

**ADVANCED EXPENDITURE AGREEMENT NO. C14037**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**COUNTY OF SAN BERNARDINO**

**FOR**

**Interim Improvements for the Interstate 15/Sierra Avenue Interchange**

THIS AGREEMENT (herein referred to as this “Agreement”) is made and entered into by and between the San Bernardino County Transportation Authority (hereinafter referred to as “SANBAG”) and the County of San Bernardino (hereinafter referred to as “COUNTY”), collectively referred to as the “PARTIES”.

**WITNESSETH**

WHEREAS, the Measure I 2010-2040 Expenditure Plan and the SANBAG Nexus Study identified freeway interchange projects eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, this Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan; and

WHEREAS, SANBAG has determined that the Interstate 15/Sierra Avenue Interchange Project and construction expenditure phase are included in the SANBAG Nexus Study and is eligible to receive Measure I 2010-2040 Valley Freeway Interchange Program funds; and

WHEREAS, the SANBAG Nexus Study determines the fair-share percentages of the total estimated interchange improvement costs as: SANBAG – 19.7%, City of Rialto (RIALTO) – 52.2%, City of Fontana (FONTANA) – 22.5%, and COUNTY – 5.6%; and

WHEREAS, the State of California Department of Transportation (CALTRANS) and COUNTY wish to construct interim improvements to the Interstate 15/Sierra Avenue Interchange, which consist of signaling and widening northbound and southbound ramp intersections at Sierra Avenue, widening Sierra Avenue from Riverside Avenue to north of southbound Interstate 15 off-ramp, and drainage improvements (PROJECT), and FONTANA wishes to construct an

extension of existing Sierra Avenue sewer line and taper Sierra Avenue from two lanes to one lane at Riverside Avenue (SEWERLINE PROJECT); and

WHEREAS, COUNTY wishes to fund construction of the interim PROJECT prior to Measure I funds being available; and

WHEREAS, COUNTY, FONTANA and CALTRANS will enter into Construction Cooperative Agreement #08-1541 totaling \$3,013,000 for which CALTRANS will act as lead agency for the PROJECT with an estimated construction cost of \$2,750,000, of which CALTRANS will contribute \$755,000, and COUNTY will contribute \$1,995,000 toward PROJECT costs, and FONTANA will contribute \$263,000 toward the SEWERLINE PROJECT costs; and

WHEREAS, CALTRANS has fully funded and completed the design phase of the PROJECT; and

WHEREAS, COUNTY intends to advance all of the SANBAG, RIALTO, and FONTANA shares of the SANBAG Nexus Study fair-share PROJECT costs in exchange for reimbursement or credit on the future ultimate Interstate 15/Sierra Avenue Interchange Project equal to the advancement; and

WHEREAS, COUNTY intends to enter into a separate Development Mitigation Cooperative Agreement with RIALTO and FONTANA to coordinate all minority share development mitigation fair share contributions identified in Nexus Study; and

WHEREAS, since revenue from Measure I 2010-2040 is limited, SANBAG and COUNTY are entering into this Agreement, which will allow COUNTY to use its own funds to implement the PROJECT in advance of an allocation of Measure I funds, with the understanding that SANBAG will reimburse COUNTY for SANBAG share of eligible PROJECT expenditures with Measure I 2010-2040 Valley Freeway Interchange Program or other funds under SANBAG control at a later date in accordance with the Advance Expenditure Agreement (AEA) reimbursement policy in the Measure I 2010-2040 Strategic Plan Policy 40002 (POLICY) or through credit for the COUNTY share on the future ultimate Interstate 15/Sierra Avenue Interchange Project.

NOW, THEREFORE, SANBAG and COUNTY agree to the following:

## SECTION I

### SANBAG AGREES:

1. In accordance with the SANBAG Nexus Study to be responsible for 19.7% of the total eligible PROJECT costs that are incurred by COUNTY for an amount not to exceed \$393,015, as shown in Attachment A and hereby incorporated into this Agreement.
2. To reimburse, or provide credit on the future ultimate I-15/Sierra Interchange Improvement project, COUNTY for those eligible PROJECT expenses that are incurred by COUNTY for the PROJECT specific activities, as set forth in Attachment A to this

Agreement and as governed by the POLICY in the Measure I 2010-2040 Strategic Plan, as amended, as of the date of execution of this Agreement. Amendments to this reimbursement amount may be made by mutual agreement between SANBAG and COUNTY.

3. To reimburse or provide credit to COUNTY, subject to Article 1 and Article 2 of this Section I, in accordance with the POLICY and after COUNTY submits to SANBAG an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by COUNTY.
4. 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 CALTRANS, the State of California and/or COUNTY 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 SANBAG when planning and conducting additional audits.

## SECTION II

### COUNTY AGREES:

1. To provide a lump sum payment to CALTRANS of \$1,995,000 toward PROJECT costs, which includes the COUNTY share of \$111,720, the FONTANA entire share of \$448,875, the RIALTO entire share of \$1,041,390, and the SANBAG entire share of \$393,015 in accordance with the SANBAG Nexus Study and as shown in Attachment A.
2. That only eligible PROJECT-specific work activities, as set forth in Attachment A, that conform to the SANBAG Nexus Study will be eligible for Measure I reimbursement or credit. COUNTY agrees that it will only request reimbursement or credit for eligible PROJECT-specific work activities and that reimbursement/credit will occur based on timelines governed by the POLICY in the Measure I 2010-2040 Strategic Plan, as amended, as of the date of execution of this Agreement.
3. To obtain from CALTRANS and submit to SANBAG an original and two copies of signed invoices for reimbursement or credit of those eligible PROJECT expenses according to the requirements specified in Attachment A. COUNTY further agrees and understands that SANBAG will not reimburse or credit COUNTY for any PROJECT expenditures that are not described in the PROJECT-specific work activities or that are in excess of the amount specified in Article 1 of Section I. Invoices shall be provided to SANBAG when credit is requested by the COUNTY as well as for direct reimbursement.
4. To repay to SANBAG any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within ninety (90) days of COUNTY receiving notice of audit findings, which time shall include an opportunity for COUNTY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and COUNTY fails to reimburse moneys due SANBAG within ninety (90) days of audit finding, or

within such other period as may be agreed between both parties hereto, the SANBAG Board reserves the right to withhold future payments due COUNTY from any source under SANBAG's control.

5. To provide a share of total eligible PROJECT expenses as defined in Attachment A, after subtraction of the CALTRANS contribution, which represents the development share. Any credited funds per Section II., Article 1 shall have been from a development mitigation source or from an internal loan consistent with Policy 40005/VFI-24 in order for the credit to be earned.
6. The COUNTY commits to providing the COUNTY portion, RIALTO portion and FONTANA portion of the development share for the PROJECT under this Agreement. The COUNTY, RIALTO and FONTANA will enter separate agreement(s) whereby FONTANA and RIALTO will compensate COUNTY for their remaining development shares not covered by CALTRANS Construction Cooperative Agreement #08-1541. SANBAG shall be consulted on any subsequent agreement(s) between the COUNTY, RIALTO and FONTANA that propose the trade of development shares between the PROJECT and another interchange project. A copy of any agreement between the COUNTY, RIALTO and FONTANA that is related to this Agreement shall be provided to SANBAG within 30 days after its execution, for purposes of documentation and future reference.
7. To the extent possible, obtain copies from CALTRANS and maintain all source documents, books, and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to SANBAG or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SANBAG. Copies will be made and furnished by COUNTY upon request.
8. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support COUNTY's request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by COUNTY.
9. To obtain information from CALTRANS so that the COUNTY can prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended by CALTRANS for those activities described in the work activities, and to submit that Report and invoice no later than 120 days following the completion of those expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to SANBAG, must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described.

10. To have a PROJECT-specific audit completed by COUNTY, at SANBAG's option and expense, or an audit as described in Section I Article 4 upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. The Recitals stated above are true and correct, and are fully incorporated by this reference.
2. 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 date of execution of this Agreement.
3. SANBAG's financial responsibility shall not exceed 19.7% of eligible expenditures as listed in Attachment A. Absent an amendment to this Agreement, reimbursement or credit for the PROJECT shall be limited to \$393,015, the public share of the estimated cost of the PROJECT for which funds have been allocated by the SANBAG Board of Directors, or to the actual cost, whichever is less. The Agreement shall be amended, if applicable, to incorporate the project cost information included in the most current SANBAG Board-adopted version of the Nexus Study.
4. Eligible PROJECT reimbursement shall include only those costs incurred by CALTRANS and COUNTY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.
5. Neither SANBAG nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully defend, indemnify and save harmless SANBAG, its officers and employees 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 COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. COUNTY is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.
6. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SANBAG under or in connection with any work, authority or jurisdiction

delegated to SANBAG under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, SANBAG shall fully defend, indemnify and save harmless COUNTY, its officers and employees 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 SANBAG under or in connection with any work, authority or jurisdiction delegated to SANBAG under this Agreement. SANBAG has and maintains policies of insurance for Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

7. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by SANBAG.
8. This Agreement will be considered terminated upon reimbursement of eligible costs by SANBAG. The Agreement may also be terminated by SANBAG, in its sole discretion, in the event the PROJECT work described in Attachment A has not been initiated or let within twenty-four (24) months of the date of execution of this Agreement.
9. The terms of this Agreement represent the consent of the COUNTY to provide the full development share for the PROJECT required by the SANBAG Nexus Study and that failure to contribute the development share according to the terms of this Agreement does not obligate SANBAG to provide supplemental funds or otherwise remedy that failure. SANBAG may terminate this Agreement if the COUNTY fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.
10. The Effective Date of this Agreement is the date that SANBAG executes this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**San Bernardino County**  
**Transportation Authority**

By: \_\_\_\_\_  
W. E. Jahn  
President, SANBAG Board of  
Directors

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
SANBAG General Counsel

Date: \_\_\_\_\_

**County of San Bernardino**

By: \_\_\_\_\_  
Janice Rutherford  
Chair, Board of Supervisors

Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Scott Runyan  
Deputy County Counsel

Date: \_\_\_\_\_

## Attachment A

### Interstate 15/Sierra Avenue Interim Interchange Improvements Project Project Phase Scope, Cost, and Schedule

#### **Proposed Project Work:**

Construct interim improvements to the Interstate 15/Sierra Avenue Interchange, which consist of signalizing and widening northbound and southbound ramp intersections at Sierra Avenue, widening Sierra Avenue from Riverside Avenue to north of southbound Interstate 15 off-ramp, and drainage improvements.

#### **Summary of Project Costs (Estimate):**

Total Project Cost	\$2,750,000
Caltrans Contribution	\$ 755,000
Net Project Cost	\$1,995,000

Fontana contribution to Sewerline Project: \$263,000

#### **Net Project Costs Distribution by Party:**

SANBAG Public Share: 19.7% = \$1,995,000 X 19.7% = \$393,015  
Developer Share: 80.3% = \$1,995,000 X 80.3% = \$1,601,985  
(Shared: 52.2% RIALTO, 22.5% FONTANA & 5.6% COUNTY resulting in the following Nexus Shares of the total project cost)

COUNTY		
Nexus %	Contribution	Over
5.60%		contribution
\$111,720	\$1,995,000	\$1,883,280

SANBAG		
Nexus %	Contribution	Credit/Reimburse
19.70%		to County
\$393,015	\$0	\$393,015

This Agreement covers the terms of credit/reimbursement of the \$393,015 SANBAG Public Share contribution to the Project. Reimbursement of the remaining RIALTO and FONTANA Development Mitigation Contribution Shares to the County (\$1,041,390 and \$448,875, respectively) will be covered by separate agreement(s).

#### **Proposed Project Phase Schedule (milestone delivery dates):**

PS&E (Design completion)	11/8/12
Ready to List (RTL)	10/14/13
Advertise	10/28/13
Award Contract	11/20/13
Begin Construction	1/28/14
End of Construction	5/29/14