



Contract Number

22-85

SAP Number

Public Works

Department Contract Representative	Stephen Martinez, Interim Engineering Manager
Telephone Number	(909) 387-8165
Project Contractor	Needles Highway Segment 1C San Bernardino County Transportation Authority -50000621
Contractor Representative	Michele Fogerson, Chief of Fund Administration
Telephone Number	(909) 884-8276
Contract Term	Upon final reimbursement
Original Contract Amount	\$900,000
Amendment Amount	NA
Total Contract Amount	\$900,000
Cost Center	6650002148 40608842 TX1822 (H15179)

Briefly describe the general nature of the contract: *The County and the San Bernardino County Transportation Authority (SBCTA) desire to enter into an Advance Expenditure Agreement (AEA) No. 22-1002711 to allow the County to proceed with the Needles Highway, from David Drive north to 0.1 mile north of Not'cho Road (Segment 1C) pavement and drainage improvement project in the Needles area with the agreement that SBCTA will reimburse the County for Segment 1C project related costs up to \$900,000 of Measure "I" 2010-2040 Colorado River Subarea Major Local Highways Program (MLHP) funds once the funding becomes available.*

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE ATTACHED

Aaron Gest, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

Andy Silao, P.E., Engineering Manager

Date 1/19/2022

Reviewed/Approved by Department

Brendon Biggs, Director

Date 1-31-22



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Aaron Gest, Deputy County Counsel

Date 1/18/22

Reviewed for Contract Compliance



Andy Silao, P.E., Engineering Manager

Date

Reviewed/Approved by Department



Brendon Biggs, Director

Date

ADVANCE EXPENDITURE AGREEMENT NO. 22-1002711

FOR

NEEDLES HIGHWAY, SEGMENT 1C PROJECT

(COUNTY OF SAN BERNARDINO)

This Advance Expenditure Agreement (“AGREEMENT”) is made and entered into by and between San Bernardino County (“COUNTY”) and the San Bernardino County Transportation SBCTA (“SBCTA”). SBCTA and COUNTY are each a “Party” and collectively “Parties”.

RECITALS

A. The Measure I 2010-2040 (“Measure I”) Expenditure Plan and the Colorado River Subarea transportation planning partners have identified projects eligible for partial funding from Measure I 2010-2040 Colorado River Subarea Major Local Highway Projects Program (MLHP) funds;

B. The Needles Highway, Segment 1C Project (“PROJECT”), from David Drive north to 0.1 mile north of Not’cho Road, located in the Needles area of the Measure I Colorado River Subarea, is one of the projects identified as eligible for such funding and is described more fully in Attachment A;

C. SBCTA has determined that the PROJECT is eligible to receive Colorado River Subarea MLHP funds;

D. COUNTY has requested an allocation of \$900,000 in Colorado River Subarea MLHP funds that are not immediately available;

E. COUNTY wishes to begin the PROJECT prior to the full allocation of the Measure I MLHP funds being available for this PROJECT;

F. Since revenue from Measure I 2010-2040 is limited, SBCTA and COUNTY are entering into this AGREEMENT, which will allow COUNTY to use its own funds to implement the PROJECT in advance of the availability of Measure I funds, with the understanding that SBCTA will reimburse COUNTY at a later date for SBCTA’s share of eligible PROJECT expenditures incurred after the Effective Date of this AGREEMENT, in accordance with the Advance Expenditure Agreement (AEA) reimbursement policy in the Measure I 2010-2040 Strategic Plan Rural Mountain/Desert Subareas Advance Expenditure Processes Policy No. 40022 (POLICY), as applicable; and

G. This AGREEMENT is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan as adopted by SBCTA.

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

SECTION I

SBCTA AGREES:

1. To reimburse COUNTY for those eligible PROJECT expenses that are incurred by COUNTY for the PROJECT, as set forth in Attachment B to this AGREEMENT and as governed by POLICY in the Measure I 2010-2040 Strategic Plan, in effect as of this AGREEMENT's Effective Date.
2. To reimburse COUNTY, subject to Article 1 of this Section I, in accordance with the POLICY and after COUNTY submits to SBCTA an electronic copy of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by COUNTY.
3. 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 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 SBCTA when planning and conducting additional audits.

SECTION II

COUNTY AGREES:

1. That only eligible PROJECT expenses, as set forth in Attachment B to this AGREEMENT, that conform to the SBCTA Measure I 2010-2040 Strategic Plan Policies will be eligible for Measure I reimbursement. COUNTY agrees that it will only request reimbursement for eligible PROJECT activities and that reimbursement will occur based on timelines governed by the POLICY.
2. To abide by all applicable SBCTA, COUNTY, State and Federal laws, regulations, policies, and procedures pertaining to PROJECT.
3. To submit to SBCTA an electronic copy of signed invoices for reimbursement of eligible PROJECT expenses no later than PROJECT acceptance. COUNTY further agrees and understands that SBCTA will not reimburse COUNTY for any PROJECT expenditures that are inconsistent with the Measure I 2010-2040 Strategic Plan. The Final Report of Expenditures must state that these PROJECT funds were used in conformance with this AGREEMENT and for those PROJECT activities described in Attachment A.

4. To maintain all copies of all consultant/contractor invoices, 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 or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SBCTA during normal business hours at COUNTY Department of Public Works. Copies will be made and furnished by COUNTY upon written request by SBCTA.
5. To establish and maintain an accounting system and internal controls conforming to Generally Accepted Accounting Principles (GAAP) to support COUNTY's request for reimbursement and payment vouchers and 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.
6. To cooperate in having a PROJECT-specific audit completed by SBCTA, at SBCTA'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.
7. To repay to SBCTA any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within one hundred twenty (120) 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 fail to reimburse moneys due SBCTA within one hundred twenty (120) days of audit finding, or within such other period as may be agreed between both Parties, SBCTA reserves the right to withhold future payments due COUNTY from any source under SBCTA's control.
8. As an eligible PROJECT expense, to post signs at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of SBCTA and COUNTY.
9. To include in all contracts between COUNTY and contractors for the PROJECT the requirement that SBCTA be named as an additional insured under general liability insurance policies maintained by the contractor for the PROJECT.

SECTION III

IT IS MUTUALLY AGREED:

1. 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.
2. SBCTA's financial responsibility for the PROJECT shall not exceed the SBCTA share listed in Attachment B unless amended and approved by both Parties. Reimbursement for the PROJECT shall be limited to the SBCTA share of the estimated cost of the PROJECT for which funds have been allocated by the SBCTA Board, or to the SBCTA share of the actual cost, whichever is less.
3. This AGREEMENT can be amended when agreed upon by both Parties.
4. COUNTY will use its own funds to implement the PROJECT in advance of the availability of Measure I funds, with the understanding that SBCTA will reimburse COUNTY for SBCTA share of eligible PROJECT expenditures at a later date in accordance with the POLICY.
5. Eligible PROJECT reimbursements shall include only those costs incurred by COUNTY for PROJECT-specific activities that are described in this AGREEMENT and shall not include escalation or interest.
6. Neither SBCTA 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 SBCTA, its officers, directors 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's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
7. 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 SBCTA 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 COUNTY, its officers, directors 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 SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this AGREEMENT. SBCTA's indemnification obligation applies to COUNTY's "active" as well as "passive" negligence but does not apply to COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

8. In the event COUNTY and/or SBCTA is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this AGREEMENT, COUNTY and/or SBCTA shall indemnify the other to the extent of its comparative fault.
9. This AGREEMENT is expressly subordinate 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 SBCTA.
10. This AGREEMENT will be considered terminated upon reimbursement of eligible costs by SBCTA provided that the provisions of Paragraphs 4, 5, 6, and 7 of Section II, and Paragraphs 6, 7, and 8 of Section III, shall survive the termination of this AGREEMENT. The AGREEMENT may also be terminated by SBCTA, in its sole discretion, in the event the PROJECT work described in Attachment A has not been initiated within twenty-four (24) months of the Effective Date of this AGREEMENT.
11. SBCTA may terminate this AGREEMENT if 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.
12. The Recitals stated above are true and correct and are incorporated by this reference into this AGREEMENT.
13. Attachments A (Description and Project Milestones) and Attachment B (Summary of Estimated Costs) for PROJECT are attached to and incorporated into this AGREEMENT.
14. The AGREEMENT may be signed electronically in counterparts, each of which shall constitute an original.
15. This AGREEMENT is effective and shall be dated on the date executed by SBCTA.


IN WITNESS WHEREOF, the Parties have executed this AGREEMENT by their authorized signatories below.

**San Bernardino County
Transportation Authority**

By: 
Curt Hagman, President
Board of Directors


Date: 4/26/22

APPROVED AS TO FORM AND
PROCEDURE:

By: 
Julianna K. Tillquist
SBCTA General Counsel

Date: 4/19/2022

San Bernardino County

By: 
Curt Hagman
Chairman

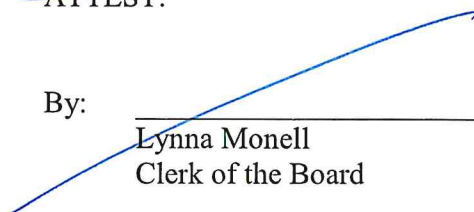
Date: FEB 08 2022

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Aaron Gest
County Counsel

Date: _____

~~ATTEST:~~

By: 
Lynna Monell
Clerk of the Board

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
of the County of San Bernardino

By: 

ATTACHMENT A

NEEDLES HIGHWAY, SEGMENT 1C PROJECT

Description of Project and Milestones

Project Title			
Needles Highway, Segment 1C Project			
Location, Project Limits, Description, Scope of Work, Legislative Description			
The Project is located on Needles Highway from David Drive north to 0.1 mile north of Not'cho Road. Scope of work includes realignment, reconstruction and drainage improvements.			
Project Milestone			Proposed
Project Study Report Approved			
Begin Environmental (PA&ED) Phase			02/15/2022
Circulate Draft Environmental Document	Document Type	IS/EA	Completed
Draft Project Report			Completed
End Environmental Phase (PA&ED Milestone)			06/30/2022 (Revalidation; NEPA completed 5/28/2014)
Begin Design (PS&E) Phase			07/01/2022
End Design Phase (Ready to List for Advertisement Milestone)			06/30/2024
Begin Right of Way Phase			08/15/2022
End Right of Way Phase (Right of Way Certification Milestone)			06/30/2024
Begin Construction Phase (Contract Award Milestone)			02/01/2025
End Construction Phase (Construction Contract Acceptance Milestone)			01/30/2026
Begin Closeout Phase			02/01/2026
End Closeout Phase (Closeout Report)			12/30/2026

ATTACHMENT B

NEEDLES HIGHWAY, SEGMENT 1C PROJECT

Summary of Estimated Costs

Phase	Total Cost	SBCTA Share* -- AEA for future MLHP Funds	County of San Bernardino Funds
PA&ED and PS&E (Environmental and Design)	\$900,000	\$900,000	-
Total	\$900,000	\$900,000	-

*SBCTA's Share can be from sources under control of SBCTA including but not limited to Measure I Major Local Highways Program (MLHP), State Transportation Improvement Program (STIP), Surface Transportation Program (STP), or other funds without necessitating an amendment of this AGREEMENT.