



**Contract Number**

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**SAP Number**

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## Public Works

<b>Department Contract Representative</b>	Jeremy Johnson P.E., Engineering Manager
<b>Telephone Number</b>	(909) 387-8165
<b>Project</b>	Riverside Avenue/Interstate 10 Interchange Project – Phase II
<b>Contractor</b>	City of Rialto
<b>Contractor Representative</b>	Timothy Sullivan, Director of Maintenance & Facilities
<b>Telephone Number</b>	(909) 421-7244
<b>Contract Term</b>	Upon County's final payment or March 31, 2040
<b>Original Contract Amount</b>	\$154,836
<b>Amendment Amount</b>	\$0
<b>Total Contract Amount</b>	\$154,836
<b>Cost Center</b>	6650002109 52002445 M00019

### IT IS HEREBY AGREED AS FOLLOWS:

#### RECITALS

WHEREAS, the City of Rialto (hereinafter referred to as "RIALTO") intends to widen the existing Riverside Avenue bridge structure over the Union Pacific Railroad (UPRR) tracks south of Interstate 10 (I-10) to Slover Avenue in the Rialto area (hereinafter referred to herein as "PROJECT"); and,

WHEREAS, the PROJECT will widen the existing Riverside Avenue bridge structure over the UPRR tracks south of I-10 to Slover Avenue to match the lane configuration constructed as part of the I-10/Riverside Avenue Interchange Project – Phase I, and add two lanes in the northbound direction to connect to the existing two left-turn lanes on the overcrossing as well as provide for sidewalks; and,

WHEREAS, the San Bernardino County Transportation Authority (SBCTA) prepared a study, referenced herein as the "Nexus Study", dated November 2, 2011, and updated every two years in accordance with the Measure

I 2010-2040 Expenditure Plan that identifies PROJECT as eligible for the SBCTA Public Share of 72.6% of costs necessary to complete the PROJECT; and,

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

WHEREAS, PROJECT and the associated expenditures are included in the SBCTA Nexus Study and are eligible to receive Measure I 2010-2040 Valley Freeway Interchange Program (MIVFIP) funds; and,

WHEREAS, SBCTA Measure I 2010-2040 Strategic Plan sets forth the policies by which the expenditure of MIVFIP funds are managed; and,

WHEREAS, many of the interchange projects listed in the MIVFIP require development mitigation contributions from one or more local agencies; and,

WHEREAS, San Bernardino County (hereinafter referred to as "COUNTY"), RIALTO, and the City of Colton (hereinafter referred to as "COLTON") each has development mitigation fair-share requirements for the PROJECT; and,

WHEREAS, SBCTA Nexus Study requires the agency with the majority share of development mitigation to be the sponsoring agency of the PROJECT; and,

WHEREAS, RIALTO has the majority share of development mitigation, RIALTO shall be the sponsoring agency of the PROJECT to coordinate collection of the minority share development mitigation fair-share contributions identified in the Nexus Study; and,

WHEREAS, SBCTA Nexus Study determines the fair-share percentages of the total estimated interchange improvement costs for the PROJECT as: SBCTA Public Share – 72.6% and Local Development Mitigation Contribution – 27.4%. The Local Development Mitigation Contribution (27.4%) is shared among the following local jurisdictions: RIALTO – 65.90%, COLTON – 26.20%, and COUNTY– 7.9%; and,

WHEREAS, COUNTY and RIALTO (COUNTY and RIALTO are also sometimes each referred to herein as "Party" and collectively referred to herein as "Parties") wish to enter into this Development Mitigation Cooperative Agreement (Agreement) to fund the development mitigation fair-share requirements for the Plans, Specifications and Estimate (PS&E), and Right of Way (ROW). The Project Approval and Environmental Document phase was completed during Phase I of the PROJECT which was led by RIALTO. RIALTO is in the process of securing funding for the construction phase, once funding is secured RIALTO will submit an amendment to this Agreement to include the construction phase for the Parties respective Board for consideration and approval and,

WHEREAS, PROJECT total estimated cost is \$7,153,107; and,

WHEREAS, Local Development Mitigation contribution is estimated to be \$1,959,951 (27.4%); and SBCTA Public Share is estimated to be \$5,193,156 (72.6%), as set forth more particularly in Exhibits A, attached hereto and incorporated herein by this reference; and,

WHEREAS, COUNTY's contribution toward the PROJECT is limited to development mitigation fees collected through its Regional Transportation Development Mitigation Plan (PLAN) – Rialto Sphere Freeway Interchange Funds; and

WHEREAS, this Agreement specifies COUNTY's fair-share of the PROJECT's PS&E and ROW costs; and,

WHEREAS, to date, RIALTO has incurred approximately \$710,630.27 for PS&E and ROW ("PRIOR COSTS"); and,

WHEREAS, there will be a separate agreement between RIALTO and COLTON to coordinate the collection of its fair-share of the PROJECT's PRIOR COSTS including advanced payments made by RIALTO on behalf of COLTON.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

### **AGREEMENT**

#### **1.0 RIALTO AGREES TO:**

- 1.1 Serve as the sponsoring agency of the PS&E and ROW costs for the PROJECT.
- 1.2 Under the Funding Agreement with SBCTA, as required by the SBCTA Measure I 2010-2040 Strategic Plan, be responsible for ensuring that the PROJECT complies with the terms of the Funding Agreement.
- 1.3 Provide 65.90% (\$1,291,608) of the 27.4% development mitigation funding contribution for the PROJECT, which will come from development impact fees or other source of development contribution as required by the Nexus Study (Appendix G of the SBCTA Congestion Management Program – CMP) and Appendix J of the CMP or from a loan of funds to the CITY's development impact fee.
- 1.4 Invoice eligible PRIOR COSTS and future PS&E and ROW costs to COUNTY during the PROJECT, subject to availability of PLAN funds collected for the Rialto Sphere Freeway Interchange. THE COUNTY does not guarantee it will collect and then pay to RIALTO its full cost share as described in this paragraph. COUNTY is only contractually responsible under this Agreement for paying RIALTO the PLAN fees it collects in the RIALTO sphere Freeway Interchange funds up to \$154,836. The total County contribution for PRIOR COSTS and future PS&E and ROW costs is estimated to be \$154,836. Support documentation shall be included with invoices to the COUNTY as the basis for substantiating the invoice amount for eligible PROJECT expenditures. Invoicing may be submitted to COUNTY as frequently as monthly.
- 1.5 Abide by all SBCTA, State, and if applicable, federal policies, procedures, and regulations pertaining to the PROJECT, including policies pertaining to the PROJECT in the Measure I 2010-2040 Strategic Plan.
- 1.6 Credit the COUNTY any development mitigation costs that are determined by subsequent audit to be unallowable within sixty (60) days of the COUNTY receiving notice of audit findings.
- 1.7 Maintain all source documents, books, and records connected with performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to SBCTA or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of COUNTY.
- 1.8 Have a PROJECT-specific audit completed by COUNTY and/or RIALTO, at the COUNTY's option and expense, upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.
- 1.9 Establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support accounting activities associated with the delivery of PROJECT by RIALTO and produce monthly reports, which clearly identify invoice payments for PROJECT, including funding information.

#### **2.0 COUNTY AGREES TO:**

- 2.1 Provide 7.9% (\$154,836) of the 27.4% development mitigation funding contribution for the PREVIOUSLY INCURRED COSTS and future PS&E and ROW costs in accordance with the SBCTA Nexus Study, as shown in Exhibit A, which will come from development impact fees or other source of development contribution as required by the Appendix G and Appendix J of the CMP or from a loan of funds to RIALTO's development impact fee.
- 2.2 Reimburse RIALTO development mitigation fair-share of PROJECT costs with PLAN for the Rialto Sphere of Influence funds collected, estimated to be \$154,836. COUNTY will not be obligated to make any payment if there are not sufficient funds collected in the PLAN for the Rialto Sphere of Influence. As PLAN funds are collected, COUNTY will reimburse RIALTO, up to \$154,836.

#### **3.0 IT IS MUTUALLY AGREED:**

- 3.1 This Agreement applies to the PS&E and ROW scope of work, as shown in Exhibits A.
- 3.2 The COUNTY's financial responsibility shall not exceed 7.9% of 27.4% of the actual PROJECT costs for expenditures on the scope of work as shown in Exhibits A, unless the fair-share percentage is amended in the SBCTA Nexus Study because of annexations or other changes to growth figures that affect development mitigation fair-share contributions to the PROJECT. Any change in fair-share percentages shall affect only development mitigation contributions subsequent to the amendment to the Nexus Study and shall not be retroactive.
- 3.3 Eligible PROJECT expenditures shall be limited to the PROJECT-specific work activities shown in Exhibits A to this Agreement and shall not include escalation, interest, or other fees.
- 3.4 In the event RIALTO determines PROJECT costs may exceed the not to exceed amount identified in Section 2.0, paragraph 2.2, RIALTO shall inform COUNTY of this determination and thereafter, the Parties shall work together in an attempt upon an amendment to the PROJECT amounts identified in this Agreement. In no event shall the COUNTY be responsible for PROJECT costs in excess of the PROJECT amounts identified herein absent a written amendment to this Agreement that is approved by the Parties.
- 3.5 COUNTY agrees to indemnify and hold harmless RIALTO and its officers, agents, volunteers from any and all claims, actions, or losses, damages, and/or liability resulting from the COUNTY's negligent acts or omissions which arising out of COUNTY's obligations under this Agreement.
- 3.6 RIALTO agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of its obligations under this Agreement.
- 3.7 In the event the COUNTY and/or RIALTO is found to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under the Agreement, the COUNTY and/or RIALTO shall indemnify the other to the extent of its comparative fault.
- 3.8 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 3.5, 3.6, and 3.7 indemnifications.
- 3.9 COUNTY and RIALTO are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Worker's Compensation, and warrant that through their respective programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of COUNTY and RIALTO's performance of the terms, conditions, or obligations of this Agreement.
- 3.10 This Agreement shall terminate upon final development mitigation fair-share payment by COUNTY (not-to-exceed amount of \$154,836) or the expiration of Measure I 2010-2040 Program on March 31, 2040, whichever occurs first.
- 3.11 The Parties' indemnification obligations described in Paragraphs 3.5, 3.6. and 3.7 shall survive the termination of this Agreement.
- 3.12 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.
- 3.13 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between COUNTY and RIALTO 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 San Bernardino County, California.
- 3.14 Time is of the essence for each and every provision of this Agreement.
- 3.15 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 time, days or period for performance 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.
- 3.16 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, estoppels, or otherwise.

- 3.17 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.
- 3.18 This Agreement may be signed electronically and in counterparts, each of which shall constitute an original.
- 3.19 The Recitals are incorporated into the body of this Agreement.
- 3.20 This Agreement will be effective on the date it is signed by both Parties.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both Parties.

IN WITNESS WHEREOF, the Parties to these presents have hereunto set their hands.

SIGNATURES ON THE FOLLOWING PAGE

SAN BERNARDINO COUNTY



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

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

Lynna Monell  
Clerk of the Board of Supervisors  
San Bernardino County

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

CITY OF RIALTO

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

Name \_\_\_\_\_  
(Print or type name of person signing contract)

Title \_\_\_\_\_  
(Print or Type)


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

Address \_\_\_\_\_

\_\_\_\_\_


**FOR COUNTY USE ONLY**

Approved as to Legal Form

 \_\_\_\_\_  
Aaron Gest, Deputy County Counsel


Date \_\_\_\_\_

Reviewed for Contract Compliance

 \_\_\_\_\_  
Andy Silao, P.E., Engineering Manager

Date \_\_\_\_\_

Reviewed/Approved by Department

 \_\_\_\_\_  
Noel Castillo, Director

Date \_\_\_\_\_

### Exhibit A

## **SAN BERNARDINO COUNTY/CITY OF RIALTO RIVERSIDE AVENUE/INTERSTATE 10 – PHASE II INTERCHANGE PROJECT IN THE RIALTO AREA**

### **PROJECT SCOPE:**

The second phase of the I-10/Riverside Avenue Interchange project includes widening of the existing Riverside Avenue bridge structure over the UPRR railway to match the configuration of the recently completed I-10/Riverside Avenue Interchange Phase 1 project. The project will add two lanes in the northbound direction to connect to the existing two left turn lanes on the overcrossing as well as provide for sidewalks.

### **NEXUST STUDY FAIR-SHARE CONTRIBUTION**

<b>Phase<sup>1</sup></b>	<b>Total Cost</b>	<b>SBCTA Share<sup>2</sup> (Public Share) 72.6%</b>	<b>Local Agency Contribution (Development Share) 27.4%</b>
Plans, Specifications, and Estimates Phase	\$2,700,607	\$1,960,641	\$739,966
ROW and Utility Relocation Phase	\$4,452,500	\$3,232,515	\$1,219,985
<b>TOTAL</b>	<b>\$7,153,107</b>	<b>\$5,193,156</b>	<b>\$1,959,951</b>

### **LOCAL DEVELOPMENT FAIR SHARE CONTRIBUTION**

<b>Phase<sup>1</sup></b>	<b>Local Agency Contribution (Development Share) 27.4%</b>	<b>Rialto Contribution 65.9% of 27.4%</b>	<b>Colton Contribution 26.2% of 27.4%</b>	<b>County Contribution 7.9% of 27.4%</b>
Plans, Specifications, and Estimates Phase	\$739,966	\$487,638	\$193,871	\$58,457
ROW and Utility Relocation Phase	\$1,219,985	\$803,970	\$319,636	\$96,379

TOTAL	\$1,959,951	\$1,291,608	\$513,507	\$154,836
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