

**COOPERATIVE AGREEMENT
SR 99/120 PHASE 1A IMPROVEMENTS**

This Cooperative Agreement ("Agreement") is made and entered into this ____ day of March, 2026 by and between the City of Manteca (CITY), a political subdivision of the State of California, and the San Joaquin Council of Governments (SJCOG).

RECITALS

WHEREAS, SJCOG and the CITY desire to enter into a Cooperative Agreement for funding of SR 99/120 Phase 1A improvements in San Joaquin County; and

WHEREAS, SJCOG is constructing the SR 99/120 Phase 1A Improvements ("Project"); and

WHEREAS, the CITY will contribute \$3,229,000 of its Phase 1A Regional Traffic Impact Fee (RTIF) toward the construction of the Project, specifically for the widening of the Austin Road overcrossing from two lanes to four lanes; and

WHEREAS, the total awarded construction cost is \$48,231,684; and

WHEREAS, SJCOG will invoice the CITY 6.7% of the total construction cost, as identified in each pay estimate submitted by Teichert and approved by WSP, until the CITY's contribution has reached \$3,229,000; and

WHEREAS, the CITY agrees to abide by the terms and conditions of SJCOG as set forth herein for the contribution of RTIF funds; and

WHEREAS, SJCOG agrees to accept the CITY's contribution toward the Project according to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

AGREEMENT

**SECTION I
Covenants of City of Manteca**

1.1. Project Contribution. The CITY shall contribute \$3,229,000 of its Phase 1A RTIF funds toward the Project, specifically for the widening of the Austin Road overcrossing from two lanes to four lanes.

1.2. Invoices. SJCOG shall invoice the CITY at 6.7% of the total construction cost identified in each pay estimate submitted by Teichert and approved by WSP, until the cumulative amount reaches \$3,229,000.

1.3. Use of Funds. The CITY shall ensure that its RTIF contribution is used exclusively for eligible costs associated with the widening of the Austin Road overcrossing.

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1.4 Completion. The CITY acknowledges that SJCOG is responsible for completing the Project and accepts that its contribution is capped at \$3,229,000.

SECTION II Covenants of SJCOG

2.1. Construction. SJCOG shall serve as the lead agency responsible for the construction of the SR 99/120 Phase 1A Improvements.

2.2. Invoices. SJCOG shall submit invoices to the CITY in accordance with Section 1.2 until the total contribution of \$3,229,000 has been reached.

2.3. Audit Rights. The CITY shall have the right to review SJCOG's records pertaining to its contribution for a period of four (4) years following completion of the Project.

SECTION III Mutual Covenants

3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.14.

3.2. Discharge. This Agreement shall be subject to discharge as follows:

3.2.a. Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties.

3.2.b. Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified in Section 3.13, this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by SJCOG.

3.3. Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of SJCOG and CITY:

3.3.a. CITY shall fully defend, indemnify and hold harmless SJCOG, and any officer or employee of SJCOG, against any damage or liability occurring by reason of anything done or omitted to be done by CITY under the Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and hold the SJCOG harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by CITY under this Agreement or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement.

3.3.b. SJCOG shall fully defend, indemnify and hold harmless CITY, and any officer or employee of CITY, against any damage or liability occurring by reason of anything done or omitted to be done by SJCOG under or in connection with any work, authority or jurisdiction delegated to SJCOG under the Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, SJCOG shall fully defend, indemnify and hold the CITY harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by SJCOG under this Agreement or in connection with any work, authority, or jurisdiction delegated to SJCOG under this Agreement.

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3.4. Notices. Any notice which may be required under this Agreement shall be in writing and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below:

TO SJCOG:

Diane Nguyen
Executive Director
San Joaquin Council of Governments
555 E. Weber Avenue
Stockton, California 95202

TO CITY:

Kevin Jorgensen
Assistant City Manager
City of Manteca
1001 Center Street
Manteca, CA 95337

Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.4. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.5. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

3.6. Integration. This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

3.7. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.8. Independent Agency. SJCOG renders its services under this Agreement as an independent agency and the CITY is also an independent agency under the Agreement. None of the SJCOG's agents or employees shall be agents or employees of the CITY and none of the CITY's agents or employees shall be agents or employees of SJCOG.

3.9. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

3.10. Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the SJCOG or as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

3.11. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

3.12. Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.

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3.13. Survival. The following provisions in this Agreement shall survive discharge:

3.13.a. SJCOG. As to SJCOG, the following sections shall survive discharge: Section 1.3 (obligation to apply funds to Project), Section 2.3 (obligation to provide copies and retain records), Section 2.1 (obligation to continue to manage Project), and Section 3.3 (Indemnity).

3.13.b. CITY. As to CITY, the following section shall survive discharge: Section 2.1.a (submittal deadline and payment of final invoice), Section 2.2 (right to conduct audit), Section 3.3 (Indemnity), and Section 3.14 (Funding Source; Absolute Obligation; Application of RTIF; Reimbursement; No Termination Due to RTIF Unavailability).

3.13.c. Both Parties. As to both parties, the following section shall survive discharge: Section 3.3. (mutual indemnities).

3.14. Funding Source; Absolute Obligation; Application of RTIF; Reimbursement; No Termination Due to RTIF Unavailability.

- (a) Primary Application of RTIF. The parties acknowledge that the CITY intends to use its RTIF funds as the primary source to satisfy the CITY's payment obligations under this Agreement. SJCOG shall continue to invoice the CITY as set forth herein, and the CITY shall first apply available RTIF to such invoices to the maximum extent permitted by law.
- (b) Absolution Obligation Up to Cap; Shortfall from Legally Available Funds. Notwithstanding the CITY's intended use of RTIF, the CITY's obligation to pay to SJCOG an amount up to the total cap of \$3,229,000 (the "City Contribution Cap") is absolute, unconditional, and not contingent upon the availability, eligibility, or timing of RTIF funds. To the extent that RTIF is not available, is insufficient, or is delayed at any time of payment to SJCOG is due, the CITY shall timely pay the amount then due from any other legally available funds of the CITY ("Legally Available Funds"), and shall not defer, reduce, or terminate payment to SJCOG on account of RTIF unavailability.
- (c) Covenant to Budget and Appropriate; Nature of Obligation. The parties intend that the CITY's obligations hereunder constitute a current expense of the CITY payable from Legally Available Funds and shall not constitute an indebtedness of the CITY in contravention of Article XVI, Section 18 of the California Constitution or any other debt limitation. Nothing herein obligates the CITY to levy any tax or make any expenditure prohibited by law.
- (d) Reimbursement When RTIF Later Becomes Available. If CITY satisfies any payment to SJCOG from Legally Available Funds other than RTIF due to RTIF unavailability or insufficiency at the time of payment, the CITY may, to the extent permitted by law, reimburse such Legally Available Funds from RTIF when and if RTIF later becomes available.
- (e) No Suspension or Termination for RTIF Issues. The CITY's payment obligations up to the City Contribution Cap shall not be suspended, excused, or terminated by reason of any limitation, suspension, delay, or unavailability of RTIF, and the parties agree that this Agreement shall not terminate on account of such circumstances.
- (f) Notice and Cooperation. The CITY shall promptly notify SJCOG upon becoming aware of any circumstance reasonably likely to delay or affect the timing or availability of RTIF for payments due under this Agreement, and the

ATTACHMENT 2

parties shall reasonably cooperate in good faith to facilitate timely payment and, as applicable, the later reimbursement described herein.

3.15. Attorneys' Fees. Should any litigation commence between the parties concerning the rights and duties of any party pursuant to, related to, or arising from, this Agreement, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees and costs of such litigation, or in a separate action brought for that purpose.

3.16. Time. Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.

3.17. Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.18. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

3.19. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.20. No Continuing Waiver. The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.

3.21. No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

3.22. Signator's Warranty. Each party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

CITY OF MANTECA

SAN JOAQUIN COUNCIL OF GOVERNMENTS

By: _____
TONI LUNDGREN
City Manager

By: _____
CHRISTINA FUGAZI
SJCOG Board Chair

ATTACHMENT 2

ATTEST:

ATTEST:

By: _____
CASSANDRA CANDINI-TILTON
City Clerk

By: _____
DIANE NGUYEN
Executive Director

APPROVED AS TO FORM AND CONTENT:

APPROVED AS TO FORM:

By: _____
KOUSHA MCKEENEJAD
Deputy City Attorney

By: _____
GRACIE OROSCO
Deputy Director of Finance and Administration