

COOPERATIVE AGREEMENT NO. 22-1002720

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SAN BERNARDINO

FOR

**PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA/ED),
PLANS, SPECIFICATIONS AND ESTIMATE (PS&E), RIGHT OF WAY (ROW), AND
CONSTRUCTION PHASES
FOR THE WATERMAN AVENUE AT STATE ROUTE 210 (SR-210) INTERCHANGE
IN THE CITY OF SAN BERNARDINO**

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 "SBCTA") and the City of San Bernardino ("CITY"), (SBCTA and CITY may be referred to herein individually as a "PARTY" and collectively as "PARTIES").
- B. Unless this AGREEMENT is terminated early as provided in Section V, Paragraph E, this AGREEMENT shall terminate upon completion of the PARTIES obligations associated with the project approval and environmental document ("PA/ED"), plans, specifications and estimate ("PS&E"), right of way ("ROW"), and construction ("CONSTRUCTION") phases described herein or December 31, 2026, whichever is earlier in time. The indemnification provisions identified in Section V, Paragraphs C through D shall survive the termination of this AGREEMENT. Should any claims arising out of this AGREEMENT be asserted against one of the PARTIES prior to the termination of this AGREEMENT, the AGREEMENT shall be extended until such time as the claims are settled, dismissed or paid.

II. RECITALS

- A. WHEREAS, the CITY intends to initiate phased improvements of the Waterman Avenue at State Route 210 Interchange within the limits of the City of San Bernardino ("PROJECT"); and
- B. WHEREAS, planned improvements include converting one southbound and one northbound through lane into a left-turn lane and widening the eastbound on-ramp to two lanes, as further described in Attachments B-1 and B-2, attached hereto and made part of this AGREEMENT, and is defined as the "PROJECT"; and
- C. WHEREAS, the PROJECT, which is the first phase of improvements at Waterman Avenue at State Route 210, is identified as eligible in the Valley Interchange Phasing Program and is

included in the most recent 10-Year Delivery Plan and Nexus Study approved by the SBCTA Board of Directors; and

- D. WHEREAS, the PARTIES consider the 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 Project Management, PA/ED, PS&E, ROW and CONSTRUCTION activities of the PROJECT; and
- F. WHEREAS, the CITY desires SBCTA to provide Project Management services, estimated at \$400,000, for the PROJECT, and understand it is the CITY's sole responsibility to pay 100% of the actual SBCTA Project Management costs in accordance with SBCTA Measure I Strategic Plan Policy 40006/VMS-29 and -30; and
- G. WHEREAS, the remaining PROJECT cost for the PA/ED, PS&E, ROW, and CONSTRUCTION phases, shall be funded with 18.2% Development Share funds and 81.8% Public Share funds, as defined by the Nexus Study and the SBCTA Measure I 2010-2040 Strategic Plan and Policy 40005/VFI-33; and
- H. WHEREAS, the SBCTA Valley Interchange Phasing Program Policy limits the total PROJECT cost to \$10 Million.

NOW, THEREFORE, for good and valuable consideration and the mutual promises contained herein, the PARTIES agree to the following:

III. SBCTA RESPONSIBILITIES

SBCTA agrees:

- A. To be lead agency on Project Management, PA/ED, PS&E, ROW and CONSTRUCTION, and to diligently undertake and complete, the PA/ED, PS&E, ROW, and CONSTRUCTION work for the PROJECT, including the selection and retention of consultants. Performance of services under these consultant contracts shall be subject to the technical direction of the SBCTA's Director of Project Delivery, or his designee, with input and consultation from CITY. SBCTA shall ensure that consultants and contractors participating in PROJECT work are appropriately qualified or licensed to perform the tasks assigned to them, and shall be responsible for managing the quality of the PROJECT work.
- B. To contribute towards PA/ED, PS&E, ROW, and CONSTRUCTION phases of the PROJECT cost as shown in Attachment A. The actual cost of a specific phase may ultimately vary from the estimates provided in Attachment A, and should SBCTA's total share of the PA/ED, PS&E, ROW, and CONSTRUCTION phases exceed the estimates as shown in Attachment A, SBCTA agrees to entertain amendment of the AGREEMENT in good faith in accordance with Section

V, Paragraph A, below. However, in no case shall the SBCTA contribution exceed \$8,180,000 in accordance with Policy 40005/VFI-36.

- C. To prepare and submit to CITY signed invoices for reimbursement of allowable PROJECT expenditures. Invoices may be submitted to CITY as frequently as monthly.
- D. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles ("GAAP") to support SBCTA's request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of Project Management, PA/ED, PS&E, ROW, and CONSTRUCTION work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by SBCTA.
- E. To prepare a final accounting of expenditures, including a final invoice for the actual Project Management, PA/ED, PS&E, ROW, and CONSTRUCTION costs. The final accounting and invoice shall be submitted no later than one hundred and twenty (120) calendar days following the completion of this AGREEMENT 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 Project Management, PA/ED, PS&E, ROW, and CONSTRUCTION work activities.
- F. To cooperate in having a PROJECT-specific audit completed by CITY, at its option, upon completion of Project Management, PA/ED, PS&E, ROW, and CONSTRUCTION work. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with this AGREEMENT.
- G. To reimburse CITY for costs that are determined by subsequent audit to be unallowable within ninety (90) calendar days of SBCTA receiving notice of audit findings, which time shall include an opportunity for SBCTA to respond to and/or resolve the finding. Should the finding not be otherwise resolved and SBCTA 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 CITY's Council reserves the right to withhold future payments due SBCTA from any source under CITY's control.
- H. SBCTA's Director of Project Delivery is authorized to act on behalf of SBCTA under this Section of the AGREEMENT.
- I. To designate a responsible staff member that will be SBCTA's representative in attending the Project Development Team ("PDT") meetings, receiving day-to-day communication, and providing Project Management services.
- J. To complete review and provide comments on PROJECT documents in a timely manner that is consistent with the schedule.
- K. To provide CITY with a proposed project schedule to complete the PROJECT.

- L. To include CITY in PDT meetings and related communications on PROJECT progress as well as to provide CITY with copies of PDT meeting minutes and action items.
- M. To perform the design and construction in accordance with State and Federal standards and practices.
- N. To provide CITY, with a reasonable amount of review and approval time and an opportunity to review, comment on, and approve PA/ED, PS&E, ROW, and CONSTRUCTION documents.
- O. To apply for encroachment permits authorizing entry of SBCTA and its consultants and contractors onto CITY right of way to perform investigative activities, including surveying and geotechnical borings, and construction activities required by the PROJECT; and to receive encroachment permits from the CITY at no cost to SBCTA, its consultants, and contractors.
- P. To obtain, all necessary PROJECT permits, agreements and/or approvals from appropriate agencies; all necessary PROJECT permits, agreements, and/or approvals from the CITY shall be provided at no cost to SBCTA, its consultants, and contractors. All mitigation, monitoring, and/or remedial action required by said permits and/or agreements obtained from agencies other than the CITY shall constitute part of the PROJECT cost.
- Q. To provide all necessary ROW services to acquire rights-of-way for PROJECT through negotiated purchases of property, or if necessary, through Eminent Domain. All voluntary acquisitions will be acquired in the name of CITY for property in CITY's jurisdiction. If necessary, SBCTA will conduct Resolutions of Necessity hearings and acquire property in the name of SBCTA for the purposes of construction of the PROJECT and convey such property, or portions thereof, to CITY prior to the start of construction.
- R. To identify the utilities within the PROJECT area and coordinate with utility companies to determine their location, and if necessary, their relocation.
- S. To provide written notice to CITY upon SBCTA's determination that the PROJECT is substantially completed in accordance the plans and specifications. For the purpose of this AGREEMENT, "substantially completed" shall mean that the PROJECT can be reasonably be used for its intended purposes, notwithstanding that certain nonmaterial work remains to be completed, it being understood that SBCTA shall promptly pursue the completion of such nonmaterial work.
- T. Upon completion of construction of the PROJECT, SBCTA shall delivery to CITY a complete set of redline "as-built" plans of the PROJECT.
- U. To require all contractors and/or consultants under contract to perform services related to the PROJECT to include the CITY, its officers, directors, employees and agents as additional insureds and indemnify, defend, and hold harmless the CITY, its officers, directors, employees and agents from any liability, claims, demands, suits or actions which made be made by any person resulting from the PROJECT.

IV. CITY RESPONSIBILITIES

CITY agrees:

- A. To reimburse SBCTA for CITY's share of actual costs incurred towards the PA/ED, PS&E, ROW, and CONSTRUCTION phases of the PROJECT and for SBCTA's Project Management as shown in Attachment A. The actual cost of a specific phase may ultimately vary from the estimates provided in Attachment A, and should CITY's total share for the PA/ED, PS&E, ROW, and CONSTRUCTION phase with SBCTA's Project Management exceed the estimates as shown in Attachment A, CITY agrees to entertain amendment of the AGREEMENT in good faith and contribute these additional costs in accordance with Section V, Paragraph A, below.
- B. 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 SBCTA 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.
- C. 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.
- D. To review, provide comments on, and approve PROJECT documents within two (2) weeks of receiving the review request from SBCTA.
- E. CITY's Public Works Director is authorized to act on behalf of CITY under this Section of the AGREEMENT.
- F. To provide permits, inspections, reviews, acceptance of the transfer of title of properties and oversight at no cost to SBCTA or to consultants and contractors contracted by SBCTA to work on the PROJECT.
- G. To provide SBCTA copies of the franchise/utility agreements for the utilities in the PROJECT area for the purpose of determining prior rights and estimating utility relocation costs.
- H. To assist SBCTA as requested and when necessary exercise its rights under utility relocation law or under any franchise agreement, to cause each utility to relocate or rearrange its utility facility.
- I. To accept in writing the PROJECT within thirty (30) days of receipt of written notice from SBCTA that the PROJECT is substantially completed as described by Paragraph "O" in Section III, which acceptance shall not be unreasonably withheld or delayed. Withholding or delaying because of nonmaterial work remaining to be completed shall be deemed unreasonable.

- J. To accept conveyance of property acquired in the name of SBCTA for the purposes of construction of the PROJECT prior to the start of construction.
- K. CITY is responsible for all commitments which are part of their direct agreement with Caltrans, including but not limited to Freeway Maintenance Agreement, and Landscape and Aesthetic Maintenance Agreements

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. In the event SBCTA determines Project Management, PA/ED, PS&E, ROW, and CONSTRUCTION work may exceed the amounts identified in Attachment A of this AGREEMENT, SBCTA 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 in this AGREEMENT. In no event, however, shall the PARTIES be responsible for PROJECT costs in excess of the amounts identified in this AGREEMENT without a written amendment that is approved by the PARTIES.
- B. Eligible PROJECT reimbursements shall include only those costs incurred by SBCTA for PROJECT-specific work activities that are described in this AGREEMENT and shall not include escalation or interest.
- C. Neither SBCTA 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 SBCTA, 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.
- D. 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 SBCTA and under or in connection with any work, authority or jurisdiction delegated to SBCTA under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA 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 SBCTA under or in

connection with any work, authority or jurisdiction delegated to SBCTA under this AGREEMENT.

- E. This AGREEMENT will be considered terminated upon completion of PROJECT closeout and 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 the other PARTY. 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.
- F. The Recitals to this AGREEMENT are true and correct and are incorporated into this AGREEMENT.
- G. All signatories hereto warrant that they are duly authorized to execute this AGREEMENT on behalf of said PARTY and that by executing this AGREEMENT, the PARTIES hereto are formally bound to this AGREEMENT.
- H. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California. All PARTIES agree to follow all applicable local, state, county and federal laws and ordinances with respect to performance under this AGREEMENT.
- I. 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.
- J. If any clause or provisions 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.
- K. This AGREEMENT cannot be amended or modified in any way except in writing, signed by all PARTIES hereto.
- L. 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.
- M. 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.

- N. 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 C and D of this Section.
- O. 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 SBCTA ("Effective Date"), following execution by both PARTIES.
- P. 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 SBCTA: Henry Stultz
 Director of Project Delivery
 1170 West Third Street, Second Floor
 San Bernardino, CA 92410-1715
 Telephone: (909) 884-8276

If to CITY: Alex Qishta, City Engineer and
 Interim Public Works Director
 201 North E Street, Suite 200
 San Bernardino, CA 92401
 Telephone: (909) 384-5019

- Q. 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.

**SIGNATURE PAGE TO
COOPERATIVE AGREEMENT NO. 22-1002720
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
and CITY OF SAN BERNARDINO**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

CITY OF SAN BERNARDINO

By: 
Curt Magman
President, Board of Directors

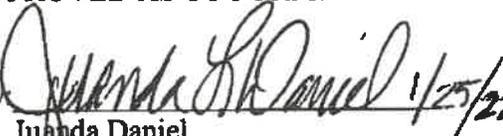
By: 
Robert D. Field
City Manager

Date: 1/31/22

Date: 12/27/2021

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
Juanda Daniel
Assistant General Counsel

By: 
City Attorney

CONCURRENCE:

By: 
Jeffrey Hill
Procurement Manager

Attachment A

Project Scope:

At the Waterman Avenue State Route 210 (SR 210) interchange, convert southbound and northbound through lane into a left-turn lane and widen eastbound on-ramp to two lanes..

Project Cost Estimate and Funding Shares:

SBCTA's Share: Public Share: 81.8%

City's Share: Development Share or Local Share: 18.2% (City of San Bernardino)

Phase	Estimated Cost ¹	Public Share	Development Share
PA/ED	\$190,000	\$155,420	\$34,580
PS&E	\$460,000	\$376,280	\$83,720
ROW	\$0	\$0	\$0
CONSTRUCTION	\$4,835,000	\$3,955,030	\$879,970
SBCTA Project Management	\$400,000	\$0	\$400,000
Total	\$5,885,000	\$4,486,730	\$1,398,270

¹Estimated cost assumes analysis of one build alternative.

Project Milestones:

Milestone ¹	Actual (Forecast)
Start of Project Approval and Environmental Document Phase (PA/ED)	(08/2022)
Environmental Approval	(08/2023)
Design Approved and ROW Certified	(08/2024)
Begin Construction	(02/2025)
End Construction	(01/2026)

¹Milestone assumes analysis of one build alternative. Anticipated environmental determination under CEQA is a Categorical Exemption and under NEPA a Categorical Exclusion.