

FORM APPROVED COUNTY COUNSEL
 BY: *[Signature]* 7/28/10
 MARSHAL VICTOR DATE

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

147
A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
 July 29, 2010

SUBJECT: Date Palm Drive Cooperative Agreement between the County of Riverside and the State of California Department of Transportation (Caltrans) for the reconstruction of the existing Interchange at Date Palm Drive and Interstate 10.

- RECOMMENDED MOTION:** That the Board of Supervisors:
1. Approve the attached Cooperative Agreement, and;
 2. Authorize the Chairman of the Board to execute the same.

BACKGROUND: The Transportation Department has obtained the environmental clearance, completed the plans and acquired the necessary right-of-way in preparation for the construction of interchange improvements at Interstate 10 and Date Palm Drive.

[Signature]

Juan C. Perez
 Director of Transportation

(Continued On Attached Page)

| | | | | |
|-----------------------|-------------------------------|---------------|-------------------------|---------|
| FINANCIAL DATA | Current F.Y. Total Cost: | \$ 22,726,000 | In Current Year Budget: | Yes |
| | Current F.Y. Net County Cost: | \$ 0 | Budget Adjustment: | No |
| | Annual Net County Cost: | \$ 0 | For Fiscal Year: | 2010/11 |

| | | |
|---------------------------------------------------------------------------|----------------------------------|--------------------------|
| SOURCE OF FUNDS: STP (37%), State RIP (63%) Project No. A8-0373 | Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| | Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION:
 APPROVE
 BY: *[Signature]*
 Tina Grande

County Executive Office Signature

Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. 07/13/10, Item 3.87 | District: 4 | Agenda Number:

3.70

The Honorable Board of Supervisors

RE: Date Palm Drive Cooperative Agreement between the County of Riverside and the State of California Department of Transportation (Caltrans) for the reconstruction of the existing Interchange on Date Palm Drive and Interstate 10.

July 29, 2010

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The planned interchange Improvements will increase capacity and improve the daily operation for current and future traffic volumes. The improvements to the Date Palm Drive Interchange will consist of the widening of the existing bridge over Interstate 10, reconstruction and widening of Date Palm Drive, and the construction of a partial cloverleaf interchange with loop on-ramps. It is anticipated that construction will start by early 2011.

The Board of Supervisors approved a "Design Cooperative Agreement" with Caltrans on March 26, 2002 as well as two amendments (Amendment One: December 19, 2006 & Amendment Two: December 23, 2008) that defined each agencies' responsibilities for the development of the interchange reconstruction project.

The California Transportation Commission approved the allocation of National Highway System/Regional improvement Program (NHS/RIP) funds for the interchange reconstruction at its May 2010 meeting and directed Caltrans to allocate to County the State NHS/RIP funds in the amount of \$14,400,000 to be expended on construction capital costs for the project.

The Board of Supervisors approved and executed a Cooperative Funding Agreement between the County of Riverside, City of Cathedral City and the Coachella Valley Association of Governments (CVAG) on May 17, 1999 that provided \$1,702,000 in funding to perform the environmental and engineering services for the proposed improvements to the Date Palm Drive at Interstate 10 Interchange. On September 25, 2001 the Board approved Amendment Number One that provided an additional \$1,300,000 for the purpose of designing and construction a new overhead crossing structure above the Union Pacific Railroad. On July 13, 2010, the Board approved Amendment Number Two that authorized an additional \$14,179,000 funding towards the project for a total CVAG funding obligation of \$17,181,000.

Additional STP funds in the amount of \$8,326,000 have been determined to be available for use on the Date Palm Drive Interchange reconstruction project subsequent to execution of Amendment Number Two of the CVAG Cooperative Agreement and will replace a portion of the CVAG authorized funding.

This Cooperative Agreement provides the terms and conditions for the construction and maintenance of the improvements and provides that Caltrans will allocate \$14,400,000 in State NHS/RIP funds and \$8,326,000 in STP funds towards the construction and construction management services.

This agreement is separate from and does not modify or supersede the Design Cooperative Agreement with Caltrans. In the event of a conflict, this agreement will supersede the prior agreement.

Contract No. 10-07-005
Riverside Co. Transportation

COOPERATIVE AGREEMENT

This agreement, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

County of Riverside, a political subdivision of the State of California, referred to as COUNTY.

RECITALS

1. CALTRANS and COUNTY, collectively referred to as PARTNERS, are authorized to enter into a cooperative agreement for improvements within the SHS right of way per Streets and Highways Code sections 114 and/or 130.
2. WORK completed under this agreement contributes toward improvements to the existing Date Palm Drive Interchange between Ramon Road Interchange and Palm Drive/Gene Autry Trail Interchange on Interstate 10 in Cathedral City, referred to as PROJECT.
3. PARTNERS will cooperate to perform and fund the construction capital and construction support for project.
4. This agreement is separate from and does not modify or supersede prior Cooperative Agreement No. 08-1167 and 08-1270. In the event of a conflict, this agreement will supersede the prior agreements.
5. Prior to the start of construction, COUNTY developed the Project Initiation Document; COUNTY developed the Project Report; COUNTY developed the Plans, Specifications and Estimate; and COUNTY developed the Right of Way Certification.
6. COUNTY and CALTRANS prepared and approved the Initial Study/Mitigated Negative Declaration pursuant to CEQA and an Environmental Assessment/Findings of No Significant Impacts pursuant to NEPA dated February 7, 2009 for PROJECT.
7. CALTRANS obtained the following resource agency permits, agreements, or approvals: U.S. Fish and Wildlife Biological Opinion.
8. The estimated date for COMPLETION OF WORK is December 31, 2018.

9. PARTNERS now define in this agreement the terms and conditions under which they will accomplish WORK.

DEFINITIONS

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

CEQA – The California Environmental Quality Act (California Public Resources Code, sections 21000 et seq.) that requires State and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

COMPLETION OF WORK – All PARTNERS have met all scope, cost, and schedule commitments included in this agreement and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

CONSTRUCTION – The project component that includes the activities involved in the administration, acceptance, and final documentation of a construction contract for PROJECT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all scope, cost, and schedule commitments included in this agreement.

FHWA – Federal Highway Administration.

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at <http://www.fhwa.dot.gov/programs.html>.

FUNDING PARTNER – A partner who commits a defined dollar amount to WORK.

FUNDING SUMMARY - The table in which PARTNERS designate funding sources, types of funds, and the project components in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

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

HM-2 – 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.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The partner responsible for managing the scope, cost, and schedule of a project component to ensure the completion of that component.

IQA – Independent Quality Assurance – Ensuring that IMPLEMENTING AGENCY’S quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan. IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another partner.

NEPA – The National Environmental Policy Act of 1969 that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

PARTNERS – The term that collectively references all of the signatory agencies to this agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner’s individual actions legally bind the other partners.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project’s execution and control throughout the project’s lifecycle.

QUALITY MANAGEMENT PLAN (QMP) – An integral part of the Project Management Plan that describes IMPLEMENTING AGENCY quality policy and how it will be used.

RESIDENT ENGINEER – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer shall be independent of the design engineering company and the construction contractor.

SAFETEA-LU – The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, signed into federal law on August 10, 2005.

SCOPE SUMMARY – The table in which PARTNERS designate their commitment to specific scope activities within each project component as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

SHS – State Highway System.

SPONSOR(S) – The partner that accepts the obligation to secure financial resources to fully fund WORK. This includes any additional funds beyond those committed in this agreement necessary to complete the full scope of WORK defined in this agreement or settle claims.

SFM (State Furnished Material) – Any materials or equipment supplied by CALTRANS.

WORK – All scope and cost commitments included in this agreement.

RESPONSIBILITIES

10. COUNTY is SPONSOR for all WORK.
11. CALTRANS and COUNTY are FUNDING PARTNERS for this agreement. Their funding commitments are defined in the FUNDING SUMMARY.
12. COUNTY is the CEQA lead agency for PROJECT.
13. CALTRANS is the NEPA lead agency for PROJECT.
14. COUNTY is IMPLEMENTING AGENCY for CONSTRUCTION.

SCOPE

Scope: General

15. All WORK will be performed in accordance with federal and California laws, regulations, and standards.

All WORK will be performed in accordance with FHWA STANDARDS and CALTRANS STANDARDS.
16. IMPLEMENTING AGENCY for a project component will provide a Quality Management Plan for that component as part of the PROJECT MANAGEMENT PLAN.
17. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
18. COUNTY may provide IQA for the portions of WORK outside existing and proposed SHS right of way.
19. PARTNERS may, at their own expense, have a representative observe any scope, cost, or schedule commitments performed by another partner. Observation does not constitute authority over those commitments.
20. Each partner will ensure that all of their personnel participating in WORK are appropriately qualified to perform the tasks assigned to them.
21. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in WORK.

22. PARTNERS will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations if PROJECT work is done under contract (not completed by a partner's own employees) and is governed by the Labor Code's definition of a "public work" (section 1720(a)(1)).

PARTNERS will include wage requirements in all contracts for "public work" and will require their contractors and consultants to include prevailing wage requirements in all agreement-funded subcontracts for "public work."

23. IMPLEMENTING AGENCY for each project component included in this agreement will be available to help resolve WORK-related problems generated by that component for the entire duration of PROJECT.
24. CALTRANS will issue, upon proper application, at no cost, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform WORK without an encroachment permit issued in their name.

25. If unanticipated cultural, archaeological, paleontological, or other protected resources are discovered during WORK, all work in that area will stop until a qualified professional can evaluate the nature and significance of the discovery and a plan is approved for its removal or protection.
26. PARTNERS will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that PARTNERS share said documents with each other.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete WORK without the written consent of the partner authorized to release them, unless required or authorized to do so by law.

27. If any partner receives a public records request, pertaining to WORK under this agreement, that partner will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any transferred public documents.
28. If HM-1 or HM-2 is found during WORK, IMPLEMENTING AGENCY for the project component during which it is found will immediately notify PARTNERS.
29. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. CALTRANS will undertake HM-1 MANAGEMENT ACTIVITIES with minimum impact to PROJECT schedule.

30. COUNTY, independent of PROJECT, is responsible for any HM-1 found within the Project limits outside existing SHS right of way. COUNTY will undertake or cause to be undertaken HM-1 MANAGEMENT ACTIVITIES with minimum impacts to PROJECT schedule.
31. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 MANAGEMENT ACTIVITIES.
32. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
33. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each partner's responsibilities in this agreement.
34. IMPLEMENTING AGENCY for each project component will furnish PARTNERS with written monthly progress reports during the implementation of WORK in that component.
35. Upon COMPLETION OF WORK, ownership and title to all materials and equipment constructed or installed as part of WORK within SHS right of way become the property of CALTRANS.
36. IMPLEMENTING AGENCY for a project component will accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.
37. PARTNERS will confer on any claim that may affect WORK or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No partner shall prejudice the rights of another partner until after PARTNERS confer on claim.
38. PARTNERS will maintain and make available to each other all WORK-related documents, including financial data, during the term of this agreement and retain those records for four (4) years from the date of termination or COMPLETION OF WORK, or three (3) years from the date of final federal voucher, whichever is later.
39. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State auditor, FHWA, and COUNTY will have access to all WORK-related records of each partner for audit, examination, excerpt, or transaction.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation.

The audited partner will review the preliminary audit, findings, and recommendations, and provide written comments within 60 calendar days of receipt.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within 30 calendar days of the final audit or dispute resolution findings.

40. PARTNERS consent to service of process by mailing copies by registered or certified mail, postage prepaid. Such service becomes effective 30 calendar days after mailing. However, nothing in this agreement affects PARTNERS' rights to serve process in any other matter permitted by law.
41. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, SPONSOR(S) will seek out additional funds and PARTNERS will amend this agreement.
42. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.
43. If WORK stops for any reason, PARTNERS are still obligated to implement all applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each partner's responsibilities in this agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
44. Each partner accepts responsibility to complete the activities that they selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.

Scope: CONSTRUCTION

45. COUNTY will advertise, open bids, award, and approve the construction contract in accordance with the Public Contract Code and the California Labor Code.

COUNTY will not advertise the construction contract until CALTRANS completes or accepts the final plans, specifications, and estimate package; CALTRANS approves the Right of Way Certification; and FUNDING PARTNERS fully fund WORK.

By accepting responsibility to advertise and award the construction contract, COUNTY also accepts responsibility to administer the construction contract.

46. COUNTY will provide a RESIDENT ENGINEER and construction support staff who are independent of the design engineering company and construction contractor.
47. COUNTY will provide a landscape architect licensed in the State of California.
48. PARTNERS will implement changes to the construction contract through contract change orders (CCOs). PARTNERS will review and concur on all CCOs over \$100,000. All CCOs affecting public safety or the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS *Construction Manual* will be approved by CALTRANS in advance of the CCO work to be performed.

If the lowest responsible construction contract bid (plus estimated contingencies, supplemental costs and State Furnished Material costs) is equal to or less than the amount shown on the FUNDING SUMMARY for CONSTRUCTION Capital, the IMPLEMENTING AGENCY may award the contract. If the lowest responsible construction contract bid is greater than the amount shown on the FUNDING SUMMARY for CONSTRUCTION Capital, all PARTNERS must be involved in determining how to proceed. If PARTNERS do not agree in writing on a course of action within 60 working days, this agreement will terminate unless PARTNERS mutually agree to extend.

49. COUNTY will require the construction contractor to furnish payment and performance bonds naming COUNTY as obligee and to carry liability insurance in accordance with CALTRANS specifications.
50. COUNTY will submit a written request to CALTRANS for any SFM identified in the PROJECT PS&E package a minimum of 45 days prior to the bid advertisement date for PROJECT construction contract. COUNTY will submit a written request to CALTRANS for any additional SFM deemed necessary during PROJECT construction.
51. Upon receipt of both SFM and full payment of CALTRANS' invoice for estimated SFM costs, CALTRANS will make the SFM available at a CALTRANS-designated location.

52. CALTRANS will be responsible for coordination of any needed renewals and amendments to the U.S. Fish and Wildlife Service Biological Opinion. COUNTY will be responsible for the preparation of any additional technical studies and Biological Assessments in support of any renewals or amendments to the U.S. Fish and Wildlife Service Biological Opinion. COUNTY will submit said documentation to CALTRANS for CALTRANS' review, comment, and approval. CALTRANS will submit any needed additional documentation to U.S. Fish and Wildlife Service. COUNTY is responsible for implementation of the U.S. Fish and Wildlife Service Biological Opinion and any amendments.

COUNTY will be responsible for all other resource agency permits, agreements, or approvals as necessary. Amendments to resource agency permits, agreements, or approvals shall be approved by CALTRANS prior to submittal to the appropriate resource agency.

53. CALTRANS will provide Source Inspection on reimbursed basis.

COST

Cost: General

54. SPONSOR(S) will secure funds for all WORK including any additional funds beyond the FUNDING PARTNERS' existing commitments in this agreement. Any change to the funding commitments outlined in this agreement requires an amendment to this agreement.
55. The cost of any awards, judgments, or settlements generated by WORK is a WORK cost.
56. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within existing SHS right of way.
57. COUNTY, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to any HM-1 found within PROJECT limits and outside of existing SHS right of way.
58. HM MANAGEMENT ACTIVITIES costs related to HM-2 are a PROJECT CONSTRUCTION cost.
59. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is a WORK cost.
60. The cost to comply with and implement the commitments set forth in the environmental documentation is a WORK cost.

61. The cost to ensure that PROJECT remains in environmental compliance is a WORK cost.
62. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is a WORK cost.
63. Independent of WORK costs, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.
64. Independent of WORK costs, COUNTY will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.
65. Fines, interest, or penalties levied against any partner will be paid, independent of WORK costs, by the partner whose actions or lack of action caused the levy. That partner will indemnify and defend all other partners.
66. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is a WORK cost.
67. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

68. If there are insufficient funds in this agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, the partner implementing the commitments or conditions accepts responsibility to fund these activities until such time PARTNERS amend this agreement.

That partner may request reimbursement for these costs during the amendment process.

69. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.
70. FUNDING PARTNERS accept responsibility to provide the funds identified on the FUNDING SUMMARY.
71. SPONSOR(S) accepts responsibility to ensure full funding for the identified scope of work.
72. The California Transportation Commission approved the allocation of National Highway System/Regional improvement Program (NHS/RIP) funds for PROJECT at its May 2010 meeting and directed CALTRANS to allocate to COUNTY the State NHS/RIP funds in

the amount of \$14,400,000 to be expended on CONSTRUCTION capital costs for PROJECT. In the event these funds are not available, COUNTY will fund PROJECT using then available funds.

Cost: CONSTRUCTION Support

73. The cost to maintain the SHS within WORK limits is a WORK cost until COMPLETION OF WORK, after which, the cost of maintenance will be handled through an existing maintenance agreement.
74. CALTRANS will invoice COUNTY for a \$24,000 deposit 30 working days prior to the construction contract bid advertisement date. This deposit represents Source Inspection costs. After PARTNERS agree that all scope activities are complete, CALTRANS will submit a final accounting for all WORK costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the obligation of this agreement.

Cost: CONSTRUCTION Capital

75. The following partners will submit invoices for CONSTRUCTION Capital:
 - COUNTY will invoice CALTRANS

CALTRANS will invoice COUNTY for the actual cost of any STATE-FURNISHED MATERIAL as a CONSTRUCTION capital cost.

76. PARTNERS will exchange funds for actual costs to be invoiced.

COUNTY will submit monthly invoices to CALTRANS for reimbursement of actual CONSTRUCTION capital costs to be paid from State RIP funds up to the amount shown in Funding Summary.

CALTRANS will deposit with COUNTY within 45 days of receipt of COUNTY's continuous invoices for actual CONSTRUCTION capital costs to be paid from State RIP funds up to the amount shown in Funding Summary.

After PARTNERS agree that all Scope activities are complete, COUNTY will submit a final accounting for all WORK costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the obligation of this agreement.

SCHEDULE

77. PARTNERS will manage the schedule for WORK through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

78. This agreement will be understood in accordance with and governed by the Constitution and laws of the State of California. This agreement will be enforceable in the State of California. Any legal action arising from this agreement will be filed and maintained in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides.
79. Invoices for CALTRANS support costs include all direct and applicable indirect costs. Applicable indirect costs are determined by the type of funds being used to pay for support. State and federal funds are subject to the Program Functional Rate. Local funds (Measure money, developer fees, special assessments, etc.) are subject to the Program Functional Rate and the Administration Rate. CALTRANS establishes the Program Functional Rate and the Administration Rate annually according to State and Federal regulations.”
80. All obligations of CALTRANS under the terms of this agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
81. Any PARTNER who performs IQA does so for its own benefit, further, that PARTNER cannot be assigned liability due to it's IQA activities.
82. 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 CALTRANS under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

It is understood and agreed that CALTRANS will fully defend, indemnify, and save harmless COUNTY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, 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 CALTRANS under this agreement.

83. Neither CALTRANS 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 CALTRANS and all of its officers and employees from all claims, suits, or

actions of every name, kind, and description brought forth under, 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.

84. This agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. This agreement is not intended to affect the legal liability of PARTNERS by imposing any standard of care for completing WORK different from the standards imposed by law.
85. PARTNERS will not assign or attempt to assign agreement obligations to parties not signatory to this agreement.
86. Any ambiguity contained in this agreement will not be interpreted against PARTNERS. PARTNERS waive the provisions of California Civil Code section 1654.
87. A waiver of a partner's performance under this agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this agreement does not constitute an amendment to or negate all other articles or sections of this agreement.
88. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
89. If any partner defaults in their agreement obligations, the non-defaulting partner(s) will request in writing that the default be remedied within 30 calendar days. If the defaulting partner fails to do so, the non-defaulting partner(s) may initiate dispute resolution.
90. PARTNERS will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of COUNTY will attempt to negotiate a resolution. If no resolution is reached, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of WORK in accordance with the terms of this agreement. However, if any partner stops WORK, the other partner(s) may seek equitable relief to ensure that WORK continues.

Except for equitable relief, no partner may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

Any civil complaints will be filed in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides. The prevailing partner will be entitled to an award of all costs, fees, and expenses, including reasonable attorney

fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.

91. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
92. If any provisions in this agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this agreement.
93. This agreement is intended to be PARTNERS' final expression and supersedes all prior oral understanding or writings pertaining to WORK.
94. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this agreement to include completion of those additional tasks.
95. PARTNERS will execute a formal written amendment if there are any changes to the commitments made in this agreement.
96. This agreement will terminate upon COMPLETION OF WORK or upon 30 calendar days' written notification to terminate and acceptance between PARTNERS, whichever occurs first.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

97. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY.
98. Signatories may execute this agreement through individual signature pages provided that each signature is an original. This agreement is not fully executed until all original signatures are attached.

CONTACT INFORMATION

The information provided below indicates the primary contact data for each partner to this agreement. PARTNERS will notify each other in writing of any personnel or location changes. These changes do not require an amendment to this agreement.

The primary agreement contact person for CALTRANS is:

Emad Makar, Project Manager
464 West 4th Street, 6th Floor, MS-1229
San Bernardino, California 92401-1400
Office Phone: (909) 383-4978
Mobile Phone: (909) 289-4632
Email: emad_makar@dot.ca.gov

The primary agreement contact person for COUNTY is:

Scott Staley, Project Manager
3525 14th Street
Riverside, California 92501
Office Phone: (951) 955-2092
Cell Phone: (951) 522-0229
Email: cstaley@rctlma.org

SIGNATURES

PARTNERS declare that:

1. Each partner is an authorized legal entity under California state law.
2. Each partner has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

COUNTY OF RIVERSIDE

By: _____
Raymond W. Wolfe, PhD
District Director

By: _____
Marion Ashley
Chairman, Board of Supervisors

CERTIFIED AS TO FUNDS:

Attest: _____
Kecia Harper-Ihem
Clerk, Board of Supervisors

By: _____
Lisa Pacheco
Budget Manager

APPROVED AS TO FORM AND PROCEDURE

By: *MP Victor* 7/28/10
Pamela J. Walls, County Counsel
By Deputy Marsha L. Victor

SCOPE SUMMARY

| 4 | 5 | 6 | 7 | 8 | Description | CALTRANS | County | N/A |
|---|-----|----|----|---|---------------------------------------------------------------------------------------|----------|--------|-----|
| 5 | | | | | Construction (CON) - 270, 285, 290, 295 | X | X | |
| | 270 | | | | Construction Engineering and General Contract Administration | X | X | |
| | | 10 | | | Construction Staking Package and Control | | X | |
| | | 15 | | | Construction Stakes | | X | |
| | | 20 | | | Construction Engineering Work | | X | |
| | | 25 | | | Construction Contract Administration Work | | X | |
| | | | 05 | | Secured Lease for Resident Engineer Office Space or Trailer | | X | |
| | | | 10 | | Set Up Construction Project Files | | X | |
| | | | 15 | | Pre-Construction Meeting | | X | |
| | | | 20 | | Progress Pay Estimates | | X | |
| | | | 25 | | Weekly Statement of Working Days | | X | |
| | | | 30 | | Construction Project Files and General Field Office Clerical Work | | X | |
| | | | 35 | | Labor Compliance Activities | | X | |
| | | | 40 | | Approved Subcontractor Substitutions | | X | |
| | | | 45 | | Coordination | | X | |
| | | | 50 | | Civil Rights Contract Compliance | | X | |
| | | | 99 | | Other Construction Contract Administration Products | | X | |
| | | 30 | | | Contract Item Work Inspection | | X | |
| | | 35 | | | Construction Material Sampling and Testing | X | X | |
| | | | 05 | | Materials Sampling and Testing for Quality Assurance | | X | |
| | | | 10 | | Plant Inspection for Quality Assurance | | X | |
| | | | 15 | | Independent Assurance Sampling and Testing | | X | |
| | | | 20 | | Source Inspection | X | | |
| | | 40 | | | Safety and Maintenance Reviews | | X | |
| | | 45 | | | Relief From Maintenance Process | | X | |
| | | 55 | | | Final Inspection and Acceptance Recommendation | | X | |
| | | 60 | | | Plant Establishment Administration | | X | |
| | | 65 | | | Transportation Management Plan Implementation During Construction | | X | |
| | | 75 | | | Resource Agency Permit Renewal and Extension Requests | | X | |
| | | 80 | | | Long-Term Environmental Mitigation/Mitigation Monitoring During Construction Contract | | X | |
| | | 99 | | | Other Construction Engineering and General Contract Administration | | X | |
| | 285 | | | | Contract Change Order Administration | | X | |
| | 290 | | | | Resolve Contract Claims | | X | |
| | 295 | | | | Accept Contract, Prepare Final Construction Estimate, and Final Report | | X | |

FUNDING SUMMARY

| Funding Source | Funding Partner | Fund Type | CON Capital | CON Support | Subtotal Funds Type |
|----------------|-----------------|------------------------|-----------------|----------------|---------------------|
| FEDERAL | COUNTY | NHS/STIP/IIP | \$9,900,000.00 | \$4,500,000.00 | \$14,400,000.00 |
| FEDERAL | COUNTY | STP | \$8,326,000.00 | \$0.00 | \$8,326,000.00 |
| | | Subtotals by Component | \$18,226,000.00 | \$4,500,000.00 | \$22,726,000.00 |

| Toll Credits | |
|--------------|--------------|
| | 954,992.20 |
| | 1,651,680.00 |
| | 2,606,672.20 |

FINANCE LETTER

| DEPARTMENT OF TRANSPORTATION DIVISION OF ACCOUNTING LOCAL PROGRAM ACCOUNTING BRANCH | | Date: 1/22/10 EA # 439904 | Sponsoring Agency: County of Riverside Agreement # 8-1458 | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------------------------|--------------------------------------------------------------|---------------------|--------------|--------------|
| Project Location: In Riverside County on Interstate 15, Portable 39 6 to 39 8, Healthy Interchange at Interstates 39 6 and 39 8 in Calandara City | | | Federal STPA | Local Program Funds | Federal AIP | Issues |
| Administrative Phases of Work | | | MSA, STPA | Local Funds | MSA, STPA | |
| REPAIRS | | | | | | |
| PAVED | 0 | | | | | \$0 |
| PALE | 1 | | | | | \$0 |
| R/W Support | 1 | | | | | \$0 |
| CONSTRUCTION | 7 | | \$4,500,000 | | | \$4,500,000 |
| CAPITAL | Proc | | | | | |
| R/W Capital | 3 | | | | | \$0 |
| CONSTRUCTION | 6 | \$6,326,000 | | | \$9,990,000 | \$16,316,000 |
| TOTALS | | \$6,326,000 | | \$0 | \$14,980,000 | \$21,306,000 |
| NOTES: * MSB RP to be reimbursed at 100% using Tot Credit of \$1.47%. Total Tot Credit = 2,058,872.00 | | | | | | |
| Project Manager | Local Match | Phone # (951) 383-4878 | | | | |
| REMARKS: | | | | | | |

| TOTAL | | Total Issues | |
|------------|--------------|--------------|--------------|
| MSA, STPA | Local Funds | MSA, STPA | Local Funds |
| 994,902.20 | 1,115,510.00 | 2,090,572.30 | 2,058,872.30 |
| 994,902.20 | 1,115,510.00 | 2,090,572.30 | 2,058,872.30 |

EXHIBIT A