

**SECOND AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING FOR
COOPERATIVE PLANNING AND DEVELOPMENT OF THE SAN SEVAINE TRAIL IN
SAN BERNARDINO COUNTY**

This Second Amendment to the Memorandum of Understanding for Cooperative Planning and Development of the San Sevaine Trail in San Bernardino County ("Second Amendment"), is effective as of October_____, 2023 ("Effective Date") and is between the City of Fontana, a municipal corporation organized under the laws of the State of California ("Fontana"), on the one hand, and the City of Rancho Cucamonga, a municipal corporation organized under the laws of the State of California ("Rancho Cucamonga"), on the other hand. Fontana and Rancho Cucamonga may be referred to collectively as "Parties" or individually as "Party".

RECITALS

A. The Parties entered into that certain Memorandum of Understanding for Cooperative Planning and Development of the San Sevaine Trail in San Bernardino County ("MOU") dated February 1, 2017, whereby the Parties agreed to work cooperatively to complete Phase 1, Segment 2 of the San Sevaine Trail ("Trail") from the Pacific Electric Trail to Banyan Street in San Bernardino County, within the Cities of Fontana and Rancho Cucamonga (the "Project"), as more fully set out therein.

B. On May 19, 2021, the Parties executed a First Amendment to the Memorandum of Understanding for Cooperative Planning and Development of the San Sevaine Trail in San Bernardino County ("First Amendment").

C. Since executing the MOU and First Amendment, California Department of Transportation's requirements necessitated additional scope which will result in the overall escalation of construction costs.

D. Therefore, the Parties agree to allocate the increased Project costs as follows: Rancho Cucamonga will contribute additional funding of \$576,000 towards the construction of the Project. Fontana will contribute the remaining funds for the Project by seeking to secure a grant to supplement the Project budget. Fontana will also request reimbursement for the additional funds up to \$576,000 needed to fully fund the construction phase upon execution of the construction contract.

E. The Parties now desire to further amend the MOU to set forth the Parties' responsibilities in connection with the Project pursuant to this Second Amendment.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

2. Additions to Section I to MOU. Section I(A) and Section I(B) is amended by adding the following:

I. Roles and Responsibilities of the Parties

A. Fontana

14. Fontana will seek to secure a grant to supplement the increase in the Project budget and will, upon execution of the construction contract, seek reimbursement for the Project costs from available grant sources.

15. Within 5 days of the receipt of bids for the Project, Fontana will provide the City of Rancho Cucamonga with copies of all bids received along with an accounting of the project funding and estimated construction costs based upon the apparent low bid received.

16. Within 30 days of receiving the apparent low bid and invoice, Rancho Cucamonga will submit its payment to Fontana in the amount of \$576,000.

17. Fontana will be responsible for all project costs in excess of Rancho Cucamonga's contribution under Section I(A)(16).

18. Subject to forces outside of its control or an event of *force majeure*, Fontana will do all that it reasonably can do to complete and accept construction of the subject trail improvements within 24 months of its notice to proceed. Should construction be halted or cancelled and the project not be accepted within 24 months after notice to proceed, Fontana will refund Rancho Cucamonga for its proportionate share of the project funds not used prior to the halt or cancellation.

I. Roles and Responsibilities of the Parties

B. Rancho Cucamonga

10. Within 30 days of receipt of the invoice described in Section I(A)(16), Rancho Cucamonga will make a one-time payment to Fontana in the amount of \$576,000, which will cover Rancho Cucamonga's share of the increased Project construction costs described herein. Following payment of this invoice, the City of Rancho Cucamonga shall have no further obligations for increased Project construction costs.

3. Extension of Term. Pursuant to Section III ("Extension of Term") of the MOU, the Parties hereby agree to extend the Term of the MOU to extend an additional **two years** from the date of the full execution of this Second Amendment.

4. Other Terms and Conditions of the MOU. All other terms and conditions of the MOU not amended by this Second Amendment remain in full force and effect.

5. Counterparts. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be executed by their duly authorized representatives and affixed as of the date of signature of the Parties:

[SIGNATURE PAGE FOLLOWS]

CITY OF FONTANA

By: _____
Matthew Ballantyne, City Manager

Date: _____

ATTEST:

By: _____
Germaine Key, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Ruben Duran, City Attorney

Date: _____

CITY OF RANCHO CUCAMONGA

By: _____
John R. Gillison, City Manager

Date: _____

ATTEST:

By: _____
Janice C. Reynolds, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Nicholas R. Ghirelli, City Attorney

Date: _____