

CONTRACT NO. 24-1003115

MEMORANDUM OF AGREEMENT

BETWEEN THE

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA), SAN
BERNARDINO ASSOCIATED GOVERNMENTS (SBCOG)**

AND

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG)

AND

COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS (CVAG)

This Memorandum of Agreement (“Agreement”) is made and entered into by and between the San Bernardino County Transportation Authority (“SBCTA”), San Bernardino Associated Governments (“SBCOG”), who share the address 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, Western Riverside Council of Governments (“WRCOG”) whose address is 3390 University Avenue Suite 200 Riverside, CA 92501, and the Coachella Valley Association of Governments (“CVAG”) whose address is 74-199 El Paseo Suite 100, Palm Desert, CA 92260.

WRCOG and CVAG are referred to, collectively, as “AGENCIES”. SBCTA, SBCOG and AGENCIES are each a “Party” and are collectively the “Parties” and the “Coalition.”

RECITALS:

WHEREAS, the Parties desire to enter this Agreement in order to submit a joint application to the U.S. Environmental Protection Agency’s (“EPA”) Climate Pollution Reduction Grant (“CPRG”) Program Implementation Grant as a Coalition and implement greenhouse gas (GHG) reduction measures described in the application (“Project”); and

WHEREAS, the Parties further desire that SBCTA/SBCOG will act as the lead agency for the purposes of submitting an application to the EPA CPRG Program Implementation Grant and implementing any project funded by said Grant; and

WHEREAS, this Agreement further sets forth the rights and obligations of the Parties with respect to the Project; and

WHEREAS, the Parties commit to the following goals of the CPRG Implementation Grant: 1. Implement ambitious measures that will achieve significant cumulative GHG reductions by 2030 and beyond; 2. Pursue measures that will achieve substantial community benefits (such as reduction of criteria air pollutants, particularly in low-income and disadvantaged communities; 3. Complement other funding sources to maximize these GHG reductions and community benefits; and, 4. Pursue innovative policies and programs that are replicable and can be “scaled up” across multiple jurisdictions; and

WHEREAS, the Parties have confirmed that they each have the requisite professional qualifications, personnel and experience to fulfill the obligations undertaken in this Agreement; and

WHEREAS, the Parties wish to enter into this Agreement to delineate roles, responsibilities; and

NOW, THEREFORE, the Parties mutually agree that:

I. CPRG PROGRAM OVERVIEW

The CPRG Program will provide grants to states, local governments, tribes, and territories to develop and implement plans for reducing greenhouse gas (GHG) emissions and other harmful air pollution. Section 60114 of the Inflation Reduction Act provides an investment of \$5 billion to support efforts by states and municipalities thereof to develop and implement strong, local GHG Reduction strategies. This two-staged grant program provides funding of \$250 million for non-competitive planning grants and \$4.6 billion for competitive implementation grants. Planning funds can be used to update existing climate, energy, or sustainability plans or develop new ones. Eligible agencies may apply as a coalition to the CPRG Implementation Grant Program.

II. ROLES AND RESPONSIBILITIES

- a. SBCTA/SBCOG shall be the lead agency for the purposes of submitting the Grant application on behalf of the Coalition and implementing the Project should the Coalition receive a Grant award. SBCTA/SBCOG will coordinate with AGENCIES in the grant writing process to ensure Project elements and requirements are included in the grant application. If awarded, SBCTA/SBCOG will continue to coordinate with AGENCIES to ensure the Project described in the application is being implemented accordingly and on schedule. Coordination from SBCTA/SBCOG will consist of seeking feedback and general input regarding the Project from AGENCIES.
- b. AGENCIES will attend meetings pertaining to the grant application and Project and provide input and expertise to support the grant application and Project.
- c. SBCTA/SBCOG is fully responsible for the performance of the Coalition and will be accountable to EPA for effectively carrying out the Project and the proper financial management of the grant.
- d. AGENCIES who are grant subrecipients will be accountable to SBCTA/SBCOG for proper use of EPA funding and successful Project implementation.

- e. The term of this Agreement shall continue in full force and effect through completion and closeout of the Project or on October 1, 2029, whichever is earlier in time. Should any claims arising out of the Project be asserted against one of the Parties, the Parties agree to extend the fixed termination date of this Contract, until such time as the claims are settled, dismissed or paid.
- f. The signatories hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties hereto are formally bound to this Agreement.
- g. The Parties agree that they shall maintain and make available for inspection all books, records, papers, accounting records, or other documents pertaining to the performance of the Project, including but not limited to, the costs associated with the Project for a period of three (3) years from the date of the expiration or termination of this Agreement, or until the conclusion of all litigation, appeals or claims related to this Agreement, whichever is longer. The Parties shall make available at their respective offices at reasonable times during the Agreement term. The Parties agree that all duly authorized representatives shall have access to the documents during normal business hours.
- h. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the remainder of this Contract shall not be affected but shall remain in full force and effect.

III. GENERAL PROVISIONS

- a. No waiver of any of the provisions of the Agreement shall be effective unless it is made in a writing which specifies the provision(s) so waived and which is executed by all Parties. No course of dealing and no delay or failure of a Party in exercising any right under any Agreement shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- b. Any modifications of any terms or conditions of this Agreement shall be valid only when reduced to writing, duly signed and approved by the authorized representatives of all Parties.
- c. This Agreement constitutes the sole and entire agreement among the Parties governing the matters set forth herein and supersedes any prior understandings, negotiations, agreements, arrangements and undertakings, written or oral, among the Parties respecting the subject matter herein. All previous proposals, offers, and other communications, written or oral,

relative to this Agreement, are superseded to the extent that they are not incorporated into this Agreement. It is the intent of the Parties that this Agreement is an integrated agreement and that no evidence may be introduced to vary in any manner its terms and conditions. No representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding.

- d. Without the prior written consent of the other Parties, the Agreement is not assignable by any Party, in whole or in part.
- e. If any legal action is instituted to enforce any Party's rights hereunder, each Party shall bear its own costs and attorney fees, regardless of who is the prevailing Party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under any indemnification or insurance requirements.
- f. Except on subjects preempted by Federal law, this Agreement shall be governed and construed in accordance with the laws of the State of California. All Parties agree to follow all local, state, county and federal laws and ordinances with respect to the performance under this Agreement.
- g. The Parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California, and Riverside County, California. The Parties agree that the venue of any action or claim brought by any Party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each Party hereby waives any law or rule of the court which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

IV. NOTICES

- a. Any communication, notice, or demand of any kind whatsoever which a party may be required or may desire to give to or serve upon the other party must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

SBCTA: San Bernardino County Transportation Authority
Attn: Josh Lee, Deputy Director of Planning
1170 W. Third Street, 2d Floor
San Bernardino, CA 92410

WRCOG: Western Riverside Council of Governments
Attn: Kurt Wilson, Executive Director
3390 University Avenue Suite 200
Riverside, CA 92501

CVAG: Coachella Valley Association of Governments
Attn: Tom Kirk, Executive Director
74-199 El Paseo Suite 100
Palm Desert, CA 92260

- b. Without requiring an amendment to this Agreement, a Party may change its address for notice by written notice given to the other party in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service; three (3) days after being placed in the U.S. Mail, if mailed; or one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery.

V. MUTUAL INDEMNIFICATION

- a. The Parties agree to indemnify, defend (with counsel approved by the indemnified Party(ies)) and hold harmless the other Parties and their officers, employees, agents, volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the indemnifying Party's negligent acts or omissions which arise from the indemnifying Party's performance of its obligations under this Agreement.
- b. In the event any Party is found to be comparatively at fault for any claim, action, loss or damage which results from its respective obligations under the Agreement, that Party shall indemnify the other Parties to the extent of its comparative fault. Furthermore, if any Party attempts to seek recovery from another Party for Workers' Compensation benefits paid to that Party's employee, the Parties agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

VI. PROJECT MANAGEMENT AND OPERATING MODEL

- a. For purposes of this Agreement, SBCTA/SBCOG designates the following individual(s) as Project Manager:

Mairany Anaya
Management Analyst II
(909) 884-8276 ext. 267
manaya@gosbcta.com

SBCTA/SBCOG reserves the right to change this designation upon written notice to Parties.

- b. For purposes of this Agreement, WRCOG designates the following individual(s) as Project Manager:

Casey Dailey
Director of Energy & Environmental Programs
(951) 405-6720
cdailey@wrcog.us

WRCOG reserves the right to change this designation upon written notice to Parties.

- c. For purposes of this Agreement, CVAG designates the following individual(s) as Project Manager:

Jacob Alvarez
I-REN Program Manager
(760) 346-1127
jalvarez@cvag.org

CVAG reserves the right to change this designation upon written notice to Parties.

- d. The Parties will contribute the necessary staff time and project management and will be coordinated through the Project Managers designated above. Since all of the local jurisdictions are included in the boundaries of the three Parties, each Party is responsible for coordinating with its respective local member jurisdictions.
- e. If awarded, SBCTA/SBCOG will be the recipient of the grant funds from EPA and will be responsible for disbursing or passing through the funds to AGENCIES. SBCTA/SBCOG will make payments to the AGENCIES only for work performed within the Period of Performance as determined in the Scopes of Work, Budget, and Schedule approved by the EPA.
- f. If awarded, SBCTA/SBCOG will not be obligated to make payments for any Project costs that exceed the Project Grant Funds for the Projects. AGENCIES will not be obligated to pay for any increase in Project costs that exceeds the Project's budget included in the grant application and the most current fully executed Scope of Work and the budget for the Project.
- g. If it is determined that outside services are necessary to develop and complete the Project, SBCTA/SBCOG will lead the procurement of such services and consult with AGENCIES to determine an appropriate vendor. However, if the funds are passed through to one of the AGENCIES to develop and complete the Project, any outside services will be procured through the recipient AGENCY, and the AGENCY will comply with all federal procurement requirements.

- h. Project Funds may not be used for administrative costs of persons employed by AGENCIES for activities not directly related to eligible activities of the grant.

VII. INSURANCE

- a. AGENCIES are self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, each has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.
- b. SBCTA/SBCOG is insured for Commercial General Liability, Professional Liability, Auto Liability and Workers Compensation in amounts believed to be adequate to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

VIII. CONCLUSION

- a. This Agreement, consisting of seven (7) pages, is the full and complete document including all covenants, conditions, and benefits.
- b. The Recitals set forth above are true and correct and are incorporated into and made a part of this Agreement, as if fully set forth herein.
- c. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

-----SIGNATURES ON FOLLOWING PAGE-----


IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be executed by their authorized representatives as of the dates indicated below:

**SAN BERNARDINO COUNTY
TRANSPORTATION
AUTHORITY/SAN
BERNARDINO ASSOCIATED
GOVERNMENTS**

By: 
Raymond Wolfe
Executive Director


Date: March 29, 2024

APPROVED AS TO FORM:

By: 
Julianna K. Tillquist (Mar 29, 2024 06:48 PDT)
Julianna Tillquist
General Counsel


Date: Mar 29, 2024

**WESTERN RIVERSIDE
COUNCIL OF
GOVERNMENTS**

By: 
Kurt Wilson (Mar 27, 2024 15:07 PDT)
Kurt Wilson
Executive Director

Date: Mar 27, 2024

APPROVED AS TO FORM:

By: 
Steven DeBaun (Mar 27, 2024 16:30 PDT)
Steven DeBaun
General Counsel


Date: Mar 27, 2024

**COACHELLA VALLEY
ASSOCIATION OF
GOVERNMENTS**

By: 
Tom Kirk (Mar 25, 2024 20:51 PDT)
Tom Kirk
Executive Director

Date: Mar 25, 2024

APPROVED AS TO FORM:

By: 
Michael Jenkins (Mar 26, 2024 08:32 PDT)
Michael Jenkins
General Counsel

Date: Mar 26, 2024