairing construction related potholes and perform necessary base repairs within the paved limits of Dyer Road, but not the chip seal repair. Such notice shall be given by email to William Lepere at bill@acpwa.org, and by mail pursuant to Paragraph J, to allow COUNTY to schedule Dyer Road chip seal repairs.
- B. Upon receipt of the Project Completion Notice, COUNTY shall schedule and complete chip seal repairs to Dyer Road between Altamont Pass Road and the entrance to the Dyer Reservoir construction area.
- C. COUNTY shall notify DWR in writing within 30 days of completion of Dyer Road chip seal repairs via a "Completion Notice," such notification shall include a request for payment.
- D. Upon DWR's receipt of the COUNTY's invoice for completed chip seal repairs on Dyer Road, DWR shall reimburse COUNTY within 30 days, the actual costs up to \$45,210. This amount represents 110% of the approved cost estimate (attached as Exhibit A) of \$41,100 to chip seal approximately one mile of Dyer Road. If the final bill exceeds 110% of the estimated cost, both parties will execute an amendment to this Agreement within 15 days, for the amount in excess of \$45,210, prior to the payment of any additional amount to COUNTY.
- E. This payment will relieve DWR from any future responsibility to COUNTY related to Dyer Road repairs.
- F. DWR and COUNTY each agree to indemnify and hold the other harmless from any loss, damage, expense and liability resulting from injuries to persons and damage or destruction of property arising out of the actions of their respective employees, agents, contractors, or invitees resulting from this Agreement; however, where negligence is contributory, principles of comparative negligence will apply and each party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that party's negligence or fault.
- G. The provisions in this Agreement are binding upon, and inure to the benefit of, the parties hereto and their successors, heirs and assigns.
- H. None of the parties to this Agreement may transfer or assign its rights under this Agreement without the express written consent of the other party.

- I. This Agreement shall not create any rights in any person, entity or organization not a party hereto; nor may any third party maintain any lawsuit for personal injuries, injunction, property damages, or breach of this Amendment.
- J. The interpretation and performance of this Agreement shall be governed by the laws of the State of California.
- K. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, addressed as follows:

TO DWR: California Department of Water Resources
 Division of Engineering
 Chief, Real Estate Branch
 1416 - 9th Street, Room 415
 Sacramento, California 95814
 (800) 600-4397

TO COUNTY: Construction and Development Department
 Alameda County Public Works Agency
 William Lepere, Deputy Director of Construction and Development
 951 Turner Court, Room 104
 Hayward, California 94545
 (510) 670-5431

Each agency shall make all reasonable efforts to review and respond to such notices within 30 working days from time of receipt except as otherwise provided herein.

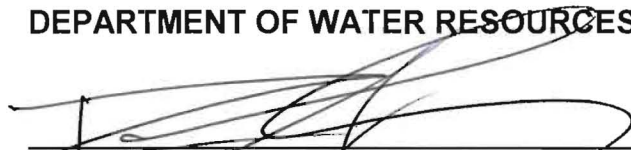
- L. Seven copies of this Agreement have been executed by the parties below and will become effective upon full execution, which is the date the Alameda County Board of Supervisors adopts and signs the Board Resolution.

NO OTHER OBLIGATION OTHER THAN THOSE SET FORTH HEREIN SHALL BE RECOGNIZED.

IN WITNESS WHEREOF, the parties have executed this Amendment.

DEPARTMENT OF WATER RESOURCES

COUNTY OF ALAMEDA



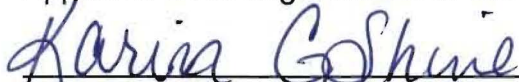
 Richard Sanchez, Chief
 Division of Engineering

 Nate Miley, President
 County of Alameda Board of Supervisors

Date 6/19/12

Date _____


Approved as to Legal form and Sufficiency:



Karin Shine, Senior Staff Counsel
Office of the Chief Counsel

Date 19 June 2012

Approved as to Legal form and Sufficiency:



Donna Ziegler
County Counsel

Date 6/21/12

EXHIBIT A

One square yard = 9 square feet

A 20 x 3 foot section of roadway = 6.67 square yards (20 feet x 3 feet = 60 sq ft, 60 sq ft = 6.67 square yards)

One mile = 5,280 feet = 1,760 yards

\$3.50 a square yard to Chip Seal roadway

Chip Seal Cost Estimate for 1 Mile of 20 foot roadway = \$41,100

(\$3.50 square yard x 6.67 yards x 1,760 yards = \$41,100)

EXHIBIT B

Dyer Road Chip Seal Agreement
Between
The Department of Water Resources (DWR)
and
Alameda County Publics Works Agency (ACPWA)

DWR agrees to repair potholes and perform necessary base repairs attributable to the DWR construction activities within the paved limits of Dyer Road during construction of Dyer Reservoir, located east of Dyer Road, in Alameda County, under the South Bay Aqueduct Improvement and Enlargement Project to the specifications shown below:

Pothole Repair

- Clean loose debris and fill with cutback (dura patch).

Base Repair

- Remove 1' all the way around beyond the failed section of AC; (aggregate concrete);
- Remove failed material 6" deep;
- Place 2" of $\frac{3}{4}$ AB, (aggregate base) and compact;
- Place 2" of $\frac{1}{2}$ " A.C. and compact;
- Place the remaining 2" of $\frac{1}{2}$ " A.C., compact and let cool.

EXHIBIT C

SITE PLAN



NOTES:
1. See Dwg. DR-1, Sheet 1 for sections and details of Dyer Road repairs.

