

SANBAG Contract No. C09129
by and between
San Bernardino County Transportation Authority
and
California Department of Transportation
for

File 1001.9.4.1

Cooperative Agreement for I-215 Segments 1 and 2 Construction

FOR ACCOUNTING PURPOSES ONLY

<input type="checkbox"/> Payable	Vendor Contract # <u>8-1427</u>	Retention:	<input checked="" type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment

Notes:

Original Contract: \$ <u>0</u>	Previous Amendments Total: \$ _____	
Contingency Amount: \$ <u>0</u>	Previous Amendments Contingency Total: \$ _____	
	Current Amendment: \$ _____	
	Current Amendment Contingency: \$ _____	

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → \$ 0

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: 4/1/09 Contract Start: 4/1/09 Contract End: 12/31/14
 New Amend. Approval (Board) Date: _____ Amend. Start: _____ Amend. End: _____

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: _____ \$ _____	Future Fiscal Year(s) - Unbudgeted Obligation →	\$ _____
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Is this consistent with the adopted budget? Yes No

If yes, which Task includes budget authority? 838

If no, has the budget amendment been submitted? Yes No

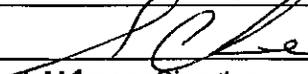
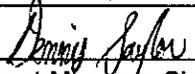
CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

Intergovernmental Private Non-Local Local Partly Local

Disadvantaged Business Enterprise: No Yes ____%

Task Manager: **Garry Cohoe** Contract Manager: **Dennis Saylor**

 Task Manager Signature Date <u>3/5/09</u>	 Contract Manager Signature Date <u>3/4/09</u>
 Chief Financial Officer Signature Date <u>3/6/09</u>	

08-SBd-215-PM 6.5/8.9
Construct one HOV and
One Fixed Flow Lane
In each direction
From 0.2km S/O Redlands Loop OH
To 0.7 km N/O 16th Street OC
In the City of San Bernardino
EA 0071V1
District Agreement No. 8-1427

CONSTRUCTION COOPERATIVE AGREEMENT

This AGREEMENT, entered into effective on April 7, 2009, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY, a public
corporation of the State of California, referred to
herein as "AUTHORITY."

RECITALS

1. STATE and AUTHORITY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within AUTHORITY's jurisdiction.
2. STATE and AUTHORITY intend to construct one High Occupancy Vehicle Lane and one Mixed Flow Lane in each direction and Operational Improvements on Interstate 215 from 0.2km south of Redlands Loop overhead to 0.7km north of 16th Street Overcrossing, referred to herein as "PROJECT."
3. AUTHORITY is responsible for one hundred percent (100%) of all PROJECT construction capital and support costs required for satisfactory completion of PROJECT, including, but not limited to, "State-furnished material" and source inspection costs, except for costs of STATE's Independent Quality Assurance (IQA) and Independent Assurance Testing of PROJECT will be borne by STATE. If it becomes necessary to obtain additional funds to complete PROJECT, these additional funds will be provided by AUTHORITY using local funds.

SECTION I**AUTHORITY AGREES:**

1. To be responsible for one hundred percent (100%) of all PROJECT construction capital and support costs required for satisfactory completion of PROJECT, including, but not limited to, Construction Zone Enhancement Enforcement Program (COZEEP), "State-furnished material" and source inspection costs, except for costs of STATE's IQA. If it becomes necessary to obtain additional funds to complete PROJECT, these additional funds will be provided by AUTHORITY using local funds.
2. To be responsible for funding PROJECT costs for construction capital outlay using DEMO funds in the estimated amount of \$1,934,978 and matching(RIP) funds in the estimated amount of \$483,745; PNRS funds in the estimated amount \$25,859,000 and matching (RIP) funds in the estimated amount of \$6,464,750; CMAQ funds in the estimated amount of \$6,645,000 and matching (RIP) funds in the estimated amount of \$860,930; CMAQ AC funds in the estimated amount of \$43,540,000 and matching (RIP) funds in the estimated amount of \$5,641,069; STATE's STP AC funds in the amount of \$22,870,000 and matching (RIP) funds in the estimated amount of \$2,963,051; STP funds in the estimated amount of \$11,980,000 and matching (RIP) funds in the estimated amount of \$1,552,136; Transportation Enhancement funds in the estimated amount of \$3,433,000 and matching (RIP) funds in the estimated amount of \$444,782; State ARRA funds in the estimated amount of \$49,120,000; Regional ARRA funds in the estimated amount of \$59,820,043; Regional TE funds in the estimated amount of \$1,731,517; and TCRP funds in the estimated amount of \$8,749,500.
3. To be responsible for funding PROJECT costs for construction support using Regional ARRA funds in the estimated amount of \$17,391,789; RIP funds in the estimated amount of \$20,443,211; and Local Measure I funds in the estimated amount of \$786,000. The PROJECT construction capital and construction support costs are shown on Exhibit A, attached hereto and made a part of this Agreement.
4. To pay STATE for providing its personnel to interpret the PS&E, review and recommend approval of change orders, required shop plans, falsework designs and other working drawings, during construction, that are related to the plan sheets, special provisions and foundation reports prepared and approved by STATE's registered engineers under the terms of Design Agreement 8-965 A/1, executed on September 3, 2008, for bridge structures 54-1241, 54-1223, 54-1224, and 54-1225, at the cost invoiced by the STATE. STATE will provide construction support to review specified plan sheets and foundation reports prepared and approved by STATE's registered engineers under the terms of Design Agreement 8-965 A/1, executed on September 3, 2008, for bridge structures 54-1222, 54-1239F, 54-1240G, and Retaining walls 21L, 126A, 126B, 126C, 127, 128, 129, 22R, 22L, 131, 132, 133, 334, 236, 335, 136, 235, 23R, 23L, 24R, 24L, 237, 242A, 341, 242B, and 137 at the cost invoiced by the STATE. No work other than the above stated plan review will be performed unless this Agreement is amended to include that

127, 128, 129, 22R, 22L, 131, 132, 133, 334, 236, 335, 136, 235, 23R, 23L, 24R, 24L, 237, 242A, 341, 242B, and 137 at the cost invoiced by the STATE.

12. To pay STATE upon completion of all work on PROJECT and within forty-five (45) days of receipt of a detailed statement made upon final accounting of costs therefor, any amount, over and above the aforesaid deposits for State-furnished materials, source inspection or other State service, required to complete AUTHORITY's financial obligations assumed pursuant to this Agreement.
13. To submit continuous billing for reimbursement of a portion of the expenditures for PROJECT, to be paid out of STATE funds (STIP, TCRP and ARRA), up to the amounts shown against those funds in Exhibit A.
14. Upon completion of the construction capital and support activities for PROJECT, to furnish STATE with a detailed statement of the total actual costs funded from STATE's ARRA, RIP and TCRP funding sources, which were reimbursed to AUTHORITY on a continuous basis. Total anticipated PROJECT costs, to be paid from STATE's ARRA, RIP and TCRP funding sources, is estimated to be the amount of \$96,723,173
15. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the Local Agency Public Construction Act and the California Labor Code, including its prevailing wage provisions. Workers employed in the performance of work contracted for by AUTHORITY, and/or performed under encroachment permit, are covered by provisions of the California Labor Code in the same manner as are workers employed by STATE's contractors. The use of any Federal funds toward PROJECT construction will mandate the inclusion and enforcement of all applicable Federal labor mandates.
16. Construction by AUTHORITY of those portions of PROJECT which lie within the SHS right of way shall not commence until AUTHORITY's contract plans involving such work, the utility relocation plans, and the right of way certification have been reviewed and accepted by STATE and encroachment permits have been issued to AUTHORITY and AUTHORITY's contractor.
17. AUTHORITY's construction contractor shall maintain in force, until completion and acceptance of the PROJECT construction contract, a policy of General Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability, that complies with all coverage requirements with Section 7-1.12 of STATE's then effective Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE and its officers, agents, and employees as additional insureds. This insurance coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of an encroachment permit to AUTHORITY's construction contractor.
18. To require the construction contractor to furnish both a payment and a performance bond, naming AUTHORITY as obligee with both bonds complying with the requirements set

preparation of estimates and reports, preparation of the mandated "As-Built" drawings, and other inspection and staff services necessary to assure that the construction is being performed in accordance with the PROJECT PS&E. Said qualified support staff shall be independent of the design engineering company and construction contractor, except that the PROJECT designer may be retained to check shop drawings, do soils foundation tests, test construction materials, and perform construction surveys.

27. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, to furnish STATE with a complete set of "As-Built" plans in accordance with STATE's then current CADD Users Manual, Plans Preparation Manual, and STATE practice. The submittal must also include all STATE requested contract records, including survey documents and Records of Surveys (to include monument perpetuation per the Land Surveyor Act, section 8771). AUTHORITY shall also submit corrected full-sized hardcopy structure plans.
28. To retain or cause to be retained for audit by STATE or other government auditors for a period of four (4) years from the date of final payment under the PROJECT contract, or four (4) years from STATE payment of the final voucher, whichever is longer, all records and accounts relating to PROJECT construction. AUTHORITY shall retain said records and accounts longer for such periods as are required in writing by STATE.
29. Upon completion of PROJECT construction, AUTHORITY will operate and maintain, at AUTHORITY's cost, any part of PROJECT located outside of the existing SHS right of way including AUTHORITY underpasses and overcrossings of then existing SHS right of way, until any subsequent acceptance of any part of PROJECT into the SHS by STATE, approval by Federal Highway Administration (FHWA), if required, and conveyance of acceptable title to STATE.
30. If AUTHORITY cannot complete PROJECT as originally scoped, scheduled, and estimated, AUTHORITY will, only with STATE's prior written consent, amend the PROJECT PS&E for a suitable resolution to ensure an alternate form of modified PROJECT that will, at all times, provide a safe and operable SHS.
31. If AUTHORITY terminates the PROJECT prior to completion, STATE shall require AUTHORITY, at AUTHORITY's expense, to return the SHS right of way to its original condition or to a safe and operable condition acceptable to STATE. If AUTHORITY fails to do so, STATE reserves the right to finish PROJECT or place PROJECT in a safe and operable condition and STATE will bill AUTHORITY for all actual expenses incurred and AUTHORITY agrees to pay said bill within thirty (30) days of receipt.
32. If cultural, archaeological, paleontological or other protected materials are encountered during PROJECT construction, AUTHORITY shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. The costs for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement.

4. To provide, at AUTHORITY's cost, any "State-furnished material" as shown on the PROJECT PS&E as determined by STATE to be appropriate and available during construction of PROJECT. Upon receipt of AUTHORITY's request for any such "State-furnished materials," STATE will order those materials and STATE's Project Manager will have an invoice submitted to AUTHORITY for the costs of those materials. Upon receipt of those materials and AUTHORITY's payment, STATE will make those "State-furnished materials" available to AUTHORITY at a STATE designated site.
5. Independent assurance testing, specialty testing, and approval of the type of asphalt and concrete plants shall be by STATE, at STATE's expense.
6. To submit an invoice to AUTHORITY for the estimated direct and indirect cost of source inspection, pursuant to Section I of this Agreement, prior to start of PROJECT construction and upon receipt of said estimate from STATE's representative.
7. To submit an invoice to AUTHORITY for the actual cost of construction support to review specified plan sheets and foundation reports prepared and approved by STATE's registered engineers under the terms of Design Agreement 8-965 A/1, executed on September 3, 2008, for bridge structures 54-1222, 54-1239F, 54-1240G, and Retaining walls 21L, 126A, 126B, 126C, 127, 128, 129, 22R, 22L, 131, 132, 133, 334, 236, 335, 136, 235, 23R, 23L, 24R, 24L, 237, 242A, 341, 242B, and 137 at the cost invoiced by the STATE.
8. To deposit with AUTHORITY within forty-five (45) days of receipt of monthly billings therefor, for a portion of the actual construction capital and support expenditures of, to be paid from STATE's ARRA, RIP and TCRP funding sources required for PROJECT. The total PROJECT costs, to be paid out of STATE's ARRA, RIP and, TCRP funding sources, should not exceed the amounts shown in Exhibit A.
9. Upon completion of PROJECT and all work incidental thereto, to furnish AUTHORITY with a detailed statement of the State-furnished materials and source inspection costs to be borne by AUTHORITY. To thereafter refund to AUTHORITY, promptly after completion of STATE's final accounting of said PROJECT costs, any amount of AUTHORITY's payments remaining, after actual State-furnished materials, source inspection costs and costs for State services stated above, to be borne by AUTHORITY have been deducted or to bill AUTHORITY for any additional amount required to complete AUTHORITY's financial obligations assumed pursuant to this Agreement.

8. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
9. During PROJECT construction, representatives of AUTHORITY and STATE will cooperate and consult with each other to assure that all PROJECT work is accomplished according to the PROJECT PS&E and STATE's then applicable policies, procedures, standards, and practices. Satisfaction of these requirements shall be verified by STATE's IQA representatives who are authorized to enter AUTHORITY's property during construction for the purpose of monitoring and coordinating construction activities.
10. PROJECT PS&E changes shall only be implemented by contract change orders that have been reviewed and concurred with by STATE's representative(s). All changes affecting public safety or public convenience, all design and specification changes, and all major changes as defined in STATE's Construction Manual shall be approved by STATE in advance of performing that work. Unless otherwise directed by STATE's representative, change orders authorized as provided herein will not require an encroachment permit rider. All changes shall be shown on the "As-Built" plans.
11. AUTHORITY shall provide a construction contract claims process acceptable to STATE and shall process any and all claims through AUTHORITY's claims process. STATE's representative will be made available to AUTHORITY to provide advice and technical input in any claims process.
12. In the event that STATE proposes and/or requires a change in design standards, implementation of those new or revised design standards shall be done in accordance with STATE's Highway Design Manual, Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with AUTHORITY in a timely manner regarding the effect of proposed and/or required PROJECT changes.
13. The party that discovers hazardous materials (HM) will immediately notify the other party(ies) to this Agreement.

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

HM-2 is defined as 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.

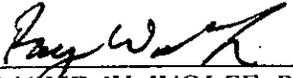
installed within the operating SHS right of way for SHS operations will be vested in STATE, and materials, equipment, and appurtenances installed for non-SHS operations both inside (overcrossings and underpasses for local traffic) and outside of the SHS right of way will automatically be deemed to be under the control of AUTHORITY or an appropriate third party as determined by AUTHORITY.

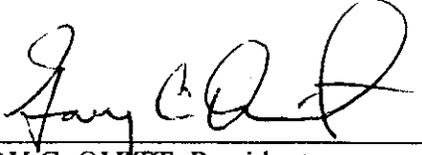
22. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
23. Neither STATE 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 under this Agreement. It is understood and agreed that, AUTHORITY will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, 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 under this Agreement.
24. 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 STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that, STATE 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, including, 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 STATE under this Agreement.
25. Prior to the commencement of any construction activity within the SHS right of way, either STATE or AUTHORITY may terminate this Agreement by written notice to the other party.
26. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
27. This Agreement shall terminate upon the satisfactory completion of all post-PROJECT construction obligations of AUTHORITY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on June 30, 2014, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

WILL KEMPTON
Director

By: 
RAYMOND W. WOLFE, PhD
ND. District Director

By: 
GARY C. OVIATT, President
SANBAG Board of Directors

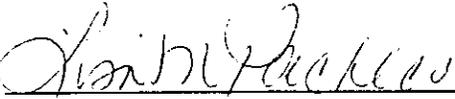
APPROVED AS TO FORM AND
PROCEDURE:

Attest: 
VICKI WATSON
Board Secretary

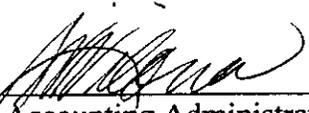
By: 
Attorney,
Department of Transportation

By: 
JEAN-RENE BASLE
AUTHORITY's Counsel

CERTIFIED AS TO FUNDS:

By: 
District Budget Manager

CERTIFIED AS TO FINANCIAL
TERMS AND POLICIES:

By: 
Accounting Administrator

- 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: April 1, 2009

Subject: Construction Cooperative Agreement No. C09-129 with Caltrans for Interstate 215 Segments 1 and 2 in the City of San Bernardino

Recommendation: Approve Construction Cooperative Agreement No. C09-129 with Caltrans for Interstate 215 Segments 1 and 2 in the City of San Bernardino.

Background: This is a new cooperative agreement. SANBAG is the lead agency for the construction of Interstate 215 Segments 1 and 2 in San Bernardino. This is the third project of the major reconstruction and widening of the Interstate 215 project through the City of San Bernardino, extending from just south of Rialto Avenue to just south of Massachusetts Avenue. The project is environmentally cleared through both the Federal Highway Administration and Caltrans. The final design of the project is nearly complete as well and a bid package will be completed by June. Staff anticipates execution of the Construction and Maintenance Agreements with the BNSF railroad and Caltrans within the month and Caltrans is currently acquiring the necessary right of way for construction. Construction of the project is funded from a variety of State and Federal funds and Measure I Major projects funds.

This cooperative agreement assigns SANBAG and Caltrans roles and responsibilities for construction management and administration of this construction project, and the funding responsibilities of both parties. The agreement recognizes that SANBAG will Advertise, Award, and Administer (AAA) a construction contract to reconstruct Interstate 215 Segments 1 and 2. SANBAG is responsible for providing various construction support services

Approved Consent

Motion to approve staff recommendation subject to legal counsel review of final document. Upon legal counsel approval authorize SANBAG President to execute.

Approved
Board of Directors

Date: April 1, 2009

Moved: McCallon Second: Jahn

In Favor: 27 Opposed: 0 Abstained: 0

Witnessed: Anna Adara

including construction management, construction surveying and staking and materials testing at no cost to Caltrans. Caltrans will provide, at no cost to SANBAG, quality assurance activities.

The procurement of construction management services will be completed through amendments to existing contracts in the next several months. At the March, 2008 Major Projects Committee meeting, an agenda item was brought forward obtaining concurrence in principal on amending the existing contract.

This agreement specifies the use of a mixture of Federal, State, and Local funding to complete the construction. The funding includes Federal Stimulus funding included as Recommendation 2 of Agenda Item 18B.

Expeditious approval of the agreement is required, to meet the time lines of the Federal Stimulus funds. The funding information included in the agreement is the most up-to-date at the time the agenda was printed. Negotiations are still being conducted with the State and may result in the amount of the various fund types being altered. If this occurs a revised agreement will be distributed at the Board meeting.

- Financial Impact:*** Item is consistent with current Fiscal Year 2008/2009. Construction funds will be considered as part of the budget in future fiscal years. TN 838
- Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on March 12, 2009. SANBAG Counsel has reviewed and approved the agreement as to form.
- Responsible Staff:*** Garry Cohoe, Director of Freeway Construction