

**MEMORANDUM OF UNDERSTANDING
BETWEEN SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND THE CITY OF CHULA VISTA
REGARDING PALOMAR STREET RAIL GRADE SEPARATION FINAL DESIGN PHASE
SANDAG PROJECT NUMBER: 1210091
RTIP NUMBER: SAN261**

This Memorandum of Understanding ("MOU") is made and entered into effective as of this ____ day of _____, 2020, by and between the San Diego Association of Governments ("SANDAG") and the City of Chula Vista ("Chula Vista") for the purpose of working cooperatively on the Palomar Street Rail Grade Separation Project Design Phase ("Project" or "Design Phase"). Individually, SANDAG and Chula Vista may be referred to as "Party" and collectively as "Parties."

RECITALS

The following recitals are a substantive part of this MOU:

WHEREAS, on October 25, 2019, the SANDAG Board of Directors adopted Regional Transportation Commission Regional Transportation Commission (RTC) Resolution No. RTC-2020-03, approving Amendment No. 8 to the 2018 Regional Transportation Improvement Program; and

WHEREAS, Resolution No. RTC-2020-03 included a revised project schedule for the Palomar Street Rail Grade Separation Project (SANDAG ID# 1210091 & MPO ID: SAN261) to FY20, FY21 & FY22 based on completion of the environmental document phase in FY20; and

WHEREAS, the Palomar Street Rail Grade Separation project is expected to reduce delays attributed to traffic congestion, increase the capacity of the Trolley, and improve mobility, goods movement, and safety; and

WHEREAS, SANDAG will be the lead agency and administer the design phase in cooperation with Chula Vista; and

WHEREAS, SANDAG intends to utilize its on-call engineering services consultants to complete the design phase as described in this MOU; and

WHEREAS, the Parties wish to memorialize their agreement in this MOU to carry out the purposes set forth above;

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

- A. Scope of Project. Completion of 100% design, plans, specifications and estimates to advertise for construction phase, which shall include:
 - 1. Identification of critical design elements that would impact construction costs.

2. Provision of scope of work for subsequent, associated design/construction projects.
 3. Review of invoices for accuracy.
- B. Project Costs. Project Costs shall include all expenses incurred for the Design Phase, including consultant costs, Chula Vista staff time (at the fully burdened hourly rates approved by the Chula Vista City Council) and expenses, claims, litigation, or other liability, unless such costs result from the sole negligence of either Party, its officers, employees, agents, and consultants. Project Costs shall in no event exceed \$5,000,000 in total.
- C. SANDAG Obligations.
1. Lead Agency. SANDAG shall act as the lead agency and administer the Project in cooperation with Chula Vista.
 2. Use of SANDAG Consultants. SANDAG shall use one or more of its existing on-call engineering consultants to perform work on the Palomar Street Rail Grade Project Design Phase.
 3. Breakdown of Project Costs: SANDAG shall expend funds only in the manner and amounts identified below:
 - a. An amount not to exceed \$4,700,000 for consultant services, including SANDAG administrative costs from funds authorized in the RTIP.
 - b. An amount not to exceed \$300,000 for Chula Vista staff time (at the fully burdened hourly rates approved by the Chula Vista City Council) and expenses from the TransNet-MC funds in SANDAG project # 1210091 (SAN261). SANDAG shall have no obligation to reimburse Chula Vista from any other fund or funding source.
 4. Insufficient Funds. In the event the Project Costs identified above are insufficient to complete the Scope of Project identified herein, SANDAG shall have no responsibility to move forward until the parties are able to identify sufficient funds to complete the work.
- C. Chula Vista Obligations.
1. Staff. Chula Vista shall provide staff support and cooperation on the Palomar Street Rail Grade Separation Project Design Phase, including, but not limited to, any staff support, or cooperation needed to defend any claims or litigation that may arise on the Design Phase.
 - a. Invoicing. Chula Vista shall invoice SANDAG no more than once per month.
 - b. Failure to Reimburse. Chula Vista may terminate work on the Design Phase if it is not reimbursed for Project Costs by SANDAG within 30 days of submitting an invoice. Should Chula Vista elect to terminate this MOU, SANDAG will remain obligated to reimburse Chula Vista for staff time (at the fully burdened hourly rates approved by the Chula Vista City Council) and expenses actually incurred pursuant to this MOU.
- D. Records. During the term of this MOU, the Parties shall be responsible for the storage and maintenance of their respective electronic data collected for use on the Design Phase. The Parties shall provide a secure site to allow access to this data to selected staff, who shall be designated by the respective Party. All work

products resulting from this MOU and consultant deliverables shall be the joint property of Chula Vista and SANDAG.

E. Mutual Indemnity.

1. Neither Chula Vista nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by SANDAG under or in connection with any work, authority, or jurisdiction delegated to SANDAG under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, SANDAG shall fully defend, indemnify, and save harmless Chula Vista, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANDAG under or in connection with any work, authority, or jurisdiction delegated to SANDAG under this MOU to the extent the injury is not caused by Chula Vista.
2. Neither SANDAG nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Chula Vista under or in connection with any work, authority, or jurisdiction delegated to SANDAG under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, Chula Vista shall fully defend, indemnify, and save harmless SANDAG, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Chula Vista under this MOU to the extent the injury is not caused by SANDAG.
3. Survival. The indemnification provisions of this MOU shall survive termination of the MOU.

F. Notice. Any notice required or permitted under this MOU may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

For SANDAG
401 B Street, Suite 800
San Diego, CA 92101
Attn: Omar Atayee

For the City of Chula Vista
Engineering Department
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Frank Rivera

G. General Provisions.

1. Headings. All article headings are for convenience only and shall not affect the interpretation of this MOU.
2. Gender & Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.
3. Reference to Paragraphs. Each reference in this MOU to a section refers, unless otherwise stated, to a section this MOU.
4. Incorporation of Recitals and Exhibits. All recitals herein and exhibits attached hereto are incorporated into this MOU and are made a part hereof.

5. Covenants and Conditions. All provisions of this MOU expressed as either covenants or conditions on the part of Chula Vista or SANDAG shall be deemed to be both covenants and conditions.
6. Integration. This MOU and any exhibits or references incorporated into this MOU fully express all understandings of the Parties concerning the matters covered in this MOU. No change, alteration, or modification of the terms or conditions of this MOU, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this MOU agreed to by both Parties. All prior negotiations and agreements are merged into this MOU.
7. Severability. In the event that any phrase, clause, paragraph, section or other portion of this MOU shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining portions of this MOU shall not be affected and shall remain in force and effect to the fullest extent permissible by law.
8. Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this MOU, and the decision of whether or not to seek advice of counsel with respect to this MOU is a decision that is the sole responsibility of each Party. This MOU shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the MOU.
9. The Parties shall meet and confer in good faith for the purpose of resolving any dispute over the terms of this MOU. Should the parties be unable to resolve a dispute pursuant to a meet and confer process, SANDAG acknowledges and agrees to abide by the requirements of Chapter 1.34 of the Chula Vista Municipal Code.
10. No Waiver. No failure of either Party to insist upon the strict performance by the other Party of any covenant, term or condition of this MOU, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this MOU, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any default hereunder shall be implied from any omission to take any action on account of such default. The consent or approval to or of any act requiring consent or approval shall not be deemed to waive or render unnecessary future consent or approval for any subsequent similar acts. No waiver of any breach shall affect or alter this MOU, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
11. Good Faith. The Parties promise to use their best efforts to satisfy all conditions to this MOU and to take all further steps and execute all further documents reasonably necessary to put this MOU into effect.
12. Approval. That all obligations of SANDAG under the terms of this MOU are subject to the appropriation of the required resources by SANDAG and the approval of the SANDAG Board of Directors or Transportation Committee.
13. Termination. That unless amended in writing by the Parties, this MOU shall terminate on December 31, 2023, or on such earlier or later date as the Parties may agree to in writing.

14. **Governing Law/Venue.** This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.
15. **Successors.** All terms, conditions, and provisions hereof shall inure to and shall bind each of the Parties hereto and each of their respective heirs, executors, administrators, successors, and assigns.
16. **Not Agents.** For purposes of this MOU, the relationship of the Parties is that of independent entities and not as agents of each other or as joint venturers or partners. The parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.
17. **No Third Party Benefits.** Nothing in the provisions of this MOU is intended to create duties or obligations to or rights in third Parties to this MOU or affect the legal liability of the Parties to this MOU to third parties.
18. **Counterparts.** This MOU may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each Party has signed one such counterpart.
19. **Municipal/Agency Powers.** Nothing contained in this MOU shall be construed as a limitation upon the powers of Chula Vista as a chartered city of the State of California, or those of SANDAG.
20. **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.
21. **Date of Execution.** This MOU shall be deemed executed on the date on which the last Party signs this MOU.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU effective on the day and year first above written.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

CITY OF CHULA VISTA

HASAN IKHRATA
Executive Director

WILLIAM S. VALLE
Director of Engineering & Capital Projects/City Engineer

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Office of General Counsel

Glen Googins, City Attorney

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