

COOPERATIVE AGREEMENT NO. 17-1001603

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF REDLANDS

FOR

**PLANNING, PROJECT REPORT AND ENVIRONMENTAL DOCUMENT, PLANS,
SPECIFICATIONS AND ESTIMATE (PS&E), RIGHT-OF-WAY (ROW), AND
CONSTRUCTION PHASES FOR THE ALABAMA STREET AND INERSTATE 10 IN
THE CITY OF REDLANDS**

I. PARTIES AND TERM

- A. THIS COOPERATIVE AGREEMENT (“Agreement”) is made and entered into by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the City of REDLANDS (CITY), (AUTHORITY and CITY may be referred to herein as a “Party” and collectively “Parties”).
- B. This Agreement shall terminate upon completion of the AUTHORITY’s management of the planning, environmental, design, right of way (to include both ROW acquisition and utility relocation work) and construction, or December 31, 2022, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of this Agreement be asserted against one of the Parties, the Parties agree to extend the fixed termination date of this Agreement, until such time as the claims are settled, dismissed or paid.

II. RECITALS

- A. WHEREAS, CITY intends to improve Alabama Street at I-10 and Alabama Street Interchange in the City of REDLANDS; and
- B. WHEREAS, planned operational improvements include widening the existing eastbound and westbound off ramps as further described in Attachment B, attached hereto and made part of this Agreement, and is defined as the “PROJECT”; and
- C. WHEREAS, the PROJECT is identified in the Measure I 2010-2040 Expenditure Plan and San Bernardino Associated Governments (SANBAG) Nexus Study (Nexus Study) prepared by SANBAG, and approved by the SANBAG Board of Directors on November 2, 2011; and
- D. WHEREAS, the Parties consider PROJECT to be high priority and are willing to participate in funding the PROJECT pursuant to the provisions of the Nexus Study; and

- E. WHEREAS, the Parties wish to enter into this Agreement to delineate roles, responsibilities, and funding commitments relative to the Project Management, Planning, Environmental, PS&E, ROW and Construction activities of the PROJECT;
- F. WHEREAS, the PROJECT is estimated to cost a total of \$10,968,000 which includes \$330,000 for the AUTHORITY to provide project management services for the Planning, Environmental, PS&E, ROW, and Construction phases of the Project; and
- G. WHEREAS, coordination with Caltrans has not occurred to determine the level of environmental and engineering documents nor have encroachment fees been addressed. Costs based on a low level environmental document and encroachment fees will be addressed in a future agreement; and
- H. WHEREAS, the CITY desires AUTHORITY to provide project management services for the Planning, Environmental, PS&E, ROW, Construction and Project Closeout phases, estimated at \$330,000, and understands it is the sole responsibility of CITY to pay 100% of actual AUTHORITY project management costs in accordance with AUTHORITY Policy 40005/VFI-34; and
- I. WHEREAS, the remaining PROJECT cost, aside from AUTHORITY project management costs, for the Planning, Environmental, PS&E, ROW, Construction and Project Closeout phases is estimated at \$10,638,000 which shall be funded with 50.5% Development Share funds and 49.5% Public Share funds, as defined by the Nexus Study and the SANBAG Measure I 2010-2014 Strategic Plan.

NOW, THEREFORE, the Parties agree to the following:

III. AUTHORITY RESPONSIBILITIES

AUTHORITY agrees:

- A. To be lead agency on Project Management, Planning, Environmental, PS&E, ROW, and Construction work and to diligently undertake and complete, the Planning, Environmental, ROW, PS&E, Construction and Project Closeout work on PROJECT, including the selection and retention of consultants. Performance of services under these consultant contracts shall be subject to the technical direction of the AUTHORITY's Director of Project Delivery, or his designee, with input and consultation from CITY.
- B. To coordinate with AUTHORITY for first and second level reviews related to property acquisitions and to provide all support documents necessary for Hearings of Resolutions of Necessity to be conducted at the AUTHORITY in the event voluntary acquisition is unlikely.
- C. To contribute towards the Planning, Environmental, PS&E, ROW, Construction and Project Closeout phases of the PROJECT cost an amount not to exceed \$5,265,810 as shown in Attachment A. The actual cost of a specific phase may ultimately vary from the estimates

provide in Attachment A, however, under no circumstances is the total combined AUTHORITY contribution to exceed \$5,265,810 without an amendment to this agreement.

- D. To prepare and submit to CITY an original and two copies of signed invoices for reimbursement of eligible PROJECT expenses. Invoices may be submitted to CITY as frequently as monthly.
- E. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support AUTHORITY's request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT Management, Environmental, PS&E, ROW, Construction and Project Closeout work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by AUTHORITY.
- F. To prepare a final accounting of expenditures, including a final invoice for the actual PROJECT Management, Planning, Environmental, ROW, PS&E, and Construction and project closeout costs. The final accounting and invoice shall be submitted no later than one hundred and twenty (120) calendar days following the completion of work and shall be submitted to CITY. The invoice shall include a statement that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific Planning, Environmental, PS&E, ROW, and Construction work activities.
- G. To cooperate in having a PROJECT-specific audit completed by CITY, at its option, upon completion of the PROJECT Planning, Environmental, ROW, PS&E Construction and Project Closeout work. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with this Agreement.
- H. To reimburse CITY for costs that are determined by subsequent audit to be unallowable within ninety (90) calendar days of AUTHORITY receiving notice of audit findings, which time shall include an opportunity for AUTHORITY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and AUTHORITY fails to reimburse monies due CITY within ninety (90) calendar days of audit finding, or within such other period as may be agreed between both Parties hereto, the Cities' Council reserves the right to withhold future payments due AUTHORITY from any source under CITY'S control.
- I. To include CITY in Project Development Team (PDT) meetings and related communications on PROJECT progress as well as to provide CITY with copies of PDT meeting minutes and action items.
- J. To provide CITY an opportunity to review and comment on the Planning, Environmental, PS&E, ROW and Construction documents.

IV. CITY RESPONSIBILITIES

CITY agrees:

- A. To reimburse AUTHORITY for the actual costs incurred estimated at \$5,372,190 towards the Planning, Environmental, PS&E, ROW, Construction and Project Closeout phases of the PROJECT cost and \$330,000 for SANBAG management for an amount not to exceed \$5,702,190 as shown in Attachment A. The actual cost of a specific phase may ultimately vary from the estimates provided in Attachment A, however, under no circumstances is the total combined CITY contribution to exceed \$5,702,190 without an amendment to this agreement.
- B. To reimburse AUTHORITY within 30 days after AUTHORITY submits an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures and SANBAG management costs that were incurred by AUTHORITY. Invoices may be submitted to CITY as frequently as monthly.
- C. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of AUTHORITY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to CITY when planning on conducting additional audits.
- D. To designate a responsible staff member that will be CITY's representative in attending the PDT meetings, receiving day-to-day communication and reviewing the project documents.
- E. To complete review and provide comments on the Planning, Environmental, PS&E, ROW, Construction and Project Closeout documents within one month of receiving the review request from AUTHORITY.
- F. CITY's Director of the Municipal Utilities and Engineering Department is authorized to act on behalf of CITY under this Section of the Agreement.

V. MUTUAL RESPONSIBILITIES

The Parties agree:

- A. To abide by all applicable federal, state and local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the Effective Date of this Agreement.
- B. In the event AUTHORITY determines PROJECT Management, Planning, Environmental, PS&E, ROW and Construction work may exceed the amounts identified in Attachment A of this Agreement, AUTHORITY shall inform CITY of this determination and thereafter the Parties shall work together in an attempt to agree upon an amendment to the amounts identified this Agreement. In no event, however, shall any of the Parties be responsible for PROJECT costs in excess of the amounts identified in this Agreement absent a written amendment that is approved by all Parties.

- C. Eligible PROJECT reimbursements shall include only those costs incurred by AUTHORITY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.
- D. In the event that federal funds are used in the Planning, Environmental and/or PS&E phase of work, the PARTIES acknowledge Federal Highway Administration (FHWA) requires that the PROJECT must progress to a capital phase (ROW or construction) within ten years or the federal funds may be required to be repaid to FHWA. Should repayment be required, and is a result of the PROJECT not progressing by choice, it shall be the responsibility of the PARTY that determines it is unable to move forward with the PROJECT. If it is mutually decided that the project will not move forward then repayment of any federal funds used for Public Share will be the responsibility of the AUTHORITY and any federal funds used for the Local Share will be the responsibility of the CITY.
- E. Neither AUTHORITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless AUTHORITY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.
- F. Neither CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY and under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless CITY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement.
- G. This Agreement will be considered terminated upon reimbursement of eligible costs by CITY. Notwithstanding any other provision herein, to the extent consistent with the terms and obligations hereof, any Party may terminate this Agreement at any time, with or without cause, by giving thirty (30) calendar days written notice to all the other Parties. In the event of a termination, the Party terminating this Agreement shall be liable for any costs or other obligations it may have incurred under the terms of the Agreement prior to termination.
- H. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.
- I. All signatories hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by executing this Agreement, the Parties hereto are formally bound to this Agreement.

- J. Except on subjects preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the state of California. All Parties agree to follow all local, state, county and federal laws and ordinances with respect to performance under this Agreement.
- K. The Parties agree that each Party and any authorized representative, designated in writing to the Parties, and upon reasonable notice, shall have the right during normal business hours to examine all Parties' financial books and records with respect to this Agreement. The Parties agree to retain their books and records for a period of five (5) years from the later of: a) the date on which this Agreement terminates; or b) the date on which such book or record was created.
- L. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.
- M. This Agreement cannot be amended or modified in any way except in writing, signed by all Parties hereto.
- N. Neither this Agreement, nor any of the Parties rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.
- O. No waiver of any default shall constitute a waiver of any other default 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.
- P. In the event of litigation arising from this Agreement, each Party to this 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 E and F of this Section.
- Q. This Agreement may be signed in counterparts, each of which shall constitute an original. This Agreement is effective and shall be dated on the date executed by AUTHORITY.
- R. Any notice required, authorized or permitted to be given hereunder or any other communications between the Parties provided for under the terms of this Agreement shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier addressed to the relevant party at the address/fax number stated below:

If to AUTHORITY: Garry Cohoe
Director of Project Delivery
1170 West Third Street, Second Floor
San Bernardino, CA 92410-1715
Telephone: (909) 884-8276

If to CITY:

Chris Diggs
Municipal Utilities & Engineering Director
35 Cajon Street
REDLANDS, CA 92373
Telephone: (909) 798-7698

- S. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person or entity whatsoever.

SIGNATURES ON FOLLOWING PAGE:

**SIGNATURE PAGE TO
COOPERATIVE AGREEMENT NO. R17-1001603
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
and CITY OF REDLANDS**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

CITY OF REDLANDS

By: _____
Robert Lovingood
President, Board of Directors

By: _____
Paul W. Foster
Mayor, City of Redlands

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Eileen Monaghan Teichert
General Counsel

By: _____
Daniel J. McHugh
City Attorney

Attachment A

PROJECT DESCRIPTION

The project funding is based on a concept that adds two turn lanes on both off-ramps, adds a right-turn lane at the eastbound on-ramp, and a southbound right-turn lane at the westbound on-ramp.

PROJECT FUNDING TABLE

Public Share: 49.5%

Nexus Development Impact Fee Share (DIF, “Development Share” or “Local Share”): 50.5%

| Phase | Estimated Cost* | Public Share | Development Share |
|---|-----------------|--------------|-------------------|
| Project Study Report | \$347,000 | \$171,165 | \$175,235 |
| Project Report and Environmental Approval | \$920,000 | \$456,390 | \$465,610 |
| PS&E | \$462,000 | \$228,690 | \$233,310 |
| Right-of-Way (including Utilities) | \$36,000 | \$17,820 | \$18,810 |
| Construction and Construction Management | \$8,122,000 | \$4,020,390 | \$4,101,610 |
| Landscaping Maintenance | \$749,000 | \$370,755 | \$378,245 |
| SANBAG Management Oversight | \$330,000 | \$ 0 | \$330,000 |
| Total | \$10,968,000 | \$5,265,810 | \$5,702,190 |

Notes: Estimated Costs are based on June 2015 feasibility study.

*The estimate includes a 3.0% escalation rate compounded annually.

PROJECT SCHEDULE

| Milestones | Estimated Completion Date |
|--|---------------------------|
| Environmental Approval | December 2018 |
| Plans, Specifications & Estimate (PSE) | December 2019 |
| Right of Way (ROW) | December 2019 |
| Construction Start | June 2020 |
| Completion for Beneficial Use | June 2021 |

Attachment B CONCEPTUAL LAYOUT

