

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

626  
A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
April 26, 2012

**SUBJECT:** TUMF Funding Agreement with Western Riverside Council of Governments (WRCOG) for the Magnolia Avenue Grade Separation Project

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the subject TUMF Funding Agreement between WRCOG and the County, and authorize the Chairman to execute the same.
2. Authorize the Director of Transportation to approve future administrative amendments to this Agreement.

**BACKGROUND:** The proposed Magnolia Avenue Grade Separation Project is located in the unincorporated County area of Home Gardens, which is bordered by the City of Riverside and the City of Corona. Magnolia Avenue, a four-lane arterial currently crosses a Burlington

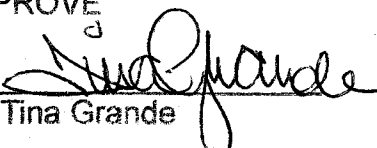
  
\_\_\_\_\_  
Juan C. Perez  
Director of Transportation

JCP:gh  
(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 2,000,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/2012

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

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

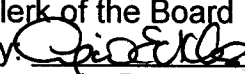
APPROVE  
BY:   
Tina Grande

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Buster, Tavaglione, Stone and Ashley  
**Nays:** None  
**Absent:** Benoit  
**Date:** May 1, 2012  
**xc:** Transp.

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

**Prev. Agn. Ref.** | **District:** 2/2 | **Agenda Number:**

**3.28**

FORM APPROVED COUNTY COUNSEL  
BY:   
DALE A. GARDNER  
DATE: 4/17/12  
Departmental Concurrence

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

The Honorable Board of Supervisors

RE: TUMF Funding Agreement with Western Riverside Council of Governments (WRCOG) for the Magnolia Avenue Grade Separation Project

April 26, 2012

Page 2 of 2

Northern Santa Fe (BNSF) Railroad at-grade between Lincoln Street and Buchanan Street. Currently, vehicle, pedestrian and bicycle traffic along Magnolia Avenue all traverse the crossing at the BNSF Railroad tracks. At this crossing, there are two mainline railroad tracks that service freight trains, as well as Metrolink and Amtrak commuter trains.

The proposed Project will grade separate Magnolia Avenue from where it crosses the railroad tracks, which would improve vehicular traffic circulation and provide uninterrupted and efficient access for motorists, pedestrians, bicycles and emergency vehicles in this area. The grade separation of the railroad tracks at Magnolia has been identified as one of the top locations by the Riverside County Transportation Commission (RCTC) in the comprehensive study that they performed Countywide. This project has been approved to receive \$13.7 million from the State Trade Corridor Improvement Funds (TCIF) towards construction. This project has also received an allocation of \$15 million from the Congestion Mitigation and Air Quality (CMAQ) Improvement Program. We will continue to work with our regional partners to identify full funding for this project.

This Agreement in the amount of \$2,000,000 is for the Right-of-Way phase of the Project. This amount is consistent with the revised budget amount currently programmed in the WRCOG Northwest Zone TIP for this Project. Additional TUMF funding for the Project may be added by future amendments, provided that additional TUMF revenues become available. This agreement has been approved by WRCOG.

Project Number: B70784

**TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

**AGREEMENT TO REIMBURSE TUMF FUNDS**

**MAGNOLIA AVENUE GRADE SEPARATION  
(LINCOLN ST TO BUCHANAN ST)**

THIS AGREEMENT ("Agreement") is made and entered into this 5<sup>th</sup> day of March, 2012, by and between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS ("WRCOG"), a California joint powers authority, and the COUNTY OF RIVERSIDE, acting through the COUNTY OF RIVERSIDE TRANSPORTATION DEPARTMENT, a subdivision of the State ("AGENCY"). WRCOG and AGENCY are sometimes hereinafter referred to individually as "Party" and collectively as "Parties."

**RECITALS**

A. WRCOG is the Administrator of the Transportation Uniform Mitigation Fee Program of Western Riverside County ("TUMF Program").

B. WRCOG has identified and designated certain transportation improvement projects throughout Western Riverside County as projects of regional importance ("Qualifying Projects"). The Qualifying Projects are more specifically described in that certain WRCOG study titled "TUMF Nexus Study," as may be amended from time to time. Qualifying Projects can have Regional or Zonal significance as further described in the TUMF Nexus Study.

C. The TUMF Program is funded by TUMF fees paid by new development in Western Riverside County (collectively, "TUMF Program Funds"). TUMF Program Funds are held in trust by WRCOG for the purpose of funding the Qualifying Projects.

D. The AGENCY proposes to implement a Qualifying Project, and it is the purpose of this Agreement to identify the project and to set forth the terms and conditions by which WRCOG will release TUMF Program Funds.

E. This Agreement is intended to cover the Right of Way phase of the Project described below, as further set forth herein and in the attached exhibits.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the Parties hereby agree as follows:

1. Description of the Qualifying Project. This Agreement is intended to distribute TUMF Program Funds to the AGENCY for MAGNOLIA AVENUE GRADE SEPARATION (LINCOLN STREET TO BUCHANAN STREET), (the "Project"), a Qualifying Project. The details of the Project, including the scope of work, the Project's estimated costs, and the Project's

schedule are more fully described in Exhibit "A," "A-1," and "A-2" attached hereto. Pursuant to Section 20 below, these details of the Project are subject to modification as requested by the AGENCY and approved by WRCOG. It is understood that the AGENCY shall expend TUMF Program Funds only as set forth in the Agreement and only for the Project. Any work done by the AGENCY shall be consistent with one or more of the defined WRCOG Call for Projects phases detailed as follows:

- 1) PA&ED – Project Approvals & Environmental Document
- 2) PS&E – Plans, Specifications and Estimates
- 3) R/W – Right of Way Acquisition and Utility Relocation
- 4) CON - Construction

2. WRCOG Funding Amount. WRCOG hereby agrees to distribute to AGENCY, on the terms and conditions set forth herein, a sum not to exceed **TWO MILLION DOLLARS (\$2,000,000)**, to be used for reimbursing the AGENCY for eligible Project expenses as described in Section 3 herein ("Funding Amount"). The Parties acknowledge and agree that the Funding Amount may be less than the actual cost of the Project. Nevertheless, the Parties acknowledge and agree that WRCOG shall not be obligated to contribute TUMF Program Funds in excess of the maximum TUMF share identified in the TUMF Nexus Study ("Maximum TUMF Share"), as may be amended from time to time.

3. Project Costs Eligible for Advance/Reimbursement. The total Project costs ("Total Project Cost") may include the following items, provided that such items are included in the scope of work attached hereto as Exhibit "A" ("Scope of Work"): (1) AGENCY and/or consultant costs associated with direct Project coordination and support; (2) funds expended in preparation of preliminary engineering studies; (3) funds expended for preparation of environmental review documentation for the Project; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the AGENCY, and costs of reviewing appraisals and offers for property acquisition; (5) costs reasonably incurred if condemnation proceeds; (6) costs incurred in the preparation of plans, specifications, and estimates by AGENCY or consultants; (7) AGENCY costs associated with bidding, advertising and awarding of the Project contracts; (8) construction costs, including change orders to construction contract approved by the AGENCY; (9) construction management, field inspection and material testing costs; and (10) any AGENCY administrative cost to deliver the Project.

4. Ineligible Project Costs. The Total Project Cost shall not include the following items, which shall be borne solely by the AGENCY without reimbursement: (1) any AGENCY administrative fees attributed to the reviewing and processing of the Project; and (2) expenses for items of work not included within the Scope of Work in Exhibit "A."

5. Procedures for Distribution of TUMF Program Funds to AGENCY.

(a) Initial Payment by the AGENCY. The AGENCY shall be responsible for initial payment of all the Project costs as they are incurred. Following payment of such Project costs, the AGENCY shall submit invoices to WRCOG requesting reimbursement of eligible Project costs. Each invoice shall be accompanied by detailed contractor invoices, or other

demands for payment addressed to the AGENCY, and documents evidencing the AGENCY's payment of the invoices or demands for payment. Documents evidencing the AGENCY'S payment of the invoices shall be retained for three (3) years and shall be made available for review by WRCOG. The AGENCY shall submit invoices not more often than monthly and not less often than quarterly.

(b) Review and Reimbursement by WRCOG. Upon receipt of an invoice from the AGENCY, WRCOG may request additional documentation or explanation of the Project costs for which reimbursement is sought. Undisputed amounts shall be paid by WRCOG to the AGENCY within thirty (30) days. In the event that WRCOG disputes the eligibility of the AGENCY for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the AGENCY may appeal WRCOG's decision as to the eligibility of one or more invoices to WRCOG's Executive Director. The WRCOG Executive Director shall provide his/her decision in writing. If the AGENCY disagrees with the Executive Director's decision, the AGENCY may appeal the decision of the Executive Director to the full WRCOG Executive Committee, provided the AGENCY submits its request for appeal to WRCOG within ten (10) days of the Executive Director's written decision. The decision of the WRCOG Executive Committee shall be final. Additional details concerning the procedure for the AGENCY's submittal of invoices to WRCOG and WRCOG's consideration and payment of submitted invoices are set forth in Exhibit "B", attached hereto.

(c) Funding Amount/Adjustment. If a post Project audit or review indicates that WRCOG has provided reimbursement to the AGENCY in an amount in excess of the Maximum TUMF Share of the Project, or has provided reimbursement of ineligible Project costs, the AGENCY shall reimburse WRCOG for the excess or ineligible payments within thirty (30) days of notification by WRCOG.

6. Increases in Project Funding. The Funding Amount may, in WRCOG's sole discretion, be augmented with additional TUMF Program Funds if the TUMF Nexus Study is amended to increase the maximum eligible TUMF share for the Project. Any such increase in the Funding Amount must be approved in writing by WRCOG's Executive Director. In no case shall the amount of TUMF Program Funds allocated to the AGENCY exceed the then-current maximum eligible TUMF share for the Project. No such increased funding shall be expended to pay for any Project already completed. For purposes of this Agreement, the Project or any portion thereof shall be deemed complete upon its acceptance by WRCOG's Executive Director which shall be communicated to the AGENCY in writing.

7. No Funding for Temporary Improvements. Only segments or components of the construction that are intended to form part of or be integrated into the Project may be funded by TUMF Program Funds. No improvement which is temporary in nature, including but not limited to temporary roads, curbs, tapers or drainage facilities, shall be funded with TUMF Program Funds, except as needed for staged construction of the Project.

8. AGENCY's Funding Obligation to Complete the Project. In the event that the TUMF Program Funds allocated to the Project represent less than the total cost of the Project, the AGENCY shall provide such additional funds as may be required to complete the Project.

9. AGENCY's Obligation to Repay TUMF Program Funds to WRCOG. In the event that: (i) the AGENCY, for any reason, determines not to proceed with or complete the Project; or (ii) the Project is not timely completed, subject to any extension of time granted by WRCOG pursuant to the terms of this Agreement; the AGENCY agrees that any TUMF Program Funds that were distributed to the AGENCY for the Project shall be repaid in full to WRCOG, except that funds for the planning phase work, also referred to as PA&ED phase work, shall not be subject to repayment. The Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism.

10. AGENCY's Local Match Contribution. Not Applicable.

11. Term/Notice of Completion. The term of this Agreement shall be from the date first herein above written until: (i) the date WRCOG formally accepts the Project as complete, pursuant to Section 6; (ii) termination of this Agreement pursuant to Section 15; or (iii) the AGENCY has fully satisfied its obligations under this Agreement. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

12. Representatives of the Parties. WRCOG's Executive Director, or his or her designee, shall serve as WRCOG's representative and shall have the authority to act on behalf of WRCOG for all purposes under this Agreement. The AGENCY hereby designates **JUAN C. PEREZ, DIRECTOR OF TRANSPORTATION**, or his or her designee, as the AGENCY's representative to WRCOG. The AGENCY's representative shall have the authority to act on behalf of the AGENCY for all purposes under this Agreement and shall coordinate all activities of the Project under the AGENCY's responsibility. The AGENCY shall work closely and cooperate fully with WRCOG's representative and any other agencies which may have jurisdiction over or an interest in the Project.

13. Expenditure of Funds by AGENCY Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the AGENCY from expending funds on the Project prior to the execution of the Agreement, or from being reimbursed by WRCOG for such expenditures. However, the AGENCY understands and acknowledges that any expenditure of funds on the Project prior to the execution of the Agreement is made at the AGENCY's sole risk, and that some expenditures by the AGENCY may not be eligible for reimbursement under this Agreement.

14. Review of Services. The AGENCY shall allow WRCOG's Representative to inspect or review the progress of the Project at any reasonable time in order to determine whether the terms of this Agreement are being met.

15. Termination.

(a) Notice. Either WRCOG or AGENCY may, by written notice to the other Party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other Party, by giving written notice to the other Party of such termination and specifying the effective date thereof. The written notice shall provide a thirty (30) day period to cure any

alleged breach. During the thirty (30) day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured.

(b) Effect of Termination. In the event that the AGENCY terminates this Agreement, the AGENCY shall, within 180 days, repay to WRCOG any unexpended TUMF Program Funds provided to the AGENCY under this Agreement and shall complete any portion of segment of work for the Project for which TUMF Program Funds have been provided. In the event that WRCOG terminates this Agreement, WRCOG shall, within ninety (90) days, distribute to the AGENCY TUMF Program Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the AGENCY regarding the Project at the time of the notice of termination; provided, however, that WRCOG shall be entitled to exercise its rights under Section 5(b), including but not limited to conducting a review of the invoices and requesting additional information. Upon such termination, the AGENCY shall, within one hundred eighty (180) days, complete any portion or segment of work for the Project for which TUMF Program Funds have been provided. This Agreement shall terminate upon receipt by the non-terminating Party of the amounts due to it hereunder and upon completion of the segment or portion of Project work for which TUMF Program Funds have been provided.

(c) Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

16. Prevailing Wages. The AGENCY and any other person or entity hired to perform services on the Project are alerted to the requirements of California Labor Code Sections 1770 *et seq.*, which would require the payment of prevailing wages were the services or any portion thereof determined to be a public work, as defined therein. The AGENCY shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform the Project. The AGENCY shall defend, indemnify, and hold harmless WRCOG, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys, fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770 *et seq.*

17. Progress Reports. WRCOG may request the AGENCY to provide WRCOG with progress reports concerning the status of the Project.

18. Indemnification.

(a) AGENCY Responsibilities. In addition to the indemnification required under Section 16, the AGENCY agrees to indemnify and hold harmless WRCOG, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of the AGENCY or its subcontractors. The AGENCY will reimburse WRCOG for any expenditures, including reasonable attorneys' fees, incurred by WRCOG, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of the AGENCY.

(b) WRCOG Responsibilities. WRCOG agrees to indemnify and hold harmless the AGENCY, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of WRCOG or its sub-consultants. WRCOG will reimburse the AGENCY for any expenditures, including reasonable attorneys' fees, incurred by the AGENCY, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of WRCOG.

(c) Effect of Acceptance. The AGENCY shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Project. WRCOG's review, acceptance or funding of any services performed by the AGENCY or any other person or entity under this Agreement shall not be construed to operate as a waiver of any rights WRCOG may hold under this Agreement or of any cause of action arising out of this Agreement. Further, the AGENCY shall be and remain liable to WRCOG, in accordance with applicable law, for all damages to WRCOG caused by the AGENCY's negligent performance of this Agreement or supervision of any services provided to complete the Project.

19. Insurance. The AGENCY shall require, at a minimum, all persons or entities hired to perform the Project to obtain, and require their subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to the AGENCY and WRCOG. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Project, whichever occurs last.

(a) Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:

(i) Name WRCOG and AGENCY, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Project and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;

(ii) Be primary with respect to any insurance or self insurance programs covering WRCOG and AGENCY, and/or their respective officials, officers, employees, agents, and consultants; and

(iii) Contain standard separation of insured provisions.

(b) Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.



(c) Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than one million dollars (\$1,000,000.00). Professional liability insurance shall only be required of design or engineering professionals.

(d) Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than one million dollars (\$1,000,000.00) per accident.

20. Project Amendments. Changes to the characteristics of the Project, including the deadline for Project completion, and any responsibilities of the AGENCY or WRCOG may be requested in writing by the AGENCY and are subject to the approval of WRCOG's Representative, which approval will not be unreasonably withheld, provided that extensions of time for completion of the Project shall be approved in the sole discretion of WRCOG's Representative. Nothing in this Agreement shall be construed to require or allow completion of the Project without full compliance with the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*; "CEQA") and the National Environmental Policy Act of 1969 (42 USC § 4231 *et seq.*), if applicable, but the necessity of compliance with CEQA and/or NEPA shall not justify, excuse, or permit a delay in completion of the Project.

21. Conflict of Interest. For the term of this Agreement, no member, officer or employee of the AGENCY or WRCOG, during the term of his or her service with the AGENCY or WRCOG, as the case may be, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

22. Limited Scope of Duties. WRCOG's and the AGENCY's duties and obligations under this Agreement are limited to those described herein. WRCOG has no obligation with respect to the safety of any Project performed at a job site. In addition, WRCOG shall not be liable for any action of AGENCY or its contractors relating to the condemnation of property undertaken by AGENCY or construction related to the Project.

23. Books and Records. Each Party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Project under this Agreement. They shall make available for examination by the other Party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other Party in relation to the expenditures and disbursements charged to the other Party pursuant to this Agreement. Further, each Party shall furnish to the other Party, its agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least four (4) years following termination of this Agreement, and they shall have access to such information during the four (4) year period for the purposes of examination or audit.

24. Equal Opportunity Employment. The Parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of employment because of race, religion, color, national origin, ancestry, sex or age. Such non-

discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, and layoff or termination.

25. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

26. Attorneys' Fees. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and costs of suit.

27. Time of Essence. Time is of the essence for each and every provision of this Agreement.

28. Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

29. Public Acknowledgement. The AGENCY agrees that all public notices, news releases, information signs and other forms of communication shall indicate that the Project is being cooperatively funded by the AGENCY and WRCOG TUMF Program Funds.

30. No Joint Venture. This Agreement is for funding purposes only and nothing herein shall be construed to make WRCOG a party to the construction of the Project or to make it a partner or joint venture with the AGENCY for such purpose.

31. Compliance With the Law. The AGENCY shall comply with all applicable laws, rules and regulations governing the implementation of the Qualifying Project, including, where applicable, the rules and regulations pertaining to the participation of businesses owned or controlled by minorities and women promulgated by the Federal Highway Administration and the Federal Department of Transportation.

32. Notices. All notices hereunder and communications regarding interpretation of the terms of this Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to AGENCY: County of Riverside Transportation Department  
Riverside County Administrative Center  
4080 Lemon Street, Eighth Floor  
Riverside, California 92502-1090  
Attention: Juan C. Perez, Director of Transportation  
Telephone: (951) 955-6740  
Facsimile: (951) 955-3198

If to WRCOG: Western Riverside Council of Governments  
Riverside County Administrative Center  
4080 Lemon Street, Third Floor  
Riverside, California 92501-3609  
Attention: Deputy Executive Director  
Telephone: (951) 955-7985  
Facsimile: (951) 787-7991

Any notice so given shall be considered served on the other Party three (3) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

33. Integration: Amendment. This Agreement contains the entire agreement between the Parties. Any agreement or representation respecting matters addressed herein that are not expressly set forth in this Agreement is null and void. This Agreement may be amended only by mutual written agreement of the Parties.

34. Severability. If any term, provision, condition or covenant of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

35. Conflicting Provisions. In the event that provisions of any attached appendices or exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the Agreement.

36. Independent Contractors. Any person or entities retained by the AGENCY or any contractor shall be retained on an independent contractor basis and shall not be employees of WRCOG. Any personnel performing services on the Project shall at all times be under the exclusive direction and control of the AGENCY or contractor, whichever is applicable. The AGENCY or contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Project and as required by law. The AGENCY or contractor shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

37. Effective Date. This Agreement shall not be effective until executed by both Parties. The failure of one Party to execute this Agreement within sixty (60) days of the other Party executing this Agreement shall render any execution of this Agreement ineffective.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

COUNTY OF RIVERSIDE, ACTING THROUGH THE COUNTY OF RIVERSIDE TRANSPORTATION DEPARTMENT

RECOMMENDED FOR APPROVAL:

By: *Rick Bishop*  
RICK BISHOP  
Executive Director

Date: 4-11-12

By: *Juan C. Perez*  
JUAN C. PEREZ  
Director of Transportation

Date: 4/16/12

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: *Steven C. DeBaun*  
STEVEN C. DEBAUN  
General Counsel

Date: 4/9/12

By: *Dale A. Gardner*  
Dale A. Gardner  
County Counsel

Date: 4/17/12

APPROVAL BY THE BOARD OF SUPERVISORS:

By: *John F. Tavaglione*  
JOHN F. TAVAGLIONE  
Chairman, Riverside County Board of Supervisors

Date: 5/1/12

ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

By: *Merrin Carr*  
Merrin Carr  
Deputy

Date: 5/1/12

**EXHIBIT "A"**

**SCOPE OF WORK**

**Magnolia Avenue Grade Separation**

**SCOPE OF WORK:**

The proposed Magnolia Avenue Grade Separation with BNSF Railroad is located in the unincorporated County area near Home Gardens between City of Riverside and the City of Corona. Magnolia Avenue, a four-lane arterial currently crosses the BNSF RR line at-grade just west of Buchanan Street.

The proposed project includes engineering and environmental analysis of the existing railroad at-grade crossing at Magnolia Avenue/BNSF RR for potential improvement as a grade-separated railroad crossing.

The proposed engineering analysis includes feasible alternatives studies on street alignments, bridge type, right-of-way, railroad operations and future track widening, utility interferences, review of Metrolink plans for additional service/track improvements and drainage improvement to accommodate proposed grade separation.

**Project Scope of Work Under this Agreement:**

The Project phase to be funded under this Agreement consists of the Right-of-Way phase only.

**Excluded Phases:**

Environmental and Engineering phases of this Project discussed above are included in a separate agreement, and TUMF Funding shall not be provided under this Agreement for these phases.

**EXHIBIT "A-1"**  
**ESTIMATE OF COST**

<b>Phase</b>	<b>TUMF</b>	<b>LOCAL</b>	<b>TOTAL</b>
<b>PA&amp;ED</b>	\$ NA	\$ NA	\$ NA
<b>PS&amp;E</b>	\$ NA	\$ NA	\$ NA
<b>RIGHT OF WAY</b>	\$2,000,000	\$0	\$2,000,000
<b>CONSTRUCTION</b>	TBD	TBD	TBD
<b>TOTAL</b>	TBD	TBD	TBD

**EXHIBIT "A-2"**  
**PROJECT SCHEDULE**

<b>Phase</b>	<b>Estimated Completion Date</b>	<b>Estimated Cost</b>	<b>Comments</b>
<b>PA&amp;ED</b>	NA	NA	NA
<b>PS&amp;E</b>	NA	NA	NA
<b>RIGHT OF WAY</b>	FY 12/13	\$2,000,000	NA
<b>CONSTRUCTION</b>	TBD	TBD	NA
<b>TOTAL</b>	TBD	TBD	NA

## Elements of Compensation

### EXHIBIT "B"

#### PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. For professional services, WRCOG recommends that the AGENCY incorporate Exhibit "B-1" provided herein into its contracts with any subcontractors to establish a standard method for preparation of invoices by contractors to the AGENCY and ultimately to WRCOG for reimbursement of AGENCY contractor costs.
2. Each month the AGENCY shall submit an invoice for eligible Project costs incurred during the preceding month to WRGOG. The original invoice shall be submitted to WRCOG's Executive Director with a copy to WRCOG's Project Coordinator. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit "B-2."
3. If the AGENCY has large construction projects (with the total construction cost exceeding ten million dollars (\$10,000,000.00) under construction at the same time, the AGENCY may, with the approval of WRCOG, submit invoices for eligible Project costs to WRCOG for payment of those eligible Project costs at the same time they are received by the AGENCY. WRCOG must receive the invoice by the fifth (5<sup>th</sup>) day of the month in order to process the invoice within thirty (30) days. WRCOG will retain ten percent (10%) of the invoice amount until all costs have been verified as eligible and will release the balance at regular intervals not more than quarterly and not less than semi-annually. If there is a discrepancy or ineligible costs that exceed ten percent (10%) of the previous invoice, WRCOG will deduct that amount from the next payment.
4. Each invoice shall include documentation from each contractor used by the AGENCY for the Project, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a monthly progress report and spreadsheets showing the hours or amounts expended by each contractor or subcontractor for the month and for the entire Project to date. Samples of acceptable task level documentation and progress reports are attached as Exhibit "B-4" All documentation from the AGENCY's contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit "B-3."
5. If the AGENCY seeks reimbursement for direct expenses incurred by AGENCY staff for eligible Project costs, the AGENCY shall provide the same level of information for its labor and any expenses as required of its contractors pursuant to Exhibit "B" and its attachments.
6. Charges for each task and milestone listed in Exhibit "A-2" shall be listed separately in the invoice.
7. Each invoice shall include a certification, signed by the AGENCY representative or his or her designee, which shall read as follows:

Exhibit B



"I hereby certify that the hours and salary rates submitted for reimbursement in this invoice are the actual hours and rates worked and paid to the contractors or subcontractors listed."

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Invoice No. \_\_\_\_\_

8. WRCOG will pay the AGENCY within thirty (30) days after receipt by WRCOG of an invoice. If WRCOG disputes any portion of an invoice, payment for that portion will be withheld, without interest, pending resolution of the dispute, but the uncontested balance will be paid.
9. The final payment under this Agreement will be made only after: (i) the AGENCY has obtained a Release and Certificate of Final Payment from each contractor or subcontractor used on the Project; (ii) the AGENCY has executed a Release and Certificate of Final Payment; and (iii) the AGENCY has provided copies of each such Release and Certificate of Final Payment to WRCOG.

**EXHIBIT "B-1"**  
**[Sample for Professional Services]**

For the satisfactory performance and completion of the Services under this Agreement, Agency will pay the Contractor compensation as set forth herein. The total compensation for the Services, which are the subject of this Agreement, shall not exceed (\_\_\_\_INSERT WRITTEN DOLLAR AMOUNT\_\_\_\_) (\$\_\_INSERT NUMERICAL DOLLAR AMOUNT\_\_) without written approval of Agency's City Manager [or applicable position] ("Total Compensation").

**1. ELEMENTS OF COMPENSATION.**

Compensation for the Services will be comprised of the following elements: 1.1 Direct Labor Costs; 1.2 Fixed Fee; and 1.3 Additional Direct Costs.

**1.1 DIRECT LABOR COSTS.**

Direct Labor costs shall be paid in an amount equal to the product of the Direct Salary Costs and the Multiplier which are defined as follows:

1.1.1 DIRECT SALARY COSTS

Direct Salary Costs are the base salaries and wages actually paid to the Contractor's personnel directly engaged in performance of the Services under the Agreement. (The range of hourly rates paid to the Contractor's personnel appears in Section 2 below.)

1.1.2 MULTIPLIER

The Multiplier to be applied to the Direct Salary Costs to determine the Direct Labor Costs is \_\_\_\_\_, and is the sum of the following components:

1.1.2.1 Direct Salary Costs \_\_\_\_\_

1.1.2.2 Payroll Additives \_\_\_\_\_

*The Decimal Ratio of Payroll Additives to Direct Salary Costs.* Payroll Additives include all employee benefits, allowances for vacation, sick leave, and holidays, and company portion of employee insurance and social and retirement benefits, all federal and state payroll taxes, premiums for insurance which are measured by payroll costs, and other contributions and benefits imposed by applicable laws and regulations.

### 1.1.2.3 Overhead Costs \_\_\_\_\_

*The Decimal Ratio of Allowable Overhead Costs to the Contractor Firm's Total Direct Salary Costs.* Allowable Overhead Costs include general, administrative and overhead costs of maintaining and operating established offices, and consistent with established firm policies, and as defined in the Federal Acquisitions Regulations, Part 31.2.

Total Multiplier \_\_\_\_\_  
 (sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3)

## 1.2 **FIXED FEE.**

1.2.1 The fixed fee is \$ \_\_\_\_\_.

1.2.2 A pro-rata share of the Fixed Fee shall be applied to the total Direct Labor Costs expended for services each month, and shall be included on each monthly invoice.

## 1.3 **ADDITIONAL DIRECT COSTS.**

Additional Direct Costs directly identifiable to the performance of the services of this Agreement shall be reimbursed at the rates below, or at actual invoiced cost.

Rates for identified Additional Direct Costs are as follows:

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
	[ <u>insert charges</u> ]
Per Diem	\$ /day
Car mileage	\$ /mile
Travel	\$ /trip
Computer Charges	\$ /hour
Photocopies	\$ /copy
Blueline	\$ /sheet
LD Telephone	\$ /call
Fax	\$ /sheet
Photographs	\$ /sheet

Travel by air and travel in excess of one hundred (100) miles from the Contractor's office nearest to Agency's office must have Agency's prior written approval to be reimbursed under this Agreement.

## 2. DIRECT SALARY RATES

Direct Salary Rates, which are the range of hourly rates to be used in determining Direct Salary Costs in Section 1.1.1 above, are given below and are subject to the following:

- 2.1 Direct Salary Rates shall be applicable to both straight time and overtime work, unless payment of a premium for overtime work is required by law, regulation or craft agreement, or is otherwise specified in this Agreement. In such event, the premium portion of Direct Salary Costs will not be subject to the Multiplier defined in Paragraph 1.1.2 above.
- 2.2 Direct Salary Rates shown herein are in effect for one year following the effective date of the Agreement. Thereafter, they may be adjusted annually to reflect the Contractor's adjustments to individual compensation. The Contractor shall notify Agency in writing prior to a change in the range of rates included herein, and prior to each subsequent change.

<u>POSITION OR CLASSIFICATION</u>	<u>RANGE OF HOURLY RATES</u>
[ <u>sample</u> ]	
Principal	\$ .00 - \$ .00/hour
Project Manager	\$ .00 - \$ .00/hour
Sr. Engineer/Planner	\$ .00 - \$ .00/hour
Project Engineer/Planner	\$ .00 - \$ .00/hour
Assoc. Engineer/Planner	\$ .00 - \$ .00/hour
Technician	\$ .00 - \$ .00/hour
Drafter/CADD Operator	\$ .00 - \$ .00/hour
Word Processor	\$ .00 - \$ .00/hour

- 2.3 The above rates are for the Contractor only. All rates for subcontractors to the Contractor will be in accordance with the Contractor's cost proposal.

## 3. INVOICING.

- 3.1 Each month the Contractor shall submit an invoice for Services performed during the preceding month to the Agency. The original invoice shall be submitted to Agency's Executive Director with two (2) copies to Agency's Project Coordinator.
- 3.2 Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by Agency's Representative.
- 3.3 Base Work and Extra Work shall be charged separately, and the charges for each task and Milestone listed in the Scope of Services, shall be listed separately. The charges for each individual assigned by the Contractor under this Agreement shall be listed separately on an attachment to the invoice.

- 3.4 A charge of five hundred dollars (\$500) or more for any one item of Additional Direct Costs shall be accompanied by substantiating documentation satisfactory to Agency such as invoices, telephone logs, etc.
- 3.5 Each copy of each invoice shall be accompanied by a Monthly Progress Report and spreadsheets showing hours expended by task for each month and total project to date.
- 3.6 If applicable, each invoice shall indicate payments to DBE subcontractors or supplies by dollar amount and as a percentage of the total invoice.
- 3.7 Each invoice shall include a certification signed by the Contractor's Representative or an officer of the firm which reads as follows:

I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed.

Signed \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_  
 Invoice No. \_\_\_\_\_

**4. PAYMENT**

- 4.1 Agency shall pay the Contractor within four (4) to six (6) weeks after receipt by Agency of an original invoice. Should Agency contest any portion of an invoice, that portion shall be held for resolution, without interest, but the uncontested balance shall be paid.
- 4.2 The final payment for Services under this Agreement will be made only after the Contractor has executed a Release and Certificate of Final Payment.

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**EXHIBIT B-2**  
**Sample Cover Letter to WRCOG**

Month/Date/Year

Western Riverside Council of Governments  
Riverside County Administrative Center  
4080 Lemon Street, Third Floor  
Riverside, California 92501-3679  
Attention: Deputy Executive Director  
ATTN: Accounts Payable

Re: Project Title - Invoice # \_\_

Enclosed for your review and payment approval is the Agency's invoice for professional and technical services that was rendered by our contractors in connection with the 2002 Measure "A" Local Streets and Roads Funding per Agreement No. \_\_\_\_\_ effective (Month/Day/Year). The required support documentation received from each contractor is included as backup to the invoice.

Invoice period covered is from Month/Date/Year to Month/Date/Year.

Total Authorized Agreement Amount:	\$0,000,000.00
Total Invoiced to Date:	\$0,000,000.00
Total Previously Invoiced:	\$0,000,000.00
Balance Remaining:	\$0,000,000.00

<b>Amount due this Invoice:</b>	<b>\$0,000,000.00</b>
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I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the contractors listed.

By: \_\_\_\_\_  
Name  
Title

cc:

Template – For Public Agency Use Only

**EXHIBIT B-3**

**Sample Letter from Contractor to AGENCY**

Month/Date/Year

Western Riverside Council of Governments  
Riverside County Administrative Center  
4080 Lemon Street, Third Floor  
Riverside, California 92501-3679  
Attention: Deputy Executive Director  
Attn: Accounts Payable

Invoice # \_\_\_\_\_

For **[type of services]** rendered by **[contractor name]** in connection with **[name of project]**  
This is per agreement No. XX-XX-XXX effective Month/Date/Year .

Invoice period covered is from Month/Date/Year to Month/Date/Year .

Total Base Contract Amount:	\$000,000.00
Authorized Extra Work (if Applicable)	\$000,000.00
	-----
<b>TOTAL AUTHORIZED CONTRACT AMOUNT:</b>	<b>\$000,000.00</b>
Total Invoice to Date:	\$000,000.00
Total Previously Billed:	\$000,000.00
Balance Remaining:	\$000,000.00
Amount Due this Invoice:	<u><u>\$000,000.00</u></u>

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed,

By: \_\_\_\_\_  
Name  
Title

Template – For Public Agency Use Only

**EXHIBIT B-4**  
**Sample Progress Report**

REPORTING PERIOD: Month/Date/Year to Month/Date/Year  
PROGRESS REPORT: #1

A. Activities and Work Completed during Current Work Periods

TASK 01 – 100% PS&E SUBMITTAL

1. Responded to Segment 1 comments from Department of Transportation
2. Completed and submitted Segment 1 final PS&E

B. Current/Potential Problems Encountered & Corrective Action

Problems	Corrective Action
None	None

C. Work Planned Next Period

TASK 01 – 100% PS&E SUBMITTAL

1. Completing and to submit Traffic Signal and Electrical Design plans
2. Responding to review comments