

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

631A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
July 13, 2009

SUBJECT: Design Cooperative Agreement between the County of Riverside and the State of California Department of Transportation (Caltrans) for the Van Buren Boulevard / Interstate 215 Interchange Improvement Project.

RECOMMENDED MOTION: That the Board approve and execute the attached Cooperative Agreement between the State of California and the County of Riverside and authorize the Chairman to execute the same (Caltrans Agreement No. 8-1420).

BACKGROUND: The Van Buren Boulevard/I-215 Interchange Expansion Project involves the replacement of the existing interchange with an interchange that can accommodate future traffic growth and allow for the expansion of the Meridian Business Park. This growth is expected to generate 15,000 jobs anticipated as part of the March Air Base re-use plans.

Juan C. Perez
Director of Transportation

BEC
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2009/2010

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: Michael R. Shetler

County Executive Office Signature

FORM APPROVED BY COUNTY COUNSEL
BY: NEAL R. KIRNIS
DATE

Departmental Concurrence

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. | District: 1 & 5 | Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.94

The Honorable Board of Supervisors

RE: Design Cooperative Agreement between the County of Riverside and the State of California Department of Transportation (Caltrans) for the Van Buren Boulevard / Interstate 215 Interchange Improvement Project.

July 13, 2009

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The attached agreement identifies the County as the lead agency and outlines responsibilities for the development of design plans, reports and project documents. This agreement is necessary for Caltrans to provide project oversight, quality assurance, including appropriate reviews and approvals of submittals by the County, and to cooperate in timely processing of the project. The cost of project oversight and quality assurance will be borne by the State. A separate future agreement will be necessary for the construction phase of this project.

The County will be funding this phase of the work through the Transportation Uniform Mitigation Funds (TUMF) provided by the Western Riverside Council of Governments, and from funds provided by the March Joint Powers Authority.

Project No. B70798

Contract No. 09-06-009
Riverside Co. Transportation

08-Riv-215-PM R32.32/35.93
Reconstruct Interstate 215/Van
Buren Blvd. Interchange and
realignment of Interstate 215
In the County of Riverside
EA 0E5200
District Agreement No. 8-1430

**PS&E AND R/W
COOPERATIVE AGREEMENT**

This AGREEMENT, entered into effective on _____, 2009, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

COUNTY OF RIVERSIDE, a political subdivision of the State of California, referred to herein as "COUNTY."

RECITALS

1. STATE and COUNTY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within COUNTY's jurisdiction.
2. COUNTY desires reconstruction of the Interstate 215 (I-215)/Van Buren Blvd. Interchange and realignment of I-215, all in the County of Riverside, referred to herein as "PROJECT."
3. COUNTY is willing to fund one hundred percent (100%) of all capital outlay and support costs using Local Funding sources for Plans, Specifications, and Estimates (PS&E) and right of way (R/W) activities, except that the costs of STATE's Independent Quality Assurance (IQA) of PROJECT PS&E and right of way activities will be borne by STATE.
4. Project Approval and Environmental Document for PROJECT were completed by March Joint Powers Authority (MJP) and covered in a prior Cooperative Agreement executed by STATE and MJP on April 19, 2007, District Agreement No. 8-1282.
5. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.

6. PROJECT landscape maintenance and construction will be the subject of a separate future agreement or agreements.
7. The parties now define herein below the terms and conditions under which PROJECT is to be developed, designed, and financed.

SECTION I

COUNTY AGREES:

1. To fund one hundred percent (100%) of all PROJECT PS&E and right of way activities costs except for costs of STATE's IQA. If it becomes necessary to obtain additional funds to complete PROJECT, these additional funds will be provided by COUNTY using a funding source other than STATE funds.
2. To not use STATE funds for any PROJECT capital and support costs except as set forth in this Agreement.
3. All PROJECT work performed by COUNTY, or performed on COUNTY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.
4. All PROJECT work, except as set forth in this Agreement, is to be performed by COUNTY. Should COUNTY request that STATE perform any portion of PROJECT work, except as otherwise set forth in this Agreement, COUNTY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
5. To have a detailed PS&E prepared, at no cost to STATE, and to submit to STATE for STATE's review and concurrence at appropriate stages of development. The final PS&E for PROJECT shall be signed on behalf of COUNTY by a Civil Engineer registered in the State of California. COUNTY agrees to provide landscape plans prepared and signed by a licensed California Landscape Architect.
6. To have all necessary right of way maps and documents used to acquire right of way by COUNTY prepared by or under the direction of a person authorized to practice land surveying in the State of California. Each right of way map and document shall bear the appropriate professional seal, certificate number, expiration date of registration certification and signature of the licensed person in Responsible Charge of Work.
7. To permit STATE to monitor, participate, and oversee the selection of personnel who will prepare the PS&E, provide right of way engineering services, and provide right of

way acquisition services for PROJECT. COUNTY agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.

8. To submit to STATE for review, comment, concurrence, and/or approval of all Right of Way Engineering Land-Net Maps and Right of Way Appraisal Maps, Records of Survey, and Right of Way Record Maps all prepared in accordance with STATE's Right of Way Manual, Chapter 6, Right of Way Engineering, STATE's Plans Preparation Manual, STATE's Surveys Manual, applicable State laws, and other pertinent reference materials and examples as provided by STATE.
9. COUNTY shall include a "conflict of interest" requirement in the PROJECT design consultant contract(s) that prohibits the design consultant from being employed or under contract to the future PROJECT construction contractor.
10. Personnel who prepare the PS&E shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems which may arise during PS&E, Right of Way, and Construction phases of the PROJECT, and/or to make design revisions for contract change orders.
11. Personnel who prepare right of way maps, documents, and related materials shall be made available to STATE, at no cost to STATE, during and after construction of PROJECT until completion and acceptance by STATE of Right of Way Record Maps, Records of Survey, and title to any property intended to be transferred to STATE.
12. To make written application to STATE for necessary encroachment permits authorizing entry of COUNTY onto the SHS right of way to perform surveying and other investigative activities required for preparation of the PS&E. COUNTY shall also require COUNTY's consultants and contractors to make written application to STATE for the same necessary encroachment permits.
13. To identify and locate all utility facilities within the area of PROJECT as part of the design responsibility for PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for PROJECT.
14. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, COUNTY shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.

The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies and procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.

15. To furnish evidence to STATE, in a form acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within the SHS right of way and that such work will be completed prior to the award of the contract to construct PROJECT or as covered in the PS&E for said contract. This evidence shall include a reference to all required SHS encroachment permits.
16. To acquire and furnish all right of way, if any, outside of the existing SHS right of way and to perform all right of way activities, including all eminent domain activities, if necessary, at no cost to STATE, and in accordance with procedures acceptable to STATE. These activities shall comply with all applicable State and Federal laws and regulations, subject to STATE's IQA to ensure that the completed work and title to property acquired for PROJECT is acceptable for incorporation into the SHS right of way.
17. To utilize the services of a qualified public agency or a qualified consultant, as determined by STATE's District Division Chief of Right of Way, in all matters related to the acquisition of right of way in accordance with STATE's procedures as published in STATE's current Right of Way Manual. Whenever personnel other than personnel of a qualified public agency, or a qualified consultant, are utilized, administration of the personnel contract shall be performed by a qualified Right of Way person employed or retained by COUNTY.
18. To certify legal and physical control of right of way ready for construction and that all right of way parcels were acquired in accordance with applicable State and Federal laws and regulations, subject to review, comment, concurrence, and/or approval by STATE prior to the advertisement for bids for the contract to construct PROJECT.
19. To deliver to STATE legal title to the right of way, including access rights, free and clear of all encumbrances detrimental to STATE's present and future uses not later than the date of acceptance by STATE of maintenance and operation of the SHS facility. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid for by COUNTY.
20. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside of the existing SHS right of way that could impact PROJECT as part of performing any work pursuant to this Agreement. If COUNTY discovers hazardous material or contamination within the PROJECT study area during said investigation, COUNTY shall immediately notify STATE.
21. If COUNTY desires to have STATE advertise, award, and administer the construction contract for PROJECT, COUNTY shall provide STATE with acceptable plans in a format acceptable to STATE. Reimbursement to STATE for costs incurred by STATE to advertise, award, and administer the construction contract for PROJECT will be covered in the separate Cooperative Agreement.

22. All aerial photography and photogrammetric mapping shall conform to STATE's current standards.
23. A copy of all original survey documents resulting from surveys performed for PROJECT, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to STATE and shall become property of STATE. For aerial mapping, all information and materials listed in the document "Materials Needed to Review Consultant Photogrammetric Mapping" shall be delivered to STATE and shall become property of STATE.
24. All original recorded land title documents created by PROJECT shall be delivered to STATE and become property of STATE.
25. To submit to STATE a list of STATE horizontal and vertical control monuments that will be used to control surveying activities for PROJECT.

SECTION II

STATE AGREES:

1. At no cost to COUNTY, to provide IQA of all COUNTY work necessary for completion of the PS&E and right of way activities for PROJECT done by COUNTY, including, but not limited to, investigation of potential hazardous material sites and all right of way activities undertaken by COUNTY or its designee, and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by COUNTY, while cooperating in timely processing of documents necessary for completion of the PS&E and right of way for PROJECT.
2. To issue, upon proper application and at no cost to COUNTY, an encroachment permit required for work within SHS R/W. Any third party agent (including but not limited to contractors, consultants, and utility owners) must obtain an encroachment permit issued in their name, prior to performing any work within the SHS R/W. All third party agents may be subject to an encroachment permit fee assessment.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).

2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT PS&E and right of way phases administered by COUNTY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by COUNTY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by COUNTY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by COUNTY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and COUNTY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this Agreement authorizing such services to be performed by STATE.
3. The Project Report (PR) for PROJECT, approved on March 3, 2009, is by this reference, made an express part of this Agreement. If there is a conflict of terms between the PR and this Agreement, the terms of this Agreement shall prevail.
4. The basic design features shall comply with those addressed in the approved PR, unless modified as required for completion of the PROJECT's environmental documentation and/or if applicable, requested by the Federal Administration (FHWA).
5. The design, right of way acquisition, and preparation of related technical reports/studies for PROJECT shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be considered by STATE for approval via the processes outlined in STATE's Highway Design Manual and appropriate memoranda and design bulletins published by STATE. In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with COUNTY in a timely manner regarding the effect of proposed and/or required changes on PROJECT.
6. If, during preparation of the PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained which requires additional environmental documentation to comply with the California Environmental Quality Act (CEQA) and if applicable, the National Environmental Policy Act (NEPA), this Agreement will be amended to include completion of those additional tasks by COUNTY.
7. COUNTY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties otherwise mutually agree in writing. If parties agree in writing that STATE is responsible

for obtaining said project permits, agreements, and/or approvals from the appropriate regulatory agencies, then those said costs shall be a PROJECT cost.

8. COUNTY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permits, agreements, and/or approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
9. If there is a legal challenge to the environmental documentation, including investigative studies and/or technical environmental report(s), permits, agreements, and/or approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
10. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
11. The party that discovers hazardous materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

12. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs associated with HM-1 management activities.

STATE, has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right of way. COUNTY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits outside existing SHS right of way. COUNTY will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule, and COUNTY will pay, or cause to be paid, all costs associated with HM-1 management activities.

13. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost associated with HM-2 is a PROJECT construction cost.
14. Management activities associated with either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
15. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
16. A separate Cooperative Agreement or agreements will be required to address landscape maintenance, and to cover responsibilities and funding for the construction phase of PROJECT.
17. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
18. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction conferred upon COUNTY under this Agreement. It is understood and agreed that, COUNTY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY under this Agreement.
19. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify and save harmless COUNTY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
20. Prior to the commencement of any work pursuant to this Agreement, either STATE or COUNTY may terminate this Agreement by written notice to the other party.

21. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
22. This Agreement shall terminate upon satisfactory completion of all post-PROJECT construction obligations of COUNTY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2015, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related claims are settled, dismissed or paid.

SIGNATURES ON FOLLOWING PAGE:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

COUNTY OF RIVERSIDE

WILL KEMPTON
Director

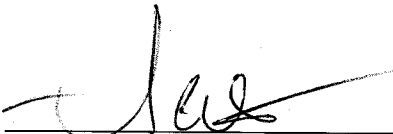
By: _____
Supervisor, Board of Supervisors

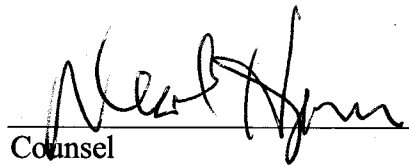
By: _____
RAYMOND W. WOLFE, PhD
District Director

Attest: _____
Clerk, Board of Supervisors

APPROVED AS TO FORM AND
PROCEDURE:

APPROVED AS TO FORM AND
PROCEDURE:

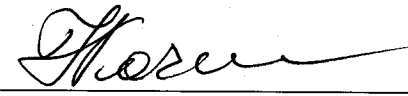
By:  _____
Attorney,
Department of Transportation

By:  _____
Counsel

CERTIFIED AS TO FUNDS:

By: _____
District Budget Manager

CERTIFIED AS TO FINANCIAL
TERMS AND POLICIES:

for By:  _____
Accounting Administrator