

A G R E E M E N T

THIS AGREEMENT, made and entered into by and between the CITY OF POMONA, a municipal corporation in the County of Los Angeles, hereinafter referred to as CITY, and the COUNTY OF LOS ANGELES, a political subdivision of the State of California (hereinafter referred to as COUNTY):

W I T N E S S E T H

WHEREAS, to assist in the traffic flow, CITY and COUNTY desire to modify and synchronize the traffic signals along Arrow Highway from Rennell Avenue to Claremont Boulevard - Mills Avenue, a portion of which is within CITY, and which work is hereinafter referred to as PROJECT; and

WHEREAS, the proposed improvements are jurisdictionally shared between CITY, the City of Claremont, the City of La Verne, and the City of San Dimas, and separate agreement between the City of San Dimas and COUNTY is being executed covering the portions of PROJECT with the City of San Dimas jurisdictions; and

WHEREAS, PROJECT is within the shared geographical boundaries of CITY, the City Claremont, the City of La Verne, and the City of San Dimas; and

WHEREAS, PROJECT is of general interest to CITY, the City of Claremont, the City of La Verne, the City of San Dimas, and COUNTY; and

WHEREAS, for the purpose of providing funding for PROJECT, COUNTY, as lead agency, on April 26, 2018, entered into an amended Memorandum of Understanding No. P00F3308 (MOU) with the Los Angeles County Metropolitan Transportation Authority (Metro); and

WHEREAS, COUNTY is willing to utilize and share with CITY the funding provided for in COUNTY/Metro MOU P00F3308 to finance a portion of COST OF PROJECT; and

WHEREAS, COST OF PROJECT includes the COST OF PRELIMINARY ENGINEERING, COST OF CONSTRUCTION CONTRACT, and COST OF CONSTRUCTION ADMINISTRATION; and

WHEREAS, the total COST OF PROJECT is currently estimated to be Three Million Five Hundred Sixty-Five Thousand Four Hundred and 00/100 Dollars (\$3,565,400); and

WHEREAS, under the MOU, Metro will provide to COUNTY a grant (GRANT) of up to a maximum of Two Million One Hundred Eighty-Four Thousand Eight Hundred and 00/100 Dollars (\$2,184,800) for PROJECT; and

WHEREAS, allocation of the Metro grant is currently estimated to be, Five

Hundred Sixty-Three Thousand Three Hundred and 00/100 Dollars (\$563,300) towards CITY's jurisdictional share, Seventy-Five Thousand and 00/100 Dollars (\$75,000) towards Claremont's jurisdictional share, Thirty-Five Thousand One Hundred and 00/100 Dollars (\$35,100) towards the City of La Verne's jurisdictional share, One Million Five Hundred Eleven Thousand Four Hundred and 00/100 Dollars (\$1,511,400) towards the City of San Dimas' jurisdictional share.

WHEREAS, CITY is willing to finance its jurisdictional share of COST OF PROJECT currently estimated to be One Million Two Hundred Fifty-Six Thousand Two Hundred and 00/100 Dollars (\$1,256,200) by claiming its share of COUNTY/Metro grant funds, currently estimated to be Five Hundred Sixty-Three Thousand Three Hundred and 00/100 Dollars (\$563,300) and contributing other CITY funds in the amount of Five Hundred Seventy-Two Thousand Nine Hundred and 00/100 Dollars (\$572,900) to finance a portion of the COST OF PROJECT; and

WHEREAS, COUNTY agrees to contribute funds of One Hundred Twenty Thousand and 00/100 Dollars (\$120,000) to finance a portion of CITY'S COST OF PROJECT; and

WHEREAS, CITY agrees to contribute funds of Five Hundred Seventy-Two Thousand Nine Hundred and 00/100 Dollars (\$572,900) to finance a portion of the COST OF PROJECT; and

WHEREAS, CITY'S estimated share is the sum of actual quantities of construction contract items utilized within CITY jurisdiction less the grant amount for grant eligible items plus thirty (30) percent of that for PRELIMINARY ENGINEERING cost, twenty (20) percent of that for CONSTRUCTION ADMINISTRATION cost, twenty (20) percent of that for contingencies, and three and a half (3.5) percent of combined costs of PRELIMINARY ENGINEERING and CONSTRUCTION ADMINISTRATION towards contract city liability trust fund altogether estimated to be Five Hundred Seventy-Two Thousand Nine Hundred and 00/100 Dollars (\$572,900); and

WHEREAS, BASIC TRAFFIC SIGNAL TIMING involves the timing parameters for the general operation of a traffic signal, which typically include, but is not limited to, defining the phases, attributes and timing values for each permitted phase, pedestrian movement, and assigning detection; and

WHEREAS, COORDINATION TRAFFIC SIGNAL TIMING involves the timing parameters that allow multiple traffic signals to be synchronized with each other, which typically include defining coordination cycle lengths, offsets and time of day operations for each traffic signal coordination plan; and

WHEREAS, COUNTY agrees to be responsible to perform or cause to be performed the PRELIMINARY ENGINEERING, solicitation of construction bids and award of CONSTRUCTION CONTRACT, and CONSTRUCTION ADMINISTRATION for PROJECT; and

WHEREAS, COUNTY agrees to be responsible to perform or cause to be performed the equipment and system testing and develop and implement the BASIC TRAFFIC SIGNAL TIMING and COORDINATION TRAFFIC SIGNAL TIMING for PROJECT; and

WHEREAS, such a proposal is authorized and provided for by the provisions of Sections 6500 and 23004, et seq., of the Government Code and Sections 1685 and 1803 of the California Streets and Highways Code.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by CITY and COUNTY and of the promises herein contained, it is hereby agreed as follows:

(1) DEFINITIONS:

- a. The term JURISDICTION, as referred to in this AGREEMENT, shall be defined as the area within the jurisdictional boundary of each governmental entity party to this AGREEMENT.
- b. PRELIMINARY ENGINEERING, as referred to in this AGREEMENT, shall consist of environmental findings and approvals/permits; design survey; soils report; traffic index and geotechnical investigation; preparation of plans, specifications, and cost estimates; right-of-way engineering; utility engineering; and all other necessary work prior to advertising of PROJECT for construction bids.
- c. COST OF CONSTRUCTION CONTRACT, as referred to in this AGREEMENT, shall consist of the actual payments to the construction contractor(s) for PROJECT and the total of all payments to utility companies or contractor(s) for the relocation of facilities necessary for the construction of PROJECT, and the cost of any additional unforeseen work that is necessary for the construction of PROJECT.
- d. CONSTRUCTION ADMINISTRATION as referred to in this AGREEMENT shall consist of construction contract administration, construction inspection, materials testing, construction survey, traffic detour, signing and striping, construction engineering, utility relocation and coordination matters, changes and modifications of plans and specifications for PROJECT necessitated by unforeseen or unforeseeable field conditions encountered during construction of PROJECT, construction contingencies, and all other necessary work after advertising of PROJECT for construction bids to cause PROJECT to be constructed in accordance with said plans and specifications approved by CITY and COUNTY.
- e. COST OF PROJECT, as referred to in this AGREEMENT, shall consist of the COST OF CONSTRUCTION CONTRACT and costs of

PRELIMINARY ENGINEERING, CONSTRUCTION ADMINISTRATION, BASIC TRAFFIC SIGNAL TIMING, and COORDINATION TRAFFIC SIGNAL TIMING for traffic signals within PROJECT limits, right-of-way acquisition and clearance matters, and all other work and materials necessary to construct PROJECT in accordance with the approved plans and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.

- f. Completion of PROJECT as referred to in this AGREEMENT shall be defined as the date of field acceptance of construction of PROJECT by COUNTY and an electronic notification to CITY'S City Manager that the improvements within CITY'S JURISDICTION are completed and transferred to CITY for purpose of operation and maintenance.
- (2) CITY AGREES:
- a. To finance CITY'S share of COST OF PROJECT, the actual amount of which is to be determined by a final accounting, pursuant to paragraph (4) d., below.
 - b. To deposit with COUNTY, following execution of this AGREEMENT and upon demand by COUNTY, CITY funds in the amount of Five Hundred Seventy-Two Thousand Nine Hundred and 00/100 Dollars (\$572,900) hereinafter referred as CITY'S PAYMENT. Said demand will consist of a billing invoice prepared by COUNTY and delivered to CITY.
 - c. To obtain and grant to COUNTY any necessary temporary right of way within CITY for the construction of PROJECT at no cost to COUNTY.
 - d. To issue to COUNTY a no-fee permit(s) authorizing COUNTY to construct those portions of PROJECT with CITY highway right of way on condition that the COUNTY'S contractor meets the insurance requirements as required and approved by the CITY's Risk Manager.
 - e. To cooperate with COUNTY in conducting negotiations with and, where appropriate, issue notices to public utilities and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction. Where utilities have been installed in CITY streets or on CITY property, CITY will provide the necessary right of way for the relocation of those utilities and facilities that interfere with the construction of PROJECT. CITY will take all necessary steps to assist COUNTY in utilizing the City's prior rights over utility companies and owners of substructure and overhead facilities and execute any necessary documentation to temporarily grant, transfer or assign such

prior rights to the COUNTY when necessary for the COUNTY to construct and complete the PROJECT. All such prior rights shall revert to the CITY upon completion of the PROJECT.

- f. To authorize COUNTY to represent CITY pursuant to this AGREEMENT, in negotiations pertaining to the advertisement of PROJECT for construction bids, award, and administration of the construction contract and in all things necessary and proper to complete PROJECT.
 - g. Upon completion of PROJECT: (1) to accept full and complete ownership of, and responsibility for, the PROJECT; and (2) to maintain in good condition and at CITY expense all improvements constructed as part of PROJECT within CITY'S JURISDICTION, including the BASIC TRAFFIC SIGNAL TIMING and the COORDINATION TRAFFIC SIGNAL TIMING to support synchronization of traffic signals on Arrow Highway.
- (3) COUNTY AGREES:
- a. To perform or cause to be performed the preliminary engineering, contract administration, construction inspection and engineering, utility engineering and relocation, traffic detour, BASIC TRAFFIC SIGNAL TIMING, TRAFFIC SIGNAL COORDINATION TIMING, and final signing and striping for PROJECT.
 - b. To act as lead agency, prepare the necessary environmental documents, and make the required environmental findings for PROJECT pursuant to the California Environmental Quality Act.
 - c. To contribute toward CITY'S share of COST OF PROJECT, currently estimated to be One Hundred Twenty Thousand and 00/100 Dollars (\$120,000).
 - d. To submit an invoice to CITY in the amount of Five Hundred Seventy-Two Thousand Nine Hundred and 00/100 Dollars (\$572,900) upon adoption of this AGREEMENT by COUNTY.
 - e. To obtain CITY'S approval of plans for PROJECT prior to advertising for construction bids.
 - f. To advertise PROJECT for construction bids, to award and to administer the construction contract, and to act on behalf of CITY in all negotiations pertaining thereto.
 - g. To administer the design and construction of PROJECT in accordance with all regulations and requirements of Metro relating to the expenditure of Proposition C Local Return funds and Proposition C Twenty-five

Percent (25%) Discretionary funds and Memorandum of Understanding No. P00F3308 between COUNTY and Metro. COUNTY'S records for PROJECT shall be open to inspection and subject to audit and reproduction by COUNTY and Metro, or any of their duly authorized representatives, and shall be retained by COUNTY for a period of not less than seven (7) years after final payment to contractor(s) for PROJECT.

- h. To ensure that CITY and all officers and employees of CITY are named as additional insured parties under the construction contractor's(s') Contractor's General Liability and automobile insurance policies.
 - i. To furnish to CITY, within one hundred eighty (180) calendar days after final Board acceptance of PROJECT, a final accounting of the actual CITY'S share of COST OF PROJECT including an itemization of actual unit costs and actual contract quantities, as specified in paragraph (3) a., above.
 - j. To perform or cause to be performed the equipment and system testing and to develop and implement the BASIC TRAFFIC SIGNAL TIMING and COORDINATION TRAFFIC SIGNAL TIMING for the PROJECT.
- (4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:
- a. Nothing in this AGREEMENT is intended to alter TSSP Agreement.
 - b. The financial obligations of COUNTY pursuant to this AGREEMENT are conditional upon COUNTY obtaining reimbursement from Metro pursuant to Memorandum of Understanding No. P00F3308 between COUNTY and Metro. If COUNTY and/or Metro fails to provide its financial contribution, then COUNTY shall refund CITY'S payment within ninety (90) calendar days after notice from Metro to COUNTY that Metro funds are not available.
 - c. The final accounting of the actual total COST OF PROJECT shall allocate said total cost between CITY and COUNTY based on the previously agreed upon improvements and/or work completed. Thus, the cost of all work or improvements (including all engineering, administration, and all other costs incidental to PROJECT work), previously agreed upon as CITY'S share of the COST OF PROJECT, shall be borne by CITY. The cost of all work or improvements (including all engineering, administration, and all other costs incidental to PROJECT work), previously agreed upon as COUNTY'S share of the COST OF PROJECT, shall be borne by COUNTY.
 - d. That if at final accounting CITY'S share of COST OF PROJECT exceeds CITY'S PAYMENT, as set forth in paragraph (2) a., above, CITY shall pay to COUNTY the additional amount upon demand. Said demand

shall consist of a billing invoice prepared by COUNTY. Conversely, if the CITY'S share is less than CITY'S PAYMENT, COUNTY shall refund the difference to CITY without further action by CITY.

- e. That if CITY'S PAYMENT, as set forth in paragraph (2) a., above is not delivered to COUNTY office, which is described on the billing invoice prepared by COUNTY within sixty (60) calendar days after the date of said invoice, notwithstanding the provisions of Government Code Section 907, COUNTY may satisfy such indebtedness, including interest thereon, from any funds of CITY on deposit with COUNTY after giving notice to CITY of COUNTY'S intention to do so.
- f. CITY shall review the final accounting invoice prepared by COUNTY and report in writing any discrepancies to COUNTY within sixty (60) calendar days after the date of said invoice. Undisputed charges shall be paid by CITY to COUNTY within sixty (60) calendar days after the date of said invoice. COUNTY shall review all disputed charges and submit a written justification detailing the basis for those charges within sixty (60) calendar days of receipt of CITY'S written report. CITY shall then make payment of the previously disputed charges or submit justification for nonpayment within sixty (60) calendar days after the date of COUNTY'S written justification.
- g. COUNTY at any time may, at its sole discretion, designate an alternative payment mailing address and an alternative schedule for payment of CITY funds if applicable. CITY shall be notified of such changes by invoice prepared by COUNTY and delivered to CITY.
- h. During construction of PROJECT, COUNTY shall furnish an inspector or other representative to perform the functions of an inspector. CITY may also furnish, at no cost to COUNTY, an inspector or other representative to inspect construction of the PROJECT. CITY shall have no obligation to inspect the PROJECT and no liability shall be attributable as a result of CITY'S inspection or failure to inspect. Said inspectors shall cooperate and consult with each other, but the orders of COUNTY inspector to the contractor or any other person in charge of construction shall prevail and be final, and COUNTY inspector shall be responsible for the proper inspection of PROJECT as needed.
- i. This AGREEMENT may be amended or modified only by mutual written consent of COUNTY and CITY. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the parties.
- j. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

CITY: Ms. Anita D. Gutierrez
City Manager
City of Pomona
505 South Garey Ave
Pomona, CA 91766

COUNTY: Mr. Mark Pestrella
Director of Public Works
Los Angeles County Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

- k. COUNTY and CITY acknowledge and recognize that the improvements contemplated by this AGREEMENT provide significant regional and local benefits with respect to reducing traffic congestion. COUNTY and CITY further acknowledge and recognize that the cost of defending claims and lawsuit arising from the improvements contemplated by this AGREEMENT is paid for by public monies and both parties share an interest in reducing the amount of public monies spent on defending claims and lawsuits where possible without prejudicing their respective defenses.
- l. In the event that a claim lawsuit is brought against COUNTY and CITY based on the allegation that the design, construction, maintenance, or operation of the improvements constructed under this AGREEMENT proximately caused injuries or damage, COUNTY and CITY agree to cooperate as much as possible with respect to defending the claim or lawsuit without causing prejudice to their respective defenses to the claim or lawsuit. Upon receipt of the claim or lawsuit, the COUNTY and CITY, through their respective agents if appropriate, shall promptly investigate the matter. COUNTY and CITY shall then meet and confer promptly regarding whether a joint defense is appropriate or if one party should tender its defense and indemnification to the other party.
- m. Neither COUNTY nor any officer or employee of COUNTY shall be responsible for any damage or liability occurring by reason of any act or omission on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to, assumed by, or determined to be the responsibility of CITY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, CITY shall fully indemnify, defend, and hold COUNTY harmless from any liability imposed for injury (as defined by Government Code, Section 810.8) occurring by reason of any act or omission on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this AGREEMENT. Where liability for injury (as defined by Government Code, Section 810.8) is sought to be imposed under Section 830, et seq., of the Government Code for a dangerous condition of property

owned by or under the control of CITY, CITY shall fully defend, indemnify, and hold COUNTY harmless from any and all liability arising from such dangerous condition.

- n. Neither CITY nor any officer or employee of CITY shall be responsible for any damage or liability occurring by reason of any act or omission on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, COUNTY shall fully indemnify, defend, and hold CITY harmless from any liability imposed for injury (as defined by Government Code, Section 810.8) occurring by reason of any act or omission on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this AGREEMENT.

- o. It is understood and agreed that the provisions of Assumption of Liability Agreement No. 32385 between CITY and COUNTY, adopted by the Board of Supervisors on December 27, 1977, and currently in effect, are inapplicable to this AGREEMENT.

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IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized, by the CITY OF POMONA on _____, 2024, and by the COUNTY OF LOS ANGELES on _____, 2024.

COUNTY OF LOS ANGELES

By _____
Director of Public Works

APPROVED AS TO FORM:

DAWYN R. HARRISON
Acting County Counsel

By _____
Deputy

CITY OF POMONA

By _____
City Manager

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney