

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

SAP Number

### Public Works

<b>Department Contract Representative</b>	Jeremy Johnson, P.E., Engineering Manager
<b>Telephone Number</b>	387-8165
<b>Project</b>	Ridgecrest Road, Bluff Crest Street, Vista Point Drive
<b>Contractor</b>	City of Victorville
<b>Contractor Representative</b>	Fredy Bonilla, City Engineer
<b>Telephone Number</b>	(760) 955-5170
<b>Contract Term</b>	Expiration December 30, 2030
<b>Original Contract Amount</b>	\$695,264
<b>Amendment Amount</b>	\$0
<b>Total Contract Amount</b>	\$695,264
<b>Cost Center</b>	6650002000 52002445 H15309
<b>Grant Number (if applicable)</b>	N/A

**IT IS HEREBY AGREED AS FOLLOWS:**

WHEREAS, San Bernardino County (COUNTY) and the City of Victorville (CITY), (COUNTY and CITY are also each referred to herein as "Party" and collectively referred to herein as "Parties") desire to cooperate and jointly participate in a project to install an offset intersection traffic signal, sidewalks, and Americans with Disabilities Act (ADA) compliant curb ramps at the offset T-intersection of Ridgecrest Road and Vista Point Drive and at Ridgecrest Road and Bluff Crest Street located in the Victorville area (hereinafter referred to as the "PROJECT"); and,

WHEREAS, the installation of the traffic signal necessitates the updating or construction of ADA curb ramps at the intersections, in accordance with the ADA; and,

WHEREAS, the PROJECT is equally located in the unincorporated area of the COUNTY and the incorporated area of the CITY; and

WHEREAS, California Streets and Highways Code Section 1710 authorizes COUNTY to contract with CITY for CITY's maintenance, construction, or repair of COUNTY roads, the cost being paid by COUNTY; and

WHEREAS, COUNTY determines that it is necessary for the more efficient maintenance, construction, or repair of the COUNTY roads identified herein to contract with CITY for the PROJECT; and

WHEREAS, the total estimated cost of the PROJECT is \$1,390,528, with the COUNTY and CITY each responsible for fifty percent (50%) of the cost; and

WHEREAS, the COUNTY's share of the PROJECT cost is estimated to be \$695,264, and the CITY's share is estimated to be \$695,264, as more specifically detailed in Exhibit "A<sub>1</sub>" attached hereto and incorporated herein by this reference; and

WHEREAS, COUNTY and CITY agree, after PROJECT completion, to amend existing Cooperative Agreement No. 22-1219 for Professional Services for Routine, Regular and Emergency Maintenance of Traffic Signals to add the PROJECT's traffic signal; and

WHEREAS, the above-described costs are proportionate based on the work to be performed in each Party's jurisdiction; and,

WHEREAS, CITY and COUNTY desire to set forth the responsibilities and obligations of each as they pertain to such participation, and to the design, construction, and funding of the PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 CITY AGREES TO:

- 1.1 Act as the Lead Agency in the design, survey, construction, construction engineering, inspection, and California Environmental Quality Act (CEQA) compliance (Public Resources Code Section 21000 *et seq.*).
- 1.2 If required for the PROJECT, at its own cost, design and perform all right-of-way acquisition-related work inside the CITY's jurisdiction that is determined to be necessary for the PROJECT. Right-of-Way acquisition related work includes, but is not limited to, right-of-way document preparation (legal description and plat), appraisal, acquisition, temporary construction easements, utility easements, utility relocations, site clearance activities, plant/tree/fence/wall removal, and relocation/replacement, legal negotiations, eminent domain proceedings, property settlements, and all right-of-way capital costs (actual cost of right-of-way).
- 1.3 Provide plans and specifications and all necessary construction engineering for the PROJECT to COUNTY, for COUNTY's prior review and approval pursuant to paragraph 2.1.
- 1.4 Construct the PROJECT by contract in accordance with the plans and specifications of CITY, which have been reviewed and approved by COUNTY pursuant to paragraphs 1.3 and 2.1 to the satisfaction of and subject to concurrence of COUNTY.
- 1.5 Arrange for relocation of all utilities which interfere with construction of the PROJECT within the entire PROJECT limits, subject to paragraphs 1.2 and 3.9.
- 1.6 Obtain a no-cost permit from the COUNTY for work within the COUNTY's right-of-way.

- 1.7 Advertise, competitively bid, award, and administer the construction of the PROJECT, in accordance with the provisions of California Public Contract Code applicable to cities and to require, as well as enforce, compliance by CITY's contractors 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.
- 1.8 CITY shall require all contractors and vendors working on the PROJECT to have appropriate and adequate insurance coverage for the mutual protection and benefit of the Parties. Except for Workers' Compensation and Errors and Omissions and Professional Liability policies, CITY shall require and ensure that all CITY contractors/subcontractors for the PROJECT 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.
- 1.9 Require CITY's contractors and subcontractors to pay the minimum of prevailing wages as applicable.
- 1.10 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. This shall be included as a PROJECT cost.
- 1.11 Include compliance with any applicable requirements of CEQA, as well as completing the required CEQA documentation.
- 1.12 Pay CITY's proportionate share of the cost of the PROJECT. The cost of the PROJECT shall include the costs of design, survey, construction, construction engineering, inspection, CEQA compliance, and CITY overhead cost for the PROJECT. CITY's proportionate share of cost for the PROJECT is estimated at \$695,264 (50% of the total estimated cost of the PROJECT). CITY shall be responsible for its share of any PROJECT cost increases pursuant to paragraphs 3.7, 3.8, and 3.9 below.
- 1.13 Submit to the COUNTY an itemized accounting of actual PROJECT costs incurred by CITY and a statement for COUNTY's proportionate share of PROJECT costs, as provided herein. Costs may be amended following CITY and COUNTY acceptance of the final construction cost accounting. In no event shall COUNTY's proportionate share of the cost of the PROJECT exceed \$869,080 (which is a twenty-five percent (25%) increase over the COUNTY's share of the PROJECT cost estimate), absent a written amendment to this Agreement approved pursuant to paragraph 3.16.
- 1.14 Include with the final invoice to the COUNTY, the Notice of Completion and the As-Built Plan.
- 1.15 Accept all payments from COUNTY via electronic funds transfer (EFT) directly deposited into the CITY's designated checking or other bank account. The CITY

shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

- 1.16 Upon PROJECT completion, to operate and maintain the newly installed traffic signal relevant to the PROJECT, in accordance with the Cooperative Agreement No. 22-1219 for Professional Services for Routine, Regular and Emergency Maintenance of Traffic Signals, which shall be amended by the Parties to add the PROJECT's traffic signals, including those within COUNTY's jurisdiction.

## 2.0 COUNTY AGREES TO:

- 2.1 Review, approve, and provide comments, if necessary, for the PROJECT's plans and specifications provided by the CITY for PROJECT work to be performed in the COUNTY's jurisdiction.
- 2.2 If required for the PROJECT, at its own cost, design and perform all right-of-way acquisition-related work inside the COUNTY's jurisdiction that is determined to be necessary for the PROJECT. Right-of-Way acquisition related work includes, but is not limited to, right-of-way document preparation (legal description and plat), appraisal, acquisition, temporary construction easements, utility easements, utility relocations, site clearance activities, plant/tree/fence/wall removal, and relocation/replacement, legal negotiations, eminent domain proceedings, property settlements, and all right-of-way capital costs (actual cost of right-of-way).
- 2.3 Provide a no cost permit to the CITY for its work in the COUNTY's right-of-way.
- 2.4 Provide a qualified COUNTY representative who has the authority to discuss and resolve PROJECT issues; and the authority to inspect PROJECT construction site upon notification by CITY via email and/or telephone that an inspection is required within the COUNTY's limits.
- 2.5 Pay COUNTY's proportionate share of the PROJECT cost. The PROJECT cost shall include the costs of design, survey, construction, construction engineering, inspection, CEQA compliance and CITY overhead cost. The COUNTY's proportionate share of cost for the PROJECT is estimated at \$695,264 (fifty percent (50%) of the total estimated cost of the PROJECT).
- 2.6 Pay to CITY, on a reimbursement basis, its share of PROJECT costs, including its jurisdictional share of any PROJECT cost increases pursuant to paragraphs 3.7, 3.8, and 3.9 , within sixty (60) calendar days after receipt of an itemized statement as set forth in paragraph 1.13 of this Agreement, setting forth all actual PROJECT costs incurred by CITY, together with adequate documentation of said expenditures. In no event shall COUNTY's proportionate share of PROJECT cost exceed \$869,080 (which is a twenty-five percent (25%) increase over the COUNTY's share of the PROJECT cost estimate), absent a written amendment to this Agreement approved pursuant to paragraph 3.16.

## 3.0 IT IS MUTUALLY AGREED:

- 3.1 Except for activities that are impossible to perform during the construction phase of the PROJECT, before, during, and after CITY's and COUNTY's acceptance of the completed PROJECT, the COUNTY shall be responsible for performing any and all work (including, but not limited to, maintenance) for the COUNTY maintained roads in the PROJECT limits that are within the COUNTY unincorporated area, and the CITY shall be responsible for performing any and all work (including, but not limited to, maintenance) City streets in the PROJECT limits that are in the CITY incorporated area.
- 3.2 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 resulting from CITY's negligent acts or omissions that arise from CITY's performance of its obligations under this Agreement.

- 3.3 COUNTY agrees to indemnify, defend (with counsel approved by CITY), 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 performance of its obligations under this Agreement.
- 3.4 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 this Agreement, the CITY and/or COUNTY shall indemnify the other to the extent of its comparative fault.
- 3.5 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 1.7, 3.2, 3.3 and 3.4 indemnification.
- 3.6 CITY and COUNTY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation insurance and warrant that through their respective programs of self-insurance, each Party has adequate coverage or resources to protect against liabilities arising out of COUNTY and CITY's performance of the terms, conditions or obligations of this Agreement.
- 3.7 The Parties acknowledge that actual PROJECT costs may ultimately exceed the current estimate of PROJECT costs. Any additional PROJECT costs (including, but not limited to, additional PROJECT costs caused by an increase in engineering cost, higher 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 3.8 below) in excess of the estimated total PROJECT cost of \$1,390,528 (which is the sum of \$695,264 from CITY and \$695,264 from COUNTY), shall be borne by each Party in proportion to where the work actually lies (based on jurisdiction) up to 25%, as part of the Parties' respective obligations to pay the cost for the PROJECT.
- 3.8 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 both Parties, will be paid solely by the Party requesting the work.
- 3.9 In the case where 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 for work within their jurisdictional boundaries.
- 3.10 CITY shall notify COUNTY of bids received and the amounts thereof. Within ten (10) business days thereafter, CITY and COUNTY shall determine the cost of the PROJECT. If 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 to avoid detrimental reliance by any Party, contractor, or potential contractor.
- 3.11 If after opening bids for the PROJECT, it is found that a cost overrun of twenty-five percent (25%) or less of the estimated PROJECT costs will occur, the CITY may

- award the contract to the lowest responsible and responsive bidder, even though such bidder's price exceeds the original estimated cost of the PROJECT.
- 3.12 If, upon opening bids, it is found that a cost overrun exceeding twenty-five percent (25%) of the estimated PROJECT construction costs will occur, CITY shall not award any contract for the PROJECT. Instead, CITY and COUNTY shall endeavor to agree upon an alternative course of action, including, but not limited to, re-bidding the PROJECT. If after thirty (30) days an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.
- 3.13 If change orders are required during the course of the PROJECT, said change order forms must be delivered by fax or email, must be approved and signed by COUNTY, and returned to CITY within two (2) business days. The COUNTY shall not unreasonably withhold approval of change orders. If a COUNTY disapproved or modified change order is later found to be a cost of the PROJECT, then the COUNTY shall be responsible for any costs, awards, judgments, or settlements associated with the disapproved or modified change order.
- 3.14 This Agreement may be cancelled upon the provision of thirty (30) calendar days advance written notice by 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, 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. The Parties recognize and agree that the provisions governing utility relocation and construction are dependent upon the Parties' first satisfying CEQA. As provided in this paragraph, this Agreement may be cancelled with or without cause, before, during, or after CEQA review/approval.
- 3.15 Except as provided in paragraph 3.14 and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive the termination hereof, this Agreement shall terminate upon completion of the PROJECT and payment of final billing by the COUNTY for its share of the PROJECT costs, pursuant to paragraph 2.4. The PROJECT shall be deemed complete upon the recording of a Notice of Completion by the CITY with any and all appropriate jurisdictions.
- 3.16 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.
- 3.17 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.
- 3.18 Time is of the essence for each provision of this Agreement.
- 3.19 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 or against any Party. Any term referencing business days shall be deemed COUNTY workdays. 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.

- 3.20 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.
- 3.21 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.
- 3.22 This Agreement may be signed in counterparts, each of which shall constitute an original. The Parties shall be entitled to sign and transmit an electronic signature of the Agreement (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Party an original signed Agreement upon request.
- 3.23 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 Victorville  
Public Works/Engineering Department  
14343 Civic Drive  
Victorville, CA 92393-5001

San Bernardino County  
Department of Public Works  
825 E. Third Street, Room 143  
San Bernardino, CA 92415-0835

- 3.21 This Agreement will be effective on the date it is signed by both Parties and shall conclude upon satisfaction of the terms identified in paragraph 3.15, or December 30, 2030 (whichever occurs first).
- 3.22 The Recitals are true and correct and incorporated into the body of this Agreement.

SIGNATURES ON THE FOLLOWING PAGE:

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

SAN BERNARDINO COUNTY

CITY OF VICTORVILLE

►  
\_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

By ► \_\_\_\_\_  
(Authorized signature - sign in blue ink)

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

Name Elizabeth Becerra

Title Mayor

Lynna Monell  
Clerk of the Board of Supervisors  
San Bernardino County

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Deputy

**ATTEST:**

\_\_\_\_\_  
Savanna J. Petty, Victorville Asst. City Clerk

Address 14393 Civic Drive  
Victorville, CA 92393-5001

APPROVED AS TO FORM:

\_\_\_\_\_  
Andre de Bortnowsky, Victorville City Attorney

RISK MANAGEMENT:

\_\_\_\_\_  
Sandra Bostick, Victorville Risk Manager

**FOR COUNTY USE ONLY**

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____ ►	_____ ►	_____
Aaron Gest, Deputy County Counsel	Andy Silao, P.E., Engineering Manager	Noel Castillo, Director
Date _____	Date _____	Date _____

**EXHIBIT A**

**ESTIMATE OF PROJECT COSTS  
FOR SAN BERNARDINO COUNTY/CITY OF VICTORVILLE  
RIDGECREST ROAD / VISTA POINT DRIVE / BLUFF CREST STREET TRAFFIC  
SIGNAL PROJECT**

<b>PROJECT PHASE</b>	<b>TOTAL PROJECT COST</b>	<b>SAN BERNARDINO COUNTY SHARE</b>	<b>CITY OF VICTORVILLE SHARE</b>
All other costs such as preliminary engineering, design, survey construction engineering, inspection, CEQA, and CITY overhead	\$250,000	\$125,000	\$125,000
Construction (including contingencies)	\$1,140,528	\$570,264	\$570,264
<b>TOTAL</b>	<b>\$1,390,528</b>	<b>\$695,264</b>	<b>\$695,264</b>