

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

559A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
February 13, 2013

**SUBJECT:** Construction Cooperative Agreement between the State of California Department of Transportation (Caltrans), City of Banning and County of Riverside to Construct the Sunset Avenue Railroad Grade Separation Project.

**RECOMMENDED MOTION:**

1. Approve the Construction Cooperative Agreement between the State of California Department of Transportation (Caltrans), City of Banning and County of Riverside to Construct the Sunset Avenue Railroad Grade Separation Project, and;
2. Authorize the Chairman of the Board of Supervisors to execute the same.

\_\_\_\_\_  
Juan C. Perez  
Director of Transportation

initials  
css: JCP

(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 30,582,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2014/2015

**SOURCE OF FUNDS:** City of Banning

There are no General Funds used in this project.

<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY   
Tina Grande

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY: MARSHAL VICTOR  
DATE: 2/7/13

Departmental Concurrence

Dept't Recomm.:  Consent  Policy

Per Exec. Ofc.:  Consent  Policy

Prev. Agn. Ref. 6/8/10 3.69

District: 5

Agenda Number:

3-65

The Honorable Board of Supervisors

RE: Construction Cooperative Agreement between the State of California Department of Transportation (Caltrans), City of Banning and County of Riverside to Construct the Sunset Avenue Railroad Grade Separation Project.

February 13, 2013

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**BACKGROUND:** The Sunset Avenue railroad crossing in the City of Banning is currently at street level and causes significant traffic delays. A new grade separation has been proposed to improve traffic flows along Sunset Avenue, enhance pedestrian access by providing a raised sidewalk and create an uninterrupted route to service the community south of the railroad tracks. Grade separating the crossing will eliminate train / vehicle conflicts and delays at the location, and provide for improved emergency response time.

Sunset Avenue will be lowered beneath the existing railroad tracks which will be supported on a new bridge. Construction will include modifications to the Interchange related to and required by the railroad grade separation improvements. The profile of Sunset Avenue will be lowered at the I-10 Freeway interchange and the existing on and off ramps will be adjusted to meet the new grade. The combination of these features will improve the overall safety in the area.

On June 8, 2010, the Board of Supervisors executed a Cooperative Funding Agreement with the City of Banning that authorized the County to perform the services necessary to prepare the project for construction and provided the funding needed for these services.

The project has been environmentally cleared, the final design is going through the final approval process and all property owners have agreed to terms for right-of-way acquisition.

The City of Banning, County of Riverside and Caltrans now desire to define the terms and conditions of cooperation by each agency in regards to the construction of the proposed improvements.

The terms of the agreement specify that the City of Banning will provide 100% of the funding, that the County of Riverside will perform the services necessary to deliver the project and that Caltrans will provide an Independent Quality Assurance of the work within the State right-of-way.

Caltrans Agreement No.: 08-1540

Caltrans Project No.: 0800020174

County Project No.: C0-0529

**CONSTRUCTION COOPERATIVE AGREEMENT**

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

City of Banning, a body politic and municipal corporation or chartered city of the State of California, referred to as CITY.

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

For the purpose of this agreement, the term LOCAL AGENCIES collectively refers to CITY and COUNTY.

For the purpose of this agreement, the term PARTNERS collectively refers to CALTRANS and LOCAL AGENCIES (all signatory parties to this agreement). The term PARTNER refers to any one of those signatory parties individually.

**RECITALS**

1. California Streets and Highways Code sections 114 and 130 authorize PARTNERS to enter into a cooperative agreement for performance of work within the State Highway System (SHS) right of way.
2. This agreement outlines the terms and conditions of cooperation between PARTNERS to construct a Railroad Grade Separation on Sunset Avenue near the Sunset Avenue/Interstate 10 (I-10) Interchange located in the City of Banning. Construction will include modifications to the Interchange related to and required by the railroad grade separation improvements.

For the purpose of this agreement, construction of Railroad Grade Separation Improvements and Interchange modifications on Sunset Avenue and I-10 in the City of Banning will be referred to as PROJECT. All responsibilities assigned in this agreement to complete the Construction will be referred to as OBLIGATIONS.

3. There are no prior PROJECT-related cooperative agreements.
4. Prior to this agreement, COUNTY developed the Plans, Specifications and Estimate and COUNTY developed the Right of Way Certification.
5. COUNTY statutorily exempted this project pursuant to CEQA. CALTRANS signed and approved the Categorical Exclusion on February 28, 2011 pursuant to NEPA.

6. CALTRANS approves all Hot Mix Asphalt (HMA) Job Mix Formula (JMF) and concrete mixes to be used on the SHS. CALTRANS will be compensated for all cost associated with these tasks in the amount of \$25,000. CALTRANS will be reimbursed from CITY's CMAQ construction support funds.
7. In this agreement capitalized words represent defined terms and acronyms. The Definitions section contains a complete definition of capitalized term.
8. From this point forward, PARTNERS define in this agreement the terms and conditions under which they will accomplish OBLIGATIONS.

### **RESPONSIBILITIES**

9. CITY is SPONSOR for 100% of PROJECT.
10. 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.
11. LOCAL AGENCIES may provide IQA for the portions of WORK outside existing and proposed SHS right of way.
12. CITY is the only FUNDING PARTNER for this agreement. CITY's funding commitment is defined in the FUNDING SUMMARY.
13. COUNTY is the CEQA lead agency for PROJECT.
14. CALTRANS is the CEQA responsible agency for PROJECT.
15. CALTRANS is the NEPA lead agency for PROJECT.
16. COUNTY is IMPLEMENTING AGENCY for CONSTRUCTION.

### **SCOPE**

#### **Scope: General**

17. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
18. IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN. The CALTRANS District Construction Division, with input from Structure

Construction must approve the QMP before the encroachment permit for construction is issued.

19. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
20. Each PARTNER will ensure that all of its personnel participating in OBLIGATIONS are appropriately qualified, and if necessary, licensed 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 OBLIGATIONS. IMPLEMENTING AGENCY shall retain the consultants. At least one representative from the Construction Division of CALTRANS shall participate in the selection process. A construction management firm shall not be selected without the approval by this representative.
22. If WORK is done under contract (not completed by a PARTNER's own employees) and is governed by the California Labor Code's definition of "public works" (section 1720(a)(a)), that PARTNER 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.
23. IMPLEMENTING AGENCY for each PROJECT COMPONENT included in this agreement will be available to help resolve problems generated by that component for the entire duration of PROJECT.
24. CALTRANS will issue, upon proper application, 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 any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
26. PARTNERS will hold all administrative drafts 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 PROJECT 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 OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public records. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
28. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
29. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
30. CITY and COUNTY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing SHS right of way. CITY and COUNTY will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact 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 MANAGEMENT ACTIVITIES related to HM-2.
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 OBLIGATIONS in that component.
35. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right of way as part of WORK become the property of CALTRANS.

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right of way.

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 OBLIGATIONS or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.
38. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs, and provide billing and payment support.
39. PARTNERS will comply with the appropriate federal cost principles and administrative requirements outlined in the Applicable Cost Principles and Administrative Requirements table below. These principles and requirements apply to all funding types included in this agreement.
40. PARTNERS will ensure that any party hired to participate in OBLIGATIONS will comply with the appropriate federal cost principles and administrative requirements outlined in the Applicable Cost Principles and Administrative Requirements table below.

<b>Applicable Cost Principles and Administration Requirements</b>		
The federal cost principles and administrative requirements associated with each organization type apply to that organization.		
<b>Organization Type</b>	<b>Cost Principles</b>	<b>Administrative Requirements</b>
Federal Governments	2 CFR Part 225	OMB A-102
State and Local Government	2 CFR, Part 225	49 CFR, Part 18
Educational Institutions	2 CFR, Part 220	2 CFR, Part 215
Non-Profit Organizations	2 CFR, Part 230	2 CFR, Part 215
For Profit Organizations	48 CFR, Chapter 1, Part 31	49 CFR, Part 18
<b>CFR (Code of Federal Regulations)</b>		
<b>OMB (Office of Management and Budget)</b>		
<b>Related URLs:</b>		
• Various OMB Circular:	<a href="http://www.whitehouse.gov/omb/grants_circulars">http://www.whitehouse.gov/omb/grants_circulars</a>	
• Code of Federal Regulations:	<a href="http://www.gpoaccess.gov/CFR">http://www.gpoaccess.gov/CFR</a>	

41. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this agreement.
42. PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.
43. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA, and LOCAL AGENCIES will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

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 auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt.

Upon completion of the final audit, PARTNERS have 30 days to refund or invoice as necessary in order to satisfy the obligation of the audit.

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.

44. PARTNERS will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.
45. Any PARTNER that hires another party to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual*.
46. 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, IMPLEMENTING AGENCY will promptly notify SPONSOR.

IMPLEMENTING AGENCY has no obligation to perform WORK if funds to perform WORK are unavailable.

47. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.



48. If WORK stops for any reason, each PARTNER will continue to implement all of its 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.
49. Each PARTNER accepts responsibility to complete the activities that it selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.
50. Contract administration procedures shall conform to CALTRANS' Construction Manual, Local Assistance Procedures Manual (if Federal funds are used), and the PROJECT encroachment permits.
51. If the Resident Engineer is not also a registered Landscape Architect, COUNTY will furnish, at CITY expense and subject to approval of CALTRANS Landscape Architecture, a registered Landscape Architect to perform work related to architecture treatment and landscaping and to perform the function of an Assistant Resident Engineer/Inspector who is responsible for both daily on-site inspection and final decisions including, but not limited to, any highway planting and the irrigation systems that comprise a portion of the PROJECT work, consistent with any applicable measures in the environmental commitments record. Final decisions shall continue to be subject to the satisfaction and approval of CALTRANS.
52. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, IMPLEMENTING AGENCY shall furnish CALTRANS a complete set of "As-Built" plans (hard copy and electronic formats) in accordance with CALTRANS' then current CADD Users Manual, Plans Preparation Manual, and CALTRANS practice. The submittal must also include all CALTRANS requested contract records, including survey documents and Records of Surveys (to include monument perpetuation per the Land Surveyor Act, (Business & Professions Code Section 8771), including but not limited to preconstruction monumentation documents and a post construction Record of Survey that have been filed with the County Surveyor's Office). COUNTY shall also submit corrected full-sized hardcopy structure plans.

**Scope: Environmental Permits, Approvals and Agreements**

- 53. PARTNERS anticipate that environmental permits, approvals, and applicable agreements are not needed for PROJECT. In the event that environmental permits, approvals, and applicable agreements are needed for PROJECT, PARTNERS will amend this agreement to include completion of those environmental permits, approvals, and applicable agreements.

Environmental Permits						
Permit	Coordinate	Prepare	Obtain	Implement	Renew	Amend
NONE	N/A	N/A	N/A	N/A	N/A	N/A

**Scope: CONSTRUCTION**

- 54. COUNTY will advertise, open bids, award, approve, and administer the construction contract in accordance with the California 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 SPONSOR verifies full funding of CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL.

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

PARTNERS agree that COUNTY is designated as the Legally Responsible Person and the Approved Signatory Authority pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person and the Approved Signatory Authority as mandated by the Construction General Permit.

- 55. COUNTY will provide a RESIDENT ENGINEER, licensed to practice Civil Engineering in the State of California, and construction support staff that are independent of the design engineering company and construction contractor.

56. IMPLEMENTING AGENCY will implement changes to the construction contract through contract change orders (CCOs). PARTNERS will review and concur on all CCOs over \$50,000. CALTRANS must approve 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 prior to implementing the CCO.
57. IMPLEMENTING AGENCY will use a CALTRANS-approved construction contract claims process, will administer all claims through said process, and will be available to provide advice and technical input in any claims process.
58. If the lowest responsible construction contract bid is greater than the funding commitment to 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 15 working days, the IMPLEMENTING AGENCY shall not award the construction contract.
59. COUNTY will require the construction contractor to furnish payment and performance bonds naming COUNTY as obligee, CALTRANS and CITY as additional obligee's, and to carry liability insurance in accordance with CALTRANS specifications. In the event that either CALTRANS or CITY determines that they intend to make a claim against the performance bond, the parties agree to meet and confer prior CALTRANS or CITY making said claim. In the event that either CALTRANS or CITY to pursue such claim against the construction performance bond after they meet and confer, they CALTRANS and CITY hereby agree that COUNTY is relieved of its performance obligation to complete the PROJECT.
60. COUNTY will submit a written request to CALTRANS for any SFM identified in the PROJECT plans, specifications, and estimate 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.
61. CALTRANS will make SFM available at a CALTRANS-designated location after COUNTY requests SFM and pays CALTRANS' invoice for actual SFM costs.
62. COUNTY will prepare a QMP which will include a description of how source inspection will be performed and will submit the QMP to CALTRANS for review and approval by the State Materials Engineer.

CALTRANS will issue the parent permit to COUNTY upon submittal of a complete encroachment permit application. The parent permit will cite approval of the QMP by CALTRANS as a condition of issuing the double permit.

CALTRANS will issue the double permit to the contractor upon submittal of a complete encroachment permit application and all conditions cited in the parent permit have been met.

COUNTY will provide, or cause to provide, source inspection services.

63. As IMPLEMENTING AGENCY for CONSTRUCTION, COUNTY is responsible for maintenance within PROJECT limits as part of the construction contract.
64. CITY and CALTRANS will execute a separate maintenance agreement prior to OBLIGATION COMPLETION.

### COST

#### **Cost: General**

65. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS COST.
66. CALTRANS, independent of PROJECT, will pay or cause to be paid all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
67. CITY and COUNTY, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside of the existing SHS right of way.
68. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
69. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS COST.
70. The cost to ensure that PROJECT remains in environmental compliance is an OBLIGATIONS COST.
71. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS COST.
72. Independent of OBLIGATIONS COST, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.
73. Independent of OBLIGATIONS COST, CITY will fund the cost of IQA for WORK done outside existing or proposed future SHS right of way.

74. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
75. Fines, interest, or penalties levied against a PARTNER will be paid, independent of OBLIGATIONS COST, by the PARTNER whose actions or lack of action caused the levy.
76. CALTRANS will administer all federal subvention funds identified on the FUNDING SUMMARY.
77. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this agreement.

If LOCAL AGENCIES invoice for rates in excess of DPA rates, LOCAL AGENCIES will fund the cost difference and reimburse CALTRANS for any overpayment.

78. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds are subject to the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and the Administration Rate are adjusted periodically.
79. If CALTRANS reimburses CITY for any costs later determined to be unallowable, CITY will reimburse those funds.
80. If CALTRANS reimburses COUNTY for any costs later determined to be unallowable, COUNTY will reimburse those funds.
81. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
82. 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.

83. 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, each PARTNER implementing commitments or conditions accepts responsibility to fund these activities, as they apply to each PARTNER's responsibilities, until such time as PARTNERS amend this agreement.

Each PARTNER may request reimbursement for these costs during the amendment process.

84. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

**Cost: Environmental Permits, Approvals and Agreements**

85. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is an OBLIGATIONS COST.

**Cost: CONSTRUCTION Support**

86. The cost to maintain the SHS within PROJECT limits is an OBLIGATIONS COST until CITY and CALTRANS execute a separate maintenance agreement.

87. Each PARTNER listed below may submit invoices for CONSTRUCTION Support:
- COUNTY may invoice CITY
  - CITY may invoice CALTRANS
  - CALTRANS may invoice CITY

88. A deposit may or may not be put into place based on future agreement between COUNTY and CITY.

COUNTY will submit to CITY monthly invoices for estimated monthly costs based on the prior month's actual expenditures.

After PARTNERS agree that all WORK is complete, COUNTY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

89. CITY will submit to CALTRANS monthly invoices of actual expenditures.

After PARTNERS agree that all WORK is complete, CITY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

90. CALTRANS will submit to CITY quarterly invoices for actual expenditures for approving the HMA JMF and concrete mixes as a CONSTRUCTION SUPPORT cost.

After PARTNERS agree that all WORK is complete, CALTRANS will submit a final accounting for approving the HMA JMF and concrete mixes. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments for approving the HMA JMF and concrete mixes.

**Cost: CONSTRUCTION Capital**

91. Each PARTNER listed below may submit invoices for CONSTRUCTION Capital:
- CALTRANS may invoice CITY
  - COUNTY may invoice CITY
  - CITY may invoice CALTRANS

92. The cost of all SFM is a CONSTRUCTION Capital cost.

CALTRANS will invoice CITY for the actual cost of any SFM as a CONSTRUCTION Capital cost.

After PARTNERS agree that all WORK is complete, CALTRANS will submit a final accounting for all SFM costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

93. A deposit may or may not be put into place based on future agreement between COUNTY and CITY.

COUNTY will submit to CITY monthly invoices for estimated monthly costs based on the prior month's actual expenditures.

After PARTNERS agree that all WORK is complete, COUNTY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

94. CITY will submit to CALTRANS monthly invoices of actual expenditures.

After PARTNERS agree that all WORK is complete, CITY will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

### **SCHEDULE**

95. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

### **GENERAL CONDITIONS**

96. PARTNERS understand that this agreement is 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 PARTNER initiating legal action arising from this agreement will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this agreement resides, or in the Superior Court of the county in which PROJECT is physically located.
97. 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.
98. Any PARTNER performing IQA does so for its own benefit. No one can assign liability to that PARTNER due to its IQA activities.
99. PARTNERS will meet the requirements of Government Code Section 8879.20 et al. (Proposition 1 legislation), the governor's Executive Order 2007-S-02-07, and the California Transportation Commission (CTC) program guidelines for the applicable account.

Right of way purchased using bond funds will become the property of CALTRANS, and any revenue from the sale of excess lands originally purchased with bond funds will revert to CALTRANS.



100. Neither CITY nor COUNTY nor any officer or employee thereof are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS and or its agents, under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

It is understood and agreed that, CALTRANS, to the extent permitted by law will defend, indemnify, and save harmless CITY and COUNTY and all of their 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 and/or its agents under this agreement.

101. Neither CALTRANS nor 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 CITY and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this agreement.

It is understood and agreed that, CITY, to the extent permitted by law will defend, indemnify, and save harmless CALTRANS and 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 CITY and/or its agents under this agreement.

102. Neither CALTRANS nor CITY 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 and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this agreement.

It is understood and agreed that, COUNTY, to the extent permitted by law will defend, indemnify, and save harmless CALTRANS and CITY 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 and/or its agents under this agreement.

103. PARTNERS do not intend this agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. PARTNERS do not intend this agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.

104. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this agreement.

105. PARTNERS will not interpret any ambiguity contained in this agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
106. 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.
107. 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.
108. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER 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 may initiate dispute resolution.
109. 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 CITY and COUNTY will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, 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 OBLIGATIONS in accordance with the terms of this agreement. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

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.

PARTNERS will file any civil complaints 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.

110. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
111. 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 PARTNERS will automatically sever those provisions from this agreement.

112. PARTNERS intend this agreement to be their final expression and supersede any oral understanding or writings pertaining to OBLIGATIONS.
113. 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.
114. PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
115. This agreement will terminate upon OBLIGATION COMPLETION or an amendment to terminate this agreement, whichever occurs first.

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

116. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY, CEQA Designation Letter.

## **DEFINITIONS**

**CALTRANS** – The California Department of Transportation

**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 (California Environmental Quality Act)** – The 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.

**CFR (Code of Federal Regulations)** – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

**CONSTRUCTION CAPITAL** – See PROJECT COMPONENT.

**CONSTRUCTION SUPPORT** – See PROJECT COMPONENT.

**COOPERATIVE AGREEMENT CLOSURE STATEMENT** – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this agreement and in all amendments to this agreement.

**COST** – The responsibility for cost responsibilities in this agreement can take one of three assignments:

- **OBLIGATIONS COST** – A cost associated with fulfilling OBLIGATIONS that will be funded as part of this agreement. The responsibility is defined by the funding commitments in this agreement.
- **PROJECT COST** – A cost associated with PROJECT that can be funded outside of OBLIGATIONS. A PROJECT COST may not necessarily be part of this agreement. This responsibility is defined by the PARTNERS' funding commitments at the time the cost is incurred.
- **PARTNER COST** – A cost that is the responsibility of a specific PARTNER, independent of PROJECT.

**FHWA** – Federal Highway Administration

**FHWA STANDARDS** – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at [www.fhwa.dot.gov/topics.htm](http://www.fhwa.dot.gov/topics.htm).

**FUNDING PARTNER** – A PARTNER that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds identified on the FUNDING SUMMARY under its name.

**FUNDING SUMMARY** – The table that designates an agreement’s funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

**GAAP (Generally Accepted Accounting Principles)** – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

**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 (QMP). 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.

**LOCAL AGENCIES** - The term that collectively references all of non-CALTRANS signatory agencies to this agreement.

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

**OBLIGATION COMPLETION** – PARTNERS have fulfilled all OBLIGATIONS included in this agreement, and all amendments to this agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

**OBLIGATIONS** – All responsibilities included in this agreement.

**OBLIGATIONS COST** – See COST.

**OMB (Office of Management and Budget)** – The federal office that oversees preparation of the federal budget and supervises its administration in Executive Branch agencies.

**PARTNER** – Any individual signatory party to this agreement.

**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** – The undertaking to construct a Railroad Grade Separation Improvements and Interchange modifications on Sunset Avenue and Interstate 10 (I-10) in the City of Banning.

**PROJECT COMPONENT** – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.
- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

**PROJECT COST** – See COST.

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

**QMP (Quality Management Plan)** – An integral part of the Project Management Plan that describes IMPLEMENTING AGENCY's 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 must be independent of the design engineering company and the construction contractor.

**SAFETEA-LU** – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

**SCOPE SUMMARY** – The attachment in which each PARTNER designates its 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)** – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

**SPONSOR** – Any PARTNER that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. If a PROJECT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

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

**WORK** – All scope activities included in this agreement.

**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. Contact information 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  
Fax Number: (909) 383-6938  
Email: emad.makar@dot.ca.gov

The primary agreement contact person for CITY is:

Kahono Oei, City Engineer  
P.O. Box 998  
Banning, California 92220  
Office Phone: (951) 922-3130  
Email: koei@ci.banning.ca.us

The primary agreement contact person for COUNTY is:

C. Scott Staley, Project Manager  
4080 Lemon Street  
Riverside, California 92502  
Office Phone: (951) 955-2029  
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

APPROVED

By: \_\_\_\_\_  
Basem E. Muallem, P.E.  
District Director

CERTIFIED AS TO FUNDS:

By: \_\_\_\_\_  
Lisa Pacheco  
Budget Manager

CITY OF BANNING

APPROVED

By: \_\_\_\_\_  
Don Robinson  
Mayor

By: \_\_\_\_\_  
Marie A. Calderon  
CITY Clerk

APPROVED AS TO FORM AND PROCEDURE

By: \_\_\_\_\_  
Dave Alshire  
CITY Attorney

COUNTY OF RIVERSIDE

APPROVED

By: \_\_\_\_\_  
John J. Benoit  
Chairman, Riverside County  
Board of Supervisor

By: \_\_\_\_\_  
Kecia Harper-Ihem  
Clerk of the Board

APPROVED AS TO FORM AND PROCEDURE

By: *Famela J. Walls, Deputy 2/11/13*  
Famela J. Walls  
COUNTY Counsel

### SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	CITY	COUNTY	N/A
5	270				Construction Engineering and General Contract Administration			X	
		10			Construction Staking Package and Control			X	
			10		Construction Staking Package			X	
			20		Project Control for Construction			X	
		15			Construction Stakes			X	
			15		Slope Stakes			X	
			25		Rough Grade Stakes			X	
			30		Final Grade Stakes			X	
			35		Drainage and Minor Structure Stakes			X	
			50		Miscellaneous Stakes			X	
			55		Photogrammetric Product for Construction			X	
			60		Ground Stakes for Major Structure			X	
			65		Superstructure Stakes for Major Structure			X	
		20			Construction Engineering Work			X	
			05		Resident Engineer's File Review			X	
			10		Project Plans, Special Provisions, and Estimate Review			X	
			15		Contract Pay Quantities			X	
			20		Lines and Grades Control			X	
			25		Contractors' Falsework Submittals Review			X	
			30		Contractors' Trenching and Shoring Submittals Review			X	
			35		Shop Plans Review			X	
			40		Cost Reduction Incentive Proposals Review			X	
			45		Contractors' Water Pollution Control Program Review			X	
			50		Technical Support			X	
			99		Other Construction Engineering Products			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
		05	Photographed Jobsite and Contractors' Operations		X
		10	Inspection of Contractors' Work for Compliance		X
		15	Contractors' Operations Relative to Safety Requirements Documentation		X
		20	Daily Diary of Contract Operations		X
		25	Punch List		X
		35	Construction Material Sampling and Testing		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
		80	Long-Term Environmental Mitigation/Mitigation Monitoring During Construction Contract		X
		99	Other Construction Engineering and General Contract Administration		X
5	275		Construction Engineering and General Contract Administration of Structures Work		X
		10	Office Administration Work for Structures		X
		20	Field Administration Work for Structures		X
		30	Contract Change Order Inspection for Structures Work		X
		40	Safety Tasks for Structures Work		X
5	285		Contract Change Order Administration		X
		05	Contract Change Order Process		X
		10	Functional Support		X
5	290		Resolve Contract Claims		X
		05	Analysis of Notices of Potential Claims		X
		10	Supporting Documentation and Responses to Notices of Potential Claims		X
		15	Reviewed and Approved Claim Report		X
		20	District Claim Meeting or Board of Review		X
		25	Arbitration Hearing		X
		30	Negotiated Claim Settlement		X
		35	Technical Support		X
5	295		Accept Contract, Prepare Final Construction Estimate, and Final Report		X
		05	Processed Estimate After Acceptance		X
		10	Proposed Final Contract Estimate		X
		15	As-Built Plans		X
		20	Project History File		X
		25	Final Report		X
		30	Processed Final Estimate		X

		40			Long Term Environmental Mitigation/Mitigation Monitoring After Construction Contract Acceptance		X		
		45			Post-Construction Traffic Operations Activities		X		
		99			Other Accept Contract/ Prepare Final Construction Estimate and Final Report			X	
4	300				FINAL RIGHT OF WAY ENGINEERING			X	
		05			Right of Way Monumentation			X	
		10			Trial Exhibits and Testimony			X	
		25			Relinquishment and Vacation Maps			X	
		30			Deed Package for Excess Land Transactions			X	
		35			Right of Way Record Map			X	

**FUNDING SUMMARY**

Funding Source	Funding Partner	Fund Type	CON Capital	CON Support	Subtotal Support	Subtotal Capital	Subtotal Funds Type
STATE	CITY	Trade Corridor Improvement Funds	\$9,600,000	\$400,000	\$400,000	\$9,600,000	\$10,000,000
FEDERAL	CITY	DEMO-SAFETEA-LU	\$1,600,000	\$0	\$0	\$1,600,000	\$1,600,000
FEDERAL	CITY	Projects for National and Regional Significance (PNRS)	\$7,500,000	\$0	\$0	\$7,500,000	\$7,500,000
FEDERAL	CITY	Surface Transportation Program Local	\$1,482,000	\$0	\$0	\$1,482,000	\$1,482,000
<b>FEDERAL</b>	<b>CITY</b>	<b>CMAQ</b>	<b>\$6,900,000*</b>	<b>\$3,100,000**</b>	<b>\$3,100,000</b>	<b>\$6,900,000</b>	<b>\$10,000,000</b>
		Subtotals by Component	\$27,082,000	\$3,500,000	\$3,500,000	\$27,082,000	\$30,582,000

\*Includes CALTRANS costs for the supply of State Furnished Material.

\*\*Includes CALTRANS costs for Approving HMA JMF and concrete mixes estimated cost at \$25,000 support.