

**COOPERATIVE AGREEMENT FOR THE
BARRANCA PARKWAY/DYER ROAD/MUIRLANDS BOULEVARD/SEGERSTROM
AVENUE/SLATER AVENUE SYNCHRONIZATION PROJECT**

This Barranca Parkway/Dyer Road/Muirlands Boulevard/Seegerstrom Avenue/Slater Avenue Synchronization Project Agreement ("Agreement") is entered into as of _____, 2020 ("Effective Date") by and between the CITY OF IRVINE, a California municipal corporation ("City"), and the CITY OF SANTA ANA, a California municipal corporation and charter city, ("Santa Ana"). City and Santa Ana are sometimes referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

A. City in cooperation with Santa Ana is working to coordinate traffic signals across multiple jurisdictional boundaries as a part of the Renewed Measure M ("M2") Regional Traffic Signal Synchronization Program Project P ("Project P") to enhance countywide traffic flow and reduce congestion.

B. City has been awarded Project P funds based on the application ("Application") prepared by City for implementation of signal synchronization of traffic signals along the Barranca Parkway/Dyer Road/Muirlands Boulevard/Seegerstrom Avenue/Slater Avenue Corridor between Magnolia Street and Bake Parkway (hereinafter, "Project").

C. Santa Ana has elected to designate City and City agrees to act as implementing agency to carry out the Project.

D. The Project will include the synchronization of sixty-six (66) traffic signals as identified in the Application, which is attached and incorporated herein.

E. The Project will include elements identified in the Application such as the development and implementation of optimized signal synchronization timing, preparation of before and after study, and installation of signal timing improvements.

F. City agrees to work with Santa Ana to coordinate the inclusion of other traffic control elements that must be installed at the same time as the construction of the Project and that are NOT included in the Application. The Parties agree that a Party's request to include any such element will result in said Party taking full financial responsibility for each and any of those traffic control elements during the course of the Project, unless and otherwise agreed to in writing.

G. City agrees to implement the Project as referenced on the Application.

H. The Parties agree to contribute the share of the Project as set forth in the Application, which is attached and incorporated herein by reference. Santa Ana's share shall be a cash contribution equaling Two Hundred Twenty-Two Thousand Four Hundred

Forty-Four Dollars and No/100 (\$222,444.43) plus in-kind services equaling Thirty-Six Thousand Seven Hundred Seventy-Nine dollars and No/100 (\$36,779.97).

I. In the event the cost of the Project exceeds the estimates as submitted in the Application prepared by City, the Parties agree to meet and determine revisions to the Project to satisfy the budget(s) or revised funding proposal(s) by the Parties, which shall be documented and submitted in writing as an amendment to the Agreement. Any cost overruns shall be the financial responsibility of the jurisdiction where the work improvement occurs or as the case may be, causes the required improvement.

J. The Parties desire to enter into this Agreement to implement the Project in support of Project P as part of M2.

K. This Agreement defines the specific terms, conditions, and funding responsibilities between the Parties for the implementation of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants set forth below, City and Santa Ana agree as follows:

1. Complete Agreement

- A. This Agreement, including any attachments incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of this Agreement between City and Santa Ana and it supersedes all prior representations, understandings and communications between the Parties. The above referenced Recitals are true and correct and are incorporated by reference herein.
- B. City's failure to insist on any instance(s) of Santa Ana's performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of City's right to such performance or to future performance of such term(s) or condition(s), and Santa Ana's obligation in respect thereto shall continue in full force and effect.
- C. Changes to any portion of this Agreement shall not be binding upon City except when specifically confirmed in writing by an authorized representative of City by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.
- D. Santa Ana's failure to insist on any instance(s) of City's performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of Santa Ana's right to such performance or to future performance of such term(s) or condition(s), and City's obligation in respect thereto shall continue in full force and effect.

- E. Changes to any portion of this Agreement shall not be binding upon Santa Ana except when specifically confirmed in writing by an authorized representative of Santa Ana by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

2. Scope of Agreement

This Agreement specifies the roles and responsibilities of the Parties as they pertain to the subjects and Project addressed herein. Both City and Santa Ana agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any other supplemental agreements that may be required to facilitate purposes thereof.

3. Responsibilities of the City as Project Lead Agency

The City as the Lead Agency agrees to the following responsibilities for the implementation of the Project:

- A. To manage, procure, and complete the Project as identified in the Application.
- B. To cooperate with the Orange County Transportation Authority ("OCTA") and coordinate outreach efforts for the Primary Implementation (design and construction) phases of the Project.
- C. To collect manual intersection movement and automated machine traffic counts.
- D. To implement required signal improvements at the locations set forth in the Application.
- E. To develop and implement optimized signal synchronization timing set forth in the Application.
- F. To provide updated timing plans and traffic count data to Santa Ana.
- G. To prepare a "Before and After Study" for the Barranca Parkway/Dyer Road/Muirlands Boulevard/Segerstrom Avenue/Slater Avenue Project. As described in the Measure M2 Eligibility Guidelines adopted by the OCTA, the "Before and After Study" for the Project is considered the equivalent of the required Project Final Report (Measure M2 Ordinance No. 3, Section B.III.9) for the Project. City shall provide the "Before and After Study" for the Project to Santa Ana in draft and final formats for comment, and comments shall be noted in the final study and incorporated as mutually agreed by all Parties.
- H. To provide ongoing maintenance and operation of optimized signal timing after the Primary Implementation phase of the Project is completed and to continue such maintenance until the end of the three (3) year grant period.

- I. To provide updates to Santa Ana on the Project as part of the semi-annual review process until completion of the three (3) year grant period for the Project. Documents to be provided include, but are not limited to, contracts pertinent to the Project and purchase orders pertinent to the Project.
- J. To invoice Santa Ana for dollar match amounts due as identified in **Attachment A**, at the end of each phase.

4. Responsibilities of Santa Ana

Santa Ana agrees to the following responsibilities for implementation and funding of the Project:

- A. To provide a technical representative to meet and participate as a member of the Project's Traffic Forums.
- B. To authorize the City to manage, procure, and implement all aspects of the Project.
- C. To participate and support the Project's implementation within the timeframe outlined in the Application and consistent with the Comprehensive Transportation Funding Program ("CTFP") Guidelines adopted by OCTA.
- D. To provide the City all current intersection, local field master, and/or central control system timing plans and related data upon request.
- E. To provide updates to the City on the Project as part of the semi-annual review process until completion of the three (3) year grant period for the Project. Documents to be provided include, but are not limited to, contracts pertinent to the Project and purchase orders pertinent to the Project.
- F. Santa Ana shall provide cash match and/or documentation for the in-kind services match to the City no later than thirty (30) calendar days after approval by Santa Ana staff of City's invoice for the dollar and in-kind services match identified in **Attachment A**. Failure to provide the dollar match and/or documentation for in-kind services may result in the loss of future participation for M2 Regional Traffic Synchronization Program competitive funds.
- G. To review and approve in writing the traffic synchronization signal timing within the respective jurisdiction within ten working days of receiving same where the said improvements and timing parameters have been implemented.
- H. Santa Ana shall waive all cost and fees related to any and all permits, if such permits are required to perform any project related work within its jurisdiction

5. Delegated Authority

The actions required to be taken by Santa Ana in the implementation of this Agreement are delegated to its City Manager or designee, and the actions required to be taken by City in the implementation of this Agreement are delegated to its City Manager or designee. Santa Ana acknowledges this designation of authority is authorized under their respective local rules and regulations.

6. Audit and Inspection

City and Santa Ana shall maintain a complete set of records in accordance with generally accepted accounting principles. Upon reasonable notice, City shall permit the authorized representative of Santa Ana to inspect and audit all work, materials, payroll, books, accounts, and other data and records of City relevant to this Agreement and the Project for a period of four (4) years after expiration or termination of this Agreement or until any on-going audit is completed. Upon reasonable notice, Santa Ana shall permit the authorized representatives of the City to inspect and audit all work, materials, payroll, books, accounts, and other data and records of Santa Ana relevant to this Agreement and the Project for a period of four (4) years after expiration or termination of this Agreement or until any on-going audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of OCTA's payment of City's final billing (so noted on the invoice) under this Agreement. The Parties shall have the right to reproduce any such books, records, and accounts relevant to this Agreement. The above provision with respect to audits shall extend to and/or be included in contracts with City's contractor. The only work, materials, payroll, books, accounts, and other data and records which may be audited or inspected pursuant to this section are those that are relevant to this Agreement and the Project.

7. Indemnification

- A. Santa Ana shall indemnify, defend and hold harmless the City, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation and settlement) for any loss or damages, bodily injuries, damage to, or loss of property caused by the negligent acts, omissions or willful misconduct by Santa Ana, its officers, directors, employees or agents in connection or arising out of the performance of this Agreement including damage to property and/or injury to person as a result of traffic accidents within Santa Ana's jurisdiction.
- B. Santa Ana shall maintain adequate levels of insurance, or self-insurance to assure full indemnification of City. Santa Ana shall provide City evidence and/or documentation of said insurance upon execution of this Agreement.
- C. City shall indemnify, defend and hold harmless Santa Ana, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation and

settlement) for any loss or damages, bodily injuries, damage to, or loss of property caused by the negligent acts, omissions or willful misconduct by City, its officers, directors, employees or agents in connection or arising out of the performance of this Agreement including damage to property and/or injury to person as a result of traffic accidents within City's jurisdiction.

- D. City shall maintain adequate levels of insurance, or self-insurance to assure full indemnification of Santa Ana. City shall provide Santa Ana evidence and/or documentation of said insurance upon execution of this Agreement.

8. Additional Provisions

- A. Term of Agreement. This Agreement shall continue in full force and effect until December 31, 2025, or until the Parties' ongoing obligations under section 3.H and 4.G have terminated, whichever is later. This Agreement may be extended or amended at the mutual consent of all Parties hereto. No amendment shall have any force or effect unless executed in writing and approved as to form by Santa Ana's City Attorney and the City Attorney for the City.
- B. Disputes. The Parties agree to work together in good faith, using reasonable efforts to resolve any unforeseen issues and disputes arising out of the performance of this Agreement.
- C. Permits. The Parties shall waive any fees for permits required by either City or Santa Ana for the Project.
- D. Corporate Authority. The Parties hereto consent that they are authorized to execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.
- E. Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- F. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same Agreement. Facsimile signatures will be permitted.
- G. Compliance with All Laws. The Parties shall comply with all applicable federal, state and local laws, statutes, ordinances and regulations of any governmental authority having jurisdiction over the Project.

- H. Force Majeure. Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.
- I. Assignment. Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by any Party without the prior written consent of the other Party hereto in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one (1) assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- J. Obligations to Comply with Law. Nothing herein shall be deemed or construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.
- K. Governing Law. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.
- L. Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.
- M. Notices. Any notice, demand, request, consent, approval or communication under this Agreement shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed given (a) upon personal delivery or (b) forty-eight (48) hours from deposit of such notice in the United States mail, postage prepaid.

To City of Irvine:
City of Irvine
Transportation Department
P.O. Box 19575
Irvine, CA 92623-9575

To City of Santa Ana :
City of Santa Ana
Traffic Engineering Section/M43
20 Civic Center Plaza
Santa Ana, CA 92702

Attention: Director of Public Works and
Transportation

Attention: Executive Director, Public
Works Agency

(Signature Page Follows)

This Agreement shall be made effective upon execution by both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first set forth above.

CITY OF IRVINE

CITY OF SANTA ANA, a California
municipal corporation

By: _____
Mark Steuer
Director of Public Works and
Transportation

By: _____
Kristine Ridge
City Manager

ATTEST:

ATTEST:


By: _____
Molly McLaughlin
City Clerk

By: _____
Daisy Gomez
City Clerk

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

**APPROVED AS TO FORM:
SONIA R. CARVALHO, CITY
ATTORNEY**

By: _____
Jeffrey Melching
City Attorney

By:  _____
John M. Funk
Assistant City Attorney

Dated: _____

Dated: _____

RECOMMENDED FOR APPROVAL

By: _____
Nabil Saba, Executive Director

Public Works Agency

ATTACHMENT A - DETAILED LOCAL MATCH COMMITMENT

SECTION 1: AGENCY TOTAL MATCH SUMMARY

AGENCY	CASH MATCH		IN-KIND MATCH*		TOTAL MATCH	
	Primary Implementation	Ongoing Monitoring & Maintenance	Primary Implementation	Ongoing Monitoring & Maintenance	Primary Implementation	Ongoing Monitoring & Maintenance
City of Santa Ana	\$214,787.73	\$7,656.70	\$35,796.67	\$983.30	\$250,584.40	\$8,640.00
	\$222,444.43		\$36,779.97		\$259,224.40	

*In-kind match may be converted to cash match if agency does not satisfy in-kind match commitment by the end of the respective phase. However, Cash Match is NOT allowed to be converted to in-kind match.

SECTION 2: MATCH BREAKDOWN (CASH VS IN-KIND SERVICES)

A. Cash Match

AGENCY	FUNDING SOURCE	AMOUNT OF CASH CONTRIBUTION
City of Santa Ana	Local Funds	\$222,444.43

B. In-Kind Services

i. Specific Improvements (List items and Cost):

AGENCY	DESCRIPTION	EXPENDITURE

ii. Staffing Commitment:

AGENCY	STAFF POSITION	TYPE OF SERVICE TO PROJECT	NO. OF HOURS	FULLY BURDENED HOURLY RATE	TOTAL
City of Santa Ana	Senior Civil Engineer	Project Administration / Construction Engineering	125	\$86.93	\$10,866.25
	Assistant Engineer	Implementation / Construction Engineering	212	\$76.41	\$16,198.92
	Construction Inspector	Construction Engineering	150	\$58.21	\$8,731.50
	Engineering Intern	Ongoing Monitoring & Maintenance	53.75	\$18.30	\$983.63
Total:					\$36,780
TOTAL IN-KIND MATCH (i + ii)**:					\$36,780

**Total amount is the required participation by the identified agency. The number of hours and hourly rate will be based on each agency's actual fully burdened billing rates, which must collectively equal the same value of assigned "Total" dollars. Each agency will be responsible for keeping detailed records of hours worked and description of work. An accounting record of personnel, hours at fully burdened rate is expected to be included with the final submittal. Records will be subject to auditing.