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**Contract Number**

11-424 A-1

SAP Number**Public Works**

Department Contract Representative	Sundaramoorthy (Sri) Srirajan, P.E., Chief
Telephone Number	(909) 387-8166
Project	Ranchero Road Corridor Widening
Contractor	City of Hesperia
Contractor Representative	Tina Souza, Senior Management Analyst
Telephone Number	(760) 947-1474
Contract Term	6/28/2011 – 8/30/2024
Original Contract Amount	\$ 577,078
Amendment Amount	\$9,395,519
Total Contract Amount	\$9,972,597
Cost Center	6650002164 52002445 TA1591

IT IS HEREBY AGREED AS FOLLOWS:**Recital**

WHEREAS, the County of San Bernardino (COUNTY) and the City of Hesperia (CITY), (COUNTY and CITY are also each referred to herein as "Party", and collectively referred to as "Parties"), previously entered into County Contract No. 11-424 (hereinafter referred to as "Agreement"), wherein the Parties agreed to jointly participate in the preparation of environmental documents and design work associated with the roadway widening on Ranchero Road, east of Mariposa Road to 7th Avenue, located in the COUNTY's and CITY's jurisdictional boundaries; and

WHEREAS, the Parties desire to amend the Agreement to add the Construction phase to the Agreement, and revise the PROJECT cost estimate by \$16,950,001 (from \$1,154,156 to \$18,104,157) to include the construction cost; and

WHEREAS, Right-of-Way (ROW) services are not part of this Agreement; each Party will be responsible for PROJECT related ROW services within their respective jurisdictions and the related costs; and

WHEREAS, the PROJECT consists of widening Ranchero Road from a two lane to an interim five lane road that has four through lanes and one continuous left turn lane on Ranchero Road; and installing traffic signals on Ranchero Road at the intersections of Maple Avenue, Cottonwood Avenue, and 7th Avenue, all within the PROJECT limits; and

WHEREAS, the PROJECT was designed for shelf readiness because there were not sufficient funds between the Parties to proceed to the construction phase; and

WHEREAS, hereto Amendment No. 1, the Parties desire to proceed with the PROJECT construction; and

WHEREAS, the total cost for the PROJECT is estimated to be \$36,335,142; however, for the purpose of this proposed amendment, the total project cost is estimated to be \$35,955,300. This amount excludes right-of-way services for the project (\$379,842). The total PROJECT cost includes local agency share and the public share, as a requirement of the San Bernardino County Transportation Authority (SBCTA) Measure I 2010-2040 Nexus Study (Nexus Study). The local agency share will be provided by the COUNTY and CITY, and the public share will be provided by SBCTA; and

WHEREAS, CITY agrees to enter into a separate Funding Agreement with the SBCTA for the Public Share of the PROJECT cost, which includes portions of the CITY and COUNTY shares, in accordance with the Nexus Study; and

WHEREAS, SBCTA Public Share cost for the PROJECT is estimated to be \$17,851,143 (CITY \$5,012,151 and COUNTY \$12,838,992), this amount excludes ROW cost. ROW costs are addressed in separate funding agreements; and

WHEREAS, the intent of this Amendment is to define the COUNTY's and CITY's duties and funding responsibilities as pertain to the PROJECT; and

WHEREAS, the revised cost for the Parties share of the PROJECT's Project Approval and Environmental Documents, Plans, Specifications, and Estimate, and Construction is estimated to be \$18,104,156 (excluding ROW cost). COUNTY's share of cost increases by \$9,395,519 (from \$577,078 to \$9,972,597), and the CITY's share of cost increases by \$7,554,482 (from \$577,078 to \$8,131,560), as more particularly set forth in Exhibit "A-1", attached hereto and incorporated herein by reference; and

WHEREAS, COUNTY share of the PROJECT cost will be funded by Discretionary General Funding, Measure "I" 2010-2040 Local Pass-Through funds, Gas Tax and Regional Development Impact Fees collected in the Victor Valley subarea; and the CITY's share of the PROJECT cost will be funded by CITY local funds and Regional Development Impact Fees collected in the Victor Valley subarea. Furthermore, it is anticipated that Senate Bill 1 Local Partnership Program (LPP) Grant and California Department of Resources Recycling and Recovery (CalRecycle) Grant funds awarded to the City of Hesperia (City) will be received and will be applied to both the COUNTY and CITY shares of the PROJECT cost, reducing their final contribution; and

WHEREAS, receipt of LPP and CalRecycle funds is contingent upon the PROJECT meeting specified PROJECT milestones. LPP grant amount is estimated to be \$3,900,000 and CalRecycle grant amount is estimated to be \$288,000.

WHEREAS, for purposes of this agreement, Exhibit A-1 reflects the total project costs without the LPP and CalRecycle funds. If the funds are received, PROJECT cost shares for CITY and COUNTY will be reduced accordingly.

NOW, THEREFORE, in consideration of the mutual covenants and conditions provided herein, the Parties hereto agree the Agreement, County Contract No. 11-424, is amended as follows:

1. DELETE the existing ninth WHEREAS recital in its entirety.

2. DELETE the existing paragraph 1.1 and REPLACE it with a revised paragraph 1.1, which shall read as follows:
 - 1.1 Act as the Lead Agency in the design, construction, construction engineering, inspection, and California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.) phases of the PROJECT, with the exception of Right-of-Way. Each Party will be responsible for Right-of-Way activities within their respective jurisdictions, including the related costs. Therefore, Right-of-Way cost estimates are not part of this Agreement.
3. DELETE the existing paragraph 1.5 and REPLACE it with a revised paragraph 1.5, which shall read as follows:
 - 1.5 Pay its proportionate share of the PROJECT cost. The PROJECT cost shall include the cost of design, construction, construction engineering, inspection, and CEQA compliance. CITY's proportionate share of the PROJECT cost is estimated to be \$8,131,560, as detailed in Exhibit "A-1" of the Agreement.
4. DELETE the existing paragraph 1.6 and REPLACE it with a revised paragraph 1.6, which shall read as follows:
 - 1.6 Submit to COUNTY an itemized accounting of actual environmental, design and construction costs incurred by CITY to date and which have not already been paid by COUNTY, and a statement for the COUNTY's share of environmental, design, and construction costs, as provided herein. Costs shall be amended following CITY and COUNTY acceptance of the PROJECT's final cost accounting. In no event shall COUNTY's share of the PROJECT cost exceed \$12,465,746 (COUNTY's estimated PROJECT share of \$9,972,597 plus twenty-five percent) absent a written amendment to this Agreement approved pursuant to Paragraph 3.10.
5. DELETE the existing paragraph 1.8 and REPLACE it with a revised paragraph 1.8, which shall read as follows:
 - 1.8 COUNTY shall fully participate with the CITY and/or the PROJECT Consultant(s) in all phases of the PROJECT. COUNTY shall be included in construction meetings, if and when such meetings are held, and in related communications on PROJECT progress. CITY also agrees to consult with COUNTY on critical issues relative to the PROJECT.
6. DELETE the existing paragraph 1.9 and REPLACE it with a revised paragraph 1.9, which shall read as follows:
 - 1.9 The City Manager shall designate and provide a qualified representative who shall have the authority to discuss and resolve issues concerning the PROJECT with the COUNTY. The PROJECT Resident Engineer shall be a qualified Professional Engineer currently licensed in the State of California with relevant experience with similar project.
7. ADD paragraph 1.11, which shall read as follows:
 - 1.11 Advertise, award, administer, and initially fund the construction of the PROJECT, in accordance with the provisions of California Public Contract Code applicable to cities and require, as well as 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. CITY shall indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its officers, employees, volunteers, and agents from any and all claims, actions, losses, damages, and/or liability arising out of CITY's obligations set forth in this paragraph.
8. ADD paragraph 1.12, which shall read as follows:

- 1.12 Provide adequate inspection of all items of work performed under the construction contract(s) with CITY's contractors or subcontractors for the PROJECT, and maintain adequate records of inspection and materials testing for review by COUNTY. CITY shall provide copies of any records of inspection and materials testing to COUNTY within ten (10) business days of CITY's receipt of written demand from COUNTY for such records. Copies of requested records shall be included as a PROJECT cost.
9. DELETE the existing paragraph 2.2 and REPLACE it with a revised paragraph 2.2, which shall read as follows:
- 2.2 Pay to the CITY, COUNTY's proportionate share of the PROJECT cost. The PROJECT cost shall include the cost of design, construction, construction engineering, inspection, CEQA compliance, and CITY overhead. COUNTY's share of the PROJECT is estimated to be \$9,972,597.
10. DELETE the existing paragraph 2.3 and REPLACE it with a revised paragraph 2.3, which shall read as follows:
- 2.3 Pay to CITY, on a reimbursement basis, its share of PROJECT costs, including its jurisdictional share of any PROJECT cost increases pursuant to Paragraphs 3.19, 3.21, and 3.23 below, within sixty (60) work days after receipt of an itemized statement as set forth in paragraph 1.6 of this Agreement, setting forth all actual PROJECT costs incurred by CITY to date and which have not already been paid by COUNTY, together with adequate documentation of said expenditures. In no event shall COUNTY's share of the PROJECT cost exceed \$12,465,746 (COUNTY's estimated PROJECT share \$9,972,597 plus twenty-five percent) absent a written amendment to this Agreement approved pursuant to Paragraph 3.10.
11. ADD paragraph 2.6, which shall read as follows:
- 2.6 Provide a no-cost permit to the CITY for CITY to perform work within COUNTY's right-of-way.
12. DELETE the existing paragraph 3.8 and REPLACE it with a revised paragraph 3.8, which shall read as follows:
- 3.8 This Agreement may be cancelled upon thirty (30) calendar days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after CITY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, including termination pursuant to Paragraph 3.22 or 3.24 below, all PROJECT costs required to be paid by the Parties prior to the effective date of cancellation shall be paid by the Parties in the same proportion to their contribution for the PROJECT.
13. DELETE the existing paragraph 3.9 and REPLACE it with a revised paragraph 3.9, which shall read as follows:
- 3.9 Except as provided in Paragraph 3.8 above, and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive Agreement termination, this Agreement shall terminate upon completion of the PROJECT and payment of final billing by the COUNTY for COUNTY's share of the PROJECT costs.
14. ADD paragraph 3.19, which shall read as follows:
- 3.19 The Parties acknowledge that final PROJECT costs may ultimately exceed current estimate of PROJECT cost. Any additional PROJECT costs resulting from increased bid prices, change orders, or arising from unforeseen site conditions, including utility relocation (but not from requested additional work by the COUNTY or CITY, which is addressed in Paragraph 3.20 below) over the estimated total of Project cost of \$18,104,157 (which is the sum of \$8,131,560 from CITY

and \$9,972,597 from COUNTY), shall be borne by each Party in proportion to where the work actually lies (based on jurisdiction), as part of the Parties' respective obligations to pay the cost for the PROJECT.

15. ADD paragraph 3.20, which shall read as follows:

3.20 If either CITY or COUNTY requests additional work that is beyond the scope of the original PROJECT, and not considered by all Parties to be a necessary part of the PROJECT, said work, if approved by all Parties, will be paid solely by the agency requesting the work.

16. ADD paragraph 3.21, which shall read as follows:

3.21 In the case wherein one of the Parties owns a utility that needs to be relocated for the 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 PROJECT cost. In the case that a utility relocation is determined to be a PROJECT cost based on that utility having prior rights, the relocation of the utility will be included as a PROJECT cost for which the COUNTY and CITY will be responsible for funding within their jurisdictional boundaries.

17. ADD paragraph 3.22, which shall read as follows:

3.22 CITY shall notify COUNTY of the bids received and the amounts thereof. Within ten (10) business days, thereafter, CITY and COUNTY shall determine the cost of the PROJECT. In the event that either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party prior to the awarding of a contract and thereafter the Parties shall work together to agree upon an amendment to this Agreement concerning the contribution amounts or determine an alternate course of action. If, after thirty (30) days from receipt of bid amount information, PROJECT construction costs are not mutually agreed upon in writing by amendment, this Agreement shall be deemed to be automatically terminated by mutual consent.

18. ADD paragraph 3.23, which shall read as follows:

3.23 If upon opening bids for the PROJECT, it is found that a cost overrun of 25% or less of the estimated PROJECT costs will occur, CITY may award the contract.

19. ADD paragraph 3.24, which shall read as follows:

3.24 If upon opening bids for the PROJECT, it is found that a cost overrun exceeding 25% of the estimated PROJECT cost will occur, CITY shall not award any contracts for the PROJECT. Rather CITY and COUNTY shall endeavor to agree upon an alternative course of action, including re-bidding of the PROJECT. If after thirty (30) calendar days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

20. REPLACE the existing Exhibit "A" with the attached Exhibit "A-1".

21. REPLACE all references to Exhibit "A" in the Agreement with references to Exhibit "A-1".

22. The recitals of this Amendment No. 1 are incorporated into the Agreement by reference.

23. Except as amended by this Amendment No. 1, all other terms and conditions of County Contract No. 11-424 shall remain the same.

24. This Amendment No. 1 may be executed by the Parties in counterparts, all of which together shall constitute a single agreement.

25. This Amendment No. 1 to the Agreement, County Contract No. 11-424, is effective on the date it is approved and signed by both Parties, and shall conclude upon satisfaction of the terms identified in paragraph 3.9 of the Agreement or August 30, 2024 (whichever occurs first).

SIGNATURES ON THE FOLLOWING PAGE:

COUNTY OF SAN BERNARDINO

►

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
of the County of San Bernardino

By _____
Deputy

(Print or type name of corporation, company, contractor, etc.)

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

►
Suzanne Bryant, County Counsel

Date _____

Reviewed for Contract Compliance

►
Mohammad Ali, P.E.

Date _____

Reviewed/Approved by Department

►
Kevin Blakeslee, Director

Date _____

EXHIBIT A-1
Estimate of Project Costs

COUNTY OF SAN BERNARDINO/CITY OF HESPERIA
RANCHERO ROAD PAVEMENT WIDENING PROJECT
HESPERIA AREA

	This totals \$2,209,452 Actual thru 6/30/19	Actual \$568,387 YTD where is the remainder \$400k?		
PHASE OF WORK	TOTAL COST	SHARE	CITY OF HESPERIA	SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
PA/ED / PSE	\$1,813,290	\$864,594	\$948,696	\$0
Environmental Permitting/Mitigation	235,000	63,288	48,593	123,120
Construction Management	\$3,785,010	\$994,960	\$817,246	\$1,972,803
Construction	\$30,122,000	\$8,049,755	\$6,317,025	\$15,755,220
TOTAL	\$35,955,300	\$9,972,597	\$8,131,560	\$17,851,143

Note: City and County are each responsible for Right-of-Way activities within their own jurisdictional boundaries, and therefore, Right-of-Way costs are omitted from this Agreement.