

## **AGENDA**

### **Major Projects Committee**

**January 12, 2012**

**9:00 a.m.**

#### **Location:**

**SANBAG Offices**

***The Super Chief Room***

**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410**

#### **Major Projects Committee Membership**

##### **Chair**

Dick Riddell, Mayor  
City of Yucaipa

Dennis Yates, Mayor  
City of Chino

Paul M. Eaton, Mayor  
City of Montclair

##### **Vice-Chair**

Michael Tahan, Council Member  
City of Fontana

Ed Graham, Council Member  
City of Chino Hills

Alan Wapner, Council Member  
City of Ontario

Janice Rutherford, Supervisor  
County of San Bernardino

Sarah Zamora, Mayor  
City of Colton

L. Dennis Michael, Mayor  
City of Rancho Cucamonga

Josie Gonzales, Supervisor  
County of San Bernardino

Larry McCallon, Mayor  
City of Highland

Pat Morris, Mayor  
City of San Bernardino

Gary Ovitt, Supervisor  
County of San Bernardino

Ed Scott, Mayor Pro Tem  
City of Rialto

Walt Stanckiewicz, Mayor  
City of Grand Terrace

Neil Derry, Supervisor  
County of San Bernardino  
*(Self-Suspension 5/3/2011)*

Rhodes "Dusty" Rigsby, Mayor  
City of Loma Linda

Ray Musser, Mayor  
City of Upland

Pete Aguilar, Mayor  
City of Redlands

*San Bernardino Associated Governments (SANBAG) is a council of governments formed in 1973 by joint powers agreement of the cities and the County of San Bernardino. SANBAG is governed by a Board of Directors consisting of a mayor or designated council member from each of the twenty-four cities in San Bernardino County and the five members of the San Bernardino County Board of Supervisors.*

*In addition to SANBAG, the composition of the SANBAG Board of Directors also serves as the governing board for several separate legal entities listed below:*

***The San Bernardino County Transportation Commission**, which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.*

***The San Bernardino County Transportation Authority**, which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.*

***The Service Authority for Freeway Emergencies**, which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.*

***The Congestion Management Agency**, which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.*

*As a **Subregional Planning Agency**, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.*

*Items which appear on the monthly Board of Directors agenda are subjects of one or more of the listed legal authorities. For ease of understanding and timeliness, the agenda items for all of these entities are consolidated on one agenda. Documents contained in the agenda package are clearly marked with the appropriate legal entity.*

San Bernardino Associated Governments  
County Transportation Commission  
County Transportation Authority  
Service Authority for Freeway Emergencies  
County Congestion Management Agency

**Major Projects Committee**  
**January 12, 2012**  
**9:00 a.m.**

**LOCATION:**  
**Santa Fe Depot**  
*The Super Chief Room*

1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino

CALL TO ORDER – 9:00 a.m.  
(Meeting chaired by Mayor Dick Riddell.)

- I. Attendance
- II. Announcements
- III. Agenda Notices/Modifications – Nessa Williams

**1. Possible Conflict of Interest Issues for the SANBAG Major Projects Meeting of January 12, 2011. Pg. 7**

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Member abstentions shall be stated and recorded on the appropriate item in the minutes summary for each month.

**Consent Calendar**

Consent Calendar items shall be adopted by a single vote unless removed by Board member request. Items pulled from the consent calendar will be brought up at the end of the agenda.

**2. Major Projects Attendance Roster Pg. 12**

A quorum shall consist of a majority of the membership of each SANBAG Policy Committee, except that all County Representatives shall be counted as one for the purpose of establishing a quorum.

**Notes/Action**

3. **Construction Change Orders to on-going SANBAG Construction Contracts with Skanska/Rados Joint Venture, C.C. Myers Inc., America West Landscaping, Pacific Restoration Group, Republic ITS and Bador Construction.** Pg. 16

Review and ratify change orders. **Garry Cohoe**

**Discussion Calendar**

4. **Hunts Lane Grade Separation Project Easement and Joint Use Agreement** Pg. 21

1. Approve transfer of aerial easements acquired for the Hunts Lane Grade Separation Project on parcels APN 0164-311-04, 0164-311-06, and 0164-321-27 in the Cities of Colton and San Bernardino by quit claim to Southern California Edison (SCE).

2. Approve Agreement C12188 with the City of Colton and SCE for joint use of easement acquired for the Hunts Lane Grade Separation Project. **Paula Beauchamp**

5. **Glen Helen Grade Separation Project Funding Advancement** Pg. 43

Authorize staff to include in the negotiations for the development of the construction cooperative agreement with the County of San Bernardino a funding advancement of Measure I 2010-2040 Valley Major Street funds to the County of San Bernardino for the Glen Helen Grade Separation Project per Measure I Strategic Plan Policy 400064, VMS-7. **Paula Beauchamp**

6. **Interstate 10 (I-10) Tippecanoe Interchange Construction Cooperative Agreement** Pg. 45

Approve Cooperative Agreement No. C12183 with the State of California Department of Transportation District 8 (Caltrans) for construction of the Phase 1 I-10 Tippecanoe Avenue Interchange Improvement project. **Paula Beauchamp**

7. **Palm Avenue Grade Separation Project Preferred Alternative and Environmental Clearance** Pg. 68

1. Approve Project Development Team (PDT) recommended Alternative 1 as the preferred alternative for the Palm Avenue Grade Separation Project as shown by Attachment "A".

2. Find that the Palm Avenue Grade Separation Project is Statutorily Exempt under CEQA guideline 15282(h), file Notice of Exemption (included as Attachment "B"), and authorize signature of same by the Director of Project Delivery. **Paula Beauchamp**

**8. Right-of-Way Legal Support Services for SANBAG Major Projects Program Pg. 72**

1. Award Contract No. C12043 to Woodruff, Spradlin & Smart for on-call Right of Way Legal Services for SANBAG Major Projects Program, for a not-to-exceed amount of \$4,042,750.

2. Authorize a four (4) year contract term through January 31, 2016 for Contract No. C12043, which exceeds the three (3) year maximum contract term for contracts as identified in SANBAG’s Contracting and Procurement Policy 11000. **Khalil Saba**

**9. Colton Crossing Rail Grade Separation Project Pg. 95**

Approve Trade Corridors Improvement Fund Agreement (TCIF) No. C12182 with Caltrans for the reimbursement of TCIF funds allocated to the Colton Crossing Rail Grade Separation Project. **Khalil Saba**

**10. Revised Funding Plan and Corridor Mobility Improvement Account (CMIA) Baseline Agreement Amendment C11108-01 for the I-215 Bi-County HOV Gap Closure Project. Pg. 169**

1. Approve revised Funding Plan for the I-215 Bi-County HOV Gap Closure Project as shown in Table 1.

2. Approve Amendment No. 1 to CMIA Baseline Agreement C11108 for the I-215 Bi-County HOV Gap Closure Project. **Khalil Saba**

**11. Interstate 215 (I-215) Bi-County HOV Gap Closure Project Pg. 185 Construction Cooperative Agreements**

1. Approve Cooperative Agreement No. R12190 with the Riverside County Transportation Commission (RCTC) for the Construction Phase of the I-215 Bi-County High Occupancy Vehicle (HOV) Gap Closure Project.

2. Approve Cooperative Agreement No. C12189 with Caltrans for the Construction Phase of the I-215 Bi-County HOV Gap Closure Project. **Khalil Saba**

12. **Purchase & Sale Agreements for acquisition of property necessary for the Newport Overcrossing Bridge Replacement, part of the Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure Project** Pg. 224

Authorize the Executive Director to act on behalf of SANBAG in signing Purchase & Sale Agreements, pursuant to SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507), to acquire the properties identified in Attachment "A" for construction of the Newport Overcrossing Bridge Replacement, part of the I-215 Bi-County HOV Gap Closure Project. **Khalil Saba**

**Additional Items from Committee Members**

**Director's Comments**

**Brief Comments by General Public**

**Acronym Listing**

Pg. 231

**ADJOURNMENT**

**The Next Major Projects Committee Meeting:  
February 9, 2012**

## Meeting Procedures and Rules of Conduct

### **Meeting Procedures**

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

### **Accessibility**

The SANBAG meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is (909) 884-8276 and office is located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA.

**Agendas** – All agendas are posted at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed at the SANBAG offices located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov).

**Agenda Actions** – Items listed on both the "Consent Calendar" and "Items for Discussion" contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.

**Closed Session Agenda Items** – Consideration of closed session items *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

**Public Testimony on an Item** – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a "Request to Speak" form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for *each* item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

**Agenda Times** – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

**Public Comment** – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board's authority. *Matters raised under "Public Comment" may not be acted upon at that meeting. "Public Testimony on any Item" still apply.*

**Disruptive Conduct** – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for meetings. Your cooperation is appreciated!*

**SANBAG General Practices for Conducting Meetings  
of  
Board of Directors and Policy Committees**

**Basic Agenda Item Discussion.**

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.

**The Vote as specified in the SANBAG Bylaws.**

- Each member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

**Amendment or Substitute Motion.**

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he would like to amend his motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is not addressed until after a vote on the first motion.
- Occasionally, a motion dies for lack of a second.

**Call for the Question.**

- At times, a member of the Board/Committee may “Call for the Question.”
- Upon a “Call for the Question,” the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair’s discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

**The Chair.**

- At all times, meetings are conducted in accordance with the Chair’s direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Board/Committee Chair.

**Courtesy and Decorum.**

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

*Adopted By SANBAG Board of Directors January 2008*



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM   1  

**Date:** January 12, 2012

**Subject:** Information Relative to Possible Conflict of Interest

**Recommendation\*:** Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

**Background:** In accordance with California Government Code 84308, members of the SANBAG Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Principals & Agents	Subcontractors
3-A	C09196	Skanska/Rados Joint Venture <i>Chad Mathes</i>	All American Asphalt Anderson Drilling CGO Construction Chrisp Company Coffman Specialties Cleveland Wrecking

\*

*Approved*  
 Major Projects Committee

*Date:* January 12, 2012

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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*Check all that apply.*  
 MPC1201z-gc

			CMC Fontana Steel D C Hubbs Dywidag-Systems Int. Elmore Pipe Jacking Foundation Pile Inc. Gerco Contracting Giken America Corp. Robert B. Longway Malcolm Drilling Co, Inc. Merli Concrete Pumping Modern Alloy MSL Electric Inc. Olivas Drilling Pacific Restoration Group Penhall Pomeroy Reycon Construction, Inc. Southwest V-ditch Statewide Safety & Sign Steve Bubalo Construction Valley Concrete Placing, Inc. VP Vertical Earthwork
3-B	C10007	C.C. Myers Inc. <i>Daniel E. Himick</i>	DC Hubbs Precision Survey Power Plus Moore Electrical Statewide Cruco Paving Diversified Landscape

			La Londe RMA Pavement Recycling Systems CMC Rebar Kirby Cal Stripe Top of Line Sweeping Harber Companies CGO Construction Concrete Coring Jo Jo trucking Riley Trucking G & F Concrete Cutting SRD Engineering Cooper Engineering Pipeline Calmex Engineering Gwinco CTM Construction Asher Avar Competitive Edge Engineering Hyatt Development Coral Construction Blue Iron Fisk K & B Boring Custom Rock
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			Cross-town Electrical and Data Dorado & Dorado Goss Construction Dywidag Systems Construction Rock Structures VT Electric Wilson Bros Trenching AC Dike Co. Alcorn Fence Amber Steel EBS utilities Jezowski and Arkey Constructors Penhall Company
3-C	C09203	America West Landscaping <i>Roy Anthony</i>	None
3-D	C11105	Pacific Restoration Group <i>John Richards</i>	Hi-Way Safety Ayala Boring JFL Electric, Inc.
3-E	C10198	Republic ITS <i>James A. Wagner</i>	None
3-F	C10190	Beador Construction <i>David Beador</i>	Cooper Engineering Cal-Stripe CGO Construction Bay Area Drill Golden State Boring United Steel Placers Diversified Landscape DC Hubbs

			Competitive Edge Electrical Murphy Industrial Coatings Sun Quest General Engineering V-Ditch Construction
3-G	C11004	C.C. Myers, Inc. <i>Daniel E. Himick</i>	Alcorn Fence Company Cal-Stripe Foundation Pile, Inc. Integrity Rebar Ecologic Landscape Elite Bobcat Services MSE Retaining Systems Murphy Industrial Coatings Sierra Pacific Electrical Visual Pollution Technologies
4	C12188	Southern California Edison (SCE) <i>Albert Ramirez</i>	None
8	C12043	Woodruff, Spradlin & Smart <i>Craig G. Farrington</i>	None

**Financial Impact:** This item has no direct impact on the SANBAG budget.

**Reviewed By:** This item is prepared monthly for review by SANBAG Board and Committee members.

**AGENDA ITEM 2  
MAJOR PROJECTS POLICY COMMITTEE ATTENDANCE RECORD – 2011**

Name	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Dick Riddell</b> City of Yucaipa	X	X	X	X	X	X	X	X	X	X	X	X
<b>John Pomierski</b> City of Upland	X	X										
<b>Ray Musser</b> City of Upland			X		X	X	X	X	X	X		X
<b>Janice Rutherford</b> Board of Supervisors		X					X	X	X	X		X
<b>David Zamora</b> City of Colton	X	X			X	X	X					
<b>Sarah Zamora</b> City of Colton										X		X
<b>Rhodes "Dusty" Rigsby</b> City of Loma Linda	X		X	X	X	X	X		X	X	X	X
<b>Walt Stanciewicz</b> City of Grand Terrace	X	X	X	X	X	X	X	X	X	X	X	X
<b>Jon Harrison</b> City of Redlands	X	X	X	X			X					
<b>Pete Aguilar</b> City of Redlands									X		X	X
<b>Josie Gonzales</b> Board of Supervisors	X		X	X		X	X	X	X		X	X
<b>Neil Derry</b> Board of Supervisors (Self Suspension 5/3/2011)	X	X	X	X								
<b>Larry McCallon</b> City of Highland	X		X	X	X	X	X	X	X	X	X	X
<b>Patrick Morris</b> City of San Bernardino	X	X	X	X	X	X	X	X	X	X	X	X

X = Member attended meeting.  
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Empty box = Member did not attend meeting

Shaded box = Not a member at the time.  
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**AGENDA ITEM 2  
MAJOR PROJECTS POLICY COMMITTEE ATTENDANCE RECORD - 2011**

Name	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Ed Graham</b> City of Chino Hills	X	X		X	X	X	X	X	X	X	X	X
<b>John Roberts</b> City of Fontana	X											
<b>Michael Tahan</b> City of Fontana		X	X	X	X	X	X	X	X	X	X	X
<b>Gary Ovitt</b> Board of Supervisors	X	X		X	X	X	X			X		
<b>Paul Eaton</b> City of Montclair	X	X	X	X	X	X	X	X	X		X	X
<b>Ed Scott</b> City of Rialto	X		X	X		X	X	X		X	X	
<b>Alan Wapner</b> City of Ontario	X	X	X		X	X	X		X			X
<b>Diane Williams</b> City of Rancho Cucamonga	X	X										
<b>L. Dennis Michael</b> City of Rancho Cucamonga				X		X	X	X		X		
<b>Dennis Yates</b> City of Chino	X	X	X	X	X	X	X	X	X	X		X

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**AGENDA ITEM 2**  
**MAJOR PROJECTS POLICY COMMITTEE ATTENDANCE RECORD – 2010**

Name	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Paul Eaton</b> City of Montclair	Cancelled	X	X	X	X	X		X	X	X	X	X
<b>John Pomierski</b> City of Upland	Cancelled	X	X	X	X	X	X	X	X	X	X	X
<b>Paul Biane</b> Board of Supervisors	Cancelled	X					X					
<b>Janice Rutherford</b> Board of Supervisors												X
<b>Kelly Chastain</b> City of Colton	Cancelled	X	X	X	X	X		X		X	X	
<b>Rhodes "Dusty" Rigby</b> City of Loma Linda	Cancelled	X	X	X	X			X	X	X	X	X
<b>Bea Cortes</b> City of Grand Terrace	Cancelled	X	X	X	X		X	X	X	X		
<b>Pat Gilbreath</b> City of Redlands	Cancelled	X	X	X	X	X	X		X	X	X	
<b>Josie Gonzales</b> Board of Supervisors	Cancelled	X		X	X	X	X					X
<b>Neil Derry</b> Board of Supervisors	Cancelled	X	X	X	X	X		X	X	X	X	X
<b>Larry McCallon</b> City of Highland	Cancelled		X	X	X	X		X			X	X
<b>Patrick Morris</b> City of San Bernardino	Cancelled	X	X	X	X	X	X	X	X	X	X	X
<b>Ed Graham</b> City of Chino Hills	Cancelled	X		X	X	X	X	X	X	X	X	X
<b>Mark Nuaimi</b> City of Fontana	Cancelled	X	X	X	X							

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**AGENDA ITEM 2  
MAJOR PROJECTS POLICY COMMITTEE ATTENDANCE RECORD – 2010**

Name	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>John Roberts</b> City of Fontana							X	X	X	X	X	X
<b>Gary Ovitt</b> Board of Supervisors	Cancelled		X	X		X			X			
<b>Dick Riddell</b> City of Yucaipa	Cancelled	X	X	X	X	X	X	X	X	X	X	X
<b>Ed Scott</b> City of Rialto	Cancelled			X		X	X	X	X			
<b>Alan Wapner</b> City of Ontario	Cancelled	X	X		X	X	X	X		X	X	X
<b>Diane Williams</b> City of Rancho Cucamonga	Cancelled	X			X	X	X	X	X	X	X	X
<b>Dennis Yates</b> City of Chino	Cancelled	X	X	X	X	X	X	X		X	X	X

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM:   3  

**Date:** January 12, 2012

**Subject:** Construction Change Orders to on-going SANBAG Construction Contracts with Skanska/Rados Joint Venture, C.C. Myers Inc., America West Landscaping, Pacific Restoration Group, Republic ITS and Bedor Construction.

**Recommendation:**\* Review and ratify change orders.

**Background:** Of SANBAG's six on-going construction contracts and one recently completed contract, all have had contract change orders (CCO's) approved in the period from October to December 2011 which had not been previously presented to the Major Projects Committee. The CCO's are listed below:

- A. CN C09196 with Skanska/Rados Joint Venture for construction of the I-215 Segments 1 and 2 project, totaling \$1,109,736.86 with a remaining contingency balance of \$7,284,858.20: CCO No. 5 Supplement 3, (\$24,000.00 increase per Supplemental Work item to provide payment for maintaining and repairing existing electrical systems); CCO No. 10 Supplement 2, (\$10,000.00 increase per Supplemental Work item to compensate contractor for potholing existing utilities); CCO No. 11 Supplement 3, (\$50,000.00 increase per Supplemental Work item for payment for removal and disposal of buried man-made objects); CCO No. 64 Supplement 3, (\$86,000.00 increase for additional funds to compensate the contractor for additional cost in performing to complete right-of-way obligation on properties that are temporarily utilized during construction);

\*

	<p><i>Approved</i>  <i>Major Projects Committee</i></p> <p>Date: <u>  January 12, 2012  </u></p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p>
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CCO No. 68 Supplement 2, (\$85,000.00 increase per Supplemental Work item to provide payment for modifying existing and/or new drainage systems during construction staging); CCO No. 86, (\$64,003.59 increase for adding powder-coated black color on new and already installed galvanized railing assemblies at the 9<sup>th</sup> St, Baseline St. and 16<sup>th</sup> St. bridges. This change was requested by Caltrans to be consistent with the 5<sup>th</sup> Street bridge); CCO No. 92, (\$25,000.00 increase to compensate the contractor for overtime pay required for December 10, 2010 weekend closure at Baseline and H Street intersection); CCO No. 96, (\$80,145.00 increase to construct northbound pavement transition from Segment 2 into Segment 5 due to unforeseen elevation difference between stages); CCO No. 113, (\$10,000.00 increase to construct concrete barrier transition between existing and new barriers at the southbound 5<sup>th</sup> St off-ramp area); CCO No. 117, (\$5,000.00 increase to modify concrete barrier to accept drainage inlets); CCO No. 119, (\$15,000.00 increase to modify deck drain at 5<sup>th</sup> St on ramp bridge, soffit thickness at 3<sup>rd</sup> St bridge and reinforcement change at 5<sup>th</sup> St on ramp bridge); CCO No. 120, (\$64,836.00 increase to modify Caltrans fiber optic communication system); CCO no. 121, (\$40,000.00 increase to install anti-theft electrical pull box covers and modify pull box installation); CCO No. 123, (\$27,863.48 increase for miscellaneous electrical changes on Baseline St and Highland Ave); CCO No. 124, (\$30,000.00 increase for temporary asphalt paving to accommodate construction staging); CCO No. 126, (\$766.32 increase to remove and salvage city street light standards along Baseline St); CCO No. 127, (\$80,000.00 increase to remove and replace failed PCCP in Segment 1); CCO No. 128, (\$69,122.75 increase for additional drainage along Retaining Wall 242A); CCO No. 129, (\$194,000.20 increase for placement of polyester concrete overlay on the Rialto Ave bridge due to cracking and exposed reinforcement bars per Caltrans request); CCO No. 132, (\$24,000.00 increase to settle NOPC No. 9 for additional costs to provide K-rail as required under CCO No. 84) and CCO No. 133, (\$125,000.00 increase to settle NOPC No. 14 for additional costs incurred with Retaining Wall No 242B).

- B. CN C10007 with C.C. Myers Inc. for the I-10 and Riverside Avenue Interchange reconstruction project, totaling \$1,298,481.74 with a remaining contingency balance of \$1,098,267.59: CCO No. 1 Supplements 2 and 3, (\$15,000.00 and \$30,000.00 increase respectively for Supplemental Work item to provide payment for maintaining roadways for the convenience of public traffic); CCO No. 4, (\$11,870.87 increase for additional silt fencing and check dam BMP's as identified in the SWPPP); CCO No. 13, (\$21,247.85 increase per Supplemental Work item to provide payment for additional work in maintaining existing and temporary electrical systems); CCO No. 25, (\$51,930.90 increase for revisions to six (6) overhead signs); CCO No. 28, (\$3,000.00 increase to compensate contractor for modifications to Retaining Wall 320 to avoid

conflicting with SCE underground duct system); CCO No. 29, (\$70,261.64 increase for revisions to irrigation system); CCO No. 36, (\$14,361.24 increase to compensate contractor for two additional manholes in existing storm drain system); CCO No. 40 Supplement 1, (15,000.00 increase per Supplemental Work item to compensate contractor for removal and disposal of buried manmade objects); CCO No. 45, (\$7,051.76 decrease due to revision to amount of Aerial Deposited Lead excavation area); CCO No. 46, (\$249,675.14 increase to compensate contractor for increase in roadway excavation quantity due to incorrect bid quantity in Engineers Estimate); CCO No. 47, (\$1,943.86 increase to compensate contractor for extra work involved in handling 8" VCP where concrete duct was expected); CCO No. 49, (no cost/no credit to allow contractor to use alternate grading of Hot Mix Asphalt pavement); CCO No. 52, (\$25,000.00 increase per Supplemental Work item to provide payment for additional traffic control, striping and signage for local vendors); CCO No. 54, (\$7,000.00 increase to compensate contractor for extra work involved in re-grading for sidewalk, curb and gutter and driveway due to redesign for lack of right of way); CCO No. 56, (\$35,000.00 increase to provide for electrical system not included as part of the plans to illuminate Overhead Signs E and F); CCO No. 58 and Supplement 1, (\$3,000.00 each increase respectively for revisions to irrigation crossovers); CCO No. 60, (\$5,223.00 increase for additional reinforcing bars to construct pre-tensioned pre-stressed concrete bridge girders); CCO No. 62, (\$1,612.00 decrease due to reduction of signage along Riverside Drive and Valley Boulevard); CCO No. 66, (\$6,384.00 decrease due to deletion of two irrigation controller cabinets from project); CCO No. 67, (\$111,015.00 increase for modifications to existing Caltrans I10 main line irrigation system due to errors in as-built conditions); CCO No. 71, (\$10,000.00 increase to compensate contractor for design modifications at Chevron property due to deletion of Temporary Construction Easement); CCO No. 76, (\$15,000.00 increase for removal, disposal and backfill of two existing sign foundations); CCO No. 77, (\$15,000.00 increase for removal and disposal of four trees along two ramp areas per Caltrans request) and CCO No. 85, (\$600,000.00 increase to compensate contractor for Incentive Payment for early completion of work).

- C. CN C09-203 with America West Landscaping for the SR-210 Segment 4 Establish Existing Planting project: CCO No. 4, (\$4,495.67 decrease for reduction of working days to 490, a decrease of 10 days) and CCO No. 4 S-1, (no cost/no credit for provide an additional 16 working days to complete required contract work).
- D. CN C11105 with Pacific Restoration Group for the SR-210 Segment 8 Landscape construction project totaling \$65,764.59 with a contingency balance of \$392,796.41: CCO No. 2 Supplement 1, (\$9,951.47 increase per Supplemental Work to compensate contractor for correcting

- deficiencies with existing irrigation); CCO No 3 Supplement 1, (\$9,313.12 increase for correcting deficiencies with existing plantings); CCO No. 4, (\$7,500.00 increase to compensate contractor for removal of buried manmade objects); CCO No. 5, (\$10,000.00 increase to compensate contractor for actual and anticipated increased water rates and water availability charges); CCO No. 6, (\$35,000.00 increase for providing sand bedding material in irrigation pipe supply line trenches due to native rocky soils); CCO No. 7, (\$15,000.00 decrease for allowing contractor to use existing irrigation controller and electrical service equipment); CCO No. 8, (\$6,000.00 increase to compensate contractor for SANBAGs share of SWPPP maintenance costs) and CCO No. 9, (\$3,000.00 increase for repair and/or modify existing irrigation system for use as part of the new irrigation system).
- E. CN C10198 with Republic ITS for the Tiers 3 & 4 Valleywide Coordinated Signal Program project totaling \$84,990.00 with a remaining contingency balance of \$199,124.38: CCO No. 8, (\$50,000.00 increase to compensate contractor for numerous modifications to IP radio communication systems to increase functionality of existing city equipment); CCO No. 9, (\$7,000.00 increase to compensate contractor for relocation of planned communication and controller equipment in the Cities of Upland and Chino Hills due to change in field conditions); CCO No. 10, (\$10,000.00 increase to compensate contractor for relocation of planned equipment and installation of Signal Interconnect Cable due to changes in field conditions) and CCO No. 11, (\$17,990.00 increase for the installation of Battery Backup System cabinets at 7 locations in Rancho Cucamonga due to inadequate space for additional required equipment in existing cabinet).
- F. CN C10-190 with Beador Construction Co. for the I-10 Westbound Lane Addition project: CCO No. 13, (\$15,849.10 decrease due to design changes to Drainage Systems 2, 11, 12 and 13); CCO No. 15, (\$2,000.00 increase for additional work installing median barrier joint filler) and CCO No. 18, (\$990.00 increase to compensate contractor for providing temporary chain link gate).
- G. CN C11-004 with C.C. Myers Inc. for the North Milliken Avenue Grade Separation project: CCO No. 4, (\$10,000.00 increase per Supplemental Work to provide payment for additional traffic control measures for public convenience and safety as requested by the Engineer. was there more traffic than anticipated); CCO No. 5, (\$15,000.00 increase for removal and disposal of unforeseen buried manmade objects) and CCO No. 7, (\$25,000.00 increase for performance of unconventional subsurface exploratory work to locate utilities in bridge foundation areas in close proximity to operational rail tracks).

***Financial Impact:*** This item imposes no financial impact, as all CCOs are within previously approved contingency amounts. TN 83812000, TN 84112000, TN 82412000, TN 70112000, TN 86212000 and TN 88212000.

***Reviewed By:*** This item will be reviewed by the Major Projects Committee on January 12, 2012 and has been reviewed by SANBAG Legal Counsel as to form.

***Responsible Staff:*** Garry Cohoe, Director of Project Delivery



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

**Minute Action**

AGENDA ITEM: 4

**Date:** January 12, 2012

**Subject:** Hunts Lane Grade Separation Project Easement and Joint Use Agreement

- Recommendation:\***
1. Approve transfer of aerial easements acquired for the Hunts Lane Grade Separation Project on parcels APN 0164-311-04, 0164-311-06, and 0164-321-27 in the Cities of Colton and San Bernardino by quit claim to Southern California Edison (SCE).
  2. Approve Agreement C12188 with the City of Colton and SCE for joint use of easement acquired for the Hunts Lane Grade Separation Project.

**Background:** **Recommendation 1:** SANBAG has been the lead and implementing agency for the Hunts Lane Grade Separation Project in the Cities of Colton and San Bernardino. As part of this project, SANBAG, acting as the San Bernardino County Transportation Commission, has acquired a variety of necessary easements in order to construct the project. The majority of these easements have been acquired in order to relocate existing utilities, which are within the existing right of way, and need to be moved as a result of raising Hunts Lane to grade separate the road over the Union Pacific Railroad (UPRR) tracks.

In particular, SANBAG acquired three aerial easements from property owners to secure air space adjacent to relocated overhead power lines owned by SCE. This air space is reserved as the power lines sag between utility poles and can sway with the wind. The reservation of this air space insures that there are no potential

\*

*Approved  
 Major Projects Committee*

*Date: January 12, 2012*

*Moved: Second:*

*In Favor: Opposed: Abstained:*

*Witnessed: \_\_\_\_\_*

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

MPC1201f-das

Attachments: C12188 and MPC1201f1-das

obstructions to the potential swaying of these power lines, which could create a hazardous condition. Since these aerial easements are solely to facilitate the SCE power lines and are of no benefit to either City, it has been determined that conveying these easements directly to SCE would benefit both the Cities and SCE. Conveying the easements now allows SCE to go ahead and relocate their facilities before the start of construction and advance the overall project schedule. A copy of the proposed quit claim document is attached to this agenda item as Attachment A. Staff recommends the quit claim transfer of these aerial easements directly to SCE at this time.

**Recommendation 2:** In addition to the acquired aerial easements, SANBAG acquired utility easements on each side of Hunts Lane. These easements were acquired to accommodate utilities that needed to be relocated as a result of the Hunts Lane Grade Separation Project. One of the utilities to be relocated was SCE lines on the east side of Hunts Lane. The existing underground SCE lines are located within an easement acquired by SCE, which establishes prior rights for these facilities. SANBAG is required to provide a similar easement to SCE that replaces their existing easement. The utility easement acquired by SANBAG on the west side of Hunts Lane that will accommodate the relocated SCE lines will be conveyed by quit claim to the City of Colton upon completion of construction. To provide SCE the same prior rights which they have in their existing location, this joint use agreement is being executed between SANBAG, the City of Colton and SCE such that SCE will have prior rights in the new utility easement. Once the utility easements are quit claimed to the City of Colton, SANBAG's involvement in the agreement will be terminated. Staff recommends approval of Agreement C12188.

**Financial Impact:** This item is consistent with the adopted Fiscal Year 2011/2012 budget, Task No. 87012000. There is no cost impact to SANBAG as a result of these agreements.

**Reviewed By:** This item will be reviewed by the SANBAG Major Projects Committee on January 12, 2012. SANBAG Legal Counsel and Contracts Manager have reviewed and approved the agreement as to form.

**Responsible Staff:** Paula Beauchamp, Project Delivery Manager



## CONTRACT SUMMARY SHEET

Contract No. C 12188 Amendment No. \_\_\_\_\_

By and Between

City of Colton, Southern California Edison and San Bernardino County Transportation Commission

Contract Description Joint Use Easement for SCE facilities in the Hunts Lane Grade Separation Project

**Board of Director's Meeting Date:** 2/1/12

**Overview of BOD Action:** Approve rights and responsibilities between SANBAG and City of Colton, and Southern California Edison. There is no cost to SANBAG with this agreement.

Is this a Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	0	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>0</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 0</b>

<b>Contract Start Date</b> 2/1/12	<b>Current Contract Expiration Date</b> 2/1/15	<b>Revised Contract Expiration Date</b>
--------------------------------------	---	---

Has the contract term been amended?  No  Yes - please explain.

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 870.

A Budget Amendment is required.

How are we funding current FY?

Federal Funds  
  State Funds  
  Local Funds  
  TDA Funds  
  Measure I Funds

*Provide Brief Overview of the Overall Funding for the duration of the Contract:*

This contract covers the federal funds reimbursement from Caltrans

Payable    Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %    Underutilized DBE (UDBE) Goal \_\_\_\_\_ %

	1/4/12 Date		12/20/11 Date
Task Manager Signature		Project Manager Signature	
	1/4/12 Date		Date
Chief Financial Officer Signature		Contracts Manager Signature	

mm  
1/4/2012

RECORDING REQUESTED BY  
SOUTHERN CALIFORNIA EDISON  
COMPANY

WHEN RECORDED MAIL TO:

SOUTHERN CALIFORNIA EDISON  
COMPANY

ATTN: TITLE & REAL ESTATE SERVICES

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

RP File No. \_\_\_\_\_  
Serial No. \_\_\_\_\_  
Affects SCE DOC.  
Job Order:

#### JOINT USE AGREEMENT

THIS AGREEMENT, (this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation, hereinafter called "Company", the CITY OF COLTON, a municipal corporation of the State of California, hereinafter called "City", and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, a public body, corporate and politic, hereinafter called "Commission." The Company, City and Commission are sometimes referred to herein, individually, as a "Party" and collectively, as the "Parties";

#### W I T N E S S E T H

WHEREAS, Company is the owner in possession of certain right of way and easement(s) for electrical facilities by virtue of the following easement rights:

\_\_\_\_\_,  
hereafter referred to as "Company's Easement"; and

WHEREAS, Commission has acquired easement rights for street and highway purposes for the construction of an overhead grade separated overpass structure replacing the existing at-grade crossing at the intersection of Hunts Lane and the Union Pacific Railroad Company railroad tracks in said City, County of San Bernardino, State of California, hereinafter referred to as "highway right of way", as shown on the print attached hereto, marked "Exhibit A" and hereby made a part hereof which said highway right of way is subject to Company's easement; and

WHEREAS, Company's facilities as now installed and located on said highway right of way will interfere with or obstruct the construction, reconstruction, maintenance or use of said street or highway, and City desires to eliminate such interference or obstruction;

JOINT USE AGREEMENT  
S.C.E. Co., a corp., to  
The City of Colton and Commission  
Serial A  
RP File:

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties hereto do hereby agree as follows:

The location of Company's easement insofar as it now lies within the said highway right of way, be, and it hereby is, changed to the strip of land within said highway right of way, hereinafter referred to as "new location", and shown and designated as "area in Joint Use Agreement" on said print marked "Exhibit A".

Company agrees to rearrange, relocate and reconstruct within said new location, any of its facilities heretofore or now installed pursuant to Company's easement within said highway right of way. Company hereby consents to the construction, reconstruction, maintenance or use by Commission, City and the City of San Bernardino of a street or highway over, along and upon Company's easement, both in the old location and in the new location within said highway right of way, upon and subject to the terms and conditions herein contained.

Commission and City acknowledge Company's title to Company's easement in said new location, and the priority of Company's title over the title of Commission or City in said new location. Company has and reserved the right and easement of use, in common with the public's use of said street or highway, and new location for all of the purposes for which Company's easement was acquired, without need for any further permit or permission from Commission or City. Except in emergencies, Company shall give reasonable notice to City before performing any work on Company's facilities in said new location where such work will obstruct traffic. In all cases, Company shall exercise due care for the protection of the traveling public.

In the event that the future use of said highway right of way shall at any time or times necessitate a rearrangement, relocation, reconstruction or removal of any of Company's facilities then existing in said new location, and City shall notify Company in writing of such necessity and agree to reimburse Company on demand for its costs incurred in complying with such notice, Company will provide City with plans for its proposed rearrangement and an estimate of the cost thereof, and upon approval of such plans by City, Company will promptly proceed to effect such arrangement, relocation, reconstruction or removal. Company shall exercise due care for the protection of the traveling public. No further permit or permission from City for such rearrangement, relocation or reconstruction shall be required and City will (1) enter into a Joint Use Agreement on the same terms and conditions as are herein set forth covering any such subsequent relocation of Company's facilities within said highway right of way, (2) provide executed document(s) granting to Company a good and sufficient easement or easements over private property if necessary to replace Company's easement or any part thereof, and (3) reimburse Company for any costs which it may be required to expend to acquire such easement or easements, provided it is mutually agreed in writing that Company shall acquire such easement or easements.

Commission agrees to indemnify, defend and reimburse Company for any loss or claim Company may suffer because of any lack of or defect in City's title to said new location. City agrees to indemnify, defend and reimburse Company for any loss or claim Company may suffer because of any lack of or defect in City's title to any subsequent location within said highway right of way, or in the title to any easement provided by City of private property, to which Company relocates its facilities pursuant to the provisions hereof, and City agrees that if Company is ever required to relocate its

JOINT USE AGREEMENT  
S.C.E. Co., a corp., to  
The City of Colton and Commission  
Serial A  
RP File:

facilities because of any such lack of or defect in title, City shall reimburse Company for the cost of relocating its facilities or any other reasonable costs arising therefrom, such as, but not limited to, costs to acquire any right of way required for such relocation. City shall not reimburse Company for any loss caused by Company's own fault or negligence.

Except as expressly set forth herein, this agreement shall not in any way later, modify or terminate any provision of Company's easement. Commission, City and Company shall use said new location in such a manner as not to interfere unduly with the rights of the other. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which Company or City or Commission may now have or may hereafter acquire resulting from the construction of additional facilities or the alteration of existing facilities by Commission or City or Company in such a manner as to cause an unreasonable interference with the use of said new location by the other party. City agrees that Company's facilities shall not be damaged by reason of the construction, reconstruction or maintenance of said street or highway, by the City or its contractors, and that, if necessary, City will protect Company's facilities against any such damage, at City's expense.

Company shall have the right to remove, trim or top any vegetation, brush, tree or trees which may grow in said new location in said highway right of way, and which in the opinion of Company may endanger or interfere with the proper operation or maintenance of Company's facilities, to the extent necessary to prevent any such interference or danger.

This agreement shall inure to the benefit of and be binding upon the Company, Commission and the City and their respective successors and assigns; provided, however, that upon acceptance in writing by City of the Project and all Project acquired rights-of-way located within City's jurisdictional boundaries, the Commission's obligations under this Agreement shall terminate.

[THIS PAGE INTENTIONALLY LEFT BLANK]

JOINT USE AGREEMENT  
S.C.E. Co., a corp., to  
The City of Colton and Commission  
Serial A  
RP File:

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their respective officers thereunto duly authorized, as of the date and year herein first above written.

**COMPANY'S SIGNATURE PAGE**

SOUTHERN CALIFORNIA EDISON COMPANY,  
a California corporation.

By:

---

Right of Way Agent  
Real Estate Operations Division  
Corporate Real Estate Department

JOINT USE AGREEMENT  
S.C.E. Co., a corp., to  
The City of Colton and Commission  
Serial A  
RP File:

**CITY'S SIGNATURE PAGE**

**CITY OF COLTON**

By: \_\_\_\_\_  
SARAH S. ZAMORA, Mayor  
City of Colton

**Attest:**

By: \_\_\_\_\_  
EILEEN GOMEZ, City Clerk  
City of Colton

**Approved as to Form:**

By: \_\_\_\_\_  
DEAN DERLETH, City Attorney  
City of Colton

JOINT USE AGREEMENT  
S.C.E. Co., a corp., to  
The City of Colton and Commission  
Serial A  
RP File:

**SANBAG'S SIGNATURE PAGE**

**SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**

By: \_\_\_\_\_  
LARRY McCALLON, President  
Commission Board of Directors

**Attest:**

By: \_\_\_\_\_  
VICKI WATSON  
Clerk of the Board

**Approved as to Form:**

By: \_\_\_\_\_  
PENNY ALEXANDER-KELLEY  
Commission Counsel

**Concurrence:**

By: \_\_\_\_\_  
KATHLEEN MURPHY-PEREZ  
Contracts Manager



RECORDING REQUESTED BY:  
Southern California Edison  
2131 Walnut Grove Avenue  
G.O. 3 2nd Floor - TRES Department  
Rosemead, CA 91770

WHEN RECORDED MAIL TO:  
Same as above

CITY OF COLTON A.P.N. 0164-311-46 (ptn)	QUITCLAIM DEED	DOCUMENT TRANSFER TAX \$ 0.00
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For a valuable consideration receipt of which is hereby acknowledged, hereby acknowledged, the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, does hereby REMISE, RELEASE and QUITCLAIM to

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation

all of the COMMISSIONS's rights, title, and interests in that certain AERIAL EASEMENT, recorded July 30, 2010, as Instrument No. 2010-0307077 Official Records, lying within that certain real property in the City of Colton, County of San Bernardino, State of California described as follows: Exhibit "A", Legal Description, and Exhibit "B", Plat, attached hereto and made a part hereof.

SAN BERNARDINO COUNTY  
TRANSPORTATION COMMISSION

By: \_\_\_\_\_ Date \_\_\_\_\_  
Larry McCallon, President

	Township <u>1 South</u> Range: <u>4 West</u> Section: <u>27</u> Geo Index: <u>4017.0</u> Sect.: _____ Quad.: _____ Road Name(s) : <u>Hunts Lane</u> Project Name : <u>Hunts Lane Grade Separation</u> A.P.N. (s) : <u>0164-311-46 (ptn)</u>
--	---

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE

Name	Street Address	City & State
	Not Applicable	

**EXHIBIT "A"**

**Aerial Easement  
APN 164-311-46**

The West 10.00 feet of the East 40.00 feet of Parcel C being a portion of land described in the deed to Conagra, Inc., recorded March 30, 1999 as Instrument No. 1999-0132130, Official Records of said County, also being a portion of Lot 3, Block 65 as shown on Rancho San Bernardino, in the City of Colton, County of San Bernardino, State of California, per map recorded in Book 7, Page 2 of Maps in the office of the County Recorder of said county.

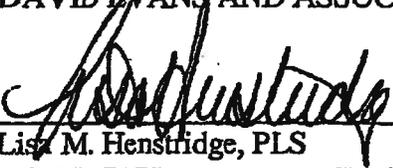
The above-described parcel of land contains approximately 2,284 square feet.

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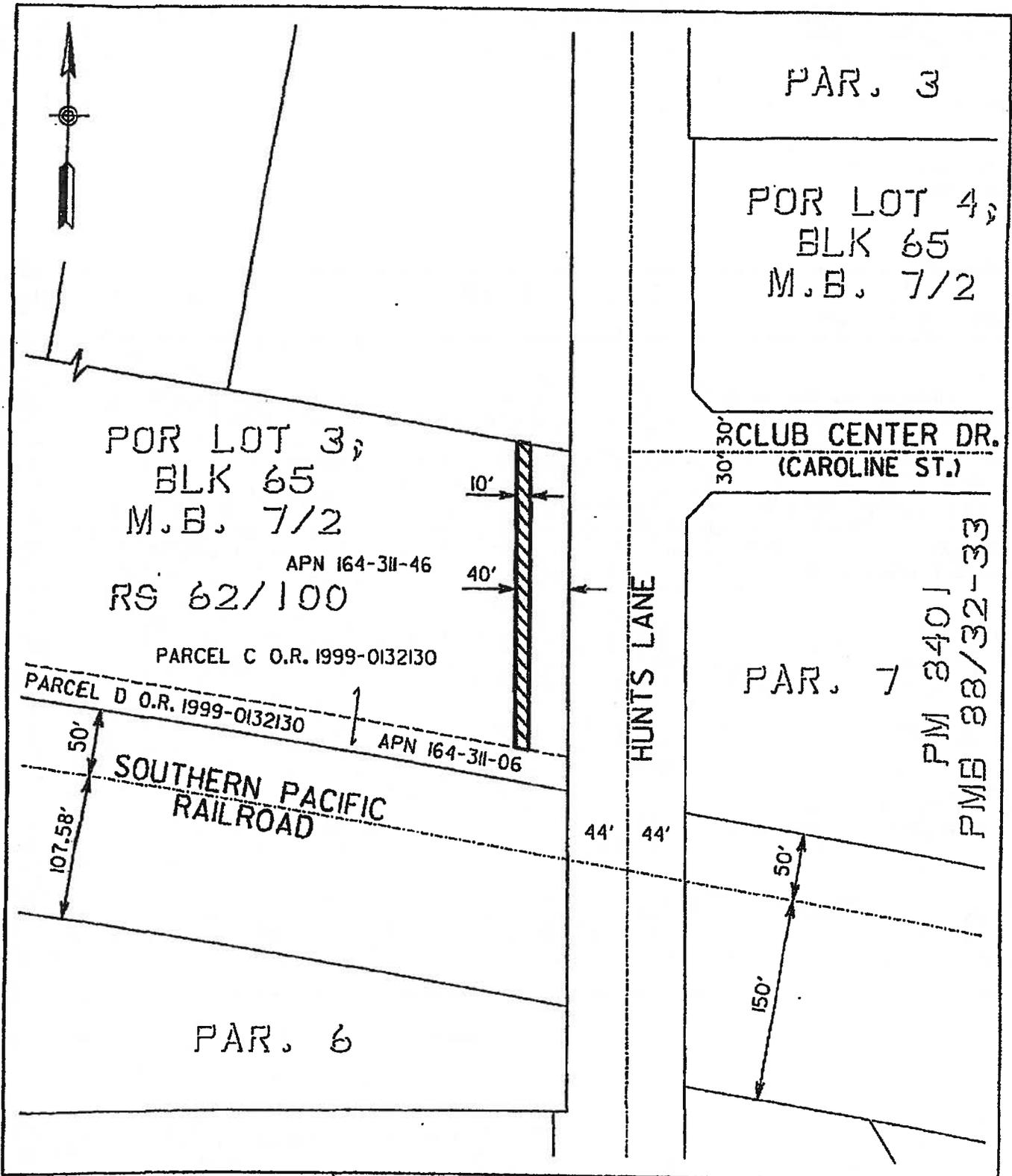
As shown on Exhibit "B" attached herewith and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

DAVID EVANS AND ASSOCIATES, INC.

 7/29/09  
\_\_\_\_\_  
Lisa M. Henstridge, PLS                      Date  
L.S. No. 7177                                  Expires: 12-31-09





**DAVID EVANS  
 AND ASSOCIATES INC**  
 400 Cassara, Suite 200  
 Galeta, California 91704  
 Phone: 909.483.5750

**EXHIBIT  
 "B"**

**AERIAL EASEMENT  
 APN 164-311-46**

IN THE CITY OF COLTON  
 COUNTY OF SAN BERNARDINO  
 STATE OF CALIFORNIA

SHEET NO:	1 OF 1
JOB NO:	MOFF0001
DRAWN BY:	LKH
DATE:	07/27/09
SCALE:	1"=100'

RECORDING REQUESTED BY:  
 Southern California Edison  
 2131 Walnut Grove Avenue  
 G.O. 3 2nd Floor - TRES Department  
 Rosemead, CA 91770

WHEN RECORDED MAIL TO:  
 Same as above

CITY OF COLTON A.P.N. 0164-311-06 (ptn)	QUITCLAIM DEED	DOCUMENT TRANSFER TAX \$ 0.00
--	----------------	-------------------------------

For a valuable consideration receipt of which is hereby acknowledged, hereby acknowledged, the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, does hereby REMISE, RELEASE and QUITCLAIM to

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation

all of the COMMISSIONS's rights, title, and interests in that certain AERIAL EASEMENT, recorded July 30, 2010, as Instrument No. 2010-0307076 Official Records, lying within that certain real property in the City of Colton, County of San Bernardino, State of California described as follows: Exhibit "A", Legal Description, and Exhibit "B", Plat, attached hereto and made a part hereof.

SAN BERNARDINO COUNTY  
 TRANSPORTATION COMMISSION

By: \_\_\_\_\_ Date \_\_\_\_\_  
 Larry McCallon, President

	Township <u>1 South</u> Range: <u>4 West</u> Section: <u>27</u> Geo Index: <u>4017.0</u> Sect.: _____ Quad.: _____ Road Name(s) : <u>Hunts Lane</u> Project Name : <u>Hunts Lane Grade Separation</u> A.P.N. (s) : <u>0164-311-06 (ptn)</u>
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MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE

Name	Not Applicable Street Address	City & State
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EXHIBIT "A"

Aerial Easement  
APN 164-311-06

The West 10.00 feet of the East 40.00 feet of Parcel D being a portion of land described in the deed to Conagra, Inc., recorded March 30, 1999 as Instrument No. 1999-0132130, Official Records of said County, also being a portion of Lot 3, Block 65 as shown on Rancho San Bernardino, in the City of Colton, County of San Bernardino, State of California, per map recorded in Book 7, Page 2 of Maps in the office of the County Recorder of said county.

The above-described parcel of land contains approximately 254 square feet.

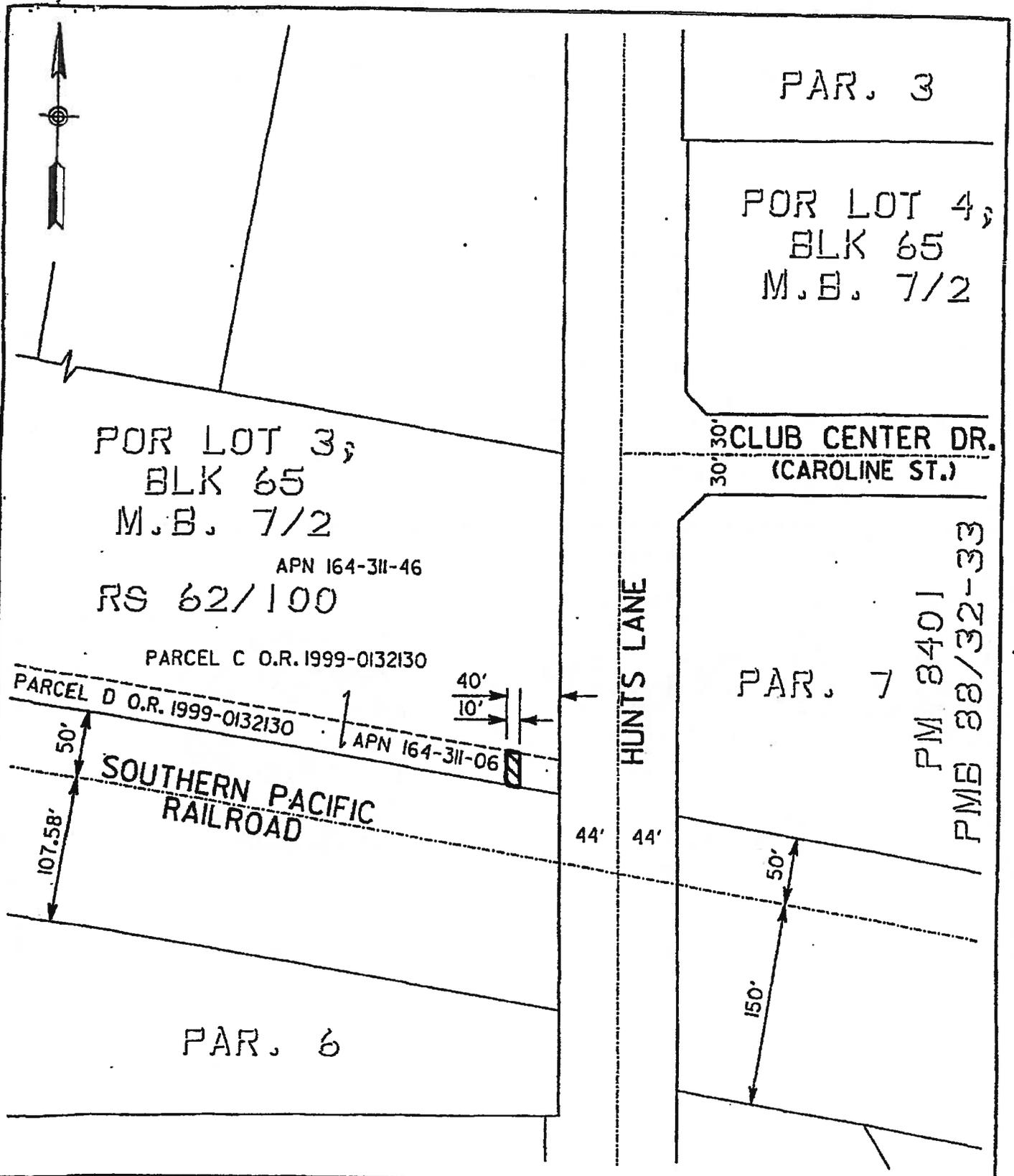
As shown on Exhibit "B" attached herewith and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

DAVID EVANS AND ASSOCIATES, INC.

  
Lisa M. Henstridge, PLS      Date 7/29/09  
L.S. No. 7177      Expires: 12-31-09





FOR LOT 3;  
BLK 65  
M.B. 7/2

APN 164-311-46

RS 62/100

PARCEL C O.R. 1999-0132130

PARCEL D O.R. 1999-0132130  
APN 164-311-06

SOUTHERN PACIFIC  
RAILROAD

PAR. 6

PAR. 7

PM 8401  
PMB 88/32-33

HUNT'S LANE



**DAVID EVANS  
AND ASSOCIATES INC.**  
4200 Connecticut, Suite 209  
Cerritos, California 91714  
Phone: 909.401.5728

EXHIBIT  
"B"

AERIAL EASEMENT  
APN 164-311-06

IN THE CITY OF COLTON  
COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA

SHEET NO:	1 OF 1
JOB NO:	MOFF0001
DRAWN BY:	LKH
DATE:	07/27/09
SCALE:	1"=100'

RECORDING REQUESTED BY:  
 Southern California Edison  
 2131 Walnut Grove Avenue  
 G.O. 3 2nd Floor - TRES Department  
 Rosemead, CA 91770

WHEN RECORDED MAIL TO:  
 Same as above

CITY OF COLTON A.P.N. 0164-311-04 (ptn)	QUITCLAIM DEED	DOCUMENT TRANSFER TAX \$ 0.00
--	----------------	-------------------------------

For a valuable consideration receipt of which is hereby acknowledged, hereby acknowledged, the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, does hereby REMISE, RELEASE and QUITCLAIM to

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation

all of the COMMISSIONS's rights, title, and interests in that certain AERIAL EASEMENT, recorded September 20, 2010, as Instrument No. 2010-0383491 Official Records, lying within that certain real property in the City of Colton, County of San Bernardino, State of California described as follows: Exhibit "A", Legal Description, and Exhibit "B", Plat, attached hereto and made a part hereof.

SAN BERNARDINO COUNTY  
 TRANSPORTATION COMMISSION

By: \_\_\_\_\_ Date \_\_\_\_\_  
 Larry McCallon, President

	Township <u>1 South</u> Range: <u>4 West</u> Section: <u>27</u> Geo Index: <u>4017.0</u> Sect.: _____ Quad.: _____ Road Name(s): <u>Hunts Lane</u> Project Name: <u>Hunts Lane Grade Separation</u> A.P.N. (s): <u>0164-311-04 (ptn)</u>
--	--

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE

Name	Not Applicable Street Address	City & State
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**EXHIBIT "A"**

**Aerial Easement  
APN 164-311-04**

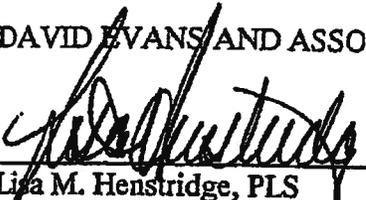
The West 10.00 feet of the East 40.00 feet of Parcel 1 as described in the deed to Superior Scale House, Inc., recorded July 21, 2004 as Instrument No, 2004-0520702, Official Records of said County, being a portion of Lot 3, Block 65 as shown on Rancho San Bernardino, in the City of Colton, County of San Bernardino, State of California, per map recorded in Book 7, Page 2 of Maps in the office of the County Recorder of said County.

The above-described parcel of land contains approximately 3,327 square feet.

As shown on Exhibit "B" attached herewith and a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

DAVID EVANS AND ASSOCIATES, INC.

  
Lisa M. Henstridge, PLS      Date 12/31/09  
L.S. No. 7177      Expires: 12-31-09





RS 00-062  
RS 114/3

PARCEL 1  
O.R. 2004-0520702

APN 164-311-04

POR LOT 3;  
BLK 65  
M.B. 7/2

44' 44'

44'

40'

84'

10'

HUNTS LANE

30' 30'

RS 62/100



DAVID EVANS  
AND ASSOCIATES INC  
4200 Concordia, Suite 200  
Ontario California 91764  
Phone: 909.481.5759

EXHIBIT  
"B"

AERIAL EASEMENT  
APN 164-311-04

IN THE CITY OF COLTON  
COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA

SHEET NO:  
1 OF 1  
JOB NO:  
MOFF0001  
DRAWN BY:  
LKH  
DATE:  
07/27/09  
SCALE:  
1"=100'

RECORDING REQUESTED BY:  
Southern California Edison  
2131 Walnut Grove Avenue  
G.O. 3 2nd Floor - TRES Department  
Rosemead, CA 91770

WHEN RECORDED MAIL TO:  
Same as above

CITY OF SAN BERNARDINO A.P.N. 0164-321-27 (ptn)	QUITCLAIM DEED	DOCUMENT TRANSFER TAX \$ 0.00
--	----------------	-------------------------------

For a valuable consideration receipt of which is hereby acknowledged, hereby acknowledged, the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, does hereby REMISE, RELEASE and QUITCLAIM to

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation

all of the COMMISSIONS's rights, title, and interests in that certain AERIAL EASEMENT, recorded August 10, 2010, as Instrument No. 2010-0323518 Official Records, lying within that certain real property in the City of San Bernardino, County of San Bernardino, State of California described as follows: Exhibit "A", Legal Description, and Exhibit "B", Plat, attached hereto and made a part hereof.

SAN BERNARDINO COUNTY  
TRANSPORTATION COMMISSION

By: \_\_\_\_\_ Date \_\_\_\_\_  
Larry McCallon, President

	Township <u>1 South</u> Range: <u>4 West</u> Section: <u>27</u> Geo Index: <u>4017.0</u> Sect.: _____ Quad.: _____ Road Name(s) : <u>Hunts Lane</u> Project Name : <u>Hunts Lane Grade Separation</u> A.P.N. (s) : <u>0164-321-27 (ptn)</u>
--	---

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE

Name	Street Address	City & State
	Not Applicable	

EXHIBIT "A"

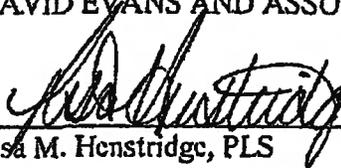
Aerial Easement  
APN 164-321-27

The Westerly 15.00 feet of the Southerly 225.00 feet of Parcel 2 of Parcel Map 3818 in the City of Colton, County of San Bernardino, State of California per map recorded in Book 35, Page 35 of Parcel Maps in the Office of the San Bernardino County Recorder.

The above-described parcel of land contains approximately 3,375 square feet.

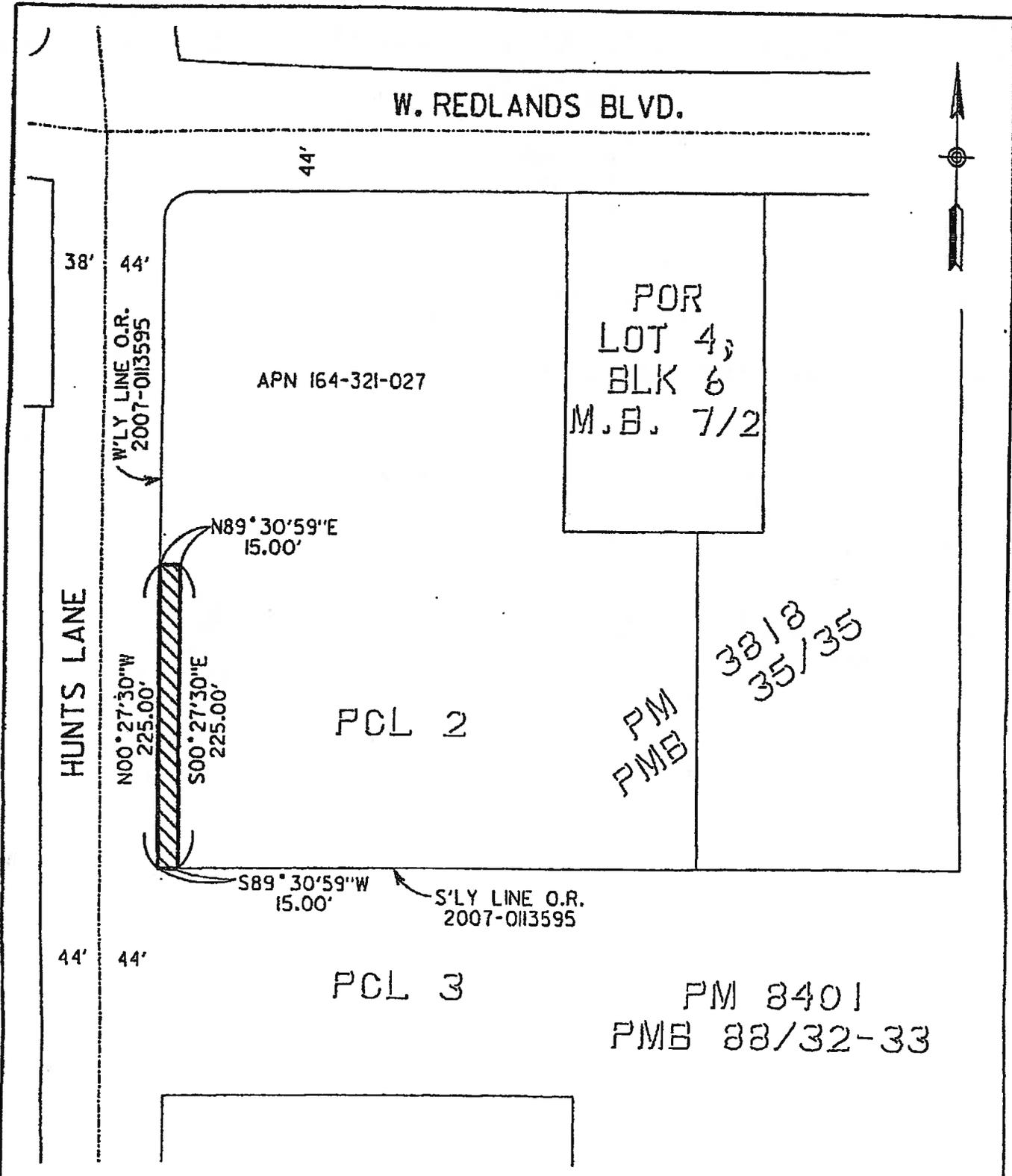
This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

DAVID EVANS AND ASSOCIATES, INC.

  
\_\_\_\_\_  
Lisa M. Henstridge, PLS  
L.S. No. 7177  
Expires: 12-31-11

3/31/2010  
Date





**DAVID EVANS  
AND ASSOCIATES INC**  
4200 Coscoeur, Suite 201  
Ontario California 91764  
Phone: 951.481.3750

**EXHIBIT  
"B"**

**AERIAL  
EASEMENT**

IN THE CITY OF COLTON  
COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA

SHEET NO:	1 OF 1
JOB NO:	MOFF0001
DRAWN BY:	LMHE
DATE:	03/31/10
SCALE:	1"=100'



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM: 5

**Date:** January 12, 2012

**Subject:** Glen Helen Grade Separation Project Funding Advancement

**Recommendation:\*** Authorize staff to include in the negotiations for the development of the construction cooperative agreement with the County of San Bernardino a funding advancement of Measure I 2010-2040 Valley Major Street funds to the County of San Bernardino for the Glen Helen Grade Separation Project per Measure I Strategic Plan Policy 400064, VMS-7.

**Background:** This item is for an authorization to utilize a funding advancement in the development of a construction cooperative agreement. SANBAG and the County of San Bernardino entered into a baseline agreement with Caltrans and the California Transportation Commission (CTC) on the Glen Helen Grade Separation project in 2008. This agreement established a baseline schedule and funding plan for the project which included using \$7.172 million in State Trade Corridor Improvement Funds (TCIF) towards the construction of the project. This agreement specifies SANBAG as the Project Sponsor/Lead Agency and the County of San Bernardino as the implementing agency for all phases of the project. SANBAG and the County of San Bernardino have entered into cooperative agreements for the preliminary engineering, plans, specifications, and estimate (PS&E), and right-of-way. A new cooperative agreement for the construction phase is required in advance of proceeding to the construction phase later this year. This future agreement will specify the roles and responsibilities for each agency through the construction phase and will detail out the funding for this phase of work. The majority of the funding for the construction will be from

\*

*Approved*  
*Major Projects Committee*

Date: January 12, 2012

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
-----	--	-----	---	-----	---	------	--	-----	--

Check all that apply.

public funds consisting of TCIF and Measure I 2010-2040 Valley Major Street funds.

Per the TCIF Baseline Agreement, the County is responsible for managing the construction phase of the project. Normal practice is for the County as the agency managing the project to pay all the construction invoices and then submit a request to SANBAG for reimbursement of SANBAG's fair share. To assist in the County's cash flow, they are requesting an advancement of SANBAG's reimbursement. Measure I 2010-2040 Strategic Plan Policy 40006, VMS-7 for the Valley Major Streets Program, includes a provision that allows for such a request on an exception basis and subject to SANBAG Board approval. The amount to be advanced to the local jurisdiction shall not be greater than 10% of the public share of the total public cost or the three month estimated peak burn rate for the project, whichever is less. For this project, the public share for the total project cost is \$20,514,000, therefore the maximum advancement is \$2,051,400.

Since this is the first request we have received for a funding advancement, staff is seeking direction from the Board on including funding advancement language in the construction cooperative agreement which needs to be developed in the near future. If the Board does not approve including the advancement in the cooperative agreement, the County may reconsider being responsible for managing the construction.

Staff recommends that the Board direct staff to include funding advancement as part of the negotiations in developing the construction cooperative agreement for the Glen Helen Grade Separation Project. The construction agreement will be brought forward to the Board at a future meeting for consideration.

**Financial Impact:** This item is consistent with the 2011/12 SANBAG Fiscal Year Budget. Task No. 86912000

**Reviewed By:** This item will be reviewed by the Major Projects Committee on January 12, 2012.

**Responsible Staff:** Paula Beauchamp, Project Delivery Manager



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM: 6

**Date:** January 12, 2012

**Subject:** Interstate 10 (I-10) Tippecanoe Interchange Construction Cooperative Agreement

**Recommendation:\*** Approve Cooperative Agreement No. C12183 with the State of California Department of Transportation District 8 (Caltrans) for construction of the Phase 1 I-10 Tippecanoe Avenue Interchange Improvement project.

**Background:** **This is a new cooperative agreement.** Under State law, SANBAG and Caltrans are required to enter into cooperative agreements for all phases of project development and construction of locally sponsored projects. The subject construction cooperative agreement defines the roles and responsibilities between SANBAG and Caltrans as related to construction of Interstate 10 Tippecanoe Avenue Interchange Project located in the Cities of Loma Linda and San Bernardino.

In November 2008, the SANBAG Board of Directors approved Contract C09092 with RMC, Inc. (RMC) for professional services to complete the preliminary design and environmental studies for the I-10 Tippecanoe Avenue Interchange Project. In October 2009, SANBAG approved Amendment No. 1 to Contract C09092 with RMC to include professional engineering services for delivery of the Plans, Specifications and Estimates (PS&E) phase of project development for the project. RMC was subsequently acquired by another firm and now does business under the name Transystems, Inc. (Transystems).

\*

	<p><i>Approved</i>  <b>Major Projects Committee</b></p> <p>Date: <u>January 12, 2012</u></p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p>
--	---

COG		CTC	X	CTA		SAFE		CMA	
-----	--	-----	---	-----	--	------	--	-----	--

Check all that apply.  
 MPC1201a-bf  
 Attachment: C12183

In July 2011, SANBAG Board approved a strategy to expedite delivery of the Tippecanoe Interchange project by separating the PS&E package into two construction contracts that would be Advertised, Awarded, and Administered (AAA) by SANBAG in two phases. Phase one construction project is all within existing right-of-way which has the benefit of allowing this phase to proceed to construction 10 months, delivering some congestion relieve early, and takes advantage of the current low bid environment. Splitting the project was originally conceived to pursue \$10 million in Corridor Mobility Improvement Account (CMIA) funds. Despite the unsuccessful nomination of the Tippecanoe Interchange Phase 1 project for CMIA funding, it was listed as an eligible project in the event that additional CMIA capacity becomes available. Caltrans has approved this change and is assisting SANBAG in the early delivery of the project.

On August 3, 2011 SANBAG approved Amendment No. 2 to C09092 with Transystems to separate the PS&E into two phases. The final Phase 1 PS&E package is expected to be approved by Caltrans in mid-January 2012 and construction is expected to begin in July 2012.

The parties now endeavor to enter into a cooperative agreement to address Phase 1 construction of the I-10 Tippecanoe Avenue Interchange Improvement Project. The subject agreement defines the roles and responsibilities of the signatory agencies in funding and administering construction of the project. SANBAG will take the lead in advertising, awarding and administering construction of the project. SANBAG is also responsible for all construction capital and support costs.

The estimated cost of constructing and administering the Phase 1 project is \$18.6 million. SANBAG will contribute \$15,549,000 in Surface Transportation Funds (local) and will advertise, open bids, award, approve, and administer the construction contract. The Cities of San Bernardino and Loma Linda will contribute local matching funds in the amount of \$3,052,000. The proposed funding plan is included in the "Funding Summary" attachment of the agreement.

Staff recommends the approval of Construction Cooperative Agreement C12183.

**Financial Impact:** The recommendation is consistent with the adopted 2011/2012 Fiscal Year Budget for Task No. 841120000.

**Reviewed By:** This item will be reviewed by the Major Projects Policy Committee on January 12, 2012. SANBAG General Counsel and Contracts Manager have reviewed and approved the subject cooperative agreement as to form.

**Responsible Staff:** Paula Beauchamp, Project Delivery Manager



## CONTRACT SUMMARY SHEET

Contract No. C 12183 Amendment No. \_\_\_\_\_

By and Between

San Bernardino County Transportation Authority and State of California DOT (Caltrans)

Contract Description Construction Coop Agreement for Phase 1 I-10/Tippecanoe Avenue Interchange

**Board of Director's Meeting Date:** February 1, 2012

**Overview of BOD Action:** Approve Cooperative Agreement No. C12183 with the State of California Department of Transportation District 8 (Caltrans) for construction of the Phase 1 Interstate 10 (I-10) Tippecanoe Avenue Interchange Improvement project.

Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW					
Original Contract Amount	\$	0	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
<b>TOTAL CONTRACT VALUE</b>	\$	0	<b>TOTAL CONTINGENCY VALUE</b>	\$	0
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					\$ 0

Contract Start Date 2/1/2012	Current Contract Expiration Date 12/31/2015	Revised Contract Expiration Date
---------------------------------	--	----------------------------------

Has the contract term been amended?  No  Yes - please explain.

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0842.

A Budget Amendment is required.

How are we funding current FY? This is a zero dollar coop agreement. Funds will be committed on future professional services and construction contracts associated with this cooperative agreement.

Federal Funds   
  State Funds   
  Local Funds   
  TDA Funds   
  Measure I Funds

*Provide Brief Overview of the Overall Funding for the duration of the Contract:*

Payable     Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %     Underutilized DBE (UDBE) Goal \_\_\_\_\_ %

\_\_\_\_\_  
 Task Manager Signature
 

 \_\_\_\_\_  
 Date
 


 \_\_\_\_\_  
 Project Manager Signature
 

 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Chief Financial Officer Signature
 

 \_\_\_\_\_  
 Date
 

 \_\_\_\_\_  
 Contracts Manager Signature
 

 \_\_\_\_\_  
 Date

## **CONSTRUCTION COOPERATIVE AGREEMENT**

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

San Bernardino Associated Governments, a political subdivision of the State of California, referred to as SANBAG.

For the purpose of this agreement, the term PARTNERS collectively refers to CALTRANS and SANBAG (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 complete the construction of the eastbound auxiliary lane, eastbound off-ramp and widening of Timoteo Bridge (phase 1) on Interstate 10 (I-10) in the cities of Loma Linda and San Bernardino from 1.01 miles west of Tippecanoe Avenue to 1.02 miles east of Tippecanoe Avenue.

For the purpose of this agreement, construction of the eastbound auxiliary lane, eastbound off-ramp and widening of Timoteo Bridge (phase 1) on I-10 in the cities of Loma Linda and San Bernardino from 1.01 miles west of Tippecanoe Avenue to 1.02 miles east of Tippecanoe Avenue will be referred to as PROJECT. All responsibilities assigned in this agreement to complete the construction PROJECT will be referred to as OBLIGATIONS.

3. This agreement is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding PROJECT.
4. Prior to this agreement, SANBAG developed PA&ED and PS&E under the Cooperative Agreement/Amendments 8-1229. CALTRANS developed the R/W under the Cooperative Agreement/Amendments 8-1459.
5. The estimated date for OBLIGATION COMPLETION is December 31, 2015.
6. In this agreement capitalized words represent defined terms and acronyms. The Definitions section contains a complete definition for each capitalized term.

7. From this point forward, PARTNERS define in this agreement the terms and conditions under which they will accomplish OBLIGATIONS.

### RESPONSIBILITIES

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

### SCOPE

#### **Scope: General**

15. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
16. IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN. The District's Construction Division, with input from their Structures Division, must approve the QMP before the encroachment permit for construction is issued.
17. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
18. 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.
19. IMPLEMENTING AGENCY shall retain consultants and shall invite CALTRANS to participate in the selection and retention of consultants that participate in OBLIGATIONS. At least one representative from the Construction Division of CALTRANS shall participate in the selection process.
20. 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.

21. **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**.
22. **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.

23. 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.
24. **PARTNERS** will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for **PROJECT** in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that **PARTNERS** share said documents with each other.

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

25. 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**.
26. If **HM-1** or **HM-2** is found during a **PROJECT COMPONENT**, **IMPLEMENTING AGENCY** for that **PROJECT COMPONENT** will immediately notify **PARTNERS**.
27. **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.
28. If **HM-1** is found within **PROJECT** limits and outside the existing **SHS** right of way, responsibility for such **HM-1** rests with the owner(s) of the parcel(s) on which the **HM-1** is found. **SANBAG**, in concert with the local agency having land use jurisdiction over the parcel(s), will ensure that **HM MANAGEMENT ACTIVITIES** related to **HM-1** are undertaken with minimum impact to **PROJECT** schedule.

29. 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.
30. 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.
31. 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.
32. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with written monthly progress reports during the implementation of OBLIGATIONS in that component.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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.

**Applicable Cost Principles and Administration Requirements**

The federal cost principles and administrative requirements associated with each organization type apply to that organization.

Organization Type	Cost Principles	Administrative Requirements
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>	

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

CALTRANS, the state auditor, FHWA, and SANBAG 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.

42. PARTNERS will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.

43. 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*.
44. 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.
45. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.
46. 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.

- 47. 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.
- 48. Contract administration procedures shall conform to CALTRANS' Construction Manual, Local Assistance Procedures Manual (if federal funds are used), and the PROJECT encroachment permits.
- 49. If the Resident Engineer is not also a registered Landscape Architect, SANBAG will furnish, at SANBAG's 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 inspections and final decisions including, but not limited to, any highway planting and the irrigation systems that comprise a portion of the PROJECT work. Final decisions shall continue to be subject to the satisfaction and approval of CALTRANS.
- 50. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, to furnish CALTRANS with a complete set of "As-Built plans (hard copy and electronic formats) in accordance with CALTRANS then current CADD User's 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, section 8771, including but not limited to preconstruction monumentation documents and a post construction Record of Survey that have been filed in the County Surveyor's Office. SANBAG shall also submit corrected full-sized hardcopy structure plans.

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

- 51. Each PARTNER identified in the Environmental Permits table below accepts the responsibility to complete the assigned activities.

Environmental Permit						
Permit	Coordinate	Prepare	Obtain	Implement	Renew	Amend
404 USACOE	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG
401 RWQCB	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG
NPDES SWRCB	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG
1602 DFG	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG	SANBAG

**Scope: CONSTRUCTION**

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

SANBAG 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, SANBAG also accepts responsibility to administer the construction contract.

PARTNERS agree that SANBAG 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.

53. SANBAG 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.

54. 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.

55. 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.

56. 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.

57. SANBAG will require the construction contractor to furnish payment and performance bonds naming SANBAG as obligee, and CALTRANS as additional obligee, and to carry liability insurance in accordance with CALTRANS specifications.

58. SANBAG will prepare a QMP for WBS activity 5.270.35.20 (Source Inspection), and will submit it to CALTRANS for review and approval.

After SANBAG submits the proper permit application and CALTRANS approves the QMP, CALTRANS will issue the encroachment permit(s) for the construction contract.

59. As IMPLEMENTING AGENCY for CONSTRUCTION, SANBAG is responsible for maintenance within PROJECT limits as part of the construction contract.
60. PARTNERS confirm that upon OBLIGATION COMPLETION, no maintenance agreement will be necessary.

### **COST**

#### **Cost: General**

61. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS COST.
62. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
63. Independent of PROJECT, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside the existing SHS right of way will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.
64. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
65. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS COST.
66. The cost to ensure that PROJECT remains in environmental compliance is an OBLIGATIONS COST.
67. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS COST.
68. 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.
69. Independent of OBLIGATIONS COST, SANBAG will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.

70. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
71. 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. That PARTNER will indemnify and defend each other PARTNER.
72. CALTRANS will administer all federal subvention funds identified on the FUNDING SUMMARY.
73. 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 SANBAG invoices for rates in excess of DPA rates, SANBAG will fund the cost difference and reimburse CALTRANS for any overpayment.

74. 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.
75. If CALTRANS reimburses SANBAG for any costs later determined to be unallowable, SANBAG will reimburse those funds.
76. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
77. 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.
78. 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.

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

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

80. 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.

**SCHEDULE**

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

**GENERAL CONDITIONS**

82. 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.
83. 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.
84. Any PARTNER performing IQA does so for its own benefit. No one can assign liability to that PARTNER due to its IQA activities.
85. Neither SANBAG nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS 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 will fully defend, indemnify, and save harmless SANBAG and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this agreement.

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

It is understood and agreed that SANBAG will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other

theories or assertions of liability occurring by reason of anything done or omitted to be done by SANBAG and/or its agents under this agreement.

87. 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.
88. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this agreement.
89. PARTNERS will not interpret any ambiguity contained in this agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
90. 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.
91. 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.
92. 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.
93. 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 SANBAG 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.

94. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
95. 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.
96. PARTNERS intend this agreement to be their final expression and supersede any oral understanding or writings pertaining to OBLIGATIONS.
97. 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.
98. PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
99. 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, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.
100. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY.

## 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.

**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 eastbound auxiliary lane, eastbound off-ramp, retaining walls eastbound, reinforced concrete box culvert and widen Timoteo Bridge (phase 1) in the cities of Loma Linda and San Bernardino from 1.01 miles west of Tippecanoe Avenue to 1.02 miles east of Tippecanoe Avenue .

**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:

Meardey Tim, Project Manager  
464 West 4th Street  
San Bernardino, California 92401-1400  
Office Phone: (909) 383-6480  
Email: meardey\_tim@dot.ca.gov

The primary agreement contact person for SANBAG is:

Paula Beauchamp, Project Delivery Manager  
1170 West 3rd Street, 2nd Floor  
San Bernardino, California 92410  
Office Phone: (909) 884-8276  
Email: pbeauchamp@sanbag.ca.gov

**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

SAN BERNARDINO ASSOCIATED  
GOVERNMENTS

APPROVED

APPROVED

By: \_\_\_\_\_  
Raymond W. Wolfe, PhD  
District Director

By: \_\_\_\_\_  
Larry McCallon  
Broad President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CERTIFIED AS TO FUNDS:

ATTEST

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

By: \_\_\_\_\_  
Vicki Watson  
Clerk of the Board

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND PROCEDURE

By: \_\_\_\_\_  
Penny Alexander-Kelley  
SANBAG Counsel

Date: \_\_\_\_\_

CONCURRENCE

By: \_\_\_\_\_  
Kathleen Murphy-Perez  
Contracts Manager

Date: \_\_\_\_\_

**SCOPE SUMMARY**

4	5	6	7	8	Description	CALTRANS	SANBAG		N/A
5	270				Construction Engineering and General Contract Administration		X		
		10			Construction Staking Package and Control		X		
		15			Construction Stakes		X		
		20			Construction Engineering Work		X		
		25			Construction Contract Administration Work		X		
			05		Secured Lease for Resident Engineer Office Space or Trailer		X		
			10		Set Up Construction Project Files		X		
			15		Pre-Construction Meeting		X		
			20		Progress Pay Estimates		X		
			25		Weekly Statement of Working Days		X		
			30		Construction Project Files and General Field Office Clerical Work		X		
			35		Labor Compliance Activities		X		
			40		Approved Subcontractor Substitutions		X		
			45		Coordination		X		
			50		Civil Rights Contract Compliance		X		
			99		Other Construction Contract Administration Products		X		
		30			Contract Item Work Inspection		X		
		35			Construction Material Sampling and Testing		X		
		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		
5	285				Contract Change Order Administration		X		
5	290				Resolve Contract Claims		X		
5	295				Accept Contract, Prepare Final Construction Estimate, and Final Report		X		
4	300				FINAL RIGHT OF WAY ENGINEERING		X		

**FUNDING SUMMARY**

Funding Source	Funding Partner	Fund Type	CON Capital	CON Support	Subtotal Support	Subtotal Capital	Subtotal Funds Type
FEDERAL	SANBAG	Surface Transportation Program Local	\$15,549,000	\$0	\$0	\$15,549,000	\$15,549,000
LOCAL	SANBAG	City (Matching)	\$3,052,000	\$0	\$0	\$3,052,000	\$3,052,000
		Subtotals by Component	\$18,601,000	\$0	\$0	\$18,601,000	\$18,601,000



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

**Minute Action**

AGENDA ITEM: 7

**Date:** January 12, 2012

**Subject:** Palm Avenue Grade Separation Project Preferred Alternative and Environmental Clearance

- Recommendation:**\*
1. Approve Project Development Team (PDT) recommended Alternative 1 as the preferred alternative for the Palm Avenue Grade Separation Project as shown by Attachment "A".
  2. Find that the Palm Avenue Grade Separation Project is Statutorily Exempt under California Environmental Quality Act (CEQA) guideline 15282(h), file Notice of Exemption (included as Attachment "B"), and authorize signature of same by the Director of Project Delivery.

**Background:** SANBAG staff has been working with the City and County of San Bernardino on the development of the Palm Avenue Grade Separation project, located in both the City and County jurisdictions. The administration of the design, right-of-way, and construction phases of the project is being done by SANBAG after which the project will be turned over to the City of San Bernardino. The County has executed a notification under Streets and Highway Code Section 1810, whereby the County has turned over the jurisdictional authority of the portion of the project within the County to the City of San Bernardino.

**Recommendation 1:** The Project Development Team (PDT), consisting of staff from the City of San Bernardino, the County of San Bernardino, and SANBAG,

\*

*Approved*  
 Major Projects Committee

*Date:* January 12, 2012

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.  
 MPC1201c-das  
 Attachments: MPC1201c1-das and MPC1201c2-das

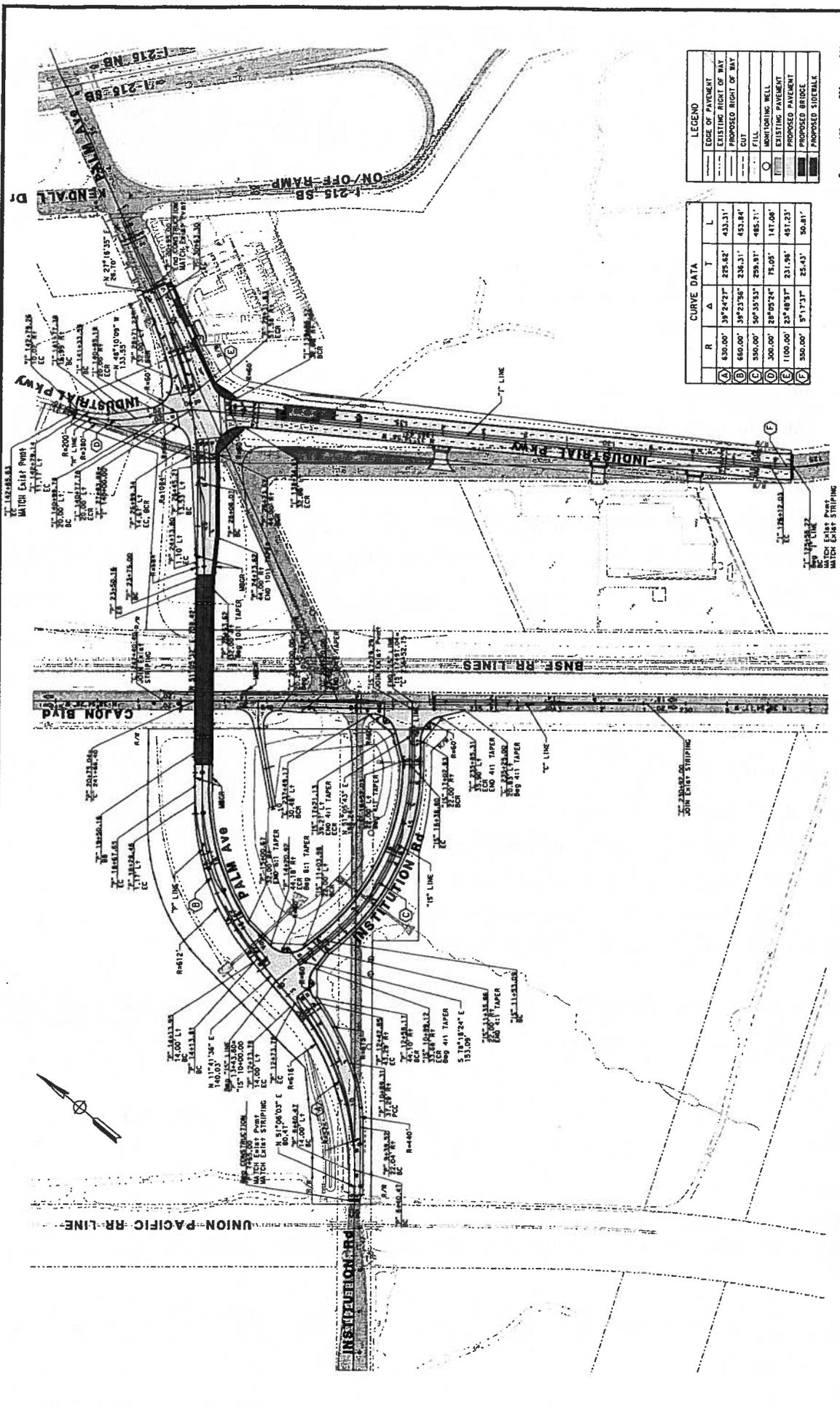
have reviewed a number of build alternatives for the project during the preliminary engineering phase in late 2008 through early 2009. Options studied included a roadway underpass and railroad bridge, a roadway overhead and railroad trench, a roadway underpass and an elevated railroad, a roadway overhead design, and a no-build option. Out of the four build alternatives, the roadway overhead design was selected because it presented fewer challenges for both the design and construction of the project, and the other build alternatives were rejected on the basis that they have a greater impact on the existing utilities, traffic movement, the operation and integrity of the BNSF railroad tracks, and right-of-way. Once the type of grade separation was selected, the second step was an evaluation of the horizontal alignment. Three options were evaluated: a north offset alignment, an on-existing alignment, and a south offset alignment. The north offset was selected by the PDT as it had the least impact on underground utilities. This alternative is shown by Attachment "A". A formal letter of support for this alternative was received from the City of San Bernardino. Staff recommends approval of the roadway overhead, north offset alternative as the preferred alternative for the Palm Avenue Grade Separation project.

**Recommendation 2:** The environmental approval process for the Palm Avenue Grade Separation project requires both CEQA and National Environmental Policy Act (NEPA) clearance. CEQA clearance can be made by a local agency while NEPA clearance is a federal action which has been delegated to Caltrans. This project was approved by the City of San Bernardino for CEQA in July, 2011 and by Caltrans for NEPA, also in July, 2011. Since SANBAG is the lead agency for the right-of-way phase and in order to proceed with acquisition of properties, possibly by eminent domain, SANBAG must document its lead agency status and approval of the CEQA environmental process. This is accomplished by approving a finding that the Palm Avenue Grade Separation project qualifies as a statutorily exempt project. Under CEQA section 15282(h), any railroad grade separation project or reconstruction of an existing grade separation project is statutorily exempt. Since this project eliminates an existing at-grade railroad crossing, this project qualifies for this exemption. Staff recommends approval of this finding and delegation of signature authority on the Notice of Exemption (see Attachment "B") to the Director of Project Delivery.

**Financial Impact:** This item is consistent with the adopted Fiscal Year 2011/2012 budget, Task No. 87412000.

**Reviewed By:** This item will be reviewed by the SANBAG Major Projects Committee on January 12, 2012.

**Responsible Staff:** Paula Beauchamp, Project Delivery Manger



LEGEND

---	EDGE OF PAVEMENT
---	EXISTING RIGHT OF WAY
---	PROPOSED RIGHT OF WAY
---	CUT
---	FILL
○	MONITORING WELL
---	EXISTING PAVEMENT
---	PROPOSED PAVEMENT
---	PROPOSED BRIDGE
---	PROPOSED SIDEWALK

CURVE DATA

R	A	T	L
(A) 630.00'	39°24'27"	275.62'	433.31'
(B) 660.00'	37°23'30"	236.31'	453.84'
(C) 550.00'	50°35'53"	299.83'	485.71'
(D) 300.00'	28°09'24"	75.05'	147.06'
(E) 1000.00'	32°48'31"	231.98'	481.23'
(F) 500.00'	9°17'37"	25.43'	50.81'

SCALE 1"=100'

**SEPTEMBER 2011**

Underground Service Alert  
 Dial 811 from any phone to have underground utilities located

**Government's SANBAG**  
 We're Keeping Together

**CH2MHILL**  
 1770 ROMA AVENUE, SUITE 200  
 RIVERSIDE, CA 92507

**ENGINEERS SEAL**

**CITY OF SAN BERNARDINO**  
 DIVISION OF TRANSPORTATION SERVICES - PUBLIC WORKS/CONSTRUCTION  
**PALM AVENUE GRADE SEPARATION**  
**GEOMETRIC APPROVAL DRAWINGS**  
**ROADWAY LAYOUT**

DRAWING NO. GAD RL-41  
 SHEET 1. OF 3  
 SHEETS 1., 2., 3.

APPROVED: \_\_\_\_\_  
 CITY ENGINEER  
 REGISTERED CIVIL ENGINEER NO. \_\_\_\_\_  
 SCALE: 1"=100'

DESIGNED BY: JUAN HERNANDEZ  
 CHECKED BY: ALICIA CANNON  
 RECOMMENDED BY: JERRY ROMANA

FOR CITY USE ONLY: FILE NO. \_\_\_\_\_

REVISIONS

NO.	DATE	BY	APPROVED

REVISIONS

REVISIONS

REVISIONS

REVISIONS

Notice of Exemption

ATTACHMENT "B"

To: [X] Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410

[X] County Clerk
County of: County of San Bernardino
385 North Arrowhead Avenue, Second Floor
San Bernardino, CA 92415

Project Title: Palm Avenue Grade Separation Project

Project Location - Specific: The limits of the Project are from Palm Avenue (560 feet southwest of I-215) and the Union Pacific Railroad ROW that runs perpendicular to Institution Road.

Project Location - City: San Bernardino Project Location-County: San Bernardino

Description of Nature, Purpose, and Beneficiaries of Project

The Project will elevate Palm Avenue and provide an above-grade separation from the Burlington Northern Santa Fe railroad tracks. The benefits of the project include improved vehicular traffic flow and motorist safety, improved emergency vehicle response time, and air quality improvements.

Name of Public Agency Approving Project: San Bernardino Associated Governments

Name of Person or Agency Carrying out Project: San Bernardino Associated Governments

Exempt Status: (check one)

- [ ] Ministerial (Sec. 21080 (b) (1); 15268)
[ ] Declared Emergency (Sec. 21080 (b) (3); 15269 (a));
[ ] Emergency Project (Sec. 21080 (b) (4); 15269 (b) (c));
[ ] Categorical Exemption. State type and section number;
[X] Statutory Exemptions: State code number; 15282(h)

Reasons why project is exempt: Pursuant to CEQA Guidelines 15282(h) the project is a railroad grade separation project which eliminates an existing grade crossing.

Lead Agency Contact Person: Garry Cohoe Area Code/Telephone/Extension: (909) 884-8276

If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? [X] Yes [ ] No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

[X] Signed by Lead Agency Date received for filing at OPR:
[ ] Signed by Applicant



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM: 8

**Date:** January 12, 2012

**Subject:** Right-of-Way Legal Support Services for SANBAG Major Projects Program

- Recommendation:\***
1. Award Contract No. C12043 to Woodruff, Spradlin & Smart for on-call Right of Way Legal Services for SANBAG Major Projects Program, for a not-to-exceed amount of \$4,042,750.
  2. Authorize a four (4) year contract term through January 31, 2016 for Contract No. C12043, which exceeds the three (3) year maximum contract term for contracts as identified in SANBAG's Contracting and Procurement Policy 11000.

**Background:** **Recommendation No. 1 - This is a new contract.** SANBAG is the lead agency for the acquisition of right of way on various projects and has been utilizing County of San Bernardino's County Counsel to address legal matters associated with the right of way acquisition process. This includes, but is not limited to review of agreements, eminent domain, and representation in discussions with legal counsel of affected property owners, expert appraisers, and right of way staff or consultants. County Counsel will stop providing these services in the very near future, and as a result, SANBAG is moving forward to procure the services of a law firm to replace County Counsel.

In September 2011 the Board authorized the release of Request for Proposals (RFP) No. 12043 for Right of Way Legal Services for SANBAG Major Projects Program. The RFP was posted to the SANBAG internet website on November 4,

\*

	<p><i>Approved</i>  <i>Major Projects Committee</i></p> <p>Date: <u>January 12, 2012</u></p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p>
--	---

COG		CTC	X	CTA	X	SAFE		CMA	
-----	--	-----	---	-----	---	------	--	-----	--

Check all that apply.  
 MPC1201c-ks  
 Attachment: C12043

2011, and was emailed to all firms registered in SANBAG's vendor database to receive legal services Request for Proposals. .

A five-member evaluation committee (Committee) was assembled, and a two-step evaluation process was followed to select the most qualified firm in accordance with SANBAG's Contracting and Procurement Policy. The Committee consisted of representatives from SANBAG, Caltrans, Riverside County Transportation Commission (RCTC), and the Alameda Corridor-East Construction Authority.

On December 6, 2011, ten (10) proposals were received and were distributed to members of the Committee. Each Committee member reviewed, scored, and ranked all ten proposals based on four main criteria: firm qualifications, personnel proposed, project understanding, and staff capability. On January 12, 2011 the Committee met and all scores were tabulated. Each Committee member provided their scores and briefly discussed the rationale used in scoring the proposals. After all scores were added and verified, the Committee shortlisted and interviewed the top five ranked firms, which are listed below in alphabetical order:

1. Best Best & Krieger, LLP
2. Burke, Williams & Sorensen, LLP
3. Daley & Heft, LLP
4. Nossaman, LLP
5. Woodruff, Spradlin & Smart

On December 19, 2011, the Committee interviewed the five shortlisted firms. Each firm was allotted approximately 50 minutes to answer eight questions related to: partial acquisition of rail property, ethical considerations faced by the condemnor in an eminent domain action, appraising contaminated properties, joint pole agreements and the interaction with the California Public Utilities Commission, and challenges and lessons learned from prior legal work on such projects. Each Committee member scored the firms based on their responses to the eight questions. Also, Price Proposals were factored into the evaluation and were weighted at 20% of the overall score. At the conclusion of the interview, all scores were added and verified, and Woodruff, Spradlin, & Smart (WS&S) was unanimously chosen by the Committee as the top ranked firm.

WS&S's hourly rates for attorneys were not the lowest received but were below the average attorney hourly rates of the ten (10) law firms that submitted proposals. The hourly rates received from the ten law firms ranged from \$175 to \$515 for attorneys; and from \$85 to \$188 for paralegals.

Committee members determined that WS&S is the most qualified firm to provide SANBAG with needed Right of Way Legal Support Services, for the following main reasons:

1. WS&S was able to demonstrate understanding and experience of the Design/Build process and more specifically, drew upon their past experience on the SR-22 Design/Build project with Orange County Transportation Commission (OCTA).
2. Extensive public agency and Caltrans experience in connection with right-of-way legal services.
3. Current involvement on five-grade separation projects with OCTA.
4. WS&S demonstrated knowledge and understanding of partial takes involving businesses with manufacturing equipment, which is expected to be an important issue on work for SANBAG.

Staff is recommending the award of Contract No. C12043 to Woodruff, Spradlin & Smart for on-call Right of Way Legal Services for SANBAG Major Projects Program, for a not-to-exceed amount of \$4,042,750.

**Recommendation No. 2** - Staff is also recommending that the Board approve a four-year duration for Contract No. C12043. The four year term would ensure consistent and un-interrupted Right of Way services on a number of major projects which have Right of Way schedules that extend beyond the three years term limit set by SANBAG's Procurement Policy 11000, as described below.

The award of this contract would greatly improve staff's ability to deliver timely Right of Way work on several projects. There are three on-going projects that will require these services very soon: the I-15/I-215 Devore Interchange Reconstruction Project, the Palm Avenue Grade Separation Project, and the Laurel Street Grade Separation project. Other projects will also require legal support services in the near future.

**Financial Impact:** The award of this contract is consistent with the adopted 2011/2012 Fiscal Year budget. Funding for the Contract is provided under Task No. 81512000. The funding source is: MSI 2010-Cajon Pass, MSI 2010-Valley Freeway Interchange, MSI 2010-Valley Freeway Projects, and MSI 2010-Valley Major Street.

**Reviewed By:** This item will be reviewed by the Major Projects Committee on January 12, 2012. SANBAG Legal Counsel and Contracts Manager have reviewed and approved the draft agreement as to form.

**Responsible Staff:** Khalil Saba, Project Delivery Manager



## CONTRACT SUMMARY SHEET

Contract No. C 12043 Amendment No. \_\_\_\_\_

By and Between

San Bernardino Associated Governments (SANBAG) and Woodruff, Spradlin & Smart

Contract Description New contract for on-call Right of Way Legal Services for the Major Projects Program

**Board of Director's Meeting Date:** February 1, 2012

**Overview of BOD Action:** Approve Contract C12043 with Woodruff, Spradlin & Smart

Is this a Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	4,042,750	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$		Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>4,042,750</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 4,042,750</b>

**Contract Start Date**

February 1, 2012

**Current Contract Expiration Date**

January 31, 2016

**Revised Contract Expiration Date**

Has the contract term been amended?  No  Yes - please explain.

This is a new contract

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 81512000

A Budget Amendment is required.

How are we funding current FY?

Federal Funds

State Funds

Local Funds

TDA Funds

Measure I Funds

*Provide Brief Overview of the Overall Funding for the duration of the Contract: Measure I funds will be used for the duration of the contract*

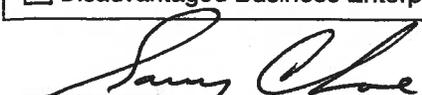
Payable  Receivable

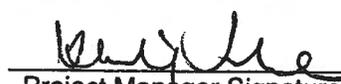
### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %  Underutilized DBE (UDBE) Goal \_\_\_\_\_ %

 \_\_\_\_\_  
Task Manager Signature Date 1-4-12

 \_\_\_\_\_  
Project Manager Signature Date 1-4-12

 \_\_\_\_\_  
Chief Financial Officer Signature Date 1/4/12

\_\_\_\_\_  
Contracts Manager Signature Date

*Handwritten note: None Yet 2012*

**CONTRACT # C 12043**

**BY AND BETWEEN**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**AND**

**WOODRUFF, SPRADLIN & SMART**

**FOR**

**RIGHT-OF-WAY LEGAL SERVICES**

This Contract, is effective on the Effective Date as defined herein, by and between the San Bernardino Associated Governments (hereinafter referred to as "AUTHORITY") whose address is: 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, California 92410-1715; and the firm of Woodruff, Spradlin & Smart, whose address is: 555 Anton Boulevard, Suite 1200, Costa Mesa, CA 92626 (hereinafter referred to as "ATTORNEY").

AUTHORITY and ATTORNEY are each a "Party" and collectively "Parties" herein.

**RECITALS:**

**WHEREAS**, AUTHORITY requires certain Right-of-Way legal services as described in Attachment A to this Contract and;

**WHEREAS**, ATTORNEY has confirmed that they have the requisite personnel and experience and is fully capable and qualified to do the work described herein; and

**WHEREAS**, ATTORNEY desires to do so for the compensation in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, the Parties hereto agree as follows:

**ARTICLE 1. DESCRIPTION OF SERVICES**

ATTORNEY agrees to perform services set forth in Attachment "A", Scope of Services, hereinafter referred to as "Services", which is incorporated herein by reference, in accordance with standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined therein. The word "Services," as used herein, includes without limitation, the performance, fulfillment and discharge by ATTORNEY of all obligations, duties, tasks, and services imposed upon or assumed by ATTORNEY hereunder; and the Services performed hereunder shall be completed to the satisfaction of AUTHORITY, with their satisfaction being based on prevailing standards in the

legal profession.

## **ARTICLE 2. PERIOD OF PERFORMANCE**

The initial period of performance by ATTORNEY under this Contract shall commence upon issuance of a written Notice To Proceed (NTP) issued by AUTHORITY, unless agreed otherwise, and shall continue in full force and effect through January 31, 2016, or until otherwise terminated, or unless extended as hereinafter provided by written amendment.

## **ARTICLE 3. PERFORMANCE OF SERVICES AND HOURLY RATES**

- 3.1 Total compensation to ATTORNEY for full and complete performance of Services, in compliance with all the terms and conditions of this Contract, payment by ATTORNEY of all obligations incurred in, or application to, ATTORNEY performance of Services, and for which ATTORNEY shall furnish all personnel, facilities, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by AUTHORITY), shall not exceed the amount set forth in 3.2 below.
- 3.2 The total Not-To-Exceed amount is Four Million Forty Two Thousand Seven Hundred and Fifty dollars (\$4,042,750). Services to be provided under this Contract are to be performed as set forth in Attachment "A", Scope of Services, which is incorporated herein by this reference. ATTORNEY's fee for services is included in the total Contract cost and set forth in Attachment "B", Price Form, which is incorporated herein by reference. ATTORNEY's fee for services is included in the total estimated contract cost and shall be a specific rate of compensation contract, as agreed upon, and noted in Attachment "B", Price Form. The foregoing amount shall not constitute a cap or guaranty of the cost of services to perform the Scope of Services identified herein, provided. However, that ATTORNEY agrees that in no event shall ATTORNEY exceed the foregoing amount without prior written authorization from AUTHORITY.
- 3.3 Staff employed by ATTORNEY may perform services under this Contract at the hourly rates specified in Attachment B. To the extent paralegals are used to perform work on AUTHORITY's behalf, such work shall be billed at the paralegal rates set forth in Attachment B. AUTHORITY may approve increases in hourly rates as needed. All changes must be submitted in writing to AUTHORITY for their approval.
- 3.4 Staff attorneys and paralegals shall not bill for customary administrative tasks such as review and processing of billings to AUTHORITY, physical or electronic file opening in their offices and the like.
- 3.5 Any services provided by ATTORNEY not specifically covered by the Scope of Services (Attachment "A") shall not be compensated without prior written authorization from AUTHORITY. It shall be ATTORNEY's responsibility to recognize and notify AUTHORITY when services not covered by the Scope of Services have been requested or are required. All changes and/or modifications to the Scope of Services shall be made in accordance with the "CHANGES" provision.

- 3.6 AUTHORITY shall have the right to review and audit all billing statements prior to or after payment to ATTORNEY.

#### **ARTICLE 4. PAYMENT**

- 4.1 The compensation of ATTORNEY as provided herein shall be payable monthly, forty-five (45) calendar days after receipt by AUTHORITY of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Services.
- 4.2 ATTORNEY shall prepare all invoices in a form satisfactory to and approved by AUTHORITY and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a monthly billing period and will be marked with AUTHORITY's Project name, and contract number. Invoices shall be submitted within fifteen (15) calendar says for the period covered by the invoice. Invoices shall include request for payment for Services completed by ATTORNEY during each billing period. ATTORNEY agrees and understands that AUTHORITY is paying on an hourly basis and will not pay for items that are charged on a "value billing" basis. For purposes of this Contract, value billing is defined as billing time or fees for a task on any basis other than the actual time that was worked by the billable attorney, measured in tenths of an hour. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to ATTORNEY. Any costs incurred by ATTORNEY in connection with the resubmission of a proper invoice shall be at ATTORNEY's sole expense.
- 4.3 Monthly billing statements shall indicate the services performed, the person(s) performing the services and provide an accounting of work time spent, and costs and expenses for which payment is requested under this Contract. In the event ATTORNEY performs services on more than one case or matter under this Contract, ATTORNEY shall, to the extent practicable, separately account for work time spent, and costs and expenses for each different case or matter.
- 4.4 ATTORNEY understands that AUTHORITY employees are public servants who do not require client development. Accordingly, ATTORNEY shall not charge AUTHORITY for any client development costs they occur.
- 4.5 ATTORNEY shall include a statement and release with each invoice, satisfactory to AUTHORITY, that ATTORNEY has fully performed the Services invoiced pursuant to this Contract for the period covered and that all claims of ATTORNEY for Services during the period will be satisfied upon the making of such payment. AUTHORITY shall not be obligated to make payments to ATTORNEY until ATTORNEY furnishes such statement and release.
- 4.6 No payment will be made prior to approval of any work, nor any work performed prior to approval of this Contract by AUTHORITY's Board of Directors.

## **ARTICLE 5. TAXES, DUTIES AND FEES**

Except to the extent expressly provided elsewhere in this Contract, ATTORNEY shall pay when due, and the compensation set forth in "Article 3" shall be inclusive of all a) local, municipal, state, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by ATTORNEY; and d) all other governmental fees and taxes or charges of whatever nature applicable to ATTORNEY to enable it to conduct business.

## **ARTICLE 6. AVAILABILITY OF FUNDS**

The award and performance of this Contract is contingent on the availability of funds. If funds are not allocated and available to AUTHORITY for the continuance of Services performed by ATTORNEY, Services directly or indirectly involved may be suspended or terminated by AUTHORITY at the end of the period for which funds are available. When AUTHORITY becomes aware that any portion of Services, which will or may be affected by a shortage of funds, it will immediately so notify ATTORNEY. Nothing herein shall relieve AUTHORITY from its obligation to compensate ATTORNEY for Services performed pursuant to this Contract. No penalty shall accrue to AUTHORITY in the event this provision is exercised.

## **ARTICLE 7. DOCUMENTATION AND RIGHT TO AUDIT**

- 7.1 ATTORNEY shall provide AUTHORITY, or other authorized representatives or agents of AUTHORITY, access to ATTORNEY's records, which are directly related to this Contract for the purpose of inspection, auditing or copying. ATTORNEY shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by AUTHORITY, except in the event of litigation or settlement of claims arising out of this Contract in which case ATTORNEY agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. ATTORNEY further agrees to maintain separate records for costs of work performed by amendment. ATTORNEY shall allow AUTHORITY or its representatives or agents to reproduce any materials as reasonably necessary. This Article applies to all subcontractors at any tier that is performing work under this Contract.
- 7.2 The Cost Proposal for this Project is subject to audit at any time. After ATTORNEY receives any audit recommendations the Cost Proposal shall be adjusted by ATTORNEY and approved by AUTHORITY's Project Manager to conform to the audit recommendations. ATTORNEY agrees that individual items of cost identified in the audit report may be incorporated into this Contract at AUTHORITY's sole discretion. Refusal by the ATTORNEY to incorporate the audit or post award recommendations will be considered a breach of the Contract terms and cause for termination of the Contract.

**ARTICLE 8. RESPONSIBILITY OF ATTORNEY**

- 8.1 ATTORNEY shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable Federal, state and local laws and regulations and other services furnished by ATTORNEY under the terms of this Contract. ATTORNEY shall consult with AUTHORITY concerning all substantive positions and procedural steps to be taken by ATTORNEY in the course of advice and representation pursuant to this Contract.
  
- 8.2 Unless otherwise instructed, ATTORNEY must obtain prior written approval from AUTHORITY concerning the following:
  - 8.2.1 Retention of any consultant or expert witnesses;
  - 8.2.2 Making any settlement proposal on AUTHORITY's behalf;
  - 8.2.3 Filing any lawsuit or responding to any lawsuit on behalf of AUTHORITY;
  
- 8.3 Unless otherwise instructed, ATTORNEY must promptly provide AUTHORITY with copies of all: material pleadings and legal memoranda prepared in connection with any AUTHORITY matter hereunder; court rulings; and significant correspondence and information related to any AUTHORITY matter hereunder.

**ARTICLE 9. REPORTING AND DELIVERABLES**

All reports and deliverables shall be submitted in accordance with Attachment "A", Scope of Services.

**ARTICLE 10. CHANGES**

- 10.1 The Services shall be subject to changes by additions, deletions, or revisions made by AUTHORITY. ATTORNEY will be advised of any such changes by written notification from AUTHORITY describing the change.
  
- 10.2 Promptly after such written notification of change is given to ATTORNEY by AUTHORITY, ATTORNEY and AUTHORITY will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly.

**ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY/DRUG FREE WORKPLACE**

- 11.1 During the term of this Contract, ATTORNEY shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. ATTORNEY agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

11.2 ATTORNEY agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

**ARTICLE 12. CONFLICT OF INTEREST**

ATTORNEY agrees that it will not represent, nor seek to represent, any party with interests adverse to AUTHORITY. AUTHORITY acknowledges that ATTORNEY has disclosed that it represents certain member agencies of AUTHORITY, including the City of Yucaipa and the County of San Bernardino. ATTORNEY assures AUTHORITY that the on-going, concurrent representation of the City of Yucaipa and the County of San Bernardino concern matters unrelated to the subject of this Contract and that such work does not constitute a conflict of interest pursuant to the California Rules of Professional Conduct applicable to ATTORNEY's ethical obligations and its work on this Contract for AUTHORITY. AUTHORITY relies solely on ATTORNEY's assurance that no conflict exists and AUTHORITY does not waive any potential or actual conflicts of interest. Should ATTORNEY determine that a potential or actual conflict exists in connection with its representation of any other client(s), Attorney shall immediately disclose same to AUTHORITY pursuant to the California Rules of Professional Conduct, and shall stop all work for AUTHORITY under this Contract until such potential or actual conflict is resolved.

**ARTICLE 13. KEY PERSONNEL**

The personnel specified below are considered to be essential to Services being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of tasks and hours of Services, which are the responsibility of key personnel to other personnel, ATTORNEY shall notify AUTHORITY reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the import on the Project. Diversion or reallocation of key personnel shall be subject to written approval by AUTHORITY. AUTHORITY also reserves the right to approve proposed substitutions for key personnel. In the event that AUTHORITY and ATTORNEY cannot agree as to the substitution of key personnel, AUTHORITY shall be entitled to terminate this Contract. Key Personnel are:

Name	Function
Craig Farrington	Litigation, Project Planning and Supervision
Alyson Suh	Litigation, Project Planning, Supervision

**ARTICLE 14. REPRESENTATIONS**

Services supplied by ATTORNEY in performance under this Contract shall be supplied by personnel who are careful, skilled, experienced and competent and possess all relative licenses and permits in their respective trades or professions. ATTORNEY agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with AUTHORITY that the same shall conform to professional standards, which are generally accepted in the industry.

## **ARTICLE 15. PROPRIETARY RIGHTS/CONFIDENTIALITY**

- 15.1 If, as a part of this Contract, ATTORNEY is required to produce materials, documents data, or information ("Products"), then ATTORNEY, if requested by AUTHORITY, shall deliver to AUTHORITY the original of all such products which shall become the sole property of AUTHORITY.
- 15.2 All materials, documents, data or information obtained from AUTHORITY's data files or any AUTHORITY medium furnished to ATTORNEY in the performance of this Contract will at all times remain the property of AUTHORITY. Such data or information may not be used or copied for direct or indirect use outside of this Project by ATTORNEY without the express written consent of AUTHORITY.
- 15.3 Except as reasonably necessary for the performance of Services, ATTORNEY and its employees and agents shall hold in confidence the materials and information referred to in this Article which are produced by ATTORNEY for AUTHORITY in the performance and completion of ATTORNEY' Services under this Contract, until released in writing by AUTHORITY, except to the extent such materials and information become a part of public domain information through no fault of ATTORNEY, or its employees or agents.
- 15.4 ATTORNEY shall not use AUTHORITY's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of AUTHORITY.
- 15.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by AUTHORITY unless otherwise agreed to by ATTORNEY and AUTHORITY.
- 15.6 ATTORNEY agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of AUTHORITY, any information obtained by ATTORNEY from or through AUTHORITY in connection with ATTORNEY's performance of this Contract, unless (a) the information was known to ATTORNEY prior to obtaining same from AUTHORITY pursuant to a prior contract; or (b) the information was obtained at the time of disclosure to ATTORNEY, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of ATTORNEY or its employees, agents, or subcontractors, or (c) the information was obtained by ATTORNEY from a third party who did not receive the same, directly or indirectly, from AUTHORITY and who had, to ATTORNEY's knowledge and belief, the right to disclose the same.

## **ARTICLE 16. TERMINATION**

- 16.1 Termination for Convenience- AUTHORITY shall have the right at any time, with or without cause, to terminate further performance of Services by written notice to ATTORNEY specifying the date of termination. On the date of such termination stated in said notice, ATTORNEY shall discontinue performance of Services and shall preserve

work in progress and completed work ("Work"), pending AUTHORITY' instruction, and shall turn over such Work in accordance with AUTHORITY' instructions.

16.1.1 ATTORNEY shall deliver to AUTHORITY, all deliverables prepared by ATTORNEY or its subcontracts or furnished to ATTORNEY by AUTHORITY. Upon such delivery, ATTORNEY may then invoice AUTHORITY for payment in accordance with the terms hereof.

16.1.2 If ATTORNEY has fully and completely performed all obligations under this Contract up to the date of termination, ATTORNEY shall be entitled to receive from AUTHORITY as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.

16.1.3 ATTORNEY shall be entitled to receive the actual cost incurred by ATTORNEY to return ATTORNEY's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with AUTHORITY's instructions plus the actual cost necessarily incurred in effecting the termination.

16.2 Termination for Cause - In the event ATTORNEY shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against ATTORNEY or a receiver shall be appointed on account of its solvency, or if ATTORNEY shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, AUTHORITY may, without prejudice to any other rights or remedies AUTHORITY may have, and in compliance with applicable Bankruptcy Laws; (a) hold in abeyance further payments to ATTORNEY; (b) stop any services of ATTORNEY or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to ATTORNEY specifying the date of termination. In the event of such termination by AUTHORITY, AUTHORITY may take possession of the deliverables and finish Services by whatever method AUTHORITY may deem expedient. A waiver by AUTHORITY of one default of ATTORNEY shall not be considered to be a waiver of any subsequent default of ATTORNEY, nor be deemed to waive, amend, or modify any term of this Contract.

16.2.1 In the event of termination ATTORNEY shall deliver to AUTHORITY all finished and unfinished products prepared under this Contract by ATTORNEY or its subcontractors or furnished to ATTORNEY by AUTHORITY.

16.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to AUTHORITY, satisfactory in form and content to AUTHORITY and verified by AUTHORITY. In no event shall ATTORNEY be entitled to any prospective profits or any damages because of such termination.

## **ARTICLE 17. STOP WORK ORDER**

Upon failure of ATTORNEY or its subcontractors to comply with any of the requirements of this Contract, AUTHORITY shall have the authority to stop any services of ATTORNEY or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 16, "TERMINATION".

## **ARTICLE 18. CLAIMS**

AUTHORITY shall not be bound to any adjustments in the Contract amount or time for ATTORNEY's claim unless expressly agreed to by AUTHORITY in writing and any such adjustments in the Contract amount so agreed to in writing shall be paid to ATTORNEY by AUTHORITY. No claim hereunder by ATTORNEY shall be allowed if asserted after final payment under this Contract.

## **ARTICLE 19. INSURANCE**

Without any way affecting the indemnity provision identified in this Contract, ATTORNEY shall, at the ATTORNEY's sole expense, and prior to the commencement of any work, procure and maintain in full force, insurance through the entire term of this Contract. The policies shall be written by a California admitted carrier with a Best rating of A-VII or better, and shall be written with a least the following limits of liability:

### **19.1 Professional Liability –**

Professional Liability insurance shall be provided in an amount not less than \$1,000,000, per claim and \$2,000,000 in the aggregate. ATTORNEY shall secure and maintain this insurance or "tail" coverage provided throughout the term of this Contract and for a minimum of three (3) years after Contract completion.

### **19.2 Workers' Compensation –** Worker's Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability in an amount not less than \$1,000,000 limits covering all persons providing services on behalf of ATTORNEY and all risks to such persons under this Contract.

### **19.3 Commercial General Liability –** To include coverage for Premises and Operations, Contractual Liability, Products/Completed Operations Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$2,000,000 in the aggregate written on an occurrence form. For products and completed operations a \$2,000,000 aggregate shall be provided.

### **19.4 Automobile Liability –** To include owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 combined single limit.

### **19.5 Proof of Coverage -** ATTORNEY shall furnish certificates of insurance to AUTHORITY evidencing the insurance coverage required above, prior to the commencement of

performance of Services hereunder, and such certificates shall include San Bernardino Associated Governments/San Bernardino County Transportation Authority and its officers, employees, agents and volunteers, as additional insured Commercial General Liability Insurance and auto insurance. Prior to commencing any work, ATTORNEY shall furnish AUTHORITY with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article. If the insurance company elects to cancel or non-renew coverage for any reason, ATTORNEY will provide AUTHORITY thirty (30) days written notice of cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium ATTORNEY will provide AUTHORITY ten (10) days written notice. ATTORNEY shall maintain such insurance for the entire term of this Contract. The certificate(s) of insurance are to include the Contract number and Project Manager' name on the face of the certificate(s).

- 19.6 Additional Insured - All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming AUTHORITY and its officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for AUTHORITY to vicarious liability but shall allow coverage for AUTHORITY to the full extent provided by the policy.
- 19.7 Waiver of Subrogation Rights - ATTORNEY shall require the carriers of Commercial General Liability, Automobile Liability and Workers Compensation to waive all rights of subrogation against AUTHORITY, its officers, employees, agents, volunteers, contractors, and subcontractors. Such insurance coverage provided shall not prohibit ATTORNEY or ATTORNEY'S employees or agents from waiving the right of subrogation prior to a loss or claim. ATTORNEY hereby waives all rights of subrogation against AUTHORITY.
- 19.8 Commercial General Liability required herein are to be primary and non-contributory with any insurance carried or administered by AUTHORITY.

## **ARTICLE 20. INDEMNITY**

ATTORNEY agrees to indemnify, defend with counsel approved by AUTHORITY and hold harmless AUTHORITY, and their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of the negligent performance by ATTORNEY under this contract, including the negligent acts, errors or omissions of any person employed by ATTORNEY and for any costs or expenses incurred by AUTHORITY on account of any claim therefor, except where such indemnification is prohibited by law.

**ARTICLE 21. ERRORS AND OMISSIONS**

- 21.1 ATTORNEY shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Contract. ATTORNEY may be liable for AUTHORITY costs resulting from errors or deficiencies, fines, penalties and damages in services furnished under this Contract.
- 21.2 Intentionally Left Blank.
- 21.3 AUTHORITY shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the AUTHORITY's interest. AUTHORITY shall include in the Contract file a written statement of the reasons for the decision to recover or not recover the costs from ATTORNEY.

**ARTICLE 22. OWNERSHIP OF DATA**

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by ATTORNEY under this Contract shall become the sole property of AUTHORITY when prepared, whether delivered to AUTHORITY or not.

**ARTICLE 23. SUBCONTRACTS**

- 23.1 ATTORNEY shall not subcontract performance of all or any portion of Services under this Contract, without first notifying AUTHORITY of the intended subcontracting and obtaining AUTHORITY's written approval of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all subcontracts at any tier.
- 23.2 ATTORNEY agrees that any and all subcontractors of ATTORNEY will comply with the terms of this Contract applicable to the portion of Services performed by them. If requested by AUTHORITY, ATTORNEY shall furnish AUTHORITY a copy of the proposed subcontract for AUTHORITY'S approval of the terms and conditions thereof and shall not execute such subcontract until AUTHORITY has approved such terms and conditions. AUTHORITY approval shall not be unreasonably withheld.
- 23.3 Approval by AUTHORITY of any services to be subcontracted and the subcontractor to perform said Services will not relieve ATTORNEY of any responsibility or liability in regard to the acceptable and complete performance of said Services. Any substitution of subcontractors must be approved in writing by AUTHORITY' Project Manager.

**ARTICLE 24. RECORD INSPECTION AND AUDITING**

AUTHORITY, or any of its designees shall at all times have access during normal business hours to ATTORNEY's operations and products wherever they are in preparation or progress, and ATTORNEY shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by AUTHORITY shall not be deemed to be a waiver of any of their rights to require ATTORNEY to comply with the Contract or to subsequently reject unsatisfactory services or products.

**ARTICLE 25. INDEPENDENT CONTRACTOR**

ATTORNEY is and shall be at all times an independent contractor. Accordingly, all Services provided by ATTORNEY shall be done and performed by ATTORNEY under the sole supervision, direction and control of ATTORNEY. AUTHORITY shall rely on ATTORNEY for results only, and shall have no right at any time to direct or supervise ATTORNEY or ATTORNEY's employees in the performance of Services or as to the manner, means and methods by which Services are performed. All workers furnished by ATTORNEY pursuant to this Contract, and all representatives of ATTORNEY, shall be and remain the employees or agents of ATTORNEY or of ATTORNEY's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of AUTHORITY.

**ARTICLE 26. ATTORNEY FEES**

If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of this Contract.

**ARTICLE 27. GOVERNING LAW AND VENUE**

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Central District of San Bernardino County. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

**ARTICLE 28. FEDERAL, STATE AND LOCAL LAWS**

ATTORNEY warrants that in the performance of this Contract, it shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations.

**ARTICLE 29. PRECEDENCE**

- 29.1 The Contract documents consist of these General Terms and Conditions, Attachment "A", Scope of Services, and Attachment "B", Billing Rate Schedule. AUTHORITY's Request for Proposal and ATTORNEY's proposal are incorporated herein by this reference.
- 29.2 The following order of precedence shall apply: This Contract, its General Terms and Conditions and Attachments; AUTHORITY's Request for Proposal; and ATTORNEY's Proposal. In the event of a conflict between the Contract and the Scope of Services, the Contract will prevail.

29.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, ATTORNEY shall notify AUTHORITY in writing within three (3) business days of its discovery of the conflict and shall comply with AUTHORITY's resolution of the conflict.

**ARTICLE 30. COMMUNICATIONS AND NOTICES**

Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article. A change in address may be made by notifying the other Party in writing.

To ATTORNEY	To AUTHORITY
Woodruff, Spradlin & Smart	San Bernardino Associated Governments
555 Anton Boulevard, Suite 1200	1170 W. 3 <sup>rd</sup> Street, 2 <sup>nd</sup> Floor
Costa Mesa, CA 92626-7670	San Bernardino, CA 92410-1715
Attn: Craig Farrington	Attn: Garry Cohoe, Director of Project Delivery
Phone: 714-415-1016	Phone: (909) 884-8276

**ARTICLE 31. DISPUTES**

31.1 In the event any dispute arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Services and/or time of performance), the dispute shall be decided by the AUTHORITY within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If ATTORNEY does not agree with the decision, then ATTORNEY shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of AUTHORITY. If the Executive Director fails to resolve the dispute in a manner acceptable to ATTORNEY, then such appeal shall be decided by a court of competent jurisdiction.

31.2 During resolution of the dispute, ATTORNEY shall proceed with performance of this Contract with due diligence.

**ARTICLE 32. GRATUITIES**

ATTORNEY, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of AUTHORITY, gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

**ARTICLE 33. REVIEW AND ACCEPTANCE**

All Services performed by ATTORNEY shall be subject to periodic review and approval by AUTHORITY at any and all places where such performance may be carried on. Failure of AUTHORITY to make such review, or to discover defective work, shall not prejudice the rights of AUTHORITY at the time of final acceptance. All Services performed by ATTORNEY shall be subject to periodic and final review and acceptance by AUTHORITY upon completion of all Services.

**ARTICLE 34. CONFIDENTIALITY**

Any AUTHORITY materials to which ATTORNEY or its subcontractors or agents have access to or materials prepared by ATTORNEY under the terms of this Contract shall be held in confidence by ATTORNEY, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as authorized by AUTHORITY. ATTORNEY shall not release any reports, information of promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of AUTHORITY.

**ARTICLE 35.**

Intentionally left blank.

**ARTICLE 36. SAFETY**

ATTORNEY shall comply strictly with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to ATTORNEY's operations in the performance of Services hereunder.

**ARTICLE 37. ASSIGNMENT**

ATTORNEY shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of AUTHORITY. AUTHORITY's exercise of consent shall be within its sole discretion. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties hereto.

**ARTICLE 38. AMENDMENTS**

This Contract may only be changed by a written amendment duly executed by ATTORNEY and AUTHORITY except, that changes to the Contract to implement administrative changes such as approved changes in key personnel as provided in Article 13, "KEY PERSONNEL" above, may be made by administrative amendment signed by ATTORNEY and AUTHORITY's Project Manager or other duly authorized representative.

**ARTICLE 39. CONTINGENT FEE**

ATTORNEY warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ATTORNEY for the purpose of securing business. For breach or violation of this warranty, AUTHORITY has the right to annul this Contract without liability, pay only for the value of Services actually performed, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE 40.           ARBITRATION**

40.1 Arbitration shall be limited to any controversy or claim between the Parties concerning ATTORNEY's billing for professional fees, costs and expenses, and shall be arbitrated under the system and procedures established for such arbitration pursuant to California Business and Professions Code sections 6200 et. seq. Judgment upon the arbitrator's award may be entered in any court having jurisdictions thereof. Such arbitration award will be final and binding upon the Parties hereto.

40.2 If any arbitration or legal action is instituted to enforce or declare and Parties rights hereunder, each Party, regardless of which Party is the prevailing party, must bear its own costs, expenses and attorney's fees. This paragraph shall not apply to those costs, expenses and attorney's fees directly arising from any third party legal action against a Party hereto.

#### **ARTICLE 41.           FORCE MAJEURE**

ATTORNEY shall not be in default under this Contract in the event that the Services provided/work performed by ATTORNEY are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, severe weather or other catastrophic events which are beyond the reasonable control of ATTORNEY and which ATTORNEY could not reasonably be expected to have prevented or controlled. Other catastrophic events do not include the financial inability of the ATTORNEY to perform or failure of the ATTORNEY to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of ATTORNEY.

#### **ARTICLE 42.           ENTIRE DOCUMENT**

42.1 This Contract and its attachments constitute the sole and only agreement governing Services and supersedes any prior understandings, written or oral, between the Parties respecting the subject matter herein. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been incorporated into this Contract.

42.2 No agent, employee or representative of AUTHORITY has any authority to bind

AUTHORITY to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and ATTORNEY hereby stipulates that it has not relied, and will not rely, on same.

42.3 As this Contract was jointly prepared by both Parties, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

**ARTICLE 43. EFFECTIVE DATE**

The date that this Contract is executed by AUTHORITY shall be the Effective Date of the Contract.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

**ATTORNEY:  
WOODRUFF, SPRADLIN & SMART  
A Professional Corporation**

**SAN BERNARDINO ASSOCIATED  
GOVERNMENTS**

By: \_\_\_\_\_  
CRAIG G. FARRINGTON

By: \_\_\_\_\_  
Larry McCallon  
President, Board of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Penny Alexander-Kelley  
General Counsel

**CONCURRENCE:**

By: \_\_\_\_\_  
Kathleen Murphy-Perez  
Contracts Manager

## **ATTACHMENT A**

### **“SCOPE OF SERVICES”**

Provide as needed right-of-way legal services in support of AUTHORITY’s Major Projects Program. Such legal services shall include pre-litigation advice, representation in litigation and any project related tasks as may be requested by AUTHORITY.

## ATTACHMENT B

### “PRICE FORM”

**Fully Loaded Hourly Rates for Legal Personnel:**

Attorneys	\$295
Paralegals	\$160

**Standard Charges:**

Attorneys and paralegals charge for time in minimum units of six minutes.

**Costs and Expenses:**

- Costs advanced to third parties for AUTHORITY are billed at the ATTORNEY’S cost (e.g., consultants, court reporters).
- Computerized legal research will be performed at AUTHORITY’S expense based on the ATTORNEY’S cost.
- Mileage for travel will be billed at the IRS approved rate (currently \$0.51 per mile).

**Estimated Legal Support Services:**

The services to be provided by ATTORNEY to AUTHORITY under this Contract are an estimated amount not-to-exceed Four Million Forty-Two Thousand Seven Hundred Fifty Dollars (\$4,042,750) as set forth in the table below entitled “Estimated legal Support Services Needed in the Next Four Years” and incorporated by reference.

**ESTIMATED LEGAL SUPPORT SERVICES NEEDED IN THE NEXT FOUR YEARS**

PROJECT DESCRIPTION	CONST. COST	ROW COST	COMPLETION DATES			ESTIMATED LABOR CHARGES PER YEAR (ATTORNEYS & PARALEGAL)			
			ROW	CONST	CLOSE OUT	2012	2013	2014	2015
Hunts Lane Grade Separation	\$36,927,000	\$5,500,000	2011	2014	2015	\$30,000	\$30,000	\$30,000	\$0
Palm Avenue Grade Separation	\$26,320,000	\$7,291,000	2012	2014	2015	\$60,000	\$60,000	\$60,000	\$0
I-10 HOT/HOV Lanes	\$762,566,000	\$11,546,000	2015	2019	2020	\$100,000	\$100,000	\$100,000	\$100,000
I-10/Tippecanoe Interchange	\$77,417,000	\$30,644,000	2012	2014	2015	\$100,000	\$100,000	\$50,000	\$0
Laurel Street Grade Separation	\$53,340,000	\$9,779,000	2012	2014	2015	\$60,000	\$60,000	\$60,000	\$0
I-215/Barton Road Interchange	\$75,781,000	\$17,168,000	2015	2018	2019	\$0	\$200,000	\$200,000	\$100,000
Lenwood Road Grade Separation	\$31,354,000	\$4,650,000	2012	2014	2015	\$30,000	\$30,000	\$30,000	\$0
I-15/I-215 Devore Interchange	\$324,201,000	\$31,337,000	2014	2016	2017	\$280,000	\$280,000	\$280,000	\$190,000
I-215/Washington Interchange	\$85,569,000	\$19,000,000	2015	2017	2018	\$0	\$0	\$290,000	\$290,000
SR-210/Pepper Interchange	\$18,965,000	\$1,000,000	2013	2015	2016	\$10,000	\$10,000	\$5,000	\$0
Other Projects						\$150,000	\$150,000	\$150,000	\$150,000
Estimated Labor Charges Per Year						\$820,000	\$1,020,000	\$1,255,000	\$830,000
Estimated Total Labor Charges						\$3,925,000			
Other Direct Costs (ODC) at 3%						\$117,750			
Estimated Total Contract Amount						\$4,042,750			



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM: 9

**Date:** January 12, 2012

**Subject:** Colton Crossing Rail Grade Separation Project

**Recommendation:\*** Approve Trade Corridors Improvement Fund Agreement (TCIF) No. C12182 with Caltrans for the reimbursement of TCIF funds allocated to the Colton Crossing Rail Grade Separation Project.

**Background:** **This is a new Agreement.** The Colton Crossing project is funded with Federal, State, and private railroad funds. On May 7, 2010 the California Transportation Commission (CTC) programmed \$91,305,000 in TCIF funds. On February 17, 2010, \$33.8 million of Transportation Investment Generating Economic Recovery (TIGER) funds were granted to the project, one of three projects in the State. Approximately \$73 million of the project cost will be funded by Union Pacific Rail Road (UPRR) and BNSF Railway (BNSF). The CTC designated SANBAG as the Responsible Agency in charge of administering the TCIF funds, and the Board accepted this role by executing TCIF Baseline Agreement C10229 in May 2010.

In June 2011, the Board approved Construction and Maintenance (C&M) Cooperative Agreement No. C11217 with the City of Colton, UPRR, and BNSF for the construction of the Colton Crossing project. Under the terms of C&M agreement No. C11217, UPRR is the lead for the construction phase of the project and is responsible for procuring and awarding the construction contract; and SANBAG is the implementing agency responsible for administering the TCIF funds. As the administrator of the TCIF funds, SANBAG will receive invoices

\*

*Approved*  
 Major Projects Committee

*Date:* May 12, 2011

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

COG	CTC	CTA	SAFE	CMA
-----	-----	-----	------	-----

Check all that apply

MPC1201e-ks

Attachments: C12182 and MPC1201e1-ks

from UPRR, review and validate the invoices, forward the invoices to Caltrans to request reimbursement, and disburse the funds to UPRR after receipt of payment from Caltrans. In order to be able to bill Caltrans for the TCIF funds, Trade Corridors Improvement Fund Agreement No. C12182 must first be executed between SANBAG and Caltrans.

Staff is recommending that the Board approve Trade Corridors Improvement Fund Agreement No. C12182 between SANBAG and Caltrans to enable the timely billing and receipt of TCIF funds allocated to the Colton Crossing project.

**Financial Impact:** The item is consistent with the current 2011/2012 fiscal year budget. SANBAG's role is limited to the collection and disbursement of the TCIF funds.

**Reviewed By:** This item will be reviewed by the Major Projects Committee on January 12, 2012. SANBAG Legal Counsel and Contracts Manager have reviewed and approved the agreement as to form.

**Responsible Staff:** Khalil Saba, Project Delivery Manager



## CONTRACT SUMMARY SHEET

Contract No. C 12182 Amendment No. \_\_\_\_\_

By and Between

San Bernardino Associated Governments (SANBAG) and Caltrans

Contract Description Trade Corridors Improvement Fund (TCIF) Agreement for the Colton Crossing Grade Separation Project.

<b>Board of Director's Meeting Date:</b> February 1, 2012	
<b>Overview of BOD Action:</b> Approve C12182 with Caltrans	
Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW					
Original Contract Amount	\$	91,305,000	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	0	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$	0	Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>91,305,000</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 91,305,000</b>

<b>Contract Start Date</b> February 1, 2012	<b>Current Contract Expiration Date</b> August 15, 2014	<b>Revised Contract Expiration Date</b>
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. 87912000				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY?				
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the <b>Overall Funding</b> for the duration of the Contract:				
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
<b>Check all applicable boxes:</b>	
<input type="checkbox"/> Retention? If yes, indicate % _____.	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ % <input type="checkbox"/> Underutilized DBE (UDBE) Goal _____ %	

<p style="text-align: center;"> _____</p> <p style="text-align: center;">Task Manager Signature <span style="float: right;">Date</span></p>	<p style="text-align: center;"> _____</p> <p style="text-align: center;">Project Manager Signature <span style="float: right;">Date</span></p>
<p style="text-align: center;"> _____</p> <p style="text-align: center;">Chief Financial Officer Signature <span style="float: right;">Date</span></p>	<p style="text-align: center;"> _____</p> <p style="text-align: center;">Contracts Manager Signature <span style="float: right;">Date</span></p>

mm  
1/4/12

UNIT 3823	PROJECT ID 0000020887	PHASE S	PROGRAM CODE 30.20.723.000	OBJECT 049	PROJECT NUMBER TCIF-083	ENCUMBRANCE DOCUMENT NO.
STATUTES 2011	CHAPTER 33	FISCAL YEAR 2011-2012	ITEM 2660-304-6056	TASK SUBTASK 1210	FUND SOURCE TCIF-1B	AMOUNT \$91,305,000
I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance. FUNDS CERTIFIED BY:						DATE

**AGREEMENT**

THIS AGREEMENT made and entered into this **1st day of February 2012**, by and between the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as **State**, and THE SAN BERNARDINO ASSOCIATION OF GOVERNMENTS, a joint powers agency (SANBAG), hereinafter referred to as **Public Agency**.

**WITNESSETH**

WHEREAS, pursuant to the provisions of Sections 8879.23(c)(1) and 8879.50 of the California Government Code, the California Transportation Commission (CTC), by Resolution No. TCIF –A–1112-01, issued on April 10, 2008, established Trade Corridors Improvement Fund (TCIF) Guidelines (Exhibit A attached); and

WHEREAS, by the CTC initiated a process to select projects and the **Colton Crossing Grade Separation Project** (hereinafter “**Project**”) was selected for funding. (SANBAG) hereinafter **Public Agency**; and

WHEREAS, on **March 15, 2010**, **Public Agency** entered into a Project Baseline Agreement, hereinafter **Baseline Agreement**, for the construction and maintenance of said **Project** (Project Baseline Agreement) (Exhibit A attached); and

WHEREAS, **Public Agency** has certified and reaffirms herein to **State** that sufficient **Public Agency** funds are available to construct the **Project**, and that all other matters, including regulatory approval and environmental clearance, prerequisite to awarding a construction contract within a period of one year after the allocation, has been or will be taken care of within that time; and

WHEREAS, an agreement is to be entered into between **Public Agency** and **State** to provide reimbursement to **Public Agency** in a sum not to exceed the CTC allocation of \$91,305,000 (Resolution TCIF-A-1112-01 at the August 2011 CTC Meeting) from the TCIF fund: and

WHEREAS, reimbursement is provided subject to the **Public Agency** establishing to the satisfaction of **State** that all sums expended by **Public Agency** for **Project** are reasonable and a necessary part of the **Project** as defined by the Commission Guidelines and the Project's Baseline Agreement;

NOW THEREFORE, in consideration of the premises and mutual undertakings of the parties hereto, as hereinafter set forth, **State** and **Public Agency** agrees as follows:

1. **Public Agency** hereby reaffirms its prior certification that it has sufficient **Public Agency** funds to construct the **Project**.
2. **Public Agency** agrees to comply with all current TCIF guidelines as if set forth fully herein and in the "**Baseline Agreement**".
3. The **Project** scope (Exhibit B), a description of anticipated benefits (Exhibit F), and delivery schedule (Exhibit C) are attached hereto as the Project Benefit Form.
4. The **Project** budget and funding plan are attached hereto as the Project Programming Request Form (PPR) (Attachment A attached).
5. The **Project** Study Report For The Colton Crossing Grade Separation Project are attached hereto as the Final Project Study Report (Attachment B attached).
6. **Public Agency** will undertake **Project** using its own documented management, project delivery procedures and practices.
7. The costs attributable to **Project** are limited to the following:

The funds will be limited to the costs of construction work.

**Public Agency** agrees that the 48 CFR, Chapter 1 Part 31 et seq., Contract Cost Principles and Procedures, Federal Acquisition Regulations System, shall be used to determine the allowable individual items of indirect cost. **Public Agency** agrees to comply with the applicable Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments and CFR 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.

8. **Public Agency** agrees to submit quarterly reports on the activities and progress made toward implementation of the **Project**, including **Project** development prior to receipt of a TCIF allocation, to the California Transportation Commission and to the California Department of Transportation.
9. As promptly as possible, and in any event within one year after the TCIF allocation, **Public Agency** shall award a contract for construction of **Project** pursuant to the laws governing the **Public Agency** in the advertising and award of public construction contracts, and in conformance with plans and specifications prepared by or on behalf of **Public Agency**. Construction shall be under the control of **Public Agency**.
10. As the work progresses, and upon receipt of a valid invoice, **State** will promptly reimburse **Public Agency** all allowable construction cost authorized, not to exceed **\$91,305,000 allocated/\$201,989,000 project cost**, the amount approved for allocation

under the TCIF Program. The **Public Agency** shall submit invoices in accordance with Chapter 5 of the Department of Transportation's Local Assistance Procedures Manual. The final invoice shall include a detailed statement of all costs, both reimbursable and matching, as required under the TCIF Program Guidelines. Should the total construction costs for the project, as described, be less than or equal to the original projects cost, those costs savings are to be returned to the **STATE** as immediately due and payable.

11. Within six (6) months after the **Project** becoming operable, the **Public Agency** will provide a final delivery/close out report to State program manager. Final reports will be posted on the bond accountability web site and made available to the California Transportation Commission and the **State**. The report shall include a comparison between the **Project** application and the final **Project** detailing differences in the scope of the completed **Project**, its final costs compared to the approved **Project** budget, actual construction schedule compared to the initial **Project** schedule, and performance compared to anticipated benefits.
12. **Public Agency** will also provide a final bill to supplement the final delivery report at the completion of the **Project**. The **final bill** is to reflect final **Project** expenditures at the conclusion of all **Project** activities. The **final bill** will consist of a detailed statement of the cost of the **Project**, which will be furnished to the **State**. Upon approval of the "**final bill**" **State** will pay **Public Agency** the balance not already reimbursed, if any, of "**State's** share of said costs. If upon final accounting it is determined that **State** previously paid more than its share of said participating portion of **Project** cost, computed in said manner, **Public Agency** will refund to bond fund the difference between **State's** share of the participating portion of **Project** cost, and the amount paid by **State**.
13. **Public Agency** agrees that the **State**, the California Department of General Services, the California Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. **Public Agency** agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated. **Public Agency** agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Construction Contractor agrees to include a similar right of the **State** to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
14. Any obligation by **State** for payment of moneys contained herein is subject to and contingent upon the **Public Agency** establishing to the satisfaction of **State** that all sums expended by **Public Agency** for **Project**, for which **Public Agency** requests partial reimbursement from **State**, are reasonable and are a necessary part of **Project**.
15. Payment of invoiced **State** funds to **Public Agency** for **State's** share of the **Project**, must be made within four years after the date of project allocation, otherwise the un-disbursed balance shall revert to **State**.

16. Any progress payments made by **State** pursuant to Section 9 herein are not an admission by **State** that such expenditures were reasonable and a necessary part of the **Project**, and if **State** finds later that such expenditures were not reasonable and a necessary part of the **Project**, **Public Agency** will reimburse **State** for such advance funds.
17. Two (2) copies of each invoice shall be submitted to the **State**.
18. All invoices and all written correspondence from **Public Agency** to **State** will reference this Agreement Number **75A0XXX**.
19. All **Public Agency** invoices for payments are to be submitted to the following address:

California Department of Transportation  
Division of Rail  
P.O. Box 942874-MS 74  
Sacramento, CA 94274-001

Attn: Trade Corridors Improvement Fund (TCIF)

20. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the agreement is binding on any of the parties.
21. **ASSIGNMENT**: This Agreement is not assignable in whole or in part, without the consent of the **State** in the form of a formal written amendment.
22. **PERIOD OF PERFORMANCE**: Reimbursable work under this Agreement shall begin no earlier than **August 15, 2011**, and will terminate on **August 15, 2014**, unless there is a formal written amendment extending the period of performance.
23. **INDEMNIFICATION**: **Public Agency** agrees to indemnify, defend and save harmless the **State**, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
24. **DISPUTES**: **Public Agency** shall continue with its responsibilities under this Agreement during any dispute.
25. **GOVERNING LAW**: This Agreement is governed by and shall be interpreted in accordance with the laws of the **State** of California.
26. **UNENFORCEABLE PROVISION**: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

27. **RESOLUTION**: A County, City, District, or other local public body must provide the **State** with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, and authorizing execution of this Agreement.

28. **AIR OR WATER POLLUTION VIOLATION**: Under the **State** laws, the **Public Agency** shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

29. **DISPUTES**

- a) Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the State's Contract Officer, who may consider any written or verbal evidence submitted by the contractor. The decision of the Contract Officer, issued in writing, shall be the final decision of the State.
- b) Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the **Public Agency** from full and timely performance in accordance with the terms of this Agreement.
- c) The final decision by the State's Contract Officer does not preclude subsequent litigation of the dispute in a court of competent jurisdiction.

30. **TERMINATION**

- a) The State and SANBAG mutually have the right to terminate this Agreement without cause upon thirty (30) days written notice to the **Public Agency** or immediately in the event of material breach by the **Public Agency**.
- b) In the event that the total contract amount is expended prior to the expiration date, the **State** may, at its discretion, terminate this Agreement with 30 days notice to **Public Agency**.

31. **LAWS TO BE OBSERVED**: The **Public Agency** shall keep fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. **Public Agency** shall at all times observe and comply with, and shall cause all agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work. The **Public Agency** shall protect and indemnify the **State** of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the contractor, a subcontractor, or an

employee. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or agreement for the work in relation to any such law, ordinance, regulation, order, or decree, the **Public Agency** shall immediately report the same to the contract manager in writing.

32. SPECIFIC STATUTORY REFERENCE: Any reference to certain statutes in this Agreement shall not relieve the **Public Agency** from the responsibility of complying with all other statutes applicable to the service, work, or rental to be furnished hereunder.

33. LIABILITY INSURANCE PROVISIONS

- a) **Public Agency** is responsible for any deductible or self-insured retention contained within the insurance program.
- b) The insurance policy shall contain a provision that states that coverage will not be cancelled without 30 days prior written notice to the **State**.
- c) Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the **State** at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of this Agreement.
- d) In the event **Public Agency** fails to keep in effect at all times the specified insurance coverage, the **State** may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.
- e) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the **State**.
- f) The **State** will not be responsible for any premiums or assessments on the policy.

1. Commercial General Liability

- i. **Public Agency** shall maintain general liability with limits of not less than **\$1,000,000** per occurrence for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the contractor's limit of liability.
  - ii. The State of California, its officers, agents, employees, and servants shall be included as additional insured, but only with respect to work performed for the State of California under this Agreement. The insurance carrier should provide an endorsement for the additional insured statement.
2. Workers' Compensation/Employer's Liability: **Public Agency** shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement,

including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 per incident shall be required.

34. **LABOR CODE COMPLIANCE: PREVAILING WAGES:** If the work performed on this **Project** is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, repair or maintenance **Public Agency** must conform to the provisions of Labor Code sections 1720 through 1815 and all applicable regulations and coverage determinations issued by the Director of Industrial Relations. **Public Agency** agrees to include prevailing wage requirements in its contracts for public work. Work performed by **Public Agency's** own forces is exempt from the Labor Code's prevailing wage requirements.
35. **PREVAILING WAGE REQUIREMENTS IN SUBCONTRACTS:** **Public Agency** shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a public work as defined in Labor Code section 1720(a)(1). Subcontracts shall include all prevailing wage requirements set forth in **Public Agency's** contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

BY

\_\_\_\_\_  
Cheryl Smith, Contract Officer  
Division of Procurement and Contracts

**San Bernardino Associated Governments**

BY

\_\_\_\_\_  
Larry McCallon,  
President, Board of Directors

Attest: \_\_\_\_\_  
Vicki Watson  
Clerk of the Board

Approved as to Form and Procedure

BY: \_\_\_\_\_  
Penny Alexander-Kelley  
General Counsel

Concurrence:

BY: \_\_\_\_\_  
Kathleen Murphy-Perez  
Contracts Manager

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

BY

---

William D. Bronte, Chief  
Division of Rail

**TRADE CORRIDORS IMPROVEMENT FUND  
PROJECT BASELINE AGREEMENT**

**1. PARTIES AND DATE**

- 1.1** This Project Baseline Agreement (Agreement) for the Colton Crossing Rail Grade Separation Project, effective March 15, 2010, is made by and between the California Transportation Commission (Commission) and the California Department of Transportation (Caltrans) as the project sponsor, sometimes collectively referred to as the "Parties."

**2. RECITAL**

- 2.1** Whereas at its April 10, 2008 Meeting the California Transportation Commission programmed the Trade Corridors Improvement Fund (TCIF) and included in this program of projects the Colton Crossing Rail Grade Separation Project, the parties are entering into this Project Baseline Agreement to document the project cost, schedule, scope and benefits. These items are detailed in the attached Project Programming Request Form (attached hereto as Attachment A), the Colton Crossing Rail Grade Separation Project Study Report (Attachment B), and in the Memorandum of Understanding (MOU) for the Colton Crossing Rail Grade Separation, executed March 15, 2010 between the California Department of Transportation, the Union Pacific Railroad Company (Union Pacific), and the BNSF Railway Company (Attachment C). This MOU includes a project benefits discussion, identified as MOU Exhibit F as "Description of Projected Public Benefits." These will serve as the baseline for project monitoring by the California Transportation Commission and its Project Delivery Council. The undersigned Project Sponsor certifies, based on the MOU with Union Pacific and BNSF Railway Company (BNSF), that the funding sources cited are expected to be available; the estimated costs represent full project funding; and the scope and description of benefits is the best estimate possible.

**3. GENERAL PROVISIONS**

Caltrans, as the Project Sponsor, and by extension the Union Pacific and BNSF (as detailed in the attached MOU), agree to abide by the following provisions:

- 3.1** To meet the requirements of Government Code Section 8879.23(c)(1), as added by Proposition 1B, and of Government Code Section 8879.50, as enacted through implementing legislation in 2007 (Senate Bill 88 and Assembly Bill 193) and 2008 (Assembly Bill 268).
- 3.2** To adhere to the provisions of the California Transportation Commission Resolution TCIF-P-0708-01, "Adoption of Program of Projects for the Trade Corridors Improvement Fund (TCIF)," dated April 10, 2008.

- 3.3 To adhere to the California Transportation Commission's Trade Corridors Improvement Fund Guidelines.
- 3.4 To adhere to the California Transportation Commission's Accountability Implementation Plan and policies, and program and baseline amendment processes.
- 3.5 The Sponsoring Agencies, pursuant to provisions of the attached MOU between Caltrans and the Union Pacific and BNSF, agree to pursue funding for any additional costs of the project. Any change to the funding commitments and/or project scope outlined in this agreement requires an amendment.
- 3.6 To report to the California Transportation Commission on a quarterly basis on the progress made toward the implementation of the project, including scope, cost, and schedule.
- 3.7 To report to the California Transportation Commission on the progress, on a quarterly basis, and outcomes, at the end of the environmental phase, regarding the air quality impacts due to diesel emissions of particulates and other pollutants, and related mitigation strategies. Whereas the Bond Act mandates that the Commission shall allocate TCIF for trade infrastructure improvements in a manner that places emphasis on projects that improve trade corridor mobility while reducing emissions of diesel particulates and other pollutant emissions, the Department of Transportation, the Sponsoring Agencies, and the Corridor Coalitions understand and agree that the California Transportation Commission will only allocate TCIF to projects that can demonstrate compliance with applicable environmental requirements. If environmental clearance is conditioned to the implementation of mitigation measures as a condition of the project moving forward, in accordance with the MOU the Union Pacific and BNSF must jointly commit, in writing, to the implementation of those mitigation measures.
- 3.8 To maintain and make available to the California Transportation Commission and/or its designated representative, all work-related documents, including engineering and financial data, during the course of the project and retain those records for four years from the date of the final closeout of the project. Financial records will be maintained in accordance with Generally Accepted Accounting Principles.
- 3.9 The California Transportation Commission, and/or its designated representative, has the right to audit the project records, including technical and financial data, of the Department of Transportation, the Union Pacific, the BNSF, and any subconsultants at any time during the course of the project and for four years from the date of the final closeout of the project. Audits will be conducted in accordance with Generally Accepted Government Auditing Standards.

#### **4. SPECIFIC PROVISIONS AND CONDITIONS**

##### **4.1 Project Schedule and Cost**

See the Project Programming Request Form (included as Attachment A), and the Estimated Project Schedule and Proposed Funding Plan Summary (included as Exhibit C in the attached MOU).

**4.2 Project Scope**

See the Colton Crossing Rail Grade Separation Project Study Report (Attachment B) and the Preliminary Description of the Project (MOU Exhibit B).

**4.3 Project Benefits**

See attached MOU Exhibit F, Description of Projected Public Benefits.

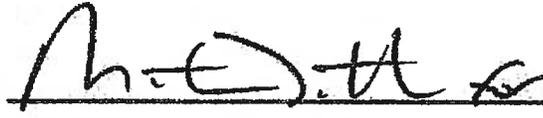
**4.4 Other Project-Specific Provisions and Conditions**

Several provisions are identified in the attached Colton Crossing Rail Grade Separation Project Memorandum of Understanding (Attachment C). This includes as MOU exhibits not otherwise mentioned above the Description of Premises (Exhibit A), Certain Key Terms and Concepts for Construction and Operation Agreement (MOU Exhibit E), and Description of Supplemental Funding Plan (MOU Exhibit G).

**SIGNATURE PAGE**

**TRADE CORRIDORS IMPROVEMENT FUND  
PROJECT BASELINE AGREEMENT**

**Colton Crossing Rail Grade Separation Project**

 3/15/10

**RANDELL H. IWASAKI**  
**Director**  
**California Department of Transportation**

**Date**

---

**BILMA RHINEHART**  
**Executive Director**  
**California Transportation Commission**

**Date**

**ATTACHMENT A**

**Colton Crossing Rail Grade Separation Project**

**Project Programming Request Form**

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 8/09)

General Instructions

<input type="checkbox"/> New Project		<input checked="" type="checkbox"/> Amendment (Existing Project)			Date:	03/31/10
Caltrans District	EA	PPNO	MPO ID	TCRP No.		
08	47700K	0150D	SCAG			
County	Route/Corridor	Project Sponsor/Lead Agency		MPO	Element	
SBD	I-10	Caltrans		SCAG	RAIL	
<b>Project Title</b>						
Colton Crossing RR Grade Separation						
PM Bk	PM Ahd	Project Mgr/Contact	Phone	E-mail Address		
538.5	539.7	Tom Kim	(714) 504-8860	tom.kim@hdrinc.com		
<b>Location; Project Limits; Description, Scope of Work, Legislative Description</b>						
Construct grade separation structure to elevate two UPRR mainline tracks which currently cross two BNSF mainline tracks at grade in Colton, California to eliminate east-west train delay caused by north-south train traffic or vice versa.						
Component	Implementing Agency				Reimbursements	
PA&ED	SANBAG					
PS&E	Union Pacific / BNSF Railroads					
Right of Way	Union Pacific / BNSF Railroads					
Construction	Union Pacific / BNSF Railroads					
<b>Legislative Districts</b>						
Assembly: 62		Senate: 32				
Congressional: 43						
<b>Purpose and Need</b>						
Eliminate a bottleneck in the regional rail network that exists where BNSF mainlines cross the UPRR mainlines in the City of Colton, otherwise known as the Colton Crossing. The specific project objectives include improving regional rail mobility and efficiency by eliminating the conflicting train movements at the crossing, discouraging a shift in goods movement from rail to truck because of conflicting train movements that cause delays and inefficiencies in rail traffic through the Colton Crossing, thus reducing the congestions impact that truck traffic has on the region's roads and freeways, and facilitating regional passenger rail service by minimizing delays at the Crossing, thus improving the operation and efficiency of passenger rail service.						
<b>Project Benefits</b>						
The project will provide capacity for future freight rail traffic increases, minimize air and noise impacts created by train delays and waiting, improve safety, reduce travel time, and improve access of NAFTA rail freight traffic to and from Mexico, Southern California, and the Ports of Los Angeles and Long Beach.						
<b>Project Milestone</b>					Existing	Proposed
Project Study Report Approved						12/31/05
Begin Environmental (PA&ED) Phase						01/01/07
Circulate Draft Environmental Document			Document Type	EIR/EIS		08/01/10
Draft Project Report						03/03/10
End Environmental Phase (PA&ED Milestone)						12/01/10
Begin Design (PS&E) Phase						06/01/10
End Design Phase (Ready to List for Advertisement Milestone)						06/21/11
Begin Right of Way Phase						01/01/11
End Right of Way Phase (Right of Way Certification Milestone)						09/01/11
Begin Construction Phase (Contract Award Milestone)						09/27/11
End Construction Phase (Construction Contract Acceptance Milestone)						03/31/14
Begin Closeout Phase						03/31/14
End Closeout Phase (Closeout Report)						12/31/14

**ADA Notice**

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 8/09)

Date: 03/31/10

<b>County</b>	<b>CT.District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD	08	0150D		47700K
<b>Project Title:</b> Colton Crossing RR Grade Separation				

Existing Total Project Cost									Implementing Agency
Component	Prior	08/09	09/10	10/11	11/12	12/13	13/14+	Total	
E&P (PA&ED)	3,689							3,689	SANBAG
PS&E			9,740					9,740	Union Pacific / BNSF Railroads
R/W SUP (CT)									
CON SUP (CT)									
R/W				1,082				1,082	Union Pacific / BNSF Railroads
CON							183,789	183,789	Union Pacific / BNSF Railroads
<b>TOTAL</b>	<b>3,689</b>		<b>9,740</b>	<b>1,082</b>			<b>183,789</b>	<b>198,300</b>	
Proposed Total Project Cost									
E&P (PA&ED)	3,689			9,600	6,600			19,889	
PS&E			1,600	10,000				11,600	
R/W SUP (CT)									
CON SUP (CT)									
R/W				7,850	2,650			10,600	
CON					48,000	83,900	48,000	159,900	
<b>TOTAL</b>	<b>3,689</b>		<b>1,600</b>	<b>27,650</b>	<b>57,250</b>	<b>83,900</b>	<b>48,000</b>	<b>201,989</b>	

<b>Fund No. 1:</b>	<b>Prop 1B - Trade Corridor Improvement Fund (TCIF)</b>								<b>Program Code</b>
<b>Existing Funding</b>									20.XX.723.000
Component	Prior	08/09	09/10	10/11	11/12	12/13	13/14+	Total	Funding Agency
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON							97,305	97,305	
<b>TOTAL</b>							<b>97,305</b>	<b>97,305</b>	
Proposed Funding									Notes
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON							97,305	97,305	
<b>TOTAL</b>							<b>97,305</b>	<b>97,305</b>	

<b>Fund No. 2:</b>	<b>NP - Public Transportation Account (PTA)</b>								<b>Program Code</b>
<b>Existing Funding</b>									30.20.020.721
Component	Prior	08/09	09/10	10/11	11/12	12/13	13/14+	Total	Funding Agency
E&P (PA&ED)	3,689							3,689	Caltrans
PS&E									\$2189 PAED voted 10/12/06
R/W SUP (CT)									\$1500 PAED voted 09/05/07
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>	<b>3,689</b>							<b>3,689</b>	
Proposed Funding									Notes
E&P (PA&ED)	3,689							3,689	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>	<b>3,689</b>							<b>3,689</b>	

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 8/09)

Date: 03/31/10

<b>County</b>	<b>CT. District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD	08	0150D		47700K
<b>Project Title:</b> Colton Crossing RR Grade Separation				

<b>Fund No. 3:</b>		<b>BNSF/UP Railroads</b>							<b>Program Code</b>	
		<b>Existing Funding</b>							<b>LOCAL FUNDS</b>	
<b>Component</b>	<b>Prior</b>	<b>08/09</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14+</b>	<b>Total</b>	<b>Funding Agency</b>	
E&P (PA&ED)										
PS&E			9,740					9,740		
R/W SUP (CT)										
CON SUP (CT)										
R/W				1,082				1,082		
CON							86,484	86,484		
<b>TOTAL</b>			<b>9,740</b>	<b>1,082</b>			<b>86,484</b>	<b>97,306</b>		
		<b>Proposed Funding</b>							<b>Notes</b>	
E&P (PA&ED)				6,700	6,600			13,300		
PS&E				9,500				9,500		
R/W SUP (CT)										
CON SUP (CT)										
R/W				7,000	3,600			10,600		
CON					6,000	12,000	16,795	33,795		
<b>TOTAL</b>				<b>23,200</b>	<b>16,200</b>	<b>12,000</b>	<b>16,795</b>	<b>67,195</b>		

<b>Fund No. 4:</b>		<b>ARRA Tiger</b>							<b>Program Code</b>	
		<b>Existing Funding</b>							<b>LOCAL FUNDS</b>	
<b>Component</b>	<b>Prior</b>	<b>08/09</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14+</b>	<b>Total</b>	<b>Funding Agency</b>	
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
<b>TOTAL</b>										
		<b>Proposed Funding</b>							<b>Notes</b>	
E&P (PA&ED)				2,900				2,900		
PS&E				2,100				2,100		
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON					28,800			28,800		
<b>TOTAL</b>				<b>5,000</b>	<b>28,800</b>			<b>33,800</b>		

<b>Fund No. 5:</b>		<b>SANBAG, RCTC</b>							<b>Program Code</b>	
		<b>Existing Funding</b>							<b>LOCAL FUNDS</b>	
<b>Component</b>	<b>Prior</b>	<b>08/09</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14+</b>	<b>Total</b>	<b>Funding Agency</b>	
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
<b>TOTAL</b>										
		<b>Proposed Funding</b>							<b>Notes</b>	
E&P (PA&ED)									No funding required or provided.	
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
<b>TOTAL</b>										

**ATTACHMENT B**

**Colton Crossing Rail Grade Separation Project Study Report**

# **Colton Crossing Rail Improvement Project**

## **Project Study Report**



**March 15, 2010**

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## **Section 1 Introduction**

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Colton Crossing is an at-grade junction of two BNSF Railway (BNSF) San Bernardino Subdivision mainline tracks running in a north-south direction and Union Pacific Railroad (UPRR) Alhambra / Yuma Subdivision mainline tracks running in an east-west direction. Conflicting train movements result in trains being delayed which compromises the operational and economic effectiveness of these critical freight corridors. The proposed improvement will result in the two UPRR tracks being elevated to cross over the two BNSF tracks, eliminating a significant majority of the delay at Colton Crossing. The proposed project will reduce emissions and improve mobility for local vehicle traffic and freight rail traffic. If this bottleneck is not addressed, delay for both vehicles and rail traffic will only continue to increase.

## **Section 2 Background**

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BNSF owns, dispatches, and maintains the north / south tracks. UPRR owns, dispatches, and maintains the east / west tracks. The junction (i.e. diamond) itself is dispatched by BNSF. Union Pacific utilizes trackage rights on BNSF's San Bernardino Subdivision (north / south) dating back to 1915. In fourth quarter 2006, approximately 129 trains, on average, occupied this crossing on a daily basis. BNSF operated approximately 60% of the trains and UPRR operated approximately 40% of the trains.

## **Section 3 Purpose and Need**

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The Purpose of the proposed project is to eliminate a bottleneck in the regional rail network that exists where BNSF mainlines cross the UPRR mainlines in the City of Colton, otherwise known as the Colton Crossing. The specific project objectives include:

- Improve regional rail mobility and efficiency by eliminating the conflicting train movements at the Crossing.
- Discourage a shift in goods movement from rail to truck because of conflicting train movements that cause delays and inefficiencies in rail traffic through the Colton Crossing, thus reducing the congestions impact that truck traffic has on the region's roads and freeways.

- Facilitate regional passenger rail service by minimizing delays at the Crossing, thus improving the operation and efficiency of passenger rail service.

The Colton Crossing project has been discussed for decades, and received increasing attention with the rapid growth of rail intermodal traffic (starting in the 1990s) that in turn resulted in larger delays to area highway traffic at rail-highway crossings. The need for improvements at Colton Crossing has been documented in the following studies:

- California Goods Movement Action Plan, January 2007;
- California State Rail Plan 2007–08 to 2017-18;
- Inland Empire Railroad Main Line Study, June 2005;
- Multi-County Goods Movement Action Plan, April 2008; and
- National Rail Freight Infrastructure Capacity and Investment Study, September 2007.

These reports include an extensive amount of data that has been thoroughly analyzed in determining the need for improvements at Colton Crossing. Each report concluded:

1. Improvements are required at Colton Crossing to eliminate an existing bottleneck whose delay is currently estimated at 74,900 train hours annually;<sup>1</sup>
2. Improvements to the rail system, including Colton Crossing, will discourage a shift to truck traffic, which could have significant positive effects on air quality and congestion; and
3. Improvements are necessary to accommodate rail traffic demands.

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<sup>1</sup> Public Benefit Study for Colton Crossing Grade Separation, Final Report, HDR | HLB Decision Economics Inc., February 2008

## **Section 4 Corridor and System Coordination**

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As noted by AASHTO, these two rail lines handle more than 70% of the potential intermodal rail traffic, both containers and trailers-on-flat cars, flowing between Southern California and the Midwest and East Coast.<sup>2</sup> Approximately 40% of all containerized traffic entering or leaving the U.S. passes through the Ports of LA/Long Beach, more than 60% of the port volume is moved inland through the L.A. Basin, and the vast majority of that traffic moves via rail over Colton Crossing. The crossing's importance is not limited to the ports, however, as 40% of its traffic serves other businesses in the State of California and is not related to the ports. For example, the crossing plays an important role in moving high-value consumer packages, and more than 90% of the automobiles manufactured in the United States and sold in Southern California utilize the crossing. Furthermore, consumer products, forest products, processed foods, and construction materials move via rail to and from various parts of the United States to Southern California. Each year the railroads originate or terminate over 1.6 million units of traffic, excluding international intermodal, which supports local industry in the Los Angeles basin.

Colton Crossing is a major chokepoint of the Southern California rail network, with an average of 129 train operations (including three Amtrak intercity passenger trains and eight Metrolink commuter trains) per day at its peak in 2006. Although demand has moderated due to the economic retraction since 2006, congestion is expected to grow increasingly worse as passenger train counts increase and when the economic demand for additional freight shipments returns. For example in 2007, freight trains experienced delays up to several hours (with an average of one hour delay at the crossing) as they waited for other trains to pass through the crossing. These delays cascade through the nation's rail network, requiring both UP and BNSF to hold trains as far as 20-50 miles from Colton in order to fit them into operating "gaps" at the crossing. These systemic delays not only have a direct time impact on how long it takes to move goods across the country, but the range of delays also severely affects the reliability of shipping goods via rail. Shippers have higher inventory costs, as they need to hold larger stockpiles of materials to avoid shortages if/when shipments arrive late. The impacts of delays at

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<sup>2</sup> "Freight-Rail Bottom Line Report," AASHTO, 2008.

Colton Crossing limit the viability of rail in certain markets (particularly for high value goods), resulting in additional truck trips taken on already congested Interstate highways.

The crossing's congestion causes negative impacts in the city of Colton, California, and the surrounding area. Diesel locomotives sometimes idle for long periods as they wait for a crossing window, and more than 24 rail-highway crossings can be blocked by trains that are moving slowly (due to railway congestion) as they approach Colton Crossing. The road delays at these affected rail-highway grade crossings are significant (it is estimated that an average of nearly 3 million person hours per year will be saved at affected rail-highway grade crossings when the Colton Crossing grade separation project is implemented), and these road delays contribute additional emissions. Once the trains move through the crossing, which happens an average of once every 10 minutes (24 hours per day), the trains generate noise impacts when the slack in the coupling between cars is removed and again when each rail wheel eventually travels over the four gaps at the "diamond" crossing.

## **Section 5 Alternatives**

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A number of alternatives were analyzed to identify the preferred alternative for this project. The alternatives analyzed include:

- Do not construct any grade separation;
- Elevate UPRR Alhambra / Yuma Subdivision tracks over the BNSF San Bernardino Subdivision tracks;
- Elevate BNSF San Bernardino Subdivision tracks over the UPRR Alhambra / Yuma Subdivisions tracks;
- Depress BNSF San Bernardino Subdivision tracks under the UPRR Alhambra / Yuma Subdivision tracks;
- Depress UPRR Alhambra / Yuma Subdivision tracks under the BNSF San Bernardino Subdivision tracks; and
- Elevate UPRR Los Angeles Subdivision tracks over the BNSF San Bernardino Subdivision tracks.

The no build alternative was not acceptable given the existing delays and projected growth for this critical railroad junction, hindering and restricting goods movement through the rail corridor, resulting in more trucks on already congested highways.

The preferred alternative was modeled and it was determined that the grade separation would virtually eliminate all delays for the north / south BNSF line, and would also eliminate approximately 80% of the delay on the east / west UPRR line.

## **Section 6 Environmental Status**

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The state's Environmental Impact Review (EIR) is currently underway, and the draft EIR is expected to be complete and circulated for review by the third quarter 2010. No private property would be taken for the construction of the project and the only right-of-way acquisition needed for the project is an approximately 40-foot wide strip of state-owned land that is part of the Interstate-10 right-of-way (Caltrans has agreed to convey the right-of-way to the project). There is a remote potential that an endangered species could inhabit the area (the Delhi Sands fly is found in parts of San Bernardino and Riverside Counties), however, field surveys underway (beginning in the summer of 2009) have thus far indicated that this species is not expected to be found in the project area. No additional environmentally related actions are anticipated to be needed.

With the award of the USDOT American Recovery and Reinvestment Act (ARRA) Transportation Investment Generating Economic Recovery (TIGER) grant, a federal NEPA evaluation will also be required. An Environmental Assessment (EA) may be needed, which could take up to six months. The project schedule anticipates that the NEPA process will begin (with scoping) in April 2010 and conclude by December 2010, drawing heavily on work already done under the state environmental process. It is anticipated that the project will receive a Finding of No Significant Impact (FONSI), although there may be a path under which a Categorical Exclusion is possible.

## **Section 7 Cost Estimates/Funding**

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### **Project Element Cost Estimates**

The project scope includes:

- Construct a structure, approximately 7,250 feet long, between Rancho Avenue (MP 538.5) and Mount Vernon Avenue (MP 539.7) with a 0.65% grade at the west approach and a 1.17% grade at the east approach;
- Two mainline tracks and a maintenance road will be constructed on the structure;
- Opening under the grade separation structure for the BNSF tracks would accommodate a potential third BNSF mainline track with 20 ft track centers;

- The existing UPRR mainline 2 track would be converted to a switching lead track between West Colton yard and Old Cotton yard with an at grade crossing diamond at the junction with the BNSF;
- Modify existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline 2 track; and
- Design provides for future connection between UPRR and BNSF tracks in the southwest quadrant.

The project costs (in millions) are summarized as follows.<sup>3</sup>

	<u>Total</u>	<u>Percentage</u>
Project Approval and Environmental	\$19.8	9.8%
Plans, Specifications and Estimates	\$11.6	5.7%
Right-of-Way	\$10.6	5.3%
Construction (Capital and Support)	\$160.0	79.2%
<b>TOTAL</b>	<b>202.0</b>	<b>100.0%</b>

### Funding (in millions)

The following funding allocation has been identified.

<u>Source</u>	<u>Amount</u>	<u>Percentage</u>
UPRR	\$49.7	24.6%
BNSF	\$7.5	3.7%
Supplemental Funding -- (responsibility of UPRR)	\$10.0	5.0%
USDOT -- ARRA TIGER GRANT	\$33.8	16.7%
CALIFORNIA TCIF	\$97.3	48.2%
CTC STIP (for PA&ED)	3.7	1.8%
<b>TOTAL</b>	<b>\$202.0</b>	<b>100.0%</b>

<sup>3</sup> Due to rounding, the total amount may deviate slightly from the actual total.

UPRR and BNSF are committed to providing the funding identified above subject to mutually agreeable funding terms and conditions. The final project concept, design, and scope may be modified prior to construction as the result of final engineering, an environmental assessment, and/or an updated economic analysis.

In addition to the private match, the future maintenance of the new infrastructure as a result of the rail improvement project would be privately funded by the railroads.

## **Section 8 Schedule**

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The preliminary project schedule is outlined below.

### **Project Schedule**

<b>Begin Permitting / NEPA</b>	<b>Underway</b>
<b>Complete Preliminary Engineering, Technical Studies</b>	<b>June 2010</b>
<b>Begin Design – Track &amp; Structures</b>	<b>June 2010</b>
<b>Begin Design – Signal</b>	<b>August 2010</b>
<b>Circulate Draft EIR/EA</b>	<b>August 2010</b>
<b>Complete PAED/Final EIR and EA</b>	<b>December 2010</b>
<b>Begin ROW Acquisition</b>	<b>January 2011</b>
<b>Begin Utility Relocation</b>	<b>March 2011</b>
<b>Complete Construction &amp; Maintenance Agreement</b>	<b>March 2011</b>
<b>Complete Definitive Agreement</b>	<b>March 2011</b>
<b>End Permitting / NEPA</b>	<b>June 2011</b>
<b>End Design – Track &amp; Structures and Signal</b>	<b>June 2011</b>
<b>Begin Project Bid Process</b>	<b>July 2011</b>
<b>End ROW Acquisition</b>	<b>September 2011</b>
<b>End Utility Relocation</b>	<b>September 2011</b>
<b>End Project Bid Process</b>	<b>September 2011</b>

Begin Construction

September 2011

End Construction

March 2014

## **Section 9 Project Reviews**

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The proposed project is subject to Project approval and environmental clearance processes necessary to comply with the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act (NEPA). Final review will also be required before the allocation of TCIF funds by the California Transportation Commission, and by the Federal Railroad Administration (FRA), in their administration of the ARRA TIGER funds. Any change in the Project budget, funding plan or schedule identified will be reviewed by the State, FRA and Railroads.

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**ATTACHMENT C**

**Colton Crossing Rail Grade Separation Project**

**Memorandum of Understanding**

**MEMORANDUM OF UNDERSTANDING****Colton Crossing Rail Grade-Separation Project**

This Memorandum of Understanding (“**Memorandum**”), dated this 15th day of March 2010, is by and between the State of California, acting through its Department of Transportation (the “**State**”), Union Pacific Railroad Company (“**Union Pacific**”), and BNSF Railway Company (“**BNSF**”). For purposes of this Memorandum, the State, BNSF, and Union Pacific are sometimes collectively referred to as “**parties**” and individually as a “**party**.” Likewise, BNSF and Union Pacific are sometimes collectively referred to as the “**railroads**.”

This Memorandum is made with reference to the following recitals:

A. The parties agree that an efficient and capable freight rail system is critical to assuring the growth of the State’s economy. As stated in the California State Rail Plan 2007-08 to 2017-18, an ongoing partnership with freight railroads and others is required to maximize benefits, including freight mobility, safety, energy, and environmental objectives. Working together to eliminate rail infrastructure chokepoints and improve rail-system efficiency is essential to achieving these goals.

B. The Colton Crossing consists of two BNSF San Bernardino Subdivision mainline tracks that run north/south and cross two Union Pacific Yuma Subdivision mainline tracks that run east/west. The BNSF and Union Pacific tracks cross at grade and perpendicular to one another. The railroads own or have the right to use and operate over the real property and rail facilities at and near the Colton Crossing, as more particularly described in Exhibit A (the “**Premises**”). The Colton Crossing causes delays and congestion because trains must stop and wait for other trains on conflicting tracks to pass through the crossing.

C. The majority of passenger and freight rail movements between Los Angeles, the Inland Empire, and points east must pass through the Colton Crossing. Elsewhere on these corridors, BNSF and Union Pacific have both made capacity improvements whose long-term capacity value may not be fully realized because of the constraints created by the Colton Crossing.

D. The parties propose a project to grade-separate the Colton Crossing (the “**Project**”). As described in Exhibit B, the Project would consist of a flyover to elevate the Union Pacific mainline tracks and permit trains traveling on the BNSF tracks to pass beneath the Union Pacific tracks without conflict of movement. As set forth in greater detail in Exhibit F, the parties expect that the Project will:

- a. Improve freight train corridor mobility through the region;
- b. Reduce train delays caused by conflicting movements at the Colton Crossing, thus improving reliability of both passenger and freight trains;

- c. Improve local and regional air quality by reducing the time that locomotives spend idling and by reducing truck volumes on local roads and freeways;
- d. Minimize noise associated with train staging operations and idling locomotives;
- e. Reduce long-term congestion and improve safety on the regional freeway network by shifting loads from trucks to trains and reducing the number of interstate trucks traveling on the freeways;
- f. Increase the efficiency of rail movement in the region, thereby enhancing the competitiveness of the Port of Los Angeles and Port of Long Beach;
- g. Create employment opportunities related to the construction of a major rail improvement project.

E. On November 7, 2006, California voters approved The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 as Proposition 1B (the "Act"). The Act provided for \$2 billion to be transferred to the Trade Corridors Improvement Fund (the "TCIF") for infrastructure improvements along corridors having a high volume of freight movement. The California Transportation Commission (the "Commission") thereafter, on November 27, 2007, established certain guidelines by which the TCIF program will be implemented and, on April 10, 2008, adopted certain clarifying resolutions (collectively, the "TCIF Guidelines"). The parties agree that the Project satisfies the TCIF Guidelines and qualifies as the type of project for which TCIF funds should be used.

F. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act ("ARRA"). Among other things, the ARRA created the Transportation Investment Generating Economic Recovery ("TIGER") program. The TIGER program authorizes the Secretary of Transportation to issue up to \$1.5 billion in grants on a competitive basis for capital investments in surface transportation infrastructure projects that will have a significant impact on the nation, a metropolitan area, or a region. Passenger and freight rail projects are among those eligible for TIGER grants. The ARRA authorizes funding for TIGER grants through September 30, 2011. The parties applied for TIGER funding for the Project, as reflected in Exhibit G. On February 17, 2010, the Secretary of Transportation granted \$33.8 million in TIGER funds for the Project.

G. The parties have submitted the construction of the Colton Crossing Grade Separation Project for adoption into the TCIF program. As of April 10, 2008, the Commission has already programmed ninety-seven million, three hundred and five thousand dollars (\$97,305,000) in TCIF funds for the Project, subject to the Commission's review of the Project's requirements and delivery schedule contained in the Project's baseline agreement. (See, Cal. Gov. Code §8879.52(d).)

H. The State and railroads now desire to enter into this Memorandum in order to outline some of the main terms that would govern the proposed investment in the Project of funds allocated by the Commission pursuant to the TCIF Guidelines (the "State Contribution"), the supplemental funds to be provided for the Project, the design and construction of the Project,

the achievement of public benefits to be realized as a result of the Project, and the process for negotiating and preparing binding Definitive Agreements (as defined below) to cover all such matters.

I. The parties acknowledge that the allocation of the State Contribution for construction of the Project is contingent upon, among other things, its adoption by the Commission pursuant to applicable law and the TCIF Guidelines, the appropriation of funds by the California state Legislature (the "Legislature"), the execution of a project baseline agreement (the "Project Baseline Agreement") between the State and the Commission, commitment of sufficient supplemental funds to complete the Project, and continued adherence to the accountability implementation plan adopted by the Commission, including the provision of financial and performance audits and quarterly progress reports.

**NOW, THEREFORE**, the parties agree as follows:

1. **Project.** The Project will consist of the construction and operation of various upgrades and improvements to the existing grade, tracks, signal, and related infrastructure located on the Premises. The current Project scope includes, without limitation, construction of an elevated flyover of the Union Pacific tracks over the BNSF tracks, as more specifically described in Exhibit B. Final Project concept, design, and scope may be reduced or expanded by mutual written agreement of the parties prior to commencement of construction of the Project as the result of final engineering, an environmental assessment, or an updated economic analysis. The parties agree that funding for the Project is subject to Project approval and environmental clearance processes necessary to comply with the California Environmental Quality Act ("CEQA"). The State will be the responsible CEQA lead agency. The Federal Railroad Administration will be the lead agency under the National Environmental Policy Act ("NEPA"). The Project is expected to generate significant public benefits as described in Exhibit F.

2. **Project Baseline Budget.** The railroads advise that as of the date hereof, (i) the Project baseline budget and schedule attached hereto as Exhibit C represent the estimated Project costs and the current Project funding plan and schedule, and (ii) the non-State Contribution funding described in Exhibit E and Exhibit G is expected to be available to fund part of the development of the Project in accordance with the contemplated Project scope, budget, and schedule, and is expected to be fully committed, consistent with the amounts and allocations set forth in Exhibit C and Exhibit E, at or prior to execution of the Definitive Agreements. Any change in the Project budget, funding plan, scope, or schedule described in the attached Exhibits B, C, E and G will require prior written approval of the parties, and may require an amendment to the Project Baseline Agreement or one or more Definitive Agreements, with any amendment to the Project Baseline Agreement requiring approval by the Commission.

3. **Overall Schedule.** The parties contemplate that, subject to obtaining all necessary approvals, the parties will enter into one or more agreements covering the construction, operation, maintenance, and funding of the Project, and implementation of public benefits generated by the Project (the "Definitive Agreements"), on a date no sooner than six months prior to the beginning of construction, which is currently projected to commence in September 2011. The parties contemplate that the railroads will complete construction of the Project and commence operations over the new improvements by dates to be established in the Definitive

Agreements. The parties further contemplate that negotiation of the Definitive Agreements for the Project, environmental review, and permitting will be conducted in accordance with the schedule attached hereto as Exhibit C. The parties agree to use reasonable efforts, including dedication of sufficient staff time as they respectively deem necessary, to meet the milestones set forth in Exhibit C.

4. Definitive Agreements. This Memorandum is intended by the parties as a summary of some, but not all, of the basic terms associated with the Project. Except for the confidentiality provisions, this Memorandum is non-binding. The parties contemplate that, subject to obtaining all necessary approvals from their respective governing bodies, they would enter into certain Definitive Agreements, including, but not limited to, the following:

(a) An Agreement for Construction, Funding, and Operation of the Colton Crossing Grade Separation Project that will cover the scope, construction, operation, maintenance, and funding of the Project (the “**Construction and Operation Agreement**”). The Construction and Operation Agreement will establish dates for the construction term, which dates shall be subject to adjustment for permitting, force majeure, and other approved delays as defined therein; provided that the parties acknowledge that, pursuant to the TCIF Guidelines, construction on the Project must commence by December 31, 2013 or the funding as contemplated herein may terminate. Similar terms will likewise be included to the extent they are necessary to reflect TIGER requirements. A brief summary of certain key terms in the Construction and Operation Agreement is attached hereto as Exhibit E. The parties may also enter into one or more ancillary agreements that they mutually agree are necessary or helpful in connection with the development, environmental review, permitting, or construction of the Project.

(b) An Agreement Regarding Implementation of Public Benefits that will detail the public benefits to be realized as a result of the Project (the “**Public Benefits Agreement**”) and the plan to implement the same (to the extent it is not governed in the Construction and Operation Agreement). A brief summary of the contemplated public benefits that will accrue as a result of the Project and by when those benefits will be realized is attached hereto as Exhibit F. The parties may also enter into one or more ancillary agreements that they mutually agree are necessary or helpful in connection with the realization of public benefits from the Project.

5. Negotiations and Due Diligence. From the date of this Memorandum until such time that negotiations may be terminated as provided in Section 12 of this Memorandum, the parties contemplate that (i) each of the parties will use reasonable, good-faith efforts to negotiate and document each Definitive Agreement, including devoting sufficient staff and time as they deem appropriate to complete such negotiations; (ii) the railroads will grant permission to the State to inspect the Premises, provided that the State enters into each railroad’s standard right-of-entry agreement, subject to review of forms and agreed-upon changes to such forms, for such inspections; and (iii) to the extent permitted by applicable law, the railroads will provide to the State information that is not proprietary, privileged, or subject to a confidentiality obligation and that is reasonably requested by the State concerning the Project or the subdivisions impacted by the Project that will assist the State in evaluating the costs and impacts of the Project and in identifying and evaluating the proposed public benefits of the Project. Prior to a railroad’s

delivery of any such non-public information under this Section ("**Confidential Information**"), the parties will enter into confidentiality agreements that will govern the protection of such Confidential Information, which agreements, however, will be subject to the requirements of the California Public Records Act. Such confidentiality agreements will also include provisions for the State to notify the railroads of any requests the State receives to disclose Confidential Information.

6. Disbursement of Funds.

(a) Pursuant to the TCIF Guidelines, funding for projects adopted into the TCIF program will be allocated by the Commission from funds appropriated by the Legislature or from other state or federal funds appropriated to fund the TCIF program. The funds allocated to the Project will be disbursed by the State pursuant to a procedure to be set forth in the Construction and Operation Agreement.

(b) The parties acknowledge that all projects adopted into the TCIF program are statutorily mandated to have supplemental funding equal to or greater than the State Contribution (the "**Supplemental Funding Requirement**"). Local, federal, or private funds expended after the adoption of the Project into the TCIF program may be used to meet the Supplemental Funding Requirement; provided, however, that while the funding plan may include state funds in addition to the State Contribution, those additional state funds may not be used to satisfy the Supplemental Funding Requirement. Each railroad's supplemental funding obligation is described in Exhibit C and Exhibit E. The parties agree that any TIGER funding received for the Project will be applied to satisfy the Supplemental Funding Requirement.

(c) The parties acknowledge and agree that the approved State Contribution may be used only for the payment or reimbursement of construction costs, which shall be defined in the Construction and Operation Agreement.

7. Conditions Precedent. Conditions precedent to entering into the Definitive Agreements include:

(a) Demonstration of Public Benefits. The public benefits resulting from the Project must be commensurate with the anticipated investment of the State Contribution to the Project. The parties will cooperate in identifying and quantifying public benefits expected to result from the Project, drafting and executing the Public Benefits Agreement providing for the implementation and achievement of such public benefits, and in developing metrics for the measurement of public benefits realized over the economic life of the Project.

(b) Project Scope and Budget. The railroads acknowledge that the scope and layout of the Project is subject to the State's review and approval. The parties further acknowledge and agree that, pursuant to the TCIF Guidelines, the Project must satisfy the statutorily-required useful life for capital assets set forth in the California General Obligation Bond Law (Section 16727(a) of the California Government Code). In order to meet these requirements, the railroads would need to prepare and submit the scope, specifications, schedule, and budget for the Project to the State for review and approval in accordance with the schedule

set forth in Exhibit C. The railroads agree to respond within a reasonable time to any comments that the State may have.

(c) Commission Approval of Project. The Commission must adopt the Project pursuant to applicable law and the TCIF Guidelines.

(d) Dedication of TIGER Funding. The Secretary of Transportation must grant TIGER funds in an amount sufficient to satisfy that portion of the supplemental funding for the Project that the railroads have not committed to pay, as set forth in Exhibit C.

8. Ownership of Project Site and Improvements. The railroads either hold all property rights that will be necessary for the construction of the Project, or prior to commencement of construction, they shall acquire or cause to be acquired any such necessary rights.

9. Allocation of Environmental Benefits. The Definitive Agreements will contain provisions governing allocation of all environmental benefits and/or credits, including such credits as may be generically identified as marketable emissions credits under the Federal Implementation Plan or the California Implementation Plan or a similar program administered by any federal or California state agency or instrumentality, which may accrue, result, or become available as a result of the construction of the Project. As part of the Definitive Agreements, the Parties will evaluate how and which benefits will be allocated between the State and the railroads based upon each party's relative contribution toward such benefits.

10. Press Releases/Communications. The parties will cooperate in good faith during the term of this Memorandum to coordinate any press releases or other communications or statements to the press concerning the negotiations contemplated hereby or the proposed State funding for the Project.

11. Disclaimer of Liabilities. Except for the breach of any confidentiality provisions contained herein, no party shall have any liability to any other party for any liabilities; losses; damages, whether special, incidental or consequential; costs; or expenses incurred by such other party in the event the negotiations contemplated hereunder are terminated for any reason. Each party agrees that there are no representations or warranties concerning the Project, including but not limited to any implied warranties such as fitness for a particular use or merchantability. Except to the extent otherwise provided in any Definitive Agreement, each party shall be solely responsible for its own expenses, legal fees, and consultant fees related to the negotiations described in this Memorandum, regardless of whether any of the transactions contemplated herein are consummated. Notwithstanding any other provision herein, the terms of the Definitive Agreements shall govern questions regarding issues of liability, indemnity, and insurance with respect to the construction, maintenance, and operation of the Project.

12. Termination. The parties agree that any party to this Memorandum may unilaterally withdraw from negotiation or dealing with respect to the Project or the Definitive Agreements contemplated herein at any time, with or without cause, at the withdrawing party's sole discretion upon thirty days prior written notification to the other parties. Notwithstanding this Section, the terms of an executed Definitive Agreement shall govern the obligations of the

parties with respect to the grounds and manner of termination of the executed Definitive Agreement.

13. Preparation of Project Baseline Agreement. The parties agree to work together in good faith to negotiate and prepare the Project Baseline Agreement. The railroads further agree to work in good faith to provide the State with such information as it may need to prepare timely reports to the Commission in relation to the Project Baseline Agreement. The Parties acknowledge that this Memorandum shall be referred to in the Project Baseline Agreement and included as an attachment thereto.

14. Continuation of Existing Rail Service.

Amtrak operates passenger service on the Union Pacific and BNSF tracks located at the Colton Crossing. The Southern California Regional Railroad Authority ("SCRRA" or "Metrolink") operates by agreement on the BNSF tracks at this location. Plans for the Project will include provisions that coordinate passenger train operations through the Project limits on both lines during and after construction. As noted in Exhibit F, passenger lines are expected to enjoy the benefits of fewer delays after the Project is completed. Any effects to the on-time performance of passenger trains operating through the Colton Crossing during and after construction of the Project will be subject to and resolved on terms consistent with the operating agreements between the passenger and freight railroads and any agreements that the freight and passenger railroads may negotiate for purposes of operations during the construction period.

15. Miscellaneous.

(a) Governing Law. Except on subjects preempted by Federal law, this Memorandum shall be governed by and construed in accordance with the laws of the State of California.

(b) Headings. The Section headings in this Memorandum are for convenience only and shall not be used for any purpose in the interpretation of this Memorandum.

(c) Severability. If any clause or provision of this Memorandum is illegal, invalid, or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Memorandum shall not be affected but shall remain in full force and effect.

(d) Exhibits. All of the exhibits attached to this Memorandum are hereby incorporated by this reference.

(e) Relationship of the Parties. Each party is and shall at all times be and remain independent from the other parties hereto and, except to the extent otherwise expressly set forth in the Definitive Agreements, shall not be deemed an agent of any other party. Nothing contained herein shall have the effect of creating a joint venture or partnership between or among any of the parties hereto. No party shall have any right or power to obligate or bind any other party in any manner whatsoever. This Memorandum is not intended and shall not be construed to create any beneficiary rights in any individual or entity not a party hereto. None of the parties hereto is a fiduciary of any other party.

(f) Amendments. This Memorandum cannot be modified or amended in any way except in writing, signed by the parties hereto.

(g) Notices. Any notice required or authorized to be given hereunder or any other communications between the parties provided for under the terms of this Memorandum shall be in writing, unless otherwise provided, and shall be served personally or by reputable express courier service or by facsimile transmission addressed to the relevant party at the address stated below or at any other address notified by that party to the other as its address for service. Any notice so given personally or by express courier service shall be deemed to have been served and received upon delivery, or attempted delivery, and any notice so given by facsimile transmission shall be deemed to have been served and received on dispatch. As proof of such service and receipt, it shall be sufficient to produce a receipt showing delivery, or attempted delivery, by personal service or by express courier service, or an activity report of the sender's facsimile machine showing the correct facsimile number of the party to whom notice is served and the correct number of pages transmitted. The parties' addresses for service are:

**Union Pacific:** Union Pacific Railroad Company  
10031 Foothills Boulevard  
Roseville, CA 95747  
Attention: Jerry Wilmoth  
General Manager Network Infrastructure  
Telephone: (916) 789-6360  
Facsimile: (916) 789-6058

**BNSF:** BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, Texas 76131  
Attention: Dean Wise  
Vice President, Network Strategy  
Telephone: (817) 593-3156  
Facsimile: (817) 352-7154

**The State:** California Department of Transportation  
1120 N Street  
Sacramento, California 95814  
Attention: William D. Bronte  
Chief, Division of Rail  
Telephone: (916) 654-6542  
Facsimile: (916) 653-4565

(h) Counterparts. This Memorandum may be executed in one or more counterparts, each of which when so executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(i) Entire Agreement. This Memorandum constitutes a single, integrated, written contract expressing the entire agreement of the parties. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto,

except as specifically set forth herein. All prior discussions and negotiations have been and are merged and integrated into, and superseded by, this Memorandum.

(j) **Waivers.** Any waiver, modification, consent, or acquiescence with respect to any provision of this Memorandum shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder will be deemed a waiver of any other or subsequent breach.

(k) **No Presumption Against Drafting Party.** This Memorandum and the provisions contained therein shall not be construed or interpreted for or against any party because that party drafted or caused its legal representative to draft any of the Memorandum's provisions.

(l) **Authority.** Each individual executing this Memorandum hereby represents and warrants that he or she has the capacity set forth on the signature pages with full power and authority to bind the party on whose behalf he or she is executing the Memorandum.

(m) **Assignment.** This Memorandum shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns. No party may assign its rights or obligations under this Memorandum to a third party without the written consent of the other parties, except where assignment occurs as a result of a sale or transfer of all or substantially all of a party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties as of the date first written above.

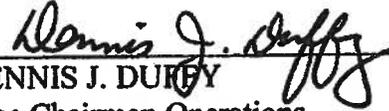
**CALIFORNIA DEPARTMENT OF  
TRANSPORTATION**

By:   
RANDELL H. IWASAKI  
Director  
Department of Transportation

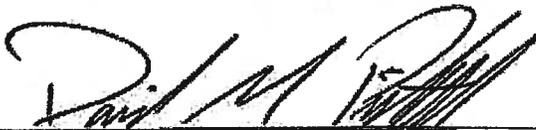
Approved as to Form:

By:   
THOMAS C. FELLENZ  
Deputy Chief Counsel  
Department of Transportation

**UNION PACIFIC RAILROAD COMPANY**

By:   
DENNIS J. DUFFY  
Vice Chairman Operations  
Union Pacific Railroad

Approved as to Form:

By:   
DAVID M. PICKETT  
General Attorney  
Union Pacific Railroad

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Peter J. Rickershauser  
Vice President  
BNSF Railway Company

Approved as to Form:

By: \_\_\_\_\_  
David Rankin  
Senior General Attorney  
BNSF Railway Company

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties as of the date first written above.

**CALIFORNIA DEPARTMENT OF  
TRANSPORTATION**

**UNION PACIFIC RAILROAD COMPANY**

By: \_\_\_\_\_  
RANDELL H. IWASAKI  
Director  
Department of Transportation

By: \_\_\_\_\_  
DENNIS J. DUFFY  
Vice Chairman Operations  
Union Pacific Railroad

Approved as to Form:

Approved as to Form:

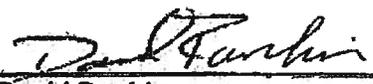
By: \_\_\_\_\_  
THOMAS C. FELLEENZ  
Deputy Chief Counsel  
Department of Transportation

By: \_\_\_\_\_  
DAVID M. PICKETT  
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**BNSF RAILWAY COMPANY**

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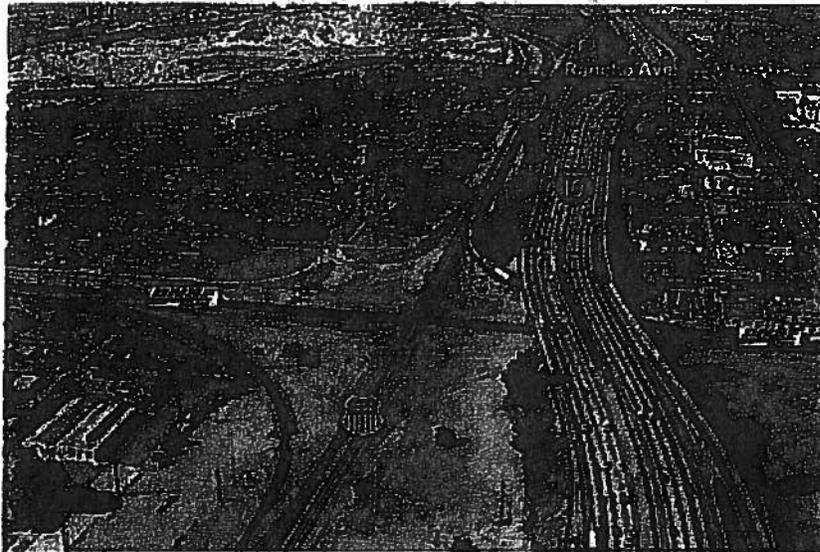
## **EXHIBIT A**

### **Description of Premises**

The Project is located in Colton, California where Union Pacific Railroad's Alhambra and Yuma Subdivisions (MP 538.7) intersect with BNSF's San Bernardino Subdivision.

## **EXHIBIT B**

### **Preliminary Description of the Project**



The Project would elevate Union Pacific's east / west tracks over the BNSF's north / south tracks. The planned project scope includes:

- Construct a structure, approximately 7,250 feet long, between Rancho Avenue (MP 538.5) and Mount Vernon Avenue (MP 539.7) with a 0.65% grade at the west approach and a 1.17% grade at the east approach
- Two mainline tracks and a maintenance road will be constructed on the structure
- Opening under the grade separation structure for the BNSF tracks would accommodate a potential third BNSF mainline track with 20 ft track centers
- One of the existing UPRR mainline tracks would be converted to become the Colton Yard lead / Yuma connector track with an at-grade crossing diamond at the junction with the BNSF
- Modify existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline 2 track
- Design provides for future connection between UPRR and BNSF tracks in the southwest quadrant

## EXHIBIT C

### Estimated Project Schedule and Proposed Funding Plan Summary

#### Project Schedule

Begin Permitting / NEPA	Underway
Complete Preliminary Engineering / Technical Studies	June 2010
Begin Design – Track & Structures	June 2010
Begin Design – Signal	August 2010
Circulate Draft EIR/EA	August 2010
Complete PAED/Final EIR and EA	December 2010
Begin ROW Acquisition	January 2011
Begin Utility Relocation	March 2011
Execute Public Benefits Agreement	March 2011
Execute Construction & Maintenance Agreement	March 2011
End Permitting / NEPA	June 2011
End Design – Track & Structures and Signal	June 2011
Begin Project Bid Process	July 2011
End ROW Acquisition	September 2011
End Utility Relocation	September 2011
End Project Bid Process	September 2011
Begin Construction	September 2011
End Construction	March 2014

#### Funding Plan (costs in millions of dollars)

	TIGER Funds	State STIP	State TCIF	Union Pacific	BNSF	Supp Funds	Local Funds	TOTAL	
Project Approval / Environmental Documentation	\$2.8	\$3.7	-	\$11.9	\$0.5	\$0.9	\$0	\$19.8	9.8%
Plans, Specifications and Estimates	\$2.1	-	-	\$8.5	\$0.4	\$0.6	\$0	\$11.6	5.7%
Right-of-Way (Capital and Support)	-	-	-	\$9.0	\$1.6	-	\$0	\$10.6	5.3%
Construction (Capital and Support)	\$28.9	-	\$97.3	\$20.3	\$5.0	\$8.5	\$0	\$160.0	79.2%
TOTAL	\$33.8	\$3.7	\$97.3	\$49.7	\$7.5	\$10.0	\$0	\$202.0	
	16.7%	1.8%	48.2%	24.6%	3.7%	5.0%	0%		100.0%

Due to rounding, the total amount may deviate slightly from the actual total.

**Notes:**

- **Estimated construction costs are in 2012 dollars**
- **TCIF funds and Railroad funding subject to receipt of TIGER funding and terms of this memorandum**
- **Supplemental Funds of up to ten million dollars (\$10,000,000) will be apportioned equally between BNSF and Union Pacific**
- **Nothing in this MOU or the funding of the Project shall affect or alter any obligation under any existing agreement between BNSF and SCRRA or any of its member agencies to provide funding to BNSF under such agreements if SCRRA commences additional passenger service on the BNSF San Bernardino Subdivision.**

**EXHIBIT D**

**Intentionally Omitted**

## **EXHIBIT E**

### **Certain Key Terms and Concepts for Construction and Operation Agreement**

**Note:** The descriptions below are intended to summarize certain terms and concepts to be included in the Construction and Operation Agreement, subject to negotiation of the Definitive Agreements. The terms and concepts would be set forth in full in the Construction and Operation Agreement, which agreement also would contain other terms and provisions to be specified and agreed upon by the parties.

#### **A. Project Scope, Schedule and Budget.**

- 1. The Construction and Operation Agreement will include a detailed and complete description of the Project scope and specifications and identification of the party responsible to complete the various elements of the Project, which shall be agreed upon by the parties at or prior to the execution of the Construction and Operation Agreement.**
- 2. The Construction and Operation Agreement will include a detailed and complete budget and construction schedule for the Project based upon the agreed Project scope and specifications. The budget and construction schedule will be agreed upon by the parties at or prior to execution of the Construction and Operation Agreement.**
- 3. Any changes to the Project's final approved scope, specifications, schedule, or budget from that attached to the Construction and Operation Agreement shall require the State's and railroads' prior approval and may require an amendment to the Project Baseline Agreement amendment by the Commission. All parties agree to consider such proposals in good faith and to review and respond to any such proposed changes within a reasonable time.**
- 4. Any cost increases resulting from any changes to the Project's approved scope, specifications, schedule or construction budget shall be the responsibility of parties other than the State, unless such cost increases result from a change in the Project scope, as set forth in Exhibit B, requested by the State (but only in its capacity as a party to the Definitive Agreements); provided that in no event shall the State Contribution be required to exceed fifty percent (50%) of the Project's eligible construction costs or the amount allocated by the Commission. In addition, reductions to the Project's approved scope, benefits, specifications, schedule or budget may result in a reduction in the State Contribution, as will be set forth in the Construction and Operations Agreement.**
- 5. The railroads will use reasonable efforts to reduce or minimize Project costs, including, but not limited to, providing to the Project the benefit of reduced materials prices resulting from the railroads' bulk purchase of materials. The benefits of any cost**

reductions will be credited equally toward the State Contribution and Supplemental Funding Requirement.

6. In the event the Commission allocates an amount lower than fifty percent (50%) of the Project's final approved budget for eligible construction costs, the State and railroads may jointly agree to adjust the Project's scope and schedule to reflect the new Project budget (it being acknowledged that the State or either railroad may elect to terminate the Project following review of any such proposed adjustments).

**B. Funding Sources.**

1. The "State Contribution" currently scheduled for the Project is ninety-seven million three hundred and five thousand dollars (\$97,305,000), based on the information available at this time, including information regarding the Project's scope, budget, schedule, and anticipated public benefits as submitted to the Commission. The final State Contribution will be specified in the Construction and Operation Agreement, and will be subject to reduction (i) as provided in Section A.3 above, or (ii) if the Commission allocates a lower amount for the Project, in which case such lower amount shall be the State Contribution (it being acknowledged that the State or railroads may elect to terminate the Project following review of any such proposed reductions).
2. The Construction and Operation Agreement will include a commitment for BNSF and Union Pacific to provide their respective funding contributions as set forth in Exhibit C. Any cost overruns will be the responsibility of Union Pacific.

**C. Conditions to all Disbursements.** The Definitive Agreement will contain specific conditions to all disbursements of the State Contribution, including:

1. Appropriation of funds for the Project by the Legislature, and allocation of funds to the Project by the Commission in an amount sufficient to cover requested disbursements. If the Legislature or Commission fails to so appropriate and allocate such funds then railroads shall have no further obligation regarding the Project.
2. Establishment and maintenance by railroads and their subcontractors of an accounting system that properly accumulates and segregates incurred Project costs by line item. The accounting system shall conform to Generally Accepted Accounting Principles ("GAAP"). In addition, the accounting system shall enable the determination of incurred costs at interim points of completion, and provide support for the railroads expenditures to be counted as matching or reimbursable payments.

**D. Conditions to Specific Disbursements.** The Definitive Agreements will contain specific conditions to all disbursements of the State Contribution, including submittal by the railroads of evidence the railroads or other third parties have paid a sufficient amount of Project

construction costs to date, excluding amounts reimbursed or requested to be reimbursed from the State Contribution, so that the one to one (1:1) ratio between the State Contribution and the supplemental funding payments of construction costs is not exceeded.

**E. Description of Costs Eligible for Reimbursement from the State Contribution and Costs that Qualify Toward Supplemental Funding Requirement.**

1. The State Contribution may only be used to reimburse already paid eligible construction costs. Eligible construction costs, including the costs of acquiring materials to be incorporated into the improvements to be constructed as part of the Project, shall be determined in accordance with the provisions of 23 C.F.R. Part 646.
2. Expenditures that do not qualify toward the Supplemental Funding Requirement are (i) amounts incurred or paid prior to adoption of the Project into the TCIF program, and (ii) any payments or contributions by the State of California to the cost of the Project, or to reimburse railroads for any such cost, other than the State Contribution.
3. Amounts received for the salvage, reuse or recycling of any materials in connection with the Project shall be applied to reduce the overall cost of the Project.

**F. General Post Construction Operating Covenants.**

1. Railroads will maintain in service the track and other improvements built as part of the Project (the "Project Facilities") for a minimum of twenty (20) years after completion of construction (the "Operating Term").
2. Railroads will maintain the Project Facilities in good repair on the Premises throughout the Operating Term.
3. Should any of the Project Facilities be damaged or destroyed during the Operating Term, Railroads will restore and repair such damage or destruction.
4. Railroads acknowledge that all post-construction activities, including maintenance, repair, restoration and replacement, shall be at no cost to the State.

**G. Miscellaneous.**

1. The Construction and Operation Agreement would be binding upon any assignees or other transferees of Railroads right to operate freight service on the Premises.
2. The Construction and Operation Agreement will contain provisions giving the State the right to audit the Project records maintained by railroads or their contractors, including technical and financial data, at any time during the course of the Project and for four (4) years after the date of the final completion of the Project. Any such audits will be conducted in accordance with GAAP.

**EXHIBIT F**  
**Description of Projected Public Benefits**

- A. **Project Category:** Rail
- B. **Project Type:** Rail-Rail At-Grade crossing eliminated
- C. **Project Outputs and Metrics (Five years after Project completion) \***

Project Output Elements	Metric	Quantity Projected
1. New Structures	Number of Structures Constructed	1
2. Rail-Rail At-Grade Crossing	Number of At-Grade crossings eliminated	1

D. **Project Benefit Outcomes and Metrics (at Project completion) \***

Project Outcome	Metric	Determination Approach	2019 Build Case	2006 Baseline
1. Throughput	Rail Freight Volume (Trains feet per day) (No commuters)	Actual	966,154	663,811
2. Velocity	Transit time through Corridor (MPH)	BNSF Mainline Actual	30.00	10.75
		UP Mainline Actual	42.50	10.75
3. Reliability	Variability in Transit time (Avg Annual Delay Hours)	Actual	{74,852}	N/A

- \* Decrease highway accidents from occurring by more than 800 accidents over the life of the project
- 4. Safety
  - \* Avoid three fatal accidents and 100 injury accidents over the life of the project
  - \* Reduce the number of heavy truck accidents by an average of 38 incidents per year
  - \* Source: Accident rates from CalTrans "Cal-BC" model
- 5. Congestion Reduction
  - \* Average annual reduction in delay for vehicles equals 2.9 MM passenger hours
  - \* Average annual reduction in time-in-queue for delay equals 2.4 MM hours

Average annual reduction from vehicles

  - \* HC = 2.8 tons
  - \* CO = 18.6 tons
  - \* NOx = 4.9 tons
  - \* PM = 1.0 tons
  - \* CO2 = 10,982 tons
- 6. Emissions Reduction
 

Average annual reduction from locomotives

  - \* HC = 42.8 tons
  - \* CO = 146.1 tons
  - \* NOx = 67.4 tons
  - \* PM = 5.8 tons
  - \* CO2 = 23,371 tons

Average annual gallons saved

  - \* Gasoline = 907,590
  - \* Diesel = 79,060
  - \* Oil = 101,583
- 7. Other Outcomes

**Note:**

- \* Project estimates based on information developed for the BNSF and Union Pacific Public Benefit Study for Cotton Grade Separation dated February 5, 2008. The Project scope as more specifically described in Exhibit B, may be modified as set forth in this Memorandum. The Parties contemplate that prior to project construction, estimates will be revised in accordance with the final Project scope of work and updated methodology as agreed upon between the parties in the Definitive Agreements. The Parties further contemplate these revised estimates will be the basis for comparing outcomes five (5) years after Project completion.

**E. Summary of Long-Term Expected Benefits**

The following table presents the total discounted value of net public benefits presently expected to accrue to California through 2035 with the full implementation of the Project. As the table demonstrates, the total value of these benefits to the State of California would most likely be about \$503 million, but could range anywhere from \$390 million to \$624 million.

Discounted Value of Net Benefits Through 2035

(USD in millions of 2007 dollars)

Net Benefit Name	Net Benefit Category	Range	Average (Likely Value)
Travel time savings for Vehicles from reduced delay at rail / highway crossings	Transportation System Savings	\$160 - \$288	\$220
Inventory travel time savings for Trains from reduced delay at Colton crossing		\$150 - \$340	\$242
Vehicle operating cost savings from reduced time-in-queue at rail / highway crossings		\$15 - \$28	\$22
Environmental savings from reduced time-in-queue for Vehicles at rail / highway crossings	Environmental Improvements	\$2 - \$4	\$3
Environmental savings from reduced Train delay at Colton crossing		\$11 - \$23	\$17
<b>Total Discounted Value of Benefits Accruing in California</b> <i>(Note: Separate calculations, may not add)</i>		<b>\$390 - \$624</b>	<b>\$503</b>
<b>Total Discounted Value of Benefits Accruing Outside California</b> <i>(Note: Separate calculations, may not add)</i>		<b>\$203.7</b>	<b>\$203.7</b>
<b>Total Discounted Value of Benefits</b> <i>(Note: Separate calculations, may not add)</i>		<b>\$594 - \$828</b>	<b>\$706.7</b>

Source: HDR Inc., Public Benefit Study for Colton Crossing Grade Separation, February 5, 2008  
Parsons Brinckerhoff, Colton Crossing Grade Separation Project TIGER Application, September 2009

**F. Passenger Rail Benefits**

The following passenger rail benefits will accrue from the completion of the Colton project:

1. **Improved Operational Reliability and Travel Times**

Due to the volume of passenger and freight trains that pass through Colton Crossing, the variable nature of train arrivals, the different types of trains, and movement conflicts associated with an existing at-grade rail crossing, delays to trains of all types can occur. Grade separating the crossing would provide for more fluid operations of both freight and passenger train traffic. With the completion of the Project, operational efficiency and reliability benefits would accrue to the following passenger services:

- Amtrak Intercity Passenger Trains:
  - Southwest Chief (daily service on BNSF trackage)
  - Sunset Limited (tri-weekly service on UP trackage)
- SCRRA Commuter Trains:
  - Metrolink Service (daily service on BNSF trackage)

2. **Enhanced Capacity for Potential Future Services**

The completion of this project may provide opportunities for additional passenger services along railroads' network trackage (subject to other capacity improvements). Such future services would be subject to the requirements of all applicable agreements in place between each respective railroad and the applicable passenger agency.

**G. Project Benefits Estimate Conditional Statement**

The parties agree that all Project outcomes, estimates and benefits can be affected by the behavior of several external variables over time. Such variables include, but are not limited to, population growth and disposable income; global, national, and State economic conditions and development patterns; global trade trends; governmental policies; environmental conditions and regulation; changes in customer supply and demand (including for merchandized products, agricultural products); fuel prices; and acts of God. As Union Pacific operates pursuant to trackage rights on the BNSF Railroad between Daggett and Riverside and BNSF will continue to control the interlocker for the remaining at-grade crossing of Union Pacific's track over the BNSF track between Old Colton Yard and New Colton Yard, BNSF's business and operational decisions may also have a direct affect on Union Pacific's operations. Rates and services offered by the railroads, competing railroads, truck lines, and maritime shipping lines (including direct operators and brokers) may affect ultimate corridor volumes and benefits. It is understood by all parties that such variability shall be taken into account when comparing and evaluating Project outcomes, estimates, and benefits.

**H. Project Reporting Requirements (Subject to Negotiation of Definitive Agreements):**

1. Project Scope, Specifications, Schedule, and Costs Amendments

As part of the Project Baseline Agreement, the railroads will identify any issues, impacts, or changes to Project scope, specifications, schedule, or costs.

2. Quarterly Reporting

Thirty (30) calendar days after each calendar quarter, a very brief status report should be filed with the State, to report progress made toward the implementation of the Project, in accordance with the Project scope, schedule, and costs identified in the

baseline agreement. This includes, until its completion, the environmental phase of the Project. Its report shall include the identification and discussion of any significant issues that may impact implementation of the Project, including financial constraints and commitments, and any material deviations to Project scope or schedule. Reporting shall also include budgets, actual expenditures, and forecasted cost for each funding source and for each phase as identified in the baseline agreement, including those to be considered for match consideration and State payment. The parties acknowledge these reports will form the basis of reporting to the Commission.

**3. Completion of the Environmental Process**

Upon completion of the environmental phase of the Project, the outcomes of this process shall be reported to State, for acceptance and delivery to the Commission. Such reporting shall include final findings, including those pertaining to the air quality impacts of diesel emissions and particulate matter, and any mitigation measures adopted to address such impacts. Both the State and the railroads acknowledge Commission policy is to allocate TCIF funding only to projects that can demonstrate compliance with applicable environmental requirements. If environmental clearance is conditioned on the implementation of mitigation measures, as a condition of the Project moving forward, the railroads must commit, in writing, to the implementation of those mitigation measures (it being acknowledged that the railroads or State may elect to terminate the Project following review of the mitigation requirements).

**4. Final Delivery Report and Final Audit**

The railroads will cooperate with the State and will furnish all information necessary to produce the Final Delivery Report and Final Audit as required by the Commission's Accountability Implementation Plan. The Final Delivery Report shall report on the scope of the completed Project, its final cost, duration, and performance outcomes as compared to those included in the executed Project Baseline Agreements. The Final Audit shall provide a finding on whether Project costs incurred and reimbursed are in compliance with the executed Project Baseline Agreements or approved amendments thereof, state and federal laws and regulations, contract provisions, and Commission guidelines, and whether Project deliverables (outputs) and outcomes are consistent with the Project scope, schedule and benefits described in the executed Project Baseline Agreements or approved amendments thereof.

The current version of the adopted Accountability Implementation Plan can be found at the Commission's website at:

[http://www.catc.ca.gov/1baccount/Accountability\\_Implementation\\_Plan.pdf](http://www.catc.ca.gov/1baccount/Accountability_Implementation_Plan.pdf)

The Parties acknowledge that the Commission may from time to time amend or supplement its Accountability Implementation Plan.

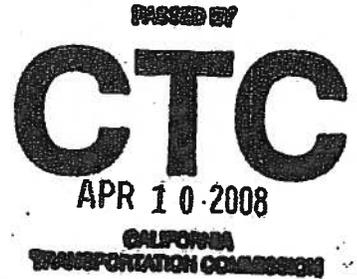
5. Five Years After Completion of Project (final report)

Five (5) years after completion of the Project, the railroads shall provide the State with a final report on the achieved outcomes of the Project, at a minimum in response to the outcome identifiers and indices as identified above. Deviations from expected outcomes should be discussed.

## EXHIBIT G

### Description of Supplemental Funding Plan

- **The railroads' current estimated total Project construction cost, as described in Exhibit C - \$202.0 million (2012 dollars)**
- **TCIF funding** – Up to 50% of the Project's eligible construction costs (not to exceed the amount programmed by the Commission), subject to the conditions precedent. For purposes of this Exhibit, references to "TCIF funding" include any and all funds from any source allocated by the Commission to the Project as part of the State Contribution.
- **Supplemental Funding** – Except as otherwise provided in this Memorandum, the railroads would match the TCIF funding provided for the Project, i.e., provide an amount equal to at least the TCIF funding for the Project's eligible construction costs. In addition, provided the State contributes the TCIF funding, the railroads will be responsible for providing or obtaining the funding for all other Project costs. All railroad funding will be apportioned between the railroads as described in Exhibits C and E. The railroads may seek reimbursement from sources other than TCIF or other funding for all or part of the Project costs required to be paid by railroads. Such reimbursement or other funding could include, without limitation, contractual contribution from the owner / joint freight operator of the corridor, a tenant passenger or commuter operator, or state or federal non-TCIF grants. In this case, the railroads have applied for TIGER funding to pay for a portion of the costs not to be paid by TCIF funding. No amounts received for the Project from TCIF funding and / or any other additional State sources will be deemed to be railroad funding for purposes of determining whether the railroads have satisfied the Supplemental Fund Requirement, but all other payments toward, or reimbursements of, Project costs expended after the adoption of the Project into the TCIF program from any other source will be deemed to be railroad funding for purposes of determining whether the railroads have satisfied the Supplemental Funding Requirement. Expenditures for engineering, environmental permitting, and right-of-way acquisition may be counted towards the railroads' Supplemental Funding Requirement but are not eligible for TCIF reimbursement.



**CALIFORNIA TRANSPORTATION COMMISSION**

**Adoption of Program of Projects for the  
Trade Corridors Improvement Fund (TCIF)  
April 10, 2008**

**RESOLUTION TCIF-P-0708-01**

- 1.1 WHEREAS the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 was approved by voters as Proposition 1B on November 7, 2006, and
- 1.2 WHEREAS the Bond Act provides that \$2 billion shall be transferred to the Trade Corridors Improvement Fund (TCIF) for allocation by the California Transportation Commission, upon appropriation in the annual Budget Bill by the Legislature, for infrastructure improvements along corridors that have a high volume of freight movement, and
- 1.3 WHEREAS the TCIF program is subject to the provisions of Government Code Section 8879.23(c)(1), as added by Proposition 1B, and to Section 8879.50, as enacted through implementing legislation in 2007 (SB 88 and AB 193) designating the Commission as the administrative agency responsible for programming TCIF and the agency authorized to adopt guidelines for the program, and
- 1.4 WHEREAS the Bond Act provides that eligible projects for the TCIF include, but are not limited to all the following:
  - a) highway capacity improvements and operational improvements;
  - b) freight rail system improvements;
  - c) enhancements to the capacity and efficiency of ports;
  - d) truck corridor improvements;
  - e) border access improvements;
  - f) surface transportation improvements to and from airports,and

- 1.5 WHEREAS the Bond Act mandates that the Commission shall allocate TCIF for trade infrastructure improvements in a manner that:
- a) addresses the state's most urgent needs;
  - b) balances the demands of various ports;
  - c) provides reasonable geographic balance between regions; and
  - d) places emphasis on projects that improve trade corridor mobility while reducing emissions of diesel particulate and other pollutant emissions,
- and
- 1.6 WHEREAS the Bond Act also mandates the Commission shall also consider the following factors when allocating the TCIF:
- a) **Velocity:** the speed by which large cargo would travel from the port through the distribution system;
  - b) **Throughput:** the volume of cargo that would move from the port through the distribution system;
  - c) **Reliability:** a reasonably consistent and predictable cargo travel time between points on any given day or time;
  - d) **Congestion reduction:** the reduction in recurrent daily hours of delay to be achieved,
- and
- 1.7 WHEREAS the Bond Act further mandates that the Commission allocates TCIF to projects that have identified and committed supplemental funding from appropriate local, federal, or private sources. The Bond Act also mandates that except for border access improvements, projects funded from the TCIF shall have supplemental funding that is at least equal to the amount of the contribution from the fund, and
- 1.8 WHEREAS the Commission recognizes that statewide goods movement needs far exceed the amount authorized by the Bond Act, and that other sources of funding should be explored for meeting these needs, and
- 1.9 WHEREAS the Commission supported the funding strategies proposed by the Business, Transportation and Housing Agency, the Department of Transportation, and the corridor agencies to increase TCIF funding by approximately \$500 million from the State Highway Account (SHA) to fund state-level priorities that are critical to goods movement, and
- 1.10 WHEREAS the Commission agreed with the Department of Transportation's proposal that SHA funds not be subject to the 1:1 match mandated by the Bond Act, and
- 1.11 WHEREAS the Commission anticipated over-programming beyond that of the resulting TCIF and SHA funds, with the assumption that new revenue sources

(e.g. additional federal funding, user fees, tolls, etc.) will become available and will be dedicated to funding the adopted TCIF program, and

- 1.12 WHEREAS the Commission required that the inclusion of each of the projects is based on a demonstration that the project, among other factors, can commence construction no later than December 31, 2013, and
- 1.13 WHEREAS the Commission adopted the TCIF program guidelines on November 27, 2007, that identified the Commission's policy and expectations for the TCIF program, and
- 1.14 WHEREAS the Commission received 84 nominations consisting of 107 individual projects, requesting approximately \$4.1 billion of TCIF funding, by the deadline of January 17, 2008, and
- 1.15 WHEREAS Commission Staff, in developing the initial program recommendations, took into consideration the methods by which corridor agencies had determined the relative priority of their nominations, and
- 1.16 WHEREAS Commission Staff prepared initial program recommendations that included 79 individual projects with an approximate request for \$3.088 billion, and
- 1.17 WHEREAS the Commission held a public hearing on March 12, 2008, to hear the Commission Staff's initial program recommendations, and
- 1.18 WHEREAS the Commission received further comment and testimony at and preceding its April 2008 meeting, and
- 1.19 WHEREAS the Bond Act requires that the Commission makes certain findings in adopting the TCIF program,
- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission adopts the program of projects for TCIF funding as presented by Commission Staff on April 10, 2008, which proposes to invest \$3.088 billion on 79 projects. The total value of these projects is estimated at approximately \$8.430 billion resulting in an average match of 1.7 to 1.0, and
- 2.2 BE IT FURTHER RESOLVED the Commission finds that projects in the TCIF program include, but are not limited to, the following:
  - a) highway capacity improvements and operational improvements;
  - b) freight rail system improvements;
  - c) enhancements to the capacity and efficiency of ports;
  - d) truck corridor improvement;
  - e) border access improvements;

- f) surface transportation improvements to and from airports,  
and
- 2.3 **BE IT FURTHER RESOLVED** that the Commission finds that the TCIF program:
- a) addresses the state's most urgent needs;
  - b) balances the demands of various ports;
  - c) provides reasonable geographic balance between regions; and
  - d) places emphasis on projects that improve trade corridor mobility while reducing emissions of diesel particulate and other pollutant emissions,  
and
- 2.4 **BE IT FURTHER RESOLVED** that the Commission also finds that the TCIF program considers the following:
- a) **Velocity:** the speed by which large cargo would travel from the port through the distribution system;
  - b) **Throughput:** the volume of cargo that would move from the port through the distribution system;
  - c) **Reliability:** a reasonably consistent and predictable cargo travel time between points on any given day or time;
  - d) **Congestion reduction:** the reduction in recurrent daily hours of delay to be achieved,  
and
- 2.5 **BE IT FURTHER RESOLVED** that the Commission's approval of individual project TCIF funding is only for the cost of construction (and construction support) except for the ALA-580 Truck Lane Project which is fully funded from the State Highway Account, and
- 2.6 **BE IT FURTHER RESOLVED** that the project's approved TCIF funding shall be considered as a "not to exceed amount" and that any increase in cost estimates beyond the levels reflected in the adopted TCIF program are the responsibility of the nominating agency, and
- 2.7 **BE IT FURTHER RESOLVED** that the Commission expects that the Business, Transportation and Housing Agency, the Department of Transportation and the individual corridor regions will collaborate to pursue additional sources of revenue to fund projects contained in the over-programming, and to identify strategies to backfill State Highway Account monies that are invested in goods movement, and
- 2.8 **BE IT FURTHER RESOLVED** that the Commission intends to prepare and adopt a fund estimate in the Fall of 2009 that includes all available revenue sources to support the over-programming of the TCIF, and

- 2.9 **BE IT FURTHER RESOLVED** that the Commission anticipates reviewing the programming and delivery status of all projects in the Spring of 2010, and may adopt amendments to the program to recognize the availability of funds or changes in project delivery, and
- 2.10 **BE IT FURTHER RESOLVED** that the Commission expects that future program calibrations due to availability of funds or delivery status will be coordinated with corridor programming ranges included in the TCIF program guidelines and the adopted TCIF program, and
- 2.11 **BE IT FURTHER RESOLVED** that the Commission will amend the TCIF program to delete projects that will be unable to commence construction by December 31, 2013, and
- 2.12 **BE IT FURTHER RESOLVED** that the Commission requires nominating agencies, no later than its July 2008 meeting (with the exception of grade separation and mainline rail projects where this deadline is extended to the September 2008 meeting), to provide executed project baseline agreements that will set forth the proposed project scope, measurable expected performance benefits, delivery schedule, and the project budget and funding plan. The baseline agreements shall be signed by the Director of the Department of Transportation, the regional agency and nominating agency executive directors, and the CTC executive director, and
- 2.13 **BE IT FURTHER RESOLVED** that the Commission requires the nominating agency to provide a local board action or resolution that commits the funding identified in the project baseline agreement and funding plan, and
- 2.14 **BE IT FURTHER RESOLVED** that the Commission requires that the baseline agreements include quantification of projected benefits related to velocity, throughput, reliability, congestion reduction and emissions reduction, and that those benefits are updated and included in the request for TCIF allocations, and
- 2.15 **BE IT FURTHER RESOLVED** that for investments in rail projects, the Commission requires a memorandum of understanding between the private railroad and the regional agency and/or Caltrans to be in place by the time of execution of the baseline agreement, and
- 2.16 **BE IT FURTHER RESOLVED** that the Commission requires the memorandum of understanding to include how and when public and private funding would be made available, and what public benefits would be realized as a result of TCIF investments, and
- 2.17 **BE IT FURTHER RESOLVED** that for grade separation projects the Commission expects that a master agreement or a memorandum of understanding between the railroad and the nominating agency be in place by the time of execution of the baseline agreement. This master agreement shall include as a minimum

- agreement in concept to the scope of work, commitments for funding, sequencing of construction operations within a corridor, and overall delivery schedule, and
- 2.18 BE IT FURTHER RESOLVED that for projects involving intermodal facilities and short haul rail proposals that rely on shared-use and access rights to mainline rail facilities, the Commission requires that the memorandum of understanding specifies that such use is authorized and agreements are documented with the railroad(s) and other affected parties, and
- 2.19 BE IT FURTHER RESOLVED that the Commission may delete a project from the adopted TCIF program for which a baseline agreement is not executed by the deadline, and the Commission will not consider approval of project allocations prior to the execution of the baseline agreement, and
- 2.20 BE IT FURTHER RESOLVED that the Commission intends to monitor the outcomes of the environmental process with regard to air quality impacts due to emissions from diesel or other particulates and related mitigation strategies, and that the Commission will only allocate TCIF to projects that can demonstrate compliance with applicable environmental requirements. If environmental clearance is conditioned to the implementation of mitigation measures, the nominating agency must commit, in writing, to the implementation of those mitigation measures, and
- 2.21 BE IT FURTHER RESOLVED that the Commission requires that nominating agencies shall report, on a quarterly basis, on the activities and progress made toward the implementation of the project, including those activities taking place prior to a TCIF allocation and including the commitment status of supplemental funding identified in the baseline agreement, and
- 2.22 BE IT FURTHER RESOLVED that the Commission intends to apply accountability measures established for the Corridor Mobility Improvement Account (CMIA) and State Route 99 (SR99) programs, including but not limited to quarterly progress reports, Delivery Council, corrective plans, program and project amendments, program reports and project audits, and
- 2.23 BE IT FURTHER RESOLVED that the Commission will create a "watch list" for projects that are unable to maintain delivery and cost commitments, and
- 2.24 BE IT FURTHER RESOLVED that the Commission finds that it has the discretion to determine whether a project on the "watch list" would remain in the TCIF program, and
- 2.25 BE IT FURTHER RESOLVED that the Commission directs Staff and nominating agencies to pursue the development of project baseline agreements to present to the Commission at its July or September, 2008 meetings, as appropriate.

## Memorandum

To: CHAIR AND COMMISSIONERS

Date: April 29, 2010

  
From: BIMLA G. RHINEHART  
Executive Director

File: Reference No. 2.1c(5b)  
ACTION

Ref: Trade Corridors Improvement Fund (TCIF) – Program Amendment

### ISSUE

Should the Commission approve the proposed TCIF Program Amendment to include the *Colton Crossing Project* in the Los Angeles/Inland Corridor element of the TCIF Program?

### RECOMMENDATION

Commission staff recommends that the Commission approve the proposed TCIF Program Amendment to include the *Colton Crossing Project* in the Los Angeles/Inland Corridor element of the TCIF Program.

### BACKGROUND

In accordance with AB 268 (Chapter 756, Statutes of 2008), the Commission, at its March 25, 2010 meeting, deleted TCIF Project 79 from the TCIF program of projects and directed the SCCG to propose a replacement project or projects for Commission consideration to amend into the Los Angeles/Inland Corridor element of the TCIF Program. The Commission also directed the SCCG to consider the *Colton Crossing Project* as a potential replacement project.

The Southern California Consensus Group (SCCG), in conjunction with San Bernardino Associated Governments (Sanbag), proposes to amend the TCIF Program by programming \$91 million for the *Colton Crossing Project* in the Los Angeles/Inland Corridor element of the program. The *Colton Crossing Project* proposes to construct a railroad grade separation in the City of Colton to eliminate train delays created by conflicting movements where BNSF's north-south mainline crosses UP's east-west mainline at grade.

# Memorandum

To: CHAIR AND COMMISSIONERS

Date: April 29, 2010

From:   
BIMLA G. RHINEHART  
Executive Director

File: Reference No. 4.9  
ACTION

Ref: Trade Corridors Improvement Fund (TCIF) – Project Baseline Agreement

## ISSUE

Should the Commission approve the TCIF Project Baseline Agreement for the *Colton Crossing Project* in accordance with the Commission's TCIF Guidelines and Resolution TCIF-P-0708-01, "Adoption of Program of Projects for the Trade Corridors Improvement Fund (TCIF)," dated April 10, 2008 and establish this agreement as the baseline for project delivery monitoring?

## RECOMMENDATION

Commission staff recommends that the Commission accept the TCIF Project Baseline Agreement for the *Colton Crossing Project* in accordance with the Commission's TCIF Guidelines and Resolution TCIF-P-0708-01, "Adoption of Program of Projects for the Trade Corridors Improvement Fund (TCIF)," dated April 10, 2008 and establish this agreement as the baseline for project delivery monitoring.

## BACKGROUND

The Commission, at its April 10, 2008 meeting, adopted the TCIF program and directed nominating agencies to provide executed Project Baseline Agreements that set forth the proposed project scope, measurable expected performance benefits, delivery schedule, and project budget and funding plan. The Commission also directed that the Project Baseline Agreements be signed by the Director of the Department of Transportation, the regional agency and nominating agency executive directors, and the CTC Executive Director.

In accordance with Resolution TCIF-P-0708-01, the San Bernardino Associated Governments, the nominating agency for the *Colton Crossing Project*, has provided an executed Project Baseline Agreement to the Commission. Commission staff has reviewed this Project Baseline Agreement and has determined that it sets forth the proposed project scope, measurable expected performance benefits, delivery schedule, and project budget and funding plan; is consistent with the Commission's TCIF Guidelines and Resolution TCIF-P-0708-01; and includes the required signatures.

## Memorandum

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: August 10-11, 2011

Reference No.: 4.16  
Action

From: NORMA ORTEGA  
Chief Financial Officer

Prepared by: William D. Bronte, Chief  
Division of Rail

Subject: **SUBMITTAL OF DEFINITIVE AGREEMENTS AND SUMMARIES FOR A TRADE  
CORRIDOR IMPROVEMENT FUND RAIL PROJECT IN ACCORDANCE WITH  
ASSEMBLY BILL 105 (2011)**

### **RECOMMENDATION:**

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) accept the summaries of the Definitive Agreements between the San Bernardino Associated Governments, Union Pacific Railroad (UPRR) and BNSF Railway Company (BNSF) as prepared by the Department and at the request of the Commission; Copies of those Definitive Agreements are attached in accordance with Assembly Bill 105 (AB 105).

### **ISSUE:**

In September 2008, Assembly Bill 268 (AB 268) added Section 8879.52 to the Government Code, which required the Department to make a one-time report on or before February 18, 2009, to certain committees of the Legislature summarizing "any memorandum of understanding or any other agreement executed between a railroad company and any state or local transportation agency" for any project that receives Trade Corridors Improvement Funds (TCIF). The Department submitted the required report on February 18, 2009.

In March 2011, AB105 amended Section 8879.52 of the Government Code. The amendment calls on the Commission to submit a report to certain legislative committees summarizing "any memorandum of understanding, along with a copy of the memorandum, or any agreement executed between a railroad company and any state or local transportation agency" for any project that receives Trade Corridors Improvement Funds (TCIF).

The Memorandum of Understanding (MOU) for the Colton Crossing Grade Separation Project (Project) was executed after the Department's reporting requirements, pursuant to AB 268, had expired but before the Commission's reporting duties began under AB 105. Although no legislative report is necessary regarding the Project MOU, both a summary and a copy of it are attached

because the Project MOU is relevant to an understanding of the definitive agreements discussed for which the Commission is called upon to report pursuant to AB 105.

At the request of the Commission, the Department has prepared a summary of the Colton Crossing Grade Separation Project's Memorandum of Understanding and its accompanying definitive agreements.

### **BACKGROUND:**

The Project is funded with a combination of TCIF funds, State Transportation Improvement Program (STIP) funds, a federal Transportation Investment Generating Economic Recovery (TIGER) grant, and funds pledged by UPRR and BNSF.

The Project will construct a grade-separated crossing of railroad tracks within the city of Colton. Currently, north/south mainline tracks on the BNSF San Bernardino Subdivision intersect with the east/west mainline tracks on the UPRR Yuma Subdivision. These tracks cross perpendicularly and at grade. The San Bernardino Associated Governments (SANBAG), BNSF and UPRR (collectively referred to as the "Parties") are undertaking the construction of the Project to permit trains traveling on the BNSF tracks to pass beneath the UPRR tracks without conflict of movement. The major elements of the Project's scope include:

- Build an elevated grade-separation structure, approximately 7,250 feet long, that will span the two BNSF mainline tracks between Rancho Avenue and Mount Vernon Avenue,
- Construct two UPRR mainline tracks and a maintenance road on the new structure,
- Modify the existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline tracks, and
- Make provisions to allow future connection between UPRR and BNSF tracks in the southwest quadrant.

The Project MOU was executed between the Parties on May 5, 2010. This MOU is the legal agreement between SANBAG and the railroads that defines the Project's scope, schedule, costs and public benefits. An MOU must be executed before a project baseline agreement can be approved.

Some of the major benefits outlined in the Project MOU include:

- Improved regional freight train corridor mobility,
- Improved reliability for both passenger and freight trains,
- Improved local and regional air quality, and
- Reduced congestion on local streets.

The Project Baseline Agreement (PBA) between the Commission, Department and SANBAG was approved by the Commission at its May 2010, meeting. The PBA enumerates the Project's scope, cost, benefits and funding commitment of SANBAG as the sponsoring agency and establishes the baseline for project delivery monitoring. The PBA commits the Department and SANBAG to the terms and conditions needed for project delivery. The executed MOU was incorporated into the PBA as an attachment. The project schedule and funding are as follows:

Project Schedule	Planned	Actual
Begin Environmental Phase	Jan-07	Jan-07
Circulate Draft Environmental Document (ND/FONSI)	Nov-10	Feb-10
End Environmental Phase	Feb-11	May-11
Begin Design Phase	Jun-10	Jun-10
End Design Phase	Jun-11	Jun-11
Begin Right-of-Way Phase	Feb-11	Feb-11
End Right-of-Way Phase	Jun-11	Jun-11
Begin Construction Phase	Sep-11	
End Construction Phase	Mar-14	

Project Funding Plan (in \$1,000s)

Phase of Work	Estimated Cost	TCIF	Supplemental Funding			
			IIP-PTA	TIGER	BNSF	UPRR
Environmental	\$ 3,689		\$ 3,689			
Design	\$ 11,600				\$ 700	\$ 10,900
Right-of-Way	\$ 21,800				\$ 2,500	\$ 19,300
Construction	\$164,905	\$ 91,305		\$ 33,800	\$ 9,300	\$ 30,500
Total	\$201,994	\$ 91,305	\$ 3,689	\$ 33,800	\$ 12,500	\$ 60,700
Percentage	100%	45%	2%	17%	6%	30%

In the MOU, the Parties agreed to formalize details of funding, construction, operations, maintenance, and implementation of public benefits through separate definitive agreements (Definitive Agreements). The Parties signed the Definitive Agreements on June 1, 2011. These agreements consist of a "Cooperative Agreement for Right-of-Way Acquisition for Colton Crossing Rail-Grade Separation Project" (Right-of-Way Agreement), an "Agreement Regarding Implementation of Public Benefits Related to the Colton Crossing Rail-Grade Separation Project" (Public Benefits Agreement), and a "Cooperative Agreement for the Construction and Maintenance of the Colton Crossing Rail-Grade Separation Project" (Construction and Maintenance Agreement).

Right-of-Way Agreement

UPRR and BNSF own or have the right to use and operate over the real property and rail facilities at and near the Colton Crossing. Construction of the Project requires the acquisition of certain additional rights where the Project is to be located. The Right-of-Way Agreement defines each party's roles and responsibilities with respect to obtaining the right-of-way certification necessary for construction of the Project. Major areas of this agreement include:

- Each party's commitment to cover all costs for real property,
- Responsibility for final right-of-way engineering,

- Responsibility for encroachment permits or other property rights, and
- Handling of utility conflicts facilities on or near impacted right-of-way.

#### Public Benefits Agreement

The Public Benefits Agreement defines the anticipated benefits of the completed Project. Detailed analyses of benefits were contained in the TCIF Project Application. This agreement formalizes the specific passenger rail benefits that will be derived from the Project and the performance measurements used to assess those benefits.

The passenger rail benefits include:

- Passenger Rail Study for one additional passenger station between the cities of Colton and Indio,
- Additional Passenger Train Slots on the BNSF San Bernardino Subdivision,
- Grant SANBAG the right of first refusal to purchase right-of-way in the city of Redlands,
- Elimination of Union Pacific/Metrolink Interlocker,
- Allow for electrification of passenger trains operating on the BNSF San Bernardino Subdivision, and
- An easement to construct a new tail track adjacent to the mainline track in Taylor Yard.

The project performance measures consist of:

- Vehicle travel time savings from reduced delay at rail-highway crossings,
- Environmental savings from reduced time-in queue at rail-highway crossings,
- Travel time savings for trains from reduced delay at the Colton Crossing, and
- Environmental savings from reduced train delay at Colton Crossing.

#### Construction and Maintenance Agreement

The Construction and Maintenance Agreement defines the roles of UPRR, BNSF and SANBAG during construction and after completion of the Project. Major areas of the agreement include:

- Project design and construction,
- Project funding,
- Record keeping and audits,
- Ownership of facilities,
- Maintenance of track and facilities for 20 years, and
- Operations.

Attachments

# Memorandum

**TAB 20**

**To:** CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

**CTC Meeting:** August 10-11, 2011

**Reference No.:** 4.15  
Information Item

**From:** NORMA ORTEGA  
Chief Financial Officer

**Prepared by:** Rachel Falsetti  
Division Chief  
Transportation Programming

**Subject:** PROPOSITION 1B BOND ALLOCATIONS

## SUMMARY:

This is an informational item that will complement the verbal presentation that will be made at the August 10, 2011, California Transportation Commission (Commission) meeting.

## ISSUE:

To date, the Commission has authorized approximately \$5.7 billion in Proposition 1B Transportation projects for which approximately \$4.2 billion worth of bonds have been sold. Thus, the additional bond sale liability for the authorized projects is approximately \$1.5 billion. As of the end of May 2011, these projects have expended approximately \$2.2 billion of the bonds sold.

The Department of Transportation (Department) is recommending additional allocations, listed below, for Proposition 1B projects based on using the existing bond cash. The reasons for selecting these projects are included in parentheses at the end of each bullet.

- Allocate all Corridor Mobility Improvement Account (CMIA) projects delivered to date, including all associated bond funds for those projects – \$750 million (statutory deadline to award of December 31, 2012);
- Allocate the Kato Road Highway Railroad Crossing Safety Account (HRCSA) project – \$10 million (Letters of No Prejudice are not allowed for this program);
- Allocate the Colton Crossing Trade Corridors Improvement Fund (TCIF) project – \$91 million (this project has a Federal Transportation Investment Generating Economic Recovery (TIGER) grant and must be under construction by January 1, 2012);
- Allocate the Metrolink project State Local Partnership Program (SLPP) funds, which are associated with the Proposition 1A Positive Train Control (PTC) project - \$10 million (PTC funded projects are a federally mandated priority);
- Allocate the Kingsburg State Route 99 (SR99) project for RW – \$1 million (allows project to meet delivery schedule).

The total amount for these projects is \$862 million. In addition, the Department is allocating an additional \$211 million of existing bond cash for Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) projects. Since this additional \$1.1 billion (\$862 million plus \$211 million) is based on previous bond sales, it would bring future bond sale liability for all allocated Commission administered projects up to \$2.6 billion.

One constraint to consider is the possible intent to fund all eligible transportation related debt service with weight fees as authorized by Assembly Bill 105. Weight fees generate about \$900 million annually and in Fiscal Year 2011-12 approximately \$700 million of bond debt service is eligible to be paid with weight fees. Any additional bond sale(s) will increase the annual debt service need. Capping debt service levels to weight fee revenues will quickly constrain future bond sales and prohibit future project allocations. The Department will continue to work to determine what, if anything else, can be allocated based on projections of future bond sale.

**BACKGROUND:**

Since early 2009, the availability of bond funds has been sporadic and unpredictable. The State's budget situation has made it difficult to fund bond debt service in this time of limited revenues. In addition, there is competition for bond funds from other bond-funded infrastructure programs.

The Department's first priority is to ensure that the projects under construction do not run short of funds. Keeping in mind that future bond sales will likely be constrained by the amount of debt service that can be supported, the Department will continue to work to determine any future allocations that can be made.

4.9. Delivered List Allocations

Project # Allocation Amount Recipient RTPA/CTC District-County	Location Project Description	PPNO Program/Year Phase Prgm'd Amount Project ID EA	Budget Year Item # Fund Type Program Code	Amount by Fund Type
<b>4.9j. Delivered List Allocations - Proposition 1B - State Administered TCIF Rail Projects</b>				
<b>Resolution TCIF-A-1112-01</b>				
21 \$91,305,000 Department of Transportation SANBAG 08-San Bernardino	<b>Colton Crossing Railroad Grade Separation</b> TCIF Project 83. In the city of Colton, construction of a railroad grade separation of Union Pacific Railroad (UPRR) and Burlington Northern Santa Fe Railroad (BNSF) railroad tracks.  (Contributions from other sources: \$73,200,000.)  (TIGER Funding - \$33,800,000)  (Future Consideration of Funding - Resolution E-11-51, June 2011.)  <u>Outcome/Output:</u> Improve operational efficiency in the regional rail network by eliminating conflicting train movements at the Colton Crossing. Discourage a shift in goods movement from rail to truck and support regional passenger rail service by minimizing delays at the crossing.	08-0150D TCIF/11-12 CONST \$91,305,000 0000020887 S F006BA	2011-12 304-6056 TCIF 30.20.723.000	\$91,305,000
		<i>Bud Act 2011? Bkt Item 2460-304-6056 Ch 33</i>		

Project # Allocation Amount Recipient RTPA/CTC District-County	Project Title Location Project Description	Program/Year Phase Prgm'd Amount Project ID Adv Phase EA	Budget Year Item # Fund Type Program Code	Amount by Fund Type
<b>4.9k. Delivered List Allocations - Proposition 1B - Locally Administered Highway-Rail</b>				
<b>Resolution GS1B-A-1112-01</b>				
1 \$10,000,000 City of Fremont MTC 04-Alameda  June 2011	<b>Kato Road Grade Separation.</b> Construct a new railroad bridge and maintenance access structure and create a new undercrossing for Kato Road, between Warm Springs Boulevard and Milmont Drive.  (CEQA - Exempt - 210803.13.)  (Contributions from local sources: \$39,685,000.)  <u>Outcome/Output:</u> Provide improved public safety by creating a new grade-separation between automotive and rail traffic.	HRCSA/10-11 CONST \$10,000,000 0000020884 S H020BA	2010-11 104-6063 HRCSA 20.30.010.400	\$10,000,000





- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM: 10

**Date:** January 12, 2012

**Subject:** Revised Funding Plan and Corridor Mobility Improvement Account (CMIA) Baseline Agreement Amendment C11108-01 for the I-215 Bi-County HOV Gap Closure Project.

- Recommendation:\***
1. Approve revised Funding Plan for the I-215 Bi-County HOV Gap Closure Project as shown in Table 1.
  2. Approve Amendment No. 1 to CMIA Baseline Agreement C11108 for the I-215 Bi-County HOV Gap Closure Project.

**Background:** **Recommendation No. 1** - On January 20, 2010, the Board approved the programming of \$148,334,000 to fully fund the I-215 Bi-County HOV Gap Closure project. The amount programmed was based on information and preliminary engineering work completed at the time. On June 8, 2010, the Board approved Amendment 1 to Cooperative Agreement C09145 (C09145-1) to authorize Caltrans to perform the final design activities for the project. Caltrans led the design effort and recently completed 100% design plans. Caltrans has also revised the cost estimate in accordance with the completed 100% design plans. The revised cost, based on 100% design plans, is \$158,782,000 for construction capital and support and which represents a net increase of \$10,448,000 from the original amount that was programmed in January 2010. The increase in cost is attributed to the following two issues:

\*

*Approved  
 Major Projects Committee*

*Date: January 12, 2012*

*Moved: Second:*

*In Favor: Opposed: Abstained:*

*Witnessed: \_\_\_\_\_*

COG		CTC		CTA	X	SAFE		CMA	
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*Check all that apply.*

MPC1201b-ks

Attachment: C11108-01

- a) Railroad Bridge: At the BNSF crossing near Highgrove, the preliminary design included a single steel girder bridge to replace the existing structure. Due to the large skew and span length it was determined during final design that a steel girder bridge was not feasible and a truss structure is required. In addition, due to the limited space in the freeway median and the large skew it was determined that three single track bridges are required instead of a single bridge that accommodates three tracks. The change in design from a steel girder bridge to a truss structure and a single bridge to three bridges caused a net increase in cost of \$6,999,000.
  
- b) Newport Road Overcrossing: The portion of I-215 in San Bernardino County has three bridge overcrossing structures that have low vertical clearances that pose accessibility issues for tractor trailers and other oversized vehicles. The reduced vertical clearance affects the function of the corridor as a significant inter-regional trade and goods movement corridor. The I-215/Barton Road Interchange project and the I-215/Washington-Mount Vernon project will address two of the vertical clearance issues. If Newport Road overcrossing is not replaced, not only will it be the only structure with a low vertical clearance, it will be the only structure on the corridor where emergency vehicles won't be able to get through by using the shoulders or the interchange ramps. The preliminary engineering overlooked the clearance issues at Newport Overcrossing, therefore did not include the replacement cost in the estimate. The addition of the Newport bridge overcrossing replacement resulted in a net increase in cost of \$3,449,000. The bridge replacement is being developed as a separate project that will be combined at construction.

The current funding plan, which is consistent with the 10-Year Delivery Plan, and the proposed funding plan for construction capital and construction support are shown in Table 1 below:

**Table 1**

	CMAQ	CMIA	STIP-RIP (RCTC)	STIP-ITIP (RCTC)	STIP-RIP	Measure I	TOTAL
Current Funding Plan	\$34,850,000	\$15,460,000	\$19,920,000	\$4,961,000	\$45,089,000	\$28,054,000	\$148,334,000
Proposed Funding Plan	\$34,850,000	\$15,460,000	\$11,881,000	\$4,961,000	\$45,089,000	\$46,541,000	\$158,782,000
Net Change	\$0	\$0	-\$8,039,000	\$0	\$0	\$18,487,000	\$10,448,000

The preliminary engineering cost estimate, which is the basis of the current funding plan, split the project cost between RCTC and SANBAG based, for the most part, on the number of miles of freeway the project improved in each county. The final financial responsibility of the two agencies is based on the cost of the improvements physically located in each of the counties. In the latest Caltrans cost estimate, which is based on 100% completed design plans, construction quantities were segregated by County and the costs for SANBAG and RCTC were calculated accordingly. Based on the 100% design plans, the proposed funding plan decreases RCTC's contribution (ITIP & RIP) by \$8,039,000, and increases SANBAG's Measure I contribution by \$18,487,000.

Staff is recommending Board approval of the above proposed funding plan which would result in the programming of an additional amount of \$18,487,000 of Measure I Valley Freeway funds, and a revised total Measure I Valley Freeway contribution to the I-215 Bi-County HOV Gap Closure project of \$46,541,000. Per the current Measure I revenue projections for fiscal year 2012-2013, approved by the Board at the December 2011 Board meeting (Agenda item 27), staff's analysis has determined that there is sufficient Measure I Valley Freeway funds to cover SANBAG's increased contribution.

**Recommendation No. 2** - On January 20, 2010, the Board approved submitting a request to the California Transportation Commission (CTC) requesting that \$15,460,000 of CMIA funds be programmed on the I-215 Bi-County HOV Gap Closure project. The CMIA funds are savings from the I-215 widening project in the City of San Bernardino. On November 4, 2010, the CTC amended the CMIA Program to include the I-215 Bi-County HOV Gap Closure project and approved the programming of \$15,460,000 for the construction phase of the project. On December 1, 2010 the Board authorized the execution of the CMIA Project Baseline Agreement C11108, which documented the commitments made by SANBAG, RCTC, CTC, and Caltrans relative to the project's cost, schedule, scope and benefits.

In accordance with the CMIA Program Guidelines, an amendment to the CMIA Baseline Agreement C11108 is required in order to address the increase in cost and to be consistent with the 10-Year Delivery Plan. The project covered by the CMIA Baseline Agreement does not include the Newport Road bridge replacement, therefore the total project increase included in the CMIA amendment is \$6,999,000.

Staff is recommending Board approval of the attached Amendment 1 to CMIA Baseline Agreement C11108. Approval of this amendment is required before the allocation of the CMIA funds can be considered by the California Transportation Commission (CTC) in March 2012.

***Financial Impact:*** This item has no direct impact on the adopted 2011-2012 Fiscal Year Budget. The additional Measure I Valley Freeway funds of \$18,487,000 will be needed during the construction phase of the project which starts in the 2012/2013 Fiscal Year.

***Reviewed By:*** This item will be reviewed by the Major Projects Committee on January 12, 2012. SANBAG Legal Counsel and Contracts Manager have reviewed and approved the draft amended agreement as to form.

***Responsible Staff:*** Khalil Saba, Project Delivery Manager



## CONTRACT SUMMARY SHEET

Contract No. C11108

Amendment No. 1

### By and Between

San Bernardino County Transportation Authority

and

California Transportation Commission,  
Riverside County Transportation  
Commission, and California Department of  
Transportation

Contract Description I-215 Bi-County HOV: CMIA Baseline Agreement, Amendment 1

**Board of Director's Meeting Date:** February 1, 2012

**Overview of BOD Action:** Approve CMIA Baseline Amendment C11108-1

Is this Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	\$0	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	-	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	-
Current Amendment Amount	\$	-	Contingency Amendment	\$	-
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>\$0</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ \$0</b>
Contract Start Date 2/01/12	Current Contract Expiration Date		Revised Contract Expiration Date -		
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.					

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 839  
 A Budget Amendment is required.  
 How are we funding current FY? **This agreement has no financial impact**

<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
--	---	--------------------------------------	------------------------------------	--

Provide Brief Overview of the Overall Funding for the duration of the Contract: To receive CMIA funds  
 Payable  Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate \_\_\_\_ %

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_ %  Underutilized DBE (UDBE) Goal \_\_\_\_ %

	1-5-12		1-5-12
Task Manager Signature	Date	Project Manager Signature	Date

Chief Financial Officer Signature	Date	Contracts Manager Signature	Date

**CORRIDOR MOBILITY IMPROVEMENT ACCOUNT  
PROJECT, SCOPE, COST, SCHEDULE, AND BASELINE DATA**

<b>County:</b> San Bernardino	<b>Route:</b> 215	<b>PPNO:</b> 0041G
<b>Project Title:</b> I-215 Bi-County HOV Gap Closure Project		

We acknowledge the baseline amendment as identified on the attached project program request sheets as the current approved for project monitoring by the California Transportation Commission and its Corridor Mobility Improvement Account Project Delivery Council. We certify that funding sources cited are committed and expected to be available; the estimated costs represent full project funding, and the description of benefits is the best estimate possible.

---

**Name:** Larry McCallon **Date**  
**Title:** Board President  
**Agency:** San Bernardino Associated Governments

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**Name:** Anne Mayer **Date**  
**Title:** Executive Director  
**Agency:** Riverside County Transportation Commission

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**Name:** Malcom Dougherty **Date**  
**Title:** Acting Director  
**Agency:** California Department of Transportation

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**Name:** Bimla Rhinehart **Date**  
**Title:** Executive Director  
**Agency:** California Transportation Commission

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**PROJECT PROGRAMMING REQUEST**  
DTP-0001 (REV. 2/10)

General Instructions

<input type="checkbox"/> New Project		<input checked="" type="checkbox"/> Amendment (Existing Project)		Date:	12/20/11
<b>Caltrans District</b>		<b>EA</b>		<b>PPNO</b>	<b>MPO ID</b>
08		OM940		0041G	SCAG
<b>County</b>	<b>Route/Corridor</b>	<b>PM Bk</b>	<b>PM Ahd</b>	<b>Project Sponsor/Lead/Agency</b>	
SBD	215	0.0	5.1	SANBAG	
RIV	215	43.2	45.3	<b>MPO</b>	<b>Element</b>
RIV	91	21.5	21.7	SCAG	
<b>Project Mgr/Contact</b>		<b>Phone</b>		<b>E-mail Address</b>	
Khalil Saba		(909) 884-8276		Ksaba@sanbag.ca.gov	
<b>Project Title</b>					
I-215 HOV Gap Closure Project					
<b>Location, Project Limits, Description, Scope of Work, Legislative Description</b>					
Construct approximately 7.5-mile HOV lane in each direction of I-215 beginning at the SR-91/SR-60/I-215 interchange to the south to I-215/Orange Show Road Interchange to the north. Includes BNSF OH replacement and bridge widening over the UPRR line south of I-10, I-10, and the Santa Ana River.					
<b>Component</b>	<b>Implementing Agency</b>			<b>Reimbursements</b>	
PA&ED	SANBAG				
PS&E	SANBAG				
Right of Way	SANBAG				
Construction	SANBAG				
<b>Legislative Districts</b>					
<b>Assembly:</b> 63			<b>Senate:</b> 32, 36		
<b>Congressional:</b> 43, 44					
<b>Purpose and Need</b>					
Purpose of the project is to:					
<ul style="list-style-type: none"> <li>- Provide continuous HOV lane along I-215 and SR-91, from San Bernardino to the City of Artesia</li> <li>- Reduce Vehicle Miles Travelled</li> <li>- Reduce commute time</li> <li>- Provide mainline congestion relief</li> <li>- Reduce congestion related air quality pollutants and greenhouse gas emissions</li> </ul>					
<b>Project Benefits</b>					
The completion of this HOV gap closure will provide a continuous HOV lane from San Bernardino to the City of Artesia near I-110 in Los Angeles County via the I-215 and SR-91. Once constructed, this project will complete an approximately 70-mile HOV system. The project will promote shared-ride modal shifts which would result in indirect mainline congestion relief, reduced congestion related air quality pollutant and greenhouse gasses emissions, reduction in energy consumption, and reduce commute times.					
<b>Project Milestone</b>				<b>Existing</b>	<b>Proposed</b>
Project Study Report Approved				12/31/05	12/31/05
Begin Environmental (PA&ED) Phase				01/01/07	01/01/07
Circulate Draft Environmental Document				10/07/10	10/07/10
Draft Project Report				04/15/10	04/15/10
End Environmental Phase (PA&ED Milestone)				03/22/11	03/22/11
Begin Design (PS&E) Phase				08/01/10	08/01/10
End Design Phase (Ready to List for Advertisement Milestone)				03/28/12	03/21/12
Begin Right of Way Phase				02/01/11	02/01/11
End Right of Way Phase (Right of Way Certification Milestone)				03/28/12	03/21/12
Begin Construction Phase (Contract Award Milestone)				08/31/12	08/31/12
End Construction Phase (Construction Contract Acceptance Milestone)				05/14/15	05/04/15
Begin Closeout Phase				05/04/15	05/04/15
End Closeout Phase (Closeout Report)				05/05/17	05/15/17

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**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

<b>County</b>	<b>CT District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

Existing Total Project Cost									Implementing Agency
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)	6,120							6,120	SANBAG
PS&E		13,029						13,029	SANBAG
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)			13,484					13,484	
R/W		9,012						9,012	SANBAG
CON			134,850					134,850	SANBAG
<b>TOTAL</b>	<b>6,120</b>	<b>23,241</b>	<b>148,334</b>					<b>177,696</b>	

Proposed Total Project Cost									Implementing Agency
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)	6,120							6,120	
PS&E		13,029						13,029	
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)			16,270					16,270	
R/W		9,012						9,012	
CON			139,063					139,063	
<b>TOTAL</b>	<b>6,120</b>	<b>23,241</b>	<b>155,333</b>					<b>184,694</b>	

<b>Fund No. 1:</b>	<b>Corridor Management Improvement Account (CMIA)</b>								<b>Program Code</b>
Existing Funding									Funding Agency
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)									SANBAG
PS&E									
R/W SUP (CT)									
CON SUP (CT)			11,223					11,223	
R/W									
CON			4,237					4,237	
<b>TOTAL</b>			<b>15,460</b>					<b>15,460</b>	
Proposed Funding									Notes
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)			11,223					11,223	
R/W									
CON			4,237					4,237	
<b>TOTAL</b>			<b>15,460</b>					<b>15,460</b>	

<b>Fund No. 2:</b>	<b>Congestion Mitigation and Air Quality (CMAQ)</b>								<b>Program Code</b>
Existing Funding									Funding Agency
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)									SANBAG
PS&E		10,844						10,844	
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)									
R/W		3,565						3,565	
CON									
<b>TOTAL</b>		<b>15,609</b>						<b>15,609</b>	
Proposed Funding									Notes
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)									
PS&E		10,844						10,844	
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)			3,283					3,283	
R/W		3,565						3,565	
CON			31,567					31,567	
<b>TOTAL</b>		<b>15,609</b>	<b>34,850</b>					<b>50,459</b>	

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

<b>County</b>	<b>CT District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

<b>Fund No. 3:</b>	<b>Surface Transportation Program (Local) STPL</b>								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									SANBAG
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			34,850					34,850	
<b>TOTAL</b>			<b>34,850</b>					<b>34,850</b>	
<b>Proposed Funding</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>									

<b>Fund No. 4:</b>	<b>Federal RIP (RCTC STIP)</b>								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									RCTC
PS&E		2,185						2,185	
R/W SUP (CT)									
CON SUP (CT)			2,261					2,261	
R/W									
CON			22,620					22,620	
<b>TOTAL</b>		<b>2,185</b>	<b>24,881</b>					<b>27,066</b>	
<b>Proposed Funding</b>									<b>Notes</b>
E&P (PA&ED)									* Subject to separate CTC
PS&E		2,185						2,185	STIP action
R/W SUP (CT)									
CON SUP (CT)			1,764					1,764	
R/W									
CON			10,117					10,117	
<b>TOTAL</b>		<b>2,185</b>	<b>11,881</b>					<b>14,066</b>	

<b>Fund No. 5:</b>	<b>Local Transportation Funds (SANBAG Measure I)</b>								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)	4,815							4,815	SANBAG
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W		5,447						5,447	
CON			28,054					28,054	
<b>TOTAL</b>	<b>4,815</b>	<b>5,447</b>	<b>28,054</b>					<b>38,316</b>	
<b>Proposed Funding</b>									<b>Notes</b>
E&P (PA&ED)	4,815							4,815	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W		5,447						5,447	
CON			43,092					43,092	
<b>TOTAL</b>	<b>4,815</b>	<b>5,447</b>	<b>43,092</b>					<b>53,354</b>	

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

<b>County</b>	<b>CT District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

<b>Fund No. 6:</b>	<b>Local Transportation Funds (RCTC Measure A)</b>								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)	1,305							1,305	RCTC
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>	<b>1,305</b>							<b>1,305</b>	
<b>Proposed Funding</b>									<b>Notes</b>
E&P (PA&ED)	1,305							1,305	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>	<b>1,305</b>							<b>1,305</b>	

<b>Fund No. 7:</b>	<b>Federal RIP (SANBAG)</b>								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			45,089					45,089	
<b>TOTAL</b>			<b>45,089</b>					<b>45,089</b>	
<b>Proposed Funding</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			45,089					45,089	
<b>TOTAL</b>			<b>45,089</b>					<b>45,089</b>	

<b>Fund No. 8:</b>	<b>IIP</b>								<b>Program Code</b>
<b>Existing Funding</b>									<b>IIP - RCTC contribution</b>
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>									
<b>Proposed Funding</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			4,961					4,961	
<b>TOTAL</b>			<b>4,961</b>					<b>4,961</b>	

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

**Complete this page for amendments only**

Date: 12/20/11

District	Co	Route	EA	PPNO	TCRP No.
08	SBD RIV RIV	215 215 91	0M940	0041G	

**SECTION 1 - All Projects**

**Project Background:**

Project PA/ED was achieved on 3/22/11; an ND/CE was approved for the project. SANBAG is the implementing agency for PS&E with Caltrans performing the final design work under SANBAG/Caltrans construction cooperative agreement 8-1435 A/1. ROW activities are underway with an anticipated ROW certification date of 3/21/12. Final engineer's estimate was completed on 1/04/11.

**Programming Change Requested:**

- 1.) Construction capital cost increase of \$2,786,000
- 2.) Construction support cost increase of \$4,213,000

**Reason for Proposed Change:**

At the BNSF crossing near Highgrove, the preliminary design included a single steel girder bridge to replace the existing structure. Due to the large skew and span length it was determined during final design that a steel girder bridge was not feasible and a truss structure is required. In addition, due to the limited space in the freeway median and the large skew it was determined that three single track bridges are required instead of a single bridge that accommodates three tracks. The change in design from a steel girder bridge to a truss structure and a single bridge to three bridges caused a net increase in cost of \$6,999,000.

**If proposed change will delay one or more components, clearly explain: 1) reason the delay; 2) cost increase related to the delay; and 3) how cost increase will be funded:**

Construction capital and support cost increase will not affect the schedule. Cost increase was largely attributed to unanticipated changes in the bridge/structural design for the I-215 BNSF/Highgrove bridge. Cost increase will be fully funded with Local Transportation Funds: San Bernardino County Measure I.

**Other Significant Information:**

**SECTION 2 - For TCRP Projects Only**

- Alternative Project Request (Please follow Instructions at <http://www.dot.ca.gov/tcrp/LETTERguidelines>)
- Letter of No Prejudice (LONP) (Please follow Guidelines at <http://www.dot.ca.gov/tcrp/docs/042706.pdf>)

**SECTION 3 - All Projects**

**Approvals:**

I hereby certify that the above information is complete and accurate and all approvals have been obtained for the processing of this amendment request.\*

Name (Print or Type)	Signature	Title	Date
Garry Cohoe		Director of Project Delivery	

**Attachments**

- 1) Concurrence from Implementing Agency and/or Regional Transportation Planning Agency
- 2) Project Location Map

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

County	CT District	PPNO	TCRP Project No.	EA
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

Existing Total Project Cost									Implementing Agency
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)	6,120							6,120	SANBAG
PS&E		13,029						13,029	SANBAG
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)			13,484					13,484	
R/W		9,012						9,012	SANBAG
CON			134,850					134,850	SANBAG
<b>TOTAL</b>	<b>6,120</b>	<b>23,241</b>	<b>148,334</b>					<b>177,695</b>	
Net Change									
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)			2,788					2,788	
R/W									
CON			4,213					4,213	
<b>TOTAL</b>			<b>6,999</b>					<b>6,999</b>	
Proposed New Result									
E&P (PA&ED)	6,120							6,120	
PS&E		13,029						13,029	
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)			16,270					16,270	
R/W		9,012						9,012	
CON			138,068					138,068	
<b>TOTAL</b>	<b>6,120</b>	<b>23,241</b>	<b>155,333</b>					<b>184,684</b>	

Fund No. 1:	Corridor Management Improvement Account (CMIA)								Program Code
Existing Funding									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	Funding Agency
E&P (PA&ED)									SANBAG
PS&E									
R/W SUP (CT)									
CON SUP (CT)			11,223					11,223	
R/W									
CON			4,237					4,237	
<b>TOTAL</b>			<b>15,460</b>					<b>15,460</b>	
Change									Notes
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>									
Proposed Funding									
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)			11,223					11,223	
R/W									
CON			4,237					4,237	
<b>TOTAL</b>			<b>15,460</b>					<b>15,460</b>	

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

<b>County</b>	<b>CT District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

<b>Fund No. 2:</b>	Congestion Mitigation and Air Quality (CMAQ)								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									SANBAG
PS&E		10,844						10,844	
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)									
R/W		3,565						3,565	
CON									
<b>TOTAL</b>		<b>15,609</b>						<b>15,609</b>	
<b>Change</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)			3,283					3,283	
R/W									
CON			31,567					31,567	
<b>TOTAL</b>			<b>34,850</b>					<b>34,850</b>	
<b>Proposed Funding</b>									
E&P (PA&ED)									
PS&E		10,844						10,844	
R/W SUP (CT)		1,200						1,200	
CON SUP (CT)			3,283					3,283	
R/W		3,565						3,565	
CON			31,567					31,567	
<b>TOTAL</b>		<b>15,609</b>	<b>34,850</b>					<b>50,459</b>	

<b>Fund No. 3:</b>	Surface Transportation Program (Local) STPL								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									SANBAG
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			34,850					34,850	
<b>TOTAL</b>			<b>34,850</b>					<b>34,850</b>	
<b>Change</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			-34,850					-34,850	
<b>TOTAL</b>			<b>-34,850</b>					<b>-34,850</b>	
<b>Proposed Funding</b>									
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>									

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

<b>County</b>	<b>CT District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

<b>Fund No. 4:</b>	Federal RIP (RCTC STIP)								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									
PS&E		2,185						2,185	
R/W SUP (CT)									
CON SUP (CT)			2,261					2,261	
R/W									
CON			22,620					22,620	
<b>TOTAL</b>		<b>2,185</b>	<b>24,881</b>					<b>27,066</b>	
<b>Change</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)			-497					-497	
R/W									
CON			-12,503					-12,503	
<b>TOTAL</b>			<b>-13,000</b>					<b>-13,000</b>	
<b>Proposed Funding</b>									
E&P (PA&ED)									
PS&E		2,185						2,185	
R/W SUP (CT)									
CON SUP (CT)			1,764					1,764	
R/W									
CON			10,117					10,117	
<b>TOTAL</b>		<b>2,185</b>	<b>11,881</b>					<b>14,066</b>	

<b>Fund No. 5:</b>	Local Transportation Funds (SANBAG Measure I)								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)	4,815							4,815	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W		5,447						5,447	
CON			28,054					28,054	
<b>TOTAL</b>	<b>4,815</b>	<b>5,447</b>	<b>28,054</b>					<b>38,316</b>	
<b>Change</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			15,038					15,038	
<b>TOTAL</b>			<b>15,038</b>					<b>15,038</b>	
<b>Proposed Funding</b>									
E&P (PA&ED)	4,815							4,815	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W		5,447						5,447	
CON			43,092					43,092	
<b>TOTAL</b>	<b>4,815</b>	<b>5,447</b>	<b>43,092</b>					<b>53,354</b>	

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

<b>County</b>	<b>GT District</b>	<b>PPNO</b>	<b>TCRP Project No.</b>	<b>EA</b>
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

<b>Fund No. 6:</b>	Local Transportation Funds (RCTC Measure A)								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)	1,305							1,305	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>	<b>1,305</b>							<b>1,305</b>	
<b>Change</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>									
<b>Proposed Funding</b>									
E&P (PA&ED)	1,305							1,305	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>	<b>1,305</b>							<b>1,305</b>	

<b>Fund No. 7:</b>	Federal RIP (SANBAG)								<b>Program Code</b>
<b>Existing Funding</b>									
<b>Component</b>	<b>Prior</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16+</b>	<b>Total</b>	<b>Funding Agency</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			45,089					45,089	
<b>TOTAL</b>			<b>45,089</b>					<b>45,089</b>	
<b>Change</b>									<b>Notes</b>
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
<b>TOTAL</b>									
<b>Proposed Funding</b>									
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON			45,089					45,089	
<b>TOTAL</b>			<b>45,089</b>					<b>45,089</b>	

**PROJECT PROGRAMMING REQUEST**

DTP-0001 (REV. 2/10)

Date: 12/20/11

County	CT District	PPNO	TCRP Project No.	EA
SBD RIV RIV	08	0041G		0M940
<b>Project Title:</b> I-215 HOV Gap Closure Project				

<b>Fund No. 8:</b>		IIP							Program Code	
Existing Funding									Funding Agency	
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total		
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
TOTAL										
Change									Notes	
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON			4,961					4,961		
TOTAL			4,961					4,961		
Proposed Funding										
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON			4,961					4,961		
TOTAL			4,961					4,961		

<b>Fund No. 9:</b>									Program Code	
Existing Funding									Funding Agency	
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total		
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
TOTAL										
Change									Notes	
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
TOTAL										
Proposed Funding										
E&P (PA&ED)										
PS&E										
R/W SUP (CT)										
CON SUP (CT)										
R/W										
CON										
TOTAL										



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM: 11

**Date:** January 12, 2012

**Subject:** Interstate 215 (I-215) Bi-County HOV Gap Closure Project Construction Cooperative Agreements

- Recommendation:\***
1. Approve Cooperative Agreement No. R12190 with the Riverside County Transportation Commission (RCTC) for the Construction Phase of the I-215 Bi-County High Occupancy Vehicle (HOV) Gap Closure Project.
  2. Approve Cooperative Agreement No. C12189 with Caltrans for the Construction Phase of the I-215 Bi-County HOV Gap Closure Project.

**Background:** The I-215 Bi-County HOV Gap Closure project involves the construction of approximately 7.5 miles of HOV lanes between State Routes 60, 91 and Interstate 215 Interchange in the City of Riverside, and Orange Show Road in the City of San Bernardino. The project closes the gap in the regional HOV network that will exist upon completion of the SR-91 HOV project in Riverside and SANBAG's I-215 widening project north of Orange Show Road. The environmental document for the I-215 Bi-County HOV Gap Closure project was approved in April 2011. On June 8, 2010, the Board approved Amendment 1 to Cooperative Agreement C09145 (C09145-1) to authorize Caltrans to perform the final design activities for the project. Caltrans led the design effort and recently completed 100% design plans. With the completion of final Design, and to enable the project go out to construction, construction cooperative agreements with Caltrans and RCTC must first be executed.

\*

*Approved*  
*Major Projects Committee*

Date: January 12, 2012

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG	CTC	CTA	X	SAFE	CMA
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Check all that apply.  
 MPC1201d-ks  
 Attachment: C12189, R12190

**Recommendation 1 – This is a new Agreement:** SANBAG and RCTC have worked cooperatively throughout the project development process. The Board has previously approved two cooperative agreements with RCTC: agreement C09145 for the Project Approval and Environmental Document (PA/ED) phase; and C10211 for Right-of-Way and Final Design Phase. The subject agreement R12190 is required for the Construction phase of the project.

Construction Cooperative Agreement R12190 between RCTC and SANBAG defines roles, responsibilities and funding commitments for the construction phase of the project. Under the terms of the subject Agreement, SANBAG will lead the construction phase and will enter into a separate agreement with Caltrans to provide construction support services. RCTC's funding commitment towards the cost of construction and construction support is \$16,842,000, while SANBAG's funding commitment is \$46,541,000, as shown in the proposed funding plan for the project which is being presented to the Board for their consideration under a separate agenda item. Staff is recommending that the Board approve Construction Cooperative Agreement R12190 with RCTC for the Construction Phase of the Project.

**Recommendation 2 - This is a new Agreement:** To enable SANBAG to proceed with the construction of the project, a Construction cooperative agreement is required between SANBAG and Caltrans. The subject cooperative agreement C12189 defines the roles and responsibilities of the parties, and identifies funding sources for the construction phase of the I-215 Bi-County HOV Gap Closure Project, as well as two additional projects that are going to be combined at construction: a pavement rehabilitation project within the limits of the Bi-County HOV Gap closure project; and the re-construction of the Newport Bridge Overcrossing. Combining these three projects during construction would result in cost savings due to economy of scale on mobilization, price of materials, and cost of construction support. In addition, the inconvenience to the public would be greatly reduced. The three projects will have separate engineer's estimates and bid items which would enable staff to accurately segregate the cost during construction.

Under Construction Agreement C12189, and relative to the I-215 Bi-County HOV Gap Closure project and the Newport Road Bridge Overcrossing project, SANBAG is responsible for all construction costs estimated at \$166,344,000, which includes RCTC's contribution. Caltrans agrees to Advertise, Award, and Administer (AAA) the construction contract, and provide the needed construction support. Staff has negotiated a scope and cost for construction support services with Caltrans. The estimated not-to-exceed cost for providing construction support services for the HOV Gap Closure project and the Newport Bridge

Overcrossing project is \$16,631,000. Caltrans has also agreed to provide monthly project status report that would allow SANBAG to monitor progress and expenditures. Construction support services will be funded with federal Congestion Mitigation & Air Quality Program (CMAQ), Corridor Mobility Improvement Account (CMIA) and State Transportation Improvement Program (STIP) funds. Utilizing State and Federal funds for construction support services allows SANBAG to pay the lower tier Caltrans Indirect Cost Rate multiplier (ICRP) of 34.4% as opposed to 60.9% if Measure I funds were utilized. The agreement allows Caltrans to reimburse themselves directly from the Federal and State funds, therefore the funds for construction support services will not be included in SANBAG's budget.

Under Construction Agreement C12189, and relative to the pavement rehab project, Caltrans is responsible for all construction costs estimated at \$13,097,000.

The funding commitments for construction capital and construction support for the three projects that are being combined for construction are summarized in the Table 1 below and are consistent with the revised funding plan for the I-215 Bi-County HOV Gap Closure project which is being presented to the Board for their consideration under a separate item.

**Table 1**

	CMAQ	CMIA	STIP-RIP (RCTC)	STIP-ITIP (RCTC)	STIP	Measure I	SHOPP	TOTAL
I-215 Bi-County HOV	\$34,850,000	\$15,460,000	\$11,881,000	\$4,961,000	\$45,089,000	\$43,092,000	\$0	\$155,333,000
Newport Road Overcrossing	\$0	\$0	\$0	\$0	\$0	\$3,449,000	\$0	\$3,449,000
<b>SUB-TOTAL</b>	<b>\$34,850,000</b>	<b>\$15,460,000</b>	<b>\$11,881,000</b>	<b>\$4,961,000</b>	<b>\$45,089,000</b>	<b>\$46,541,000</b>	<b>\$0</b>	<b>\$158,782,000</b>
Pavement Rehab	\$0	\$0	\$0	\$0	\$0	\$0	\$13,097,000	\$13,097,000
<b>TOTAL</b>	<b>\$34,850,000</b>	<b>\$15,460,000</b>	<b>\$11,881,000</b>	<b>\$4,961,000</b>	<b>\$45,089,000</b>	<b>\$46,541,000</b>	<b>\$13,097,000</b>	<b>\$171,879,000</b>

Staff is recommending that the Board approve Construction Cooperative Agreement C12189 with Caltrans.

**Financial Impact:** This item is consistent with the 2011/2012 Fiscal Year Budget. Expenditures are expected to occur in future fiscal years.

**Reviewed By:** This item will be reviewed by the Major Projects Committee on January 12, 2012. SANBAG Counsel and Contracts Manager have reviewed and approved the draft agreement as to form.

**Responsible Staff:** Khalil Saba, Project Delivery Manager



## CONTRACT SUMMARY SHEET

Contract No. R12190 Amendment No. N/A

By and Between

San Bernardino County Transportation Authority and Riverside County Transportation Commission

Contract Description I-215 Bi-County HOV: Construction Cooperative Agreement

**Board of Director's Meeting Date:** February 1, 2012  
**Overview of BOD Action:** Approve cooperative agreement R12190

Is this Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW				
Original Contract Amount	\$	\$16,842,000	Original Contingency Amount	\$ 0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	-	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$ -
Current Amendment Amount	\$	-	Contingency Amendment	\$ -
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>\$16,842,000</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$ 0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>				<b>\$ \$16,842,000</b>
Contract Start Date 2/01/12	Current Contract Expiration Date 12/31/14		Revised Contract Expiration Date -	
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.				

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. 839 <input type="checkbox"/> A Budget Amendment is required. How are we funding current FY? <b>This agreement has no financial impact</b>				
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the <b>Overall Funding</b> for the duration of the Contract: To be paid with STIP-RIP and STIP-ITIP				
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
<b>Check all applicable boxes:</b>	
<input type="checkbox"/> Retention? If yes, indicate ____ %	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal ____ % <input type="checkbox"/> Underutilized DBE (UDBE) Goal ____ %	

\_\_\_\_\_ 1-5-12 \_\_\_\_\_  
 Task Manager Signature Date Project Manager Signature Date

\_\_\_\_\_ \_\_\_\_\_  
 Chief Financial Officer Signature Date Contracts Manager Signature Date

**COOPERATIVE AGREEMENT NO. R12190**  
**BETWEEN**  
**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**  
**AND**  
**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**  
**FOR THE**  
**CONSTRUCTION PHASE**  
**OF THE**  
**I-215 BI COUNTY HOV GAP CLOSURE PROJECT**

**This Cooperative Agreement** (hereinafter referred to as this "Agreement") is entered into as of the Effective Date as defined herein, by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY ("AUTHORITY") and the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("COMMISSION") for the Construction Phase of the I-215 BI-COUNTY HOV GAP CLOSURE PROJECT ("PROJECT"). The AUTHORITY and COMMISSION are referred to herein individually as "PARTY" and collectively as "PARTIES".

**RECITALS:**

**WHEREAS**, the PARTIES desire to proceed with construction of the I-215 Bi-County High Occupancy Vehicle (HOV) Gap Closure Project between the I-215/SR-60/SR-91 and I-215/Orange Show Road Interchanges in the counties of Riverside and San Bernardino, hereinafter referred to as the "PROJECT"; and

**WHEREAS**, the scope of the PROJECT is to add a HOV lane in each direction by reconstructing the inside and outside shoulders and restriping the lanes resulting in a varying width inside shoulder, one HOV lane with no buffer, three mixed flow lanes, and a varying width outside shoulder in each direction of I-215; and

**WHEREAS**, the PROJECT is located in San Bernardino County and partially within Riverside County and will be of mutual benefit to the AUTHORITY and COMMISSION; and

**WHEREAS**, the PARTIES entered into a Project Approval and Environmental Document (PA/ED) Agreement C09145 on February 4, 2009, said Agreement defining the responsibilities and obligations of the AUTHORITY and COMMISSION during the PA/ED phase; and

**WHEREAS**, the PARTIES entered into a Plans, Estimates, and Specifications (PS&E) and Right of Way (ROW) Agreement C10211 on June 15, 2010, said Agreement defining the responsibilities and obligations of the AUTHORITY and COMMISSION during the PS&E and ROW phases; and

**WHEREAS**, the **PARTIES** desire to set forth responsibilities and obligations of **AUTHORITY** and **COMMISSION** during the construction phase ("**Construction Phase**") for the **PROJECT**; and

**NOW, THEREFORE**, **AUTHORITY** and **COMMISSION** agree to the following:

## **SECTION I ADMINISTRATION**

- a) The scope of this Agreement strictly applies to the work related to the Construction Phase of the **PROJECT**. Any work beyond what is necessary for construction of the project shall be part of an independent, separate agreement between the **PARTIES**.
- b) The **AUTHORITY** and **COMMISSION** mutually agree that **AUTHORITY** shall be the lead agency on the **PROJECT** for Construction.
- c) The **PARTIES** agree it would be to the benefit of the **PARTIES** to enter into negotiations with the **STATE OF CALIFORNIA**, acting by and through its Department of Transportation, referred to herein as "**STATE**," to provide professional services and Advertise, Award, and Administer the construction contract for **PROJECT**.
- d) **AUTHORITY** shall enter into a separate Cooperative Agreement with **STATE** for the Construction phase of the **PROJECT**. **AUTHORITY** shall comply with all requirements set forth in the Cooperative Agreement to be entered into with **STATE**.
- e) **AUTHORITY** shall be the responsible agency for procuring professional services from the **STATE**.
- f) **AUTHORITY** shall render project management services and provide engineering and construction support services utilizing **AUTHORITY**'s available staff, which will be supplemented with the **AUTHORITY**'S consultant staff. Any consultant contract for services to be reimbursed with **COMMISSION** funds to be provided pursuant to this Agreement shall include **COMMISSION** as an indemnified party by the consultant and as an additional insured. Such coverage shall be to the same extent as provided to **AUTHORITY**.
- g) **COMMISSION** shall designate a Project Manager to represent **COMMISSION**, and **AUTHORITY** shall designate a Project Manager to represent **AUTHORITY** through whom all communications between the two agencies shall be channeled.
- h) **AUTHORITY** shall coordinate and conduct project development team meetings on a monthly basis to provide the **COMMISSION** with updates that includes schedule updates, cost updates, scope updates, status of action items, and status of issues/concerns.
- i) **COMMISSION** agrees its Project Manager shall be responsible for preparing **COMMISSION** staff reports for **COMMISSION** Board consideration.

## **SECTION II FINANCIAL RESPONSIBILITIES**

- a) The Construction Phase of the PROJECT is estimated to cost \$164,238,000 with the construction capital cost estimated at \$146,969,000 and support cost estimated at \$17,299,000. These costs are shown in Table 1, which is attached to this Agreement and by this reference incorporated into this Agreement, shall be the monetary obligation of the PARTIES.
- b) COMMISSION's share of the cost of the Construction Phase of the PROJECT is estimated at \$16,842,000 with an estimated share of the capital cost at \$15,078,000 and an estimated share of the support cost at \$1,764,000. COMMISSION's share of the capital cost is based on the estimated actual cost of work within Riverside County. The COMMISSION's share of the support cost is 11.7% of the COMMISSION's share of the capital cost.
- c) AUTHORITY's share of the cost of the Construction Phase of the PROJECT is estimated at \$138,491,000 with an estimated share of the capital cost at \$123,985,000 and an estimated share of the support cost at \$14,506,000. COMMISSION's share of the capital cost is based on the estimated actual cost of work within San Bernardino County. The COMMISSION's share of the support cost is 11.7% of the COMMISSION's share of the capital cost.
- d) The cost estimate for the Construction Phase of the PROJECT is an "estimated" not to exceed amount to be used for budgetary and planning purposes and it is agreed that there is a potential for cost increases or decreases. Upon award of construction contract, AUTHORITY and COMMISSION shall review the contractor's bid and, if necessary, agree upon a revised estimate of each Party's contribution. Should the PROJECT cost exceed the monetary obligation shown on Table 1, Section II, Article d shall apply. COMMISSION's share of the support cost shall remain fixed at 11.7% of the COMMISSION's share of the capital cost as irrespective of the revised estimate.
- e) The monetary obligation identified in this Agreement and the attached Table 1 and agreed to by AUTHORITY and COMMISSION, is a not to exceed obligation and neither AUTHORITY nor the COMMISSION may exceed this obligation unless both PARTIES obtain the necessary budget amendment authorization from their respective governing bodies, and a written amendment to this Agreement is executed by the PARTIES.
- f) AUTHORITY and COMMISSION shall be responsible for their own administrative and management costs including, but not limited to, costs attributed to the preparation of invoices, billings and payments.
- g) AUTHORITY and COMMISSION agree to independently develop their funding plan for their share of PROJECT costs, execute funding agreements, and secure funds.
- h) AUTHORITY may bill the COMMISSION on a monthly basis for reimbursement of construction phase PROJECT expenditures. The bill to the COMMISSION shall contain copies of invoices paid by AUTHORITY and the invoices shall contain supporting

documentation for expenditures associated with labor, other direct costs, and subconsultants.

- i) COMMISSION agrees to pay all approved charges of AUTHORITY's invoice within 45 days of receipt of invoice.
- j) COMMISSION's ability to fund its payment obligations under this Agreement utilizing STIP funding is subject to and contingent upon California Transportation Commission ("CTC") approval of COMMISSION's proposed allocation of STIP funds for the PROJECT. If such allocation is not approved, COMMISSION shall utilize an alternate source of funding to meet its obligations hereunder.
- k) COMMISSION agrees to allow STATE to draw from its STIP funding or other state or federal funds used to fund its payment obligations under this Agreement should STATE Advertise, Award, and Administer the construction contract for PROJECT.

### **SECTION III MISCELLANEOUS**

- a) Notices – Any notices, requests, or demands made between the Parties pursuant to this Agreement shall be addressed to the other Party at the address set forth below
  - i) Riverside County Transportation Commission  
P.O. Box 12008  
Riverside, CA 92502-2208  
Attention: Marlin Feenstra, Director of Project Delivery  
  
Physical Address  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attention: Marlin Feenstra, Director of Project Delivery
  - ii) San Bernardino Associated Governments  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410  
Attention: Garry Cohoe, Director of Project Delivery
- b) Severability – If any term, provision, covenant, or condition of this Agreement is held to be invalid, void, or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- c) Assignment – Neither this Agreement, nor any of the PARTIES rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either PARTY without the prior written consent of the other PARTY in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.

- d) **Governing Law** – The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.
- e) **Waiver** – No waiver of any default shall constitute a waiver of any other default whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a PARTY shall give the other PARTY any contractual rights by custom, estoppel, or otherwise.
- f) **Attorneys Fees** – If any legal action is instituted to enforce or declare any PARTY’S rights hereunder, each PARTY, including the prevailing Party, must bear its own costs and attorneys’ fees. This paragraph shall not apply to those costs and attorneys fees directly arising from any third party legal action against a PARTY hereto and payable under the indemnification provisions of this Agreement.
- g) **Neither COMMISSION 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 AUTHORITY under or in connection with any work, authority or jurisdiction conferred upon AUTHORITY and arising under this Agreement. It is understood and agreed that AUTHORITY shall fully defend, indemnify and hold harmless COMMISSION and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under this Agreement or occurring by reason of anything done or omitted to be done by AUTHORITY under this Agreement.**
- h) **Neither AUTHORITY 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 COMMISSION under or in connection with any work, authority or jurisdiction conferred upon COMMISSION and arising under this Agreement. It is understood and agreed that COMMISSION shall fully defend, indemnify and hold harmless AUTHORITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under this Agreement or occurring by reason of anything done or omitted to be done by COMMISSION under this Agreement.**
- i) **In the event AUTHORITY and the COMMISSION are found to be comparatively at fault for any claim, action, loss or damage, which results from their respective obligations under this Agreement, the AUTHORITY and/or the COMMISSION shall indemnify the other to the extent of its comparative fault.**
- j) **Termination**
  - i) **Termination for Cause**

Any PARTY to this Agreement may declare a breach hereof by serving written notice describing the nature of the breach to the other PARTY. The PARTY alleged to have breached the Agreement shall be afforded thirty (30) days from service of the notice of breach to take whatever steps necessary to cure the breach. If the breach is not cured within the time parameters set forth herein, this Agreement may be terminated as to that PARTY deemed to be in breach of this Agreement.

ii) Termination for Convenience

In the event either PARTY terminates the agreement for convenience, the PARTY terminating the agreement for convenience shall furnish a thirty (30) day written notice to the other PARTY.

iii) Termination Costs

If COMMISSION terminates this Agreement, COMMISSION shall pay AUTHORITY all approved costs incurred by AUTHORITY, including AUTHORITY's share paid to date, and costs to be incurred as a result of terminating this Agreement. If AUTHORITY terminates this Agreement, AUTHORITY shall pay to COMMISSION all costs incurred by COMMISSION, including costs to be incurred as a result of terminating this Agreement. Notwithstanding the foregoing, if this Agreement is terminated for cause, the non-breaching PARTY shall not be liable for any costs incurred as a result of such termination.

- k) In the event of any conflict between the Agreement and Exhibit(s), Table(s), Figure(s) attached to this Agreement and incorporated by reference, the Agreement shall take precedence over the Exhibit(s), Table(s), and Figure(s).
- l) Any amendment to this Agreement, amendment to the consultant contract(s), or significant change in the PROJECT scope or cost must be agreed to by both PARTIES in writing.
- m) This Agreement shall terminate upon completion of PROJECT PS&E and ROW obligations of AUTHORITY and the delivery of required PROJECT documents to the COMMISSION, or on December 31, 2014, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of PROJECT be asserted against one of the PARTIES, the PARTIES agree to extend the termination date of this Agreement, until such time as the claims are settled, dismissed or paid.
- n) There are no third party beneficiaries, and this agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person or entity whatsoever.

**IN WITNESS WHEREOF**, the PARTIES hereto have caused this Agreement to be entered into as of the date signed by all PARTIES.

**“COMMISSION”**

Riverside County Transportation  
Commission

**“AUTHORITY”**

San Bernardino County Transportation  
Authority

By: \_\_\_\_\_  
Greg Pettis, Chair  
Commissioners

By: \_\_\_\_\_  
Larry McCallon, President  
Board of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Jennifer Harmon  
Clerk of the Board

Attest: \_\_\_\_\_  
Vicki Watson  
Board Secretary

Approved As To Form And Procedure:

Approved As To Form And Procedure:

By: \_\_\_\_\_  
COMMISSION’s Counsel

By: \_\_\_\_\_  
Penny Alexander-Kelley  
General Counsel

Concurred: \_\_\_\_\_  
Kathleen Murphy-Perez  
Contracts Manager

TABLE 1  
[FUNDING PLAN]

I-215 Bi-County HOV Gap Closure

	CMAQ	CMIA	STIP-RIP (RCTC)	STIP-ITIP (RCTC)	STIP-RIP	Measure 1	Total
Support	\$3,283,000	\$11,223,000	\$1,764,000	\$0	\$0	\$0	\$16,270,000
Capital	\$31,567,000	\$4,237,000	\$10,117,000	\$4,961,000	45,089,000	\$43,092,000	\$139,063,000
<b>Total</b>	<b>\$34,850,000</b>	<b>\$15,460,000</b>	<b>\$11,881,000</b>	<b>\$4,961,000</b>	<b>\$45,089,000</b>	<b>\$43,092,000</b>	<b>\$155,333,000</b>



## CONTRACT SUMMARY SHEET

Contract No. C12189

Amendment No. N/A

By and Between

San Bernardino County Transportation Authority and California Department of Transportation

Contract Description I-215 Bi-County HOV: Construction Cooperative Agreement

**Board of Director's Meeting Date:** February 1, 2012

**Overview of BOD Action:** Approve cooperative agreement C12189

Is this Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	\$158,782,000	Original Contingency Amount	\$	0	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	-	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	-	
Current Amendment Amount	\$	-	Contingency Amendment	\$	-	
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>\$158,782,000</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>	
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$</b>	<b>\$158,782,000</b>
Contract Start Date 2/01/12	Current Contract Expiration Date 12/31/14		Revised Contract Expiration Date -			
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.						

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 839

A Budget Amendment is required.

How are we funding current FY? **This agreement has no financial impact**

<input checked="" type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input checked="" type="checkbox"/> Measure I Funds
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*Provide Brief Overview of the Overall Funding for the duration of the Contract: To be paid with CMAQ, CMIA, STIP-RIP, STIP-ITIP, and Measure I Valley-Fwy*

Payable  Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate \_\_\_\_ %

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_ %  Underutilized DBE (UDBE) Goal \_\_\_\_ %

 _____ Task Manager Signature	1-5-12 _____ Date	 _____ Project Manager Signature	1-5-12 _____ Date
_____ Chief Financial Officer Signature	_____ Date	_____ Contracts Manager Signature	_____ Date

1/3/12

### **COOPERATIVE AGREEMENT**

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

San Bernardino County Transportation Authority, a political subdivision of the State of California, referred to as AUTHORITY.

For the purpose of this Agreement, the term PARTNERS collectively refers to CALTRANS and AUTHORITY (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. For the purpose of this Agreement, three independent projects will be combined into one construction contract which includes the Newport Avenue Bridge Replacement, Pavement Rehabilitation, and the Interstate 215 High Occupancy Vehicle lanes; and supplemental work, will be referred to as PROJECT. All responsibilities assigned in this Agreement to complete construction will be referred to as OBLIGATIONS.

This Agreement outlines the terms and conditions of cooperation between PARTNERS to complete construction for PROJECT.

3. Prior to this agreement, AUTHORITY developed the Project Approval and Environmental Document and CALTRANS developed the Plans, Specifications and Estimate under Cooperative Agreement/Amendments 8-1435. AUTHORITY developed the Right of Way under Cooperative Agreement 8-1500.
4. The estimated date for OBLIGATION COMPLETION is November 20, 2018.
5. In this Agreement capitalized words represent defined terms and acronyms. The Definitions section contains a complete definition for each capitalized term.
6. PROJECT impacts property of Burlington Northern Santa Fe (BNSF) railway and the Union Pacific Railroad (UPRR). PARTNERS are aware that BNSF and UPRR will perform

PROJECT plan reviews and impose other requirements in order for PROJECT to proceed around and within BNSF and UPRR properties.

CALTRANS will enter into a separate agreement with BNSF and UPRR to establish terms and conditions for review as well as reimbursement to BNSF and UPRR. Funds from this Agreement will be used to reimburse BNSF and UPRR as documented in the FUNDING SUMMARY.

7. From this point forward, PARTNERS define in this Agreement the terms and conditions under which they will accomplish OBLIGATIONS.

### **RESPONSIBILITIES**

8. CALTRANS and AUTHORITY will co-sponsor PROJECT.
9. 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.
10. AUTHORITY may provide IQA for the portions of WORK outside existing and proposed SHS right of way.
11. CALTRANS and AUTHORITY are each a FUNDING PARTNER for this Agreement. The details of the funding commitments are documented in the latest FUNDING SUMMARY.
12. CALTRANS is the CEQA lead agency for PROJECT.
13. CALTRANS is the NEPA lead agency for PROJECT.
14. CALTRANS is IMPLEMENTING AGENCY for CONSTRUCTION.

### **SCOPE**

#### **Scope: General**

15. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
16. IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN.

17. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
18. 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.
19. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in OBLIGATIONS.
20. 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.
21. IMPLEMENTING AGENCY for each PROJECT COMPONENT included in this Agreement will be available to help resolve WORK related problems generated by that component for the entire duration of PROJECT.
22. 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 within the SHS right of way without an encroachment permit issued in their name.

23. 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.
24. PARTNERS will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.

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.

25. If a 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 documents. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
26. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
27. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
28. If HM-1 is found within PROJECT limits and outside the existing SHS right of way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. AUTHORITY, in concert with the local agency having land use jurisdiction over the parcel(s), will ensure that HM MANAGEMENT ACTIVITIES related to HM-1 are undertaken with minimum impact to PROJECT schedule.
29. 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.
30. 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.
31. 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.
32. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with only a final report for OBLIGATIONS completed in that component.
33. 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.
34. 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.

35. 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.
36. 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.
37. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds, each PARTNER 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.
38. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds, each PARTNER 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.		
Organization Type	Cost Principles	Administrative Requirements
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>	

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

CALTRANS, the state auditor, FHWA (if PROJECT utilizes federal funds), and AUTHORITY 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.

42. If FUNDING PARTNERS fund any part of PROJECT with state or federal funds, each FUNDING PARTNER will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.
43. 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*.
44. 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.

- 45. If WORK stops for any reason, IMPLEMENTING AGENCY will place PROJECT right of way in a safe and operable condition acceptable to CALTRANS.
- 46. 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.
- 47. 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.

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

Environmental Permits						
Permit	Coordinate	Prepare	Obtain	Implement	Renew	Amend
404 USACOE	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY
401 RWQCB	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY
NPDES SWRCB	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY
1602 DFG	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY	AUTHORITY

**Scope: CONSTRUCTION**

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

CALTRANS 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, CALTRANS also accepts responsibility to administer the construction contract.

- 49. CALTRANS will provide a RESIDENT ENGINEER and construction support staff that are independent of the design engineering company and construction contractor.

50. CALTRANS will implement changes to the construction contract through contract change orders (CCOs). PARTNERS will review and concur on all CCOs over \$100,000.

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.

51. CALTRANS 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.
52. If the lowest responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, all FUNDING PARTNERS must be involved in determining how to proceed. If FUNDING PARTNERS do not agree in writing on a course of action within 15 working days, the IMPLEMENTING AGENCY shall not award the construction contract.
53. CALTRANS will require the construction contractor to furnish payment and performance bonds naming CALTRANS as obligee and to carry liability insurance in accordance with CALTRANS specifications.
54. As IMPLEMENTING AGENCY for CONSTRUCTION, CALTRANS is responsible for maintenance within PROJECT limits as part of the construction contract.
55. PARTNERS confirm that upon OBLIGATION COMPLETION, no maintenance agreement will be necessary.

### COST

#### **Cost: General**

56. PARTNERS will document specific funding, billing, and payment details in a separate FUNDING SUMMARY.

A valid FUNDING SUMMARY must be in place at all times until COMPLETION OF OBLIGATIONS.

PARTNERS will create a new FUNDING SUMMARY each time the funding, billing and payment details of PROJECT change. The FUNDING SUMMARY is only valid after each FUNDING PARTNER signs and dates the FUNDING SUMMARY. The most current fully executed FUNDING SUMMARY supersedes any previous FUNDING SUMMARY created for this Agreement.

A new FUNDING SUMMARY will not require an amendment to this Agreement unless the rules of the new funds require it.

Each PARTNER will designate an authorized representative to sign the FUNDING SUMMARY on its behalf.

57. PARTNERS may invoice the appropriate FUNDING PARTNER according to the terms documented in the FUNDING SUMMARY.
58. If a PARTNER has received Electronic Funds Transfer (EFT) certification from CALTRANS, that PARTNER will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
59. If FUNDING PARTNERS fund OBLIGATIONS with American Recovery and Reinvestment Act (ARRA) funds, PARTNERS will adopt the terms, conditions, requirements, and constraints of the American Recovery and Reinvestment Act of 2009.
60. If FUNDING PARTNERS fund OBLIGATIONS with Proposition 1B Bond funds, 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 Proposition 1B 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.

61. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS cost.
62. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
63. Independent of PROJECT, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside the existing SHS right of way will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.
64. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
65. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS cost.

66. The cost to ensure that PROJECT remains in environmental compliance is an OBLIGATIONS cost.
67. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS cost.
68. 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.
69. Independent of OBLIGATIONS cost, AUTHORITY will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.
70. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
71. 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. That PARTNER will indemnify and defend each other PARTNER.
72. CALTRANS will draw from the state and federal funds shown in the FUNDING SUMMARY table for this PROJECT COMPONENT.
73. 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 AUTHORITY invoices for rates in excess of DPA rates, AUTHORITY will fund the cost difference and reimburse CALTRANS for any overpayment.
74. 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 the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. CALTRANS periodically adjusts the Program Functional Rate and the Administration Rate.
75. If CALTRANS reimburses AUTHORITY for any costs later determined to be unallowable, AUTHORITY will reimburse those funds.

76. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
77. 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 PROJECT 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.

78. 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.

79. Except as otherwise provided in this Agreement, PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

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

80. 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**

81. The cost of source inspection is an OBLIGATION cost.
82. The cost to maintain the SHS within PROJECT limits is an OBLIGATIONS cost until PARTNERS execute a separate maintenance agreement.

**Cost: CONSTRUCTION Capital**

83. The cost of all SFM is a CONSTRUCTION CAPITAL cost.

**SCHEDULE**

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

**GENERAL CONDITIONS**

85. 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
86. 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.
87. Any PARTNER performing IQA does so for its own benefit. No one can assign liability to that PARTNER due to its IQA activities.
88. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS 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 will fully defend, indemnify, and save harmless AUTHORITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this Agreement.

89. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by AUTHORITY and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon AUTHORITY under this Agreement.

It is understood and agreed that AUTHORITY will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by AUTHORITY and/or its agents under this Agreement.

90. 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.
91. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this Agreement.
92. PARTNERS will not interpret any ambiguity contained in this Agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
93. 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.
94. 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.
95. 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.
96. 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 AUTHORITY 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 or in the Superior Court of the county in which PROJECT is physically located. 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.

97. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
98. If any provisions in this Agreement are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other Agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement.
99. PARTNERS intend this Agreement to be their final expression and supersede any oral understanding or writings pertaining to OBLIGATIONS.
100. 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.
101. PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
102. 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, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

103. The following documents are attached to, and made an express part of this Agreement:  
SCOPE SUMMARY.

## **DEFINITIONS**

**ARRA** – American Recovery and Reinvestment Act of 2009

**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.

**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 it commits in this Agreement.

**FUNDING SUMMARY** – A document separate from this Agreement that documents the details of funding and billing/payment arrangements. Details include, but are not limited to, fund source, fund type, payment method, invoice frequency, deposit amounts and PROJECT COMPONENT in which 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.

**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.

**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 three independent projects will be combined into one construction contract and includes the Newport Bridge Ave. replacement, pavement rehabilitation and the I-215 HOV lanes.

**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 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.

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

**CONTACT INFORMATION**

The information provided below indicates the primary contact information 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:

Robert So, Office of PPM Support  
464 West 4<sup>th</sup> Street, 6<sup>th</sup> Floor (MS-1229)  
San Bernardino, California 92401-1400  
Office Phone: (909) 383-4513  
Mobile Phone: (951) 288-4420

The primary Agreement contact person for AUTHORITY is:

Khalil Saba, Project Manager  
1170 West 3<sup>rd</sup> Street  
San Bernardino, California 92410  
Office Phone: (909) 884-8276 ext 147

**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

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY

APPROVED

APPROVED

By: \_\_\_\_\_  
Raymond W. Wolfe, PhD  
District Director

By: \_\_\_\_\_  
Larry McCallon  
Board President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CERTIFIED AS TO FUNDS:

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

By: \_\_\_\_\_  
Vicki Watson  
Clerk of the Board

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND PROCEDURE

By: \_\_\_\_\_  
Penney Alexander-Kelley  
Authority's Counsel

Date: \_\_\_\_\_

CONCURRENCE

By: \_\_\_\_\_  
Kathleen Murphy-Perez  
Contract Manager

Date: \_\_\_\_\_

**SCOPE SUMMARY**

4	5	6	7	8	Description	CALTRANS	AUTHORITY	N/A
5	270				Construction Engineering and General Contract Administration	X		
5	275				Construction Engineering and General Contract Administration of Structures Work	X		
5	285				Contract Change Order Administration	X		
5	290				Resolve Contract Claims	X		
5	295				Accept Contract, Prepare Final Construction Estimate, and Final Report	X		
4	300				FINAL RIGHT OF WAY ENGINEERING	X		

# FUNDING SUMMARY Number 1

Project Number: 0000000506  
 Agreement: 08-1530  
 C12189

## Part I – Funding Summary Table Draft 1/5/12

Funding Source	Funding Partner	Fund Type	CON Capital	CON Support	Totals by Fund Type
STATE	AUTHORITY	Bond - Corridor Mobility Improvement (CMIA)	\$4,237,000	\$11,223,000	\$15,460,000
STATE	CALTRANS	SHOPP	\$12,297,000	\$800,000	\$13,097,000
STATE	AUTHORITY	STIP/RIP	\$55,206,000	\$1,764,000	\$56,970,000
STATE	AUTHORITY	STIP/TIP	\$4,961,000	\$0	\$4,961,000
FEDERAL	AUTHORITY	Congestion Mitigation and Air Quality (CMAQ)	\$31,567,000	\$3,283,000	\$34,850,000
LOCAL	AUTHORITY	Measure I	\$46,180,000	\$361,000	\$46,541,000
		Totals by Component	\$154,448,000.00	\$17,431,000	\$171,879,000

This table represents full funding of each PROJECT COMPONENT in Agreement 08-1530.

Billing and payment details follow.

# FUNDING SUMMARY Number 1

Project Number: 0000000506  
Agreement: 08-1530  
C12189

## Part II – Billing and Payment Details

### Responsibilities

CALTRANS is IMPLEMENTING AGENCY for CONSTRUCTION.

### Cost: CONSTRUCTION Support

1. Each PARTNER listed below will do work for CONSTRUCTION Support as described in the SCOPE SUMMARY of the cooperative agreement:

- CALTRANS

Therefore, based on the funding arrangements presented in the Funding Summary Table:

- CALTRANS may invoice AUTHORITY

2. PARTNERS will exchange funds for actual costs.

CALTRANS will invoice AUTHORITY for an initial deposit of \$150,000 thirty (30) working days prior to the construction contract bid advertisement date. This deposit represents two (2) months' estimated support costs.

Thereafter, CALTRANS will submit to AUTHORITY monthly invoices of estimated costs based on the prior month's actual expenditures. This will include all expenditures incurred by BNSF and UPRR for coordination and review as specified in the Spending Summary.

After PARTNERS agree that all WORK is complete for this PROJECT COMPONENT, CALTRANS 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.

### Cost: CONSTRUCTION Capital

3. CALTRANS will invoice AUTHORITY for the actual cost of any SFM as a CONSTRUCTION CAPITAL cost.

4. Each PARTNER listed below will do work for CONSTRUCTION Capital as described in the SCOPE SUMMARY of the cooperative agreement:

- CALTRANS

Therefore, based on the funding arrangements presented in the Funding Summary Table:

- CALTRANS may invoice AUTHORITY

5. PARTNERS will exchange funds for actual costs.

## **FUNDING SUMMARY Number 1**

Project Number: 000000506  
CALTRANS Agreement: 08-1530

CALTRANS will invoice AUTHORITY for an initial deposit of \$5,000,000 thirty (30) working days prior to the construction contract bid advertisement date. This deposit represents one (1) months' estimated capital cost.

Thereafter, CALTRANS will submit to AUTHORITY monthly invoices of estimated costs based on the prior month's actual expenditures.

After PARTNERS agree that all WORK is complete for this PROJECT COMPONENT, CALTRANS 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.

# FUNDING SUMMARY Number 1

Project Number: 000000506  
CALTRANS Agreement: 08-1530

## Part III – Spending Summary

Description	Partner Administering	Funding Partner	Not to exceed Amount from Measure I funds
Payment for Burlington Northern Santa Fe (BNSF) coordination and reviews.	CALTRANS	AUTHORITY	\$5,900,000
Payment for Union Pacific Railroad (UPRR) coordination and reviews.	CALTRANS	AUTHORITY	\$400,000

Project	Breakdown	CMAQ	CMIA	STIP-RIP	STIP-ITIP	Measure I	SHOPP	TOTAL
0M940	Support	\$3,283,000	\$11,223,000	\$1,764,000	\$0	\$0	\$0	\$16,270,000
	Capital	\$31,567,000	\$4,237,000	\$55,206,000	\$4,961,000	\$43,092,000	\$0	\$139,063,000
	Total	\$34,850,000	\$15,460,000	\$56,970,000	\$4,961,000	\$43,092,000	\$0	\$155,333,000
0P510	Support	\$0	\$0	\$0	\$0	\$361,000	\$0	\$361,000
	Capital	\$0	\$0	\$0	\$0	\$3,088,000	\$0	\$3,088,000
	Total	\$0	\$0	\$0	\$0	\$3,449,000	\$0	\$3,449,000
0H330	Support	\$0	\$0	\$0	\$0	\$0	\$800,000	\$800,000
	Capital	\$0	\$0	\$0	\$0	\$0	\$12,297,000	\$12,297,000
	Total	\$0	\$0	\$0	\$0	\$0	\$13,097,000	\$13,097,000

**FUNDING SUMMARY Number 1**

Project Number: 0000000506  
CALTRANS Agreement: 08-1530

**Part IV – Signature Page**

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY

APPROVED

APPROVED

By: \_\_\_\_\_  
Basem Muallem  
Deputy District Director  
Program Project Management

By: \_\_\_\_\_  
Larry McCallon  
Board President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
District Budget Manager

\_\_\_\_\_  
Authority's Counsel

\_\_\_\_\_  
HQ Accounting

\_\_\_\_\_  
Contracts Manager



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

*Minute Action*

AGENDA ITEM: 12

**Date:** January 12, 2012

**Subject:** Purchase & Sale Agreements for acquisition of property necessary for the Newport Overcrossing Bridge Replacement, part of the Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure Project

**Recommendation:\*** Authorize the Executive Director to act on behalf of SANBAG in signing Purchase & Sale Agreements, pursuant to SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507), to acquire the properties identified in Attachment "A" for construction of the Newport Overcrossing Bridge Replacement, part of the I-215 Bi-County HOV Gap Closure Project.

**Background:** Staff's intention is to utilize SANBAG's Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507) for this project. The Board has previously approved the procedure on this particular project in order to assure timely acquisition of property critical to maintaining the planned construction schedule so as not to jeopardize the Congestion Mobility Improvement Account (CMIA) funds that have been programmed for construction.

In February 2009, the Board authorized staff to start project development activities for the I-215 Bi-County HOV Gap Closure Project. The project

\*

*Approved*  
*Major Projects Committee*

*Date:* January 12, 2012

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

involves the construction of approximately 7.5 miles of HOV lanes between the 60/91/215 Interchange in the City of Riverside, and Orange Show Road in the City of San Bernardino. In January 2012, the Board approved Right-of-Way Cooperative Agreement No. C11015 with Caltrans for the acquisition of properties required for the replacement of the I-215/Newport Overcrossing as part of the I-215 Bi-County HOV project. The existing I-215/Newport Overcrossing has a low vertical clearance that poses accessibility issues for tractor trailers and other oversized vehicles.

Caltrans issued an Environmental Document for the Newport Overcrossing project on October 27, 2011 and approved the Project Report on November 9, 2011, which cleared the way to proceed with the right-of-way acquisition process. The project requires the acquisition of two temporary construction easements, a slope easement, and a footing easement.

As an agent to SANBAG, Overland, Pacific & Cutler, Inc. (OPC) has completed appraisals of the four subject properties and the required documentation to purchase the properties. The subject properties are summarized in attachment "A." The total costs for acquiring required easements on these four (4) parcels, including costs for the property owner to replace landscape plant materials and repair damaged landscape irrigation facilities within the temporary construction easements is estimated at \$148,913, which includes an approximate 50% contingency above the appraised easement values contained in the appraisal reports. The 50% contingency can be rationalized based on the additional cost associated with the curative work that may be required on the SCE parcel (installation of a security barrier on top of the new retaining wall), and administrative settlements to avoid condemnation on the other 3 properties.

Caltrans has approved the appraisals and the next step in the process requires negotiations with property owners and execution of Purchase & Sale Agreements. Since SANBAG is providing the funding for the acquisition, SANBAG needs to sign the Purchase & Sale Agreements.

Acquisition of these properties in a timely manner is critical to maintaining the planned construction schedule for the Bi-County HOV project so as not to jeopardize the Congestion Mobility Improvement Account (CMIA) funds that have been programmed for construction.

Staff is recommending that the Board authorize the Executive Director to act on behalf of SANBAG in signing Purchase & Sale Agreements, pursuant to SANBAG Valley Freeway Program Policy 40004 (reference: Administrative

Settlement Policy 34507). This Board-approved policy establishes a standard administrative process for acquisition of right-of-way whereby the Executive Director and Director of Program Management are authorized to pursue acquisitions utilizing certain factors, such as an available appraisal, the inexact nature of the process by which just compensation is determined through legal processes, and the impact of such acquisitions through voluntary settlement on the project-wide perspective, including, e.g., project deadlines and funding issues. This process is appropriate for the acquisition of the four (4) properties identified herein. Standard Caltrans agreement format will be used for these acquisitions and a copy of this standard agreement is attached for reference.

***Financial Impact:*** This item is consistent with the adopted Fiscal Year 2011/2012 budget. Funding is provided under Task No. 83912000. The funding source is Congestion Mitigation Air Quality, and MSI – 1990 Valley Major Projects.

***Reviewed By:*** This item will be reviewed by the Major Projects Committee on January 12, 2012.

***Responsible Staff:*** Khalil Saba, Project Delivery Manager

**ATTACHMENT "A"**  
**Newport Overcrossing Bridge Replacement Project - Parcels Information**

PARCEL #	A.P.N. #	CALTRANS #	Owner	ADDRESS	CITY	TYPE
1	0275-251-29	22050	Southern California Edison Co	Newport Avenue (no physical address)	Grand Terrace	Temporary Construction Easement
2	0275-251-54	22051	John & Rebecca Joseph	11868 Canal Street	Grand Terrace	Temporary Construction Easement
3	0275-211-44	22388	Skerrett Trust	22085 Newport Avenue	Grand Terrace	Slope Easement
4	0275-201-02	22389	Southern California Edison Co	Newport Avenue (no physical address)	Grand Terrace	Footing Easement & Temporary Construction Easement

**RIGHT OF WAY CONTRACT  
STATE HIGHWAY**

RW 8-3 (Rev. 6/95)

**CONFIDENTIAL**  
This document contains personal information, and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

APN:

District	County	Route	P.M. (KP)	E. A.	Program	Fed. Ref.	Name	Parcel

\_\_\_\_\_, California

\_\_\_\_\_, 2011

\_\_\_\_\_  
Grantor(s)

**RIGHT OF WAY CONTRACT -- STATE HIGHWAY**

Document No. \_\_\_\_\_ to the State of California, in the form of a \_\_\_\_\_, outlined on the attached map marked Exhibit A and covering the property particularly described in Clause 3 below, has been executed and delivered to Janet M Parks, SR/WA, R/W-AMC, Project Manager, Overland, Pacific & Cutler, Inc.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed improvement.
2. The San Bernardino Associated Governments (hereinafter referred to as "SANBAG") shall pay the undersigned Grantor the sum of \$0.00 for this acquisition.
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in the contract, the right of possession and use of the subject property by the State, shall commence upon the 30 day notice to start construction within your property, or the close of the escrow controlling this transaction, whichever occurs first, and that the amount shown in Clause 2 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.
4. The undersigned Grantor warrants that he is the owner in fee simple of the property affected by this acquisition as described in Clause 3 above and that he has the exclusive right to grant these rights.
5. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding one month and that Grantor agrees to hold the State harmless and reimburse State for any and all its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month. Grantor acknowledges that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deed is to be provided to State prior to the close of escrow.

6. In consideration of the State's waiving the defects and imperfections in all matters of record title, the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract.
7. It is understood and agreed by and between the parties hereto that payment as provided in clause 2(A) includes, but is not limited to, payment for any and all damages, and any and all damages which may accrue to the Grantors' remaining property by reason of its severance from the property conveyed herein and the construction and use of the proposed highway project, including, but not limited to, any expense which Grantors may incur in restoring the utility of their remaining property.
8. Grantor understands and agrees that after completion of the work described above, if any, said facility will be considered as Grantor's sole property and Grantor will be responsible for any necessary maintenance and repair.
9. [Insert interest to be acquired], as identified in Exhibit A (attached) is needed for construction of the proposed highway improvements. [Insert if TCE is required] Said easement shall be for a period of eighteen (18) months from the date the contractor starts such construction within the easement. Said eighteen (18) months shall begin no sooner than the date on which the department awards the construction contract and end no later than the completion of the construction within the easement or 1.5 years from contract award, whichever occurs first

Permission is hereby granted the State or its authorized agent to enter upon Grantors' land, within the temporary construction easement, shown on the map marked Exhibit "A" attached hereto and made a part hereof. Existing improvements located within this temporary construction easement will either be protected in place or removed and replaced in-kind by the State or the State's contractor. The State, upon termination of the temporary construction easement, shall restore the Grantors' land and any improvements disturbed by the State or its contractors to as good or better condition prior to any such installation of work

10. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.
11. State agrees to indemnify and hold harmless the undersigned Grantors [insert names of Grantors] from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State's operations under this agreement and State will, at it option, either repair or pay for such damage.
12. This transaction shall be handled through an internal escrow by the State of California, Department of Transportation.

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*In Witness Whereof*, the Parties vested have executed this agreement the day and year first above written.

[Insert Full Property Vesting]

\_\_\_\_\_  
Grantor Date

\_\_\_\_\_  
Grantor Date

\_\_\_\_\_  
Grantor Date

\_\_\_\_\_  
Grantor Date

San Bernardino Associated  
Governments (SANBAG):

By \_\_\_\_\_  
William T. Schuiling  
Interim Executive Director

MPC1201a2-ks

This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist SANBAG Board Members and partners as they participate in deliberations at SANBAG Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. SANBAG staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
S RTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

# ***San Bernardino Associated Governments***



## **MISSION STATEMENT**

To enhance the quality of life for all residents, San Bernardino Associated Governments (SANBAG) will:

- Improve cooperative regional planning
  
- Develop an accessible, efficient, multi-modal transportation system
  
- Strengthen economic development efforts
  
- Exert leadership in creative problem solving

To successfully accomplish this mission, SANBAG will foster enhanced relationships among all of its stakeholders while adding to the value of local governments.

Approved June 2, 1993  
Reaffirmed March 6, 1996