

FORM APPROVED COUNTY COUNSEL
DATE 6/4/13
BY: MARSHA L. VICTOR

Departmental Concurrence

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

834
A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
May 2, 2013

SUBJECT: Amendment No. 1 to the Cooperative Funding Agreement between the County of Riverside (County) and the City of Banning (City) for a Proposed New Grade Separation at the Intersection of Sunset Avenue and the Union Pacific Railroad

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Amendment No. 1 to the Cooperative Funding Agreement between the County and the City; and
2. Authorize the Chairman of the Board of Supervisors to execute the same.

Juan C. Perez
Director of Transportation and Land Management

CSS:css
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 760,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

SOURCE OF FUNDS: City of Banning (100%) Project No. C0-0529	Positions To Be Deleted Per A-30	<input type="checkbox"/>
There are no General Funds used in this project.	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY:
Tina Grande

County Executive Office Signature

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

2013 JUN 11 5:03:08

Prev. Agn. Ref. 6/8/10, 3.63 **District:** 5/5 **Agenda Number:**

3-61

The Honorable Board of Supervisors

RE: Amendment No. 1 to the Cooperative Funding Agreement between the County of Riverside (County) and the City of Banning (City) for a Proposed New Grade Separation at the Intersection of Sunset Avenue and the Union Pacific Railroad

May 2, 2013

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BACKGROUND: The Sunset Avenue railroad crossing is currently at street level and causes significant traffic delays. A grade separation project has been proposed to enhance traffic flow along Sunset Avenue and would provide a route for emergency services to access residents south of the railroad tracks, while improving overall safety in the area. The proposed facilities are located within the jurisdictional boundaries of the City, and the City has requested that the County assist the City in expediting the project through the State Department of Transportation (Caltrans) in an effort to meet project funding deadlines.

On June 8, 2010, the Board of Supervisors approved an agreement with the City that authorized the County to provide the services necessary to develop the project and obtain relevant and necessary approvals from Caltrans and the Union Pacific Railroad. The terms of the agreement also provided reimbursement to the County for the cost of the services to be provided.

The original agreement allowed for the authorization of services in multiple phases. The County has obtained environmental clearance and is substantially complete with the preparation of plans, specifications, and estimates. The City and County desire to amend the agreement to provide the second phase of services consisting of right-of-way acquisition and utility relocation. This Amendment No. 1 provides \$760,000 in additional funds for the County to complete the right-of-way acquisition (in order to purchase an additional property) and notes that the utility relocations are projected to cost approximately \$4,000,000 and are to be paid directly by the City.

Project No. C0-0529

EXHIBIT "A"

**AGREEMENT BY AND BETWEEN RIVERSIDE COUNTY AND
CITY OF BANNING, APPROVING THE 1ST AMENDMENT,
AUTHORIZING RIVERSIDE COUNTY TO ACT AS LEAD
AGENCY TO PROVIDE ROADWAY AND BRIDGE
IMPROVEMENT SERVICES FOR THE SUNSET AVENUE
GRADE SEPARATION PROJECT**

RESOLUTION NO. 2012-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE 1ST AMENDMENT TO THE COOPERATIVE AGREEMENT, AUTHORIZING RIVERSIDE COUNTY TO ACT AS LEAD AGENCY TO PROVIDE ROADWAY AND BRIDGE IMPROVEMENTS ON SUNSET AVENUE GRADE SEPARATION PROJECT”

WHEREAS, City Council approval is necessary in order for the City of Banning to authorize Riverside County to act as lead agency to provide roadway and bridge improvement services, pursuant to the authority of California Government Code Section 6502 and California Code of Civil Procedure 1240.140; and

WHEREAS, the proposed underpass project would enhance traffic flows along Sunset Avenue and would provide a safe route for emergency services to access residents south of the railroad tracks, while improving overall traffic circulation in the area; and

WHEREAS, the Riverside County has extensive experience in the development and implementation of Federal and State involved interchanges and grade separation projects; and

WHEREAS, in order for the City to meet the Traffic Corridor Infrastructure Funding-1B (TCIF) deadline, County needs to obtain the Right-of-Way and construction activities for this project must commence on or before December 31, 2013; therefore, it may be necessary that eminent domain processes be initiated; and

WHEREAS, it is essential that the City of Banning work with Riverside County to exercise the eminent domain procedure;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. Approve and Authorize Riverside County to Act as Lead Agency to Provide Roadway and Bridge Improvement Services for the Sunset Avenue Grade Separation Improvements.

SECTION 2. This authorization will be rescinded if the 1st amendment to the Cooperative Agreement is not executed within three- hundred sixty (360) days of the date of this resolution attached hereto as Exhibit “A”.

PASSED, APPROVED, AND ADOPTED this 9th day of October, 2012.



Don Robinson, Mayor
City of Banning

ATTEST



Marie A. Calderon, City Clerk

**APPROVED AS TO FORM
AND LEGAL CONTENT**



David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-76 was duly adopted by the City Council of the City of Banning at the Regular Meeting thereof held on the 9th day of October, 2012, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Robinson

NOES: None

ABSENT: None

ABSTAIN: None



Marie A. Calderon, City Clerk
City of Banning, California

City of Banning and County Agreement for Sunset Avenue Grade Separation Improvements

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**1ST AMENDMENT TO AGREEMENT BETWEEN
RIVERSIDE COUNTY AND CITY OF BANNING**

FOR

ROADWAY AND BRIDGE IMPROVEMENT SERVICES ON SUNSET AVENUE

THIS 1st AMENDMENT (hereinafter the "Amendment") to an agreement is made and entered into as of this _____ day of _____, 2012, by and between the County of Riverside (hereinafter the "COUNTY"), and the City of Banning (hereinafter the "CITY").

RECITALS

- A. COUNTY and CITY have entered into an agreement for grade separation improvements on Sunset Avenue and the Union Pacific Railroad (hereinafter "PROJECT") entitled "Agreement by and Between Riverside County and City of Banning for Roadway and Bridge Improvement Services on Sunset Avenue Between Ramsey St and Southerly of the Union Pacific Railroad" that is dated June 8, 2010 (hereinafter the "Agreement"). The Agreement provides the terms and conditions, scope of work, schedule and budget for the COUNTY to perform professional and technical services necessary to complete the planning studies, preliminary engineering, utility coordination, technical studies, environmental clearance, right-of-way engineering and final plans, specs and estimates for the CITY.
- B. The Agreement provides that COUNTY and CITY intended to authorize the PROJECT services in multiple phases. The first phase included the services needed to complete the work as stated in Paragraph "A" above. It was anticipated that COUNTY would provide services to perform right-of-way acquisition, arrange for utility relocations, perform construction of the improvements and provide construction support services under future phases that would be authorized through amendments to this agreement.
- C. COUNTY has obtained environmental clearance and is substantially complete with the preparation of plans, specifications and estimate for PROJECT. The parties now desire to amend the agreement to provide additional funding and scope for the right-of-way acquisition and utility relocation services necessary to complete the PROJECT. Construction and construction support services will be provided by a future separate amendment to the Agreement.



City of Banning and County Agreement for Sunset Avenue Grade Separation Improvements

- 1 D. California Government Code Section 6502 provides that "[i]f authorized by their legislative or governing
2 bodies, two or more public agencies by agreement may jointly exercise any power common to the
3 contracting parties".
- 4 E. California Code of Civil Procedure Section 1240.140(b) provides that "[t]wo or more public agencies may
5 enter into an agreement for the joint exercise of their respective powers of eminent domain, whether or
6 not processed in common, for acquisition of property as a single parcel".
- 7 F. The COUNTY, and the CITY desire to designate the COUNTY as lead agency to perform right-of-way
8 activities required and to acquire necessary right-of-way for the PROJECT, including eminent domain, on
9 behalf of CITY.
- 10 G. CITY has applied for and has been designated to receive \$2,906,000 in Transportation Uniform Mitigation
11 Fee funding from the Western Riverside Council of Governments. The parties intend that these funds be
12 used for funding the services provided under this agreement.

13 **AGREEMENT**

14 NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

15 SECTION 1 (COUNTY AGREES) of the original Agreement is amended to include additional services as follows:

- 16 1. To perform right-of-way activities required to acquire necessary right-of-way for the PROJECT including
17 appraisals, acquisition, relocation and condemnation, if necessary.
- 18 2. To deliver legal title to the right-of-way, including access rights in compliance with the current State Right-
19 of-way manuals, procedures, and guidelines, free and clear of all encumbrances detrimental to CITY's
20 present and future uses not later than the date of acceptance by CITY of maintenance and operation of
21 the PROJECT. Acceptance of said title by CITY is subject to a review of a Policy of Title Insurance in
22 CITY's name to be provided by COUNTY.
- 23 3. To pass a Resolution to jointly exercise the powers of eminent domain pursuant to the authority of
24 California Government Code Section 6501 and California Code of Civil Procedures 1240.140, and to
25 thereby agree and accept that authorization for the COUNTY to act as lead agency for condemnation of
26 properties within the CITY, should it become necessary.
- 27 4. To prepare certain right-of-way documents in compliance with all applicable State and Federal laws and
28 regulations. Documents to be prepared by the COUNTY include but are not limited to Legal Descriptions,
29 Plats, Right-of-way Maps and Appraisals.



City of Banning and County Agreement for Sunset Avenue Grade Separation Improvements

1 5. To identify utility conflicts and design for and coordinate relocations for the PROJECT, if necessary.

2 SECTION 2 (CITY AGREES) of the original Agreement is amended to include additional obligations as follow:

3 1. To pass a Resolution, to jointly exercise the powers of eminent domain pursuant to the authority of
4 California Government Code Section 6501 and California Code of Civil Procedures 1240.140 and to
5 thereby authorize the COUNTY to act as lead agency for condemnation of properties within the CITY
6 should it become necessary; and to cooperate as requested by the COUNTY or required by law in
7 exercising said power.

8 2. To reimburse COUNTY for costs associated with right-of-way activities, including staff costs and outside
9 consultants and attorneys hired by COUNTY when required, for negotiations. CITY shall reimburse
10 COUNTY once COUNTY has incurred the cost and provided CITY with a properly documented invoice.
11 Funding from CITY to COUNTY as provided in the Agreement is amended by increasing the authorized
12 amount of \$3,200,000 by \$760,000 for a total revised budget of \$3,960,000. \$760,000 represents the
13 current estimated cost of acquisition. CITY agrees that should unforeseen circumstances arise which
14 result in an increase in cost, CITY will in good faith consider an amendment to this agreement to include
15 the additional cost.

16 3. CITY shall be responsible for submitting official notice/orders to the utility companies to relocate
17 conflicting facilities. CITY shall reimburse utility companies for PROJECT portions of the relocations
18 costs directly and these funds shall not be routed through COUNTY. The cost of utility relocations is
19 anticipated to be approximately \$4,000,000 as shown in Exhibit A – Project Cost Estimate.

20 IN WITNESS HEREOF, the parties hereto have caused this Amendment to the Agreement to be duly
21 executed this day and year first written above.



City of Banning and County Agreement for Sunset Avenue Grade Separation Improvements

1 APPROVALS

2 COUNTY Approvals

3 APPROVED AS TO FORM:

4 PAMELA J. WALLS, COUNTY COUNSEL

5
6 *P. Walls* Dated: 6/4/13

7 By Deputy

8
9 APPROVAL BY THE BOARD OF SUPERVISORS

10
11
12 _____ Dated: _____

13 PRINTED NAME

14 Chairman, Riverside County Board of Supervisors

15
16 ATTEST:

17
18
19 _____ Dated: _____

20 KECIA HARPER-IHEM

21 Clerk of the Board (SEAL)

CITY Approvals

CITY: BANNING

A. J. Takata Dated: 10/24/12

Andrew J. Takata

PRINTED NAME

City Manager

TITLE

CITY:

_____ Dated: _____

PRINTED NAME

TITLE



City of Banning and County Agreement for Sunset Avenue Grade Separation Improvements

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EXHIBIT A • PROJECT COST ESTIMATE

TASK	COUNTY	CITY	TOTAL
Engineering & Environmental	\$ 0	\$ 3,200,000	\$ 3,200,000
Right of way Acquisition	\$ 0	\$ 760,000	\$ 760,000
Utility Relocations *	\$ 0	\$ 4,000,000	\$ 4,000,000
Construction	TBD	TBD	TBD
Construction Support	TBD	TBD	TBD
TOTALS	\$ 0	\$ 7,960,000	\$ 7,960,000

TBD = To Be Determined

Notes:

* CITY shall reimburse the utility companies for costs associated with utility relocations directly. Funding for this activity will not be routed through County.