

A G R E E M E N T

THIS AGREEMENT, made and entered into by and between the CITY OF LANCASTER, a municipal corporation in the County of Los Angeles (hereinafter referred to as CITY), and the COUNTY OF LOS ANGELES, a political subdivision of the State of California (hereinafter referred to as COUNTY):

W I T N E S S E T H

WHEREAS, Avenue N is on the Highway Element of CITY'S General Plan and on COUNTY'S Highway Plan; and

WHEREAS, CITY and COUNTY propose to resurface the deteriorated asphalt concrete pavement on Avenue N from 45th Street West to 1,800 feet east of 30th Street West, (which work is hereinafter referred to as PROJECT); and

WHEREAS, PROJECT is within the geographical boundaries of CITY, City of Palmdale, and COUNTY; and

WHEREAS, PROJECT is of general interest to CITY and COUNTY; and

WHEREAS, COUNTY is willing to perform or cause to be performed the preliminary engineering, construction contract, construction inspection and engineering, materials testing, construction survey, environmental documentation, and contract administration for PROJECT; and

WHEREAS, COST OF PROJECT includes the costs of PRELIMINARY ENGINEERING, CONSTRUCTION CONTRACT, and CONSTRUCTION ADMINISTRATION as more fully set forth herein; and

WHEREAS, COST OF PROJECT is currently estimated to be One Million Five Hundred Sixty-two Thousand and 00/100 Dollars (\$1,562,000.00) with CITY'S jurisdictional share being Six Hundred Thirty-six Thousand and 00/100 Dollars (\$636,000.00), City of Palmdale's share being Twenty-nine Thousand and 00/100 Dollars (\$29,000.00) and COUNTY'S share being Eight Hundred Ninety-seven Thousand and 00/100 Dollars (\$897,000.00); and

WHEREAS, CITY, City of Palmdale, and COUNTY are willing to finance their respective jurisdictional shares of the COST OF PROJECT; and

WHEREAS, CITY and COUNTY agree to allow the City of Palmdale to finance its jurisdictional share under a service request with the COUNTY; and

WHEREAS, CITY and COUNTY are both willing to finance their respective jurisdictional share of COST OF PROJECT as described in paragraph (4) b. below.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by CITY and COUNTY and of the promises herein contained, it is hereby agreed as follows:

1) DEFINITIONS:

- a. JURISDICTION, as referred to in this AGREEMENT, shall be defined as the area within the geographical boundary of the CITY and the unincorporated areas of the COUNTY.
- b. PRELIMINARY ENGINEERING, as referred to in this AGREEMENT, shall consist of environmental finding and approvals/permits; design survey; soils report; traffic index and geometric investigation; preparation of plans, specifications, and cost estimates; right-of-way engineering; utility engineering; and all other necessary work prior to advertising of PROJECT for construction bids.
- c. CONSTRUCTION CONTRACT, as referred to in this AGREEMENT, shall consist of the total of payments to the construction contractor(s) for PROJECT and the total of all payments to utility companies or contractor(s) for the relocation of facilities necessary for the construction of PROJECT.
- d. CONSTRUCTION ADMINISTRATION, as referred to in this AGREEMENT, shall consist of construction contract administration, construction inspection, materials testing, construction survey, traffic detour, signing and striping, construction engineering, utility relocation, changes and modifications of plans and specifications for PROJECT necessitated by unforeseen or unforeseeable field conditions encountered during construction of PROJECT, construction contingencies and all other necessary work after advertising of PROJECT for construction to cause PROJECT to be constructed in accordance with said plans and specifications approved by CITY and COUNTY.
- e. COST OF PROJECT, as referred to in this AGREEMENT, shall consist of the costs of PRELIMINARY ENGINEERING, CONSTRUCTION CONTRACT, CONSTRUCTION ADMINISTRATION, and all other work necessary to construct PROJECT in accordance with the approved plans and specifications and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.

2) CITY AGREES:

- a. To finance CITY'S share of COST OF PROJECT, the actual amount of which is to be determined by a final accounting pursuant to paragraph (4) b. below.
- b. To deposit with COUNTY, following the execution of this AGREEMENT and upon demand by COUNTY, sufficient funds to finance its share of COST OF PROJECT, currently estimated to be Six Hundred Thirty-six Thousand and 00/100 Dollars (\$636,000.00). Said demand will consist of a billing invoice prepared by COUNTY.
- c. Upon request from COUNTY, to consent to COUNTY'S request for jurisdiction of the portions of Avenue N from 45th Street West to 1,800 feet east of 30th Street West within CITY as part of the County System of Highways for the limited purpose of constructing PROJECT improvements.
- d. To grant to COUNTY, at no cost to COUNTY, any temporary right of way that CITY owns or has an easement for that is necessary for the construction of PROJECT.
- e. To cooperate with COUNTY in conducting negotiations with, and where appropriate, to issue notices to public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction. Where utilities have been installed in CITY streets or on CITY property, CITY will provide the necessary right of way for the relocation of those utilities and facilities that interfere with the construction of PROJECT. CITY will take all necessary steps to grant, transfer, or assign all prior rights over utility companies and owners of substructure and overhead facilities when necessary to construct, complete, and maintain PROJECT or to appoint COUNTY as its attorney-in-fact to exercise such prior rights.
- f. To appoint COUNTY as CITY'S attorney-in-fact for the purpose of representing CITY in all negotiations pertaining to the advertisement of PROJECT for construction bids, award, and administration of the construction contract and in all things necessary and proper to complete PROJECT.
- g. To grant COUNTY permission to occupy and use the public streets in CITY to construct PROJECT.

- h. To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered during construction of PROJECT within CITY'S jurisdiction of PROJECT.
 - i. Upon completion of PROJECT, to maintain in good condition and at CITY'S expense all improvements constructed as part of PROJECT within CITY'S JURISDICTION.
- 3) COUNTY AGREES:
- a. To perform or cause to be performed the PRELIMINARY ENGINEERING, CONSTRUCTION ADMINISTRATION, and all other work necessary to complete PROJECT.
 - b. To finance COUNTY'S share of COST OF PROJECT pursuant to paragraph (4) b. below, the actual amount of which is to be determined by a final accounting of PROJECT costs.
 - c. To obtain CITY'S approval of plans for PROJECT prior to soliciting for construction bids.
 - d. To solicit bids, award and administer the construction contract, do all things necessary and proper to complete PROJECT, and to act on behalf of CITY in all negotiations pertaining thereto.
 - e. To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered during construction of PROJECT within COUNTY'S JURISDICTION.
 - f. To furnish CITY, within one hundred twenty (120) calendar days after final payment to contractor, a final accounting of the actual COST OF PROJECT, including an itemization of actual unit costs and actual quantities for PROJECT.
 - g. Upon completion of PROJECT, to maintain in good condition and at COUNTY expense all improvements constructed as part of PROJECT within COUNTY'S JURISDICTION.
- 4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:
- a. That if the City of Palmdale fails to finance its share of the project with a services agreement with the COUNTY, COUNTY will either delete the City of Palmdale segment of the PROJECT, or agree to a cost sharing agreement between the CITY AND COUNTY.

- b. The final accounting of the actual total COST OF PROJECT shall allocate said total cost between CITY and COUNTY based on the location of the improvements and/or work done. Thus, the cost of all work or improvements (including all engineering, administration, and all other costs incidental to any such work or improvement), located within CITY'S JURISDICTION, shall be borne by CITY. Such costs constitute CITY'S JURISDICTIONAL share of the COST OF PROJECT. The cost of all work or improvements (including all engineering, administration, and all other costs incidental to any such work or improvement), located within COUNTY'S JURISDICTION, shall be borne by COUNTY. Such costs constitute COUNTY'S JURISDICTIONAL share of the COST OF PROJECT.
- c. That if CITY'S payment, as set forth in paragraph (2) b. above, is not delivered to COUNTY office, which is described on the billing invoice prepared by COUNTY prior to award of PROJECT, COUNTY may delay the award of PROJECT pending the receipt of CITY'S payment.
- d. That if CITY'S share of COST OF PROJECT, based upon the final accounting, exceeds CITY'S payment as set forth in paragraph (2) b. above, COUNTY shall make a demand for the additional amount and CITY shall either pay to COUNTY the additional amount or if CITY disputes the additional amount demanded, follow the procedure set forth in subparagraph (g) for dealing with discrepancies. Said demand will consist of a billing invoice prepared by COUNTY. Conversely, if the required CITY funds are less than said payment, COUNTY shall refund the difference to CITY within sixty (60) calendar days after completion of final accounting of the actual total COST OF PROJECT.
- e. That if CITY'S final payment, as set forth in paragraph (4) d. above, is not delivered to COUNTY office, which is described on the billing invoice prepared by COUNTY and delivered to CITY, within sixty (60) calendar days after the date of delivery to CITY of said invoice, COUNTY is entitled to recover interest thereon beginning sixty (60) calendar days from the date of the invoice at the rate of interest specified in the General Services Agreement executed by the parties to the AGREEMENT currently in effect.
- f. That if CITY'S final payment, as set forth in paragraph (4) d. above, is not delivered to COUNTY office, which is described on the billing invoice prepared by COUNTY and delivered to CITY, within sixty (60) calendar days after the date of delivery to CITY of said invoice, notwithstanding the provisions of Government Code Section 907, COUNTY may satisfy such indebtedness, including interest thereon, from any funds of CITY on deposit with COUNTY after giving notice to CITY of COUNTY'S intention to do so.

- g. CITY shall review the final accounting invoice prepared by COUNTY and report in writing any discrepancies to COUNTY within sixty (60) calendar days after the date of said invoice. Undisputed charges shall be paid by CITY to COUNTY within sixty (60) calendar days after the date of said invoice. COUNTY shall review all disputed charges and submit a written justification detailing the basis for those charges within sixty (60) calendar days of receipt of CITY'S written report. CITY shall then make payment of the previously disputed charges or submit justification for nonpayment within sixty (60) calendar days after the date of COUNTY'S written justification.
- h. COUNTY at any time may, at its sole discretion, designate an alternative payment mailing address and an alternative schedule for payment of CITY funds if applicable. CITY shall be notified of such changes by invoice.
- i. During construction of PROJECT, COUNTY shall furnish an inspector or other representative to perform the functions of an inspector. CITY may also furnish, at no cost to COUNTY, an inspector or other representative to inspect construction of PROJECT. Said inspectors shall cooperate and consult with each other, but the orders of COUNTY inspector to the contractors or any other person in charge of construction shall prevail and be final.
- j. COUNTY hereby assigns all of its right, title, and interest to the unexpired portion of a one-year warranty granted to the COUNTY by the construction contractor constructing PROJECT following completion of construction of the PROJECT and field acceptance of said construction by COUNTY. CITY agrees to accept said assignment as its sole remedy against COUNTY in connection with defects relating to said PROJECT.
- k. This AGREEMENT may be amended or modified only by mutual written consent of CITY and COUNTY. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the parties' Directors of Public Works or their delegates.
- l. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

CITY: Mr. Robert Neal
Director of Public Works
City of Lancaster
44933 North Fern Avenue
Lancaster, CA 93534-2461

COUNTY: Ms. Gail Farber
Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

A courtesy copy of this AGREEMENT and any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the City of Palmdale at the following:

Mr. Michael Mischel
Director of Public Works
City of Palmdale
38250 Sierra Highway
Palmdale, CA 93550

- m. Other than as provided below, neither COUNTY nor any officer or employee of COUNTY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully indemnify, defend, and hold COUNTY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this AGREEMENT.
- n. Neither COUNTY nor any officer or employee of COUNTY shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the PROJECT within the CITY'S geographical limits including liability under the Comprehensive Environmental, Response, Compensation and Liability Act of 1980 (CERCLA) and under the California Health and Safety Code. It is understood and agreed pursuant to Government Code Section 895.4, CITY shall fully indemnify, defend, and hold COUNTY harmless from any such damage, liability, or claim. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e), of the amended CERCLA, and California Health and Safety Code Section 25364.

- o. Other than as provided below, neither CITY nor any officer or employee of CITY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully indemnify, defend, and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this AGREEMENT.
- p. Neither CITY nor any officer or employee of CITY shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the PROJECT within the COUNTY'S geographical limits, including liability under the Comprehensive Environmental, Response, Compensation and Liability Act of 1980 (CERCLA) and under the California Health and Safety Code. It is understood and agreed pursuant to Government Code Section 895.4, COUNTY shall fully indemnify, defend, and hold CITY harmless from any such damage, liability, or claim. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e), of the amended CERCLA, and California Health and Safety Code Section 25364.
- q. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this AGREEMENT to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each of the parties indemnifies and holds harmless the other party for any liability, cost, or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized by the CITY OF LANCASTER on _____, 2011, and by the COUNTY OF LOS ANGELES on _____, 2011.

COUNTY OF LOS ANGELES

By _____
Mayor, County of Los Angeles

ATTEST:

SACHI A. HAMAI
Executive Officer of the
Board of Supervisors of the
County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN
County Counsel

By _____
Deputy

CITY OF LANCASTER

By _____
Mayor

ATTEST:

APPROVED AS TO FORM:

By _____
City Clerk

By _____
City Attorney