File
1001.9.3.5

SANBAG Contract No. C09055
by and between
San Bernardino County Transportation Authority
and
State of California
for
Cooperative Agreement for I-215, Segment 5 Right of Way Work

FOR ACCOUNTING PURPOSES ONLY

☒ Payable ☐ Receivable	Vendor Contract # 08-1402 Vendor ID Caltrans	Retention: ☐ Yes ____ % ☒ No	☒ Original ☐ Amendment

Notes: Passthrough to Caltrans for $1,814,000 in STIP/RIP; project totaling $3,135,000.

Original Contract:	$ 1,321,000	Previous Amendments Total:	$ 0.00
		Previous Amendments Contingency Total:	$ ____
		Current Amendment:	$ ____
Contingency Amount:	$ 0.00	Current Amendment Contingency:	$ ____

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

Contract TOTAL ➔ $ 1,321,000

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

Task	Cost Code	Funding Sources	Grant ID	Amounts
836E9055	5580	MEASURE I	I300	$ 1,321,000
____	____	____	____	$ ____
____	____	____	____	$ ____
____	____	____	____	$ ____

Original Board Approved Contract Date: 11/05/08 Contract Start: 11/05/08 Contract End: 12/31/09

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: 08/09 $ 1,321,000	**Future Fiscal Year(s) – Unbudgeted Obligation ➔**	$ 0.00

Is this consistent with the adopted budget? ☐Yes ☒No

If yes, which Task includes budget authority?

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: **Steve Yench**
Garry Cohoe 10/2/08	JABeers 10/2/2008
Task Manager Signature Date	Contract Manager Signature Date
11/18/08	
Chief Financial Officer Signature Date	

C09055
CN C09055

C09055

08-SBd-215-PM 8.8/10.1
HOV and Operational Improvements
And Modify/Replace Interchanges
N/O 16th Street to SR-210
Through San Bernardino
EA 007191
District Agreement No. 8-1402

R/W
COOPERATIVE AGREEMENT

This AGREEMENT, entered into effective on December 11, 2008, 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 entity 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 the County of San Bernardino.

2. STATE and AUTHORITY desire to add one mixed-flow and one high occupancy vehicle lane in each direction; modify/replace interchanges; add auxiliary lanes, and other operational improvements on Interstate 215 (I-215) north of 16th Street to State Route 210 within the City of San Bernardino, referred to herein as "PROJECT."

3. STATE will perform the Right of Way capital and support activities for PROJECT as specified in detail in the Agreement.

4. AUTHORITY agrees to be responsible for one hundred (100%) percent of all PROJECT Right of Way capital and support costs, of which a portion will be funded out of STATE's Transportation Improvement Program/Regional Improvement Program (STIP/RIP) funding source in the amount of $1,814, 000 and Measure I in the amount of $1,321,000. The PROJECT cost estimate is $3,135,000 as shown on Exhibit A, attached hereto and made a part of this Agreement. If it becomes necessary for an increase in PROJECT funding, said increase will be paid in full by AUTHORITY using local funds.

5. AUTHORITY authorizes STATE to reimburse itself from then available STIP/RIP funds on a monthly basis for all the Right of Way activities for PROJECT as shown on EXHIBIT A against the same STIP/RIP funding source up to the amount of $1,814,000.

6. AUTHORITY agrees to be responsible for informing STATE well in advance in the event that Measure I funds are going to be depleted to the point that it is necessary for STATE to stop work in anticipation of the depletion of funds.

7. Project Approval and Environmental Documentation (PA&ED) and Plans, Specifications, and Estimate (PS&E) for PROJECT were covered in a prior Cooperative Agreement executed by STATE and AUTHORITY on January 7, 2004 (District Agreement No. 8-1221).

8. PROJECT landscape maintenance, landscape design, and construction will be the subject of a separate future agreement or agreements.

9. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.

10. The parties now define herein below the terms and conditions under which PROJECT Right of Way is to be acquired, engineered, and financed.

SECTION I

AUTHORITY AGREES:

1. To be responsible for one hundred (100%) percent of all PROJECT Right of Way capital and support costs of which a portion will be funded out of STATE's STIP/RIP funding source in the amount of $1,814,000 and Measure I in the amount of $1,321,000. If it becomes necessary for an increase in PROJECT funding, said increase will be paid in full by AUTHORITY using non-State funding sources and this agreement will be amended to include these additional costs.

2. AUTHORITY authorizes STATE to reimburse itself from then available STIP/RIP funds on a monthly basis for STATE's Right of Way capital and support costs for PROJECT work up to the amount of $1,814,000.

3. To make payment to STATE, within ten (10) working days of receipt of request for payment, the capital cost of right of way to be paid by AUTHORITY, as required for right of way activities as described in Section II, Article 7, as PROJECT proceeds.

4. To pay STATE upon completion of all work and within twenty (20) days of receipt of a detailed statement made upon final accounting of costs therefor, any amount over and

above the aforesaid payment required to complete AUTHORITY's financial obligation pursuant to this Agreement.

SECTION II

STATE AGREES:

1. To undertake and complete the Right of Way capital and support activities for PROJECT.

2. To reimburse itself from then available STIP/RIP funds on a monthly basis, up to the total amount of $1,814,000.

3. To prepare and submit to AUTHORITY a request for payment for the costs of right of way capital as described in Section I, Article I as project proceeds. A request for payment should be on a mutually agreed to form.

4. To inform AUTHORITY of any issues that could have the potential to increase the actual right of way costs for PROJECT beyond the authorized costs.

5. Upon completion of PROJECT and all work incidental thereto, to furnish AUTHORITY with a detailed statement of all PROJECT costs to be borne by AUTHORITY using local Measure I funds. To thereafter refund to AUTHORITY, promptly after completion of STATE's final accounting of PROJECT costs, any amount of AUTHORITY's payment required in Article 3 of Section I remaining after actual costs 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.

6. To have all necessary right of way maps and documents used to acquire right of way by STATE prepared by or under the direction of a person authorized to practice land surveying in the State of California. Each right of way map and document shall bear the appropriate professional seal, certificate number, expiration date of registration certification and signature of the licensed person in Responsible Charge of Work.

7. To be responsible for the investigation of potential hazardous material sites within and outside of the existing SHS right of way that could impact PROJECT as part of performing any work under this Agreement. If STATE discovers hazardous material or contamination within the PROJECT study area during said investigation, STATE shall immediately notify AUTHORITY.

8. To perform all right of way and utility activities, including potholing and relocation surveys for utilities, flagging for agents.

9. To acquire and furnish all right of way, if any, outside of the existing SHS right of way and to perform all right of way activities, including all eminent domain activities, if necessary, at no cost to AUTHORITY, and in accordance with procedures acceptable to STATE. These activities shall comply with all applicable State and Federal laws and regulations to ensure that the completed work and title to property acquired for PROJECT is acceptable for incorporation into the SHS right of way.

10. To utilize the services of a qualified public agency or a qualified consultant, as determined by STATE's District Division Chief of Right of Way, in all matters related to the acquisition of right of way in accordance with STATE's procedures as published in STATE's current Right of Way Manual. Whenever personnel other than personnel of a qualified public agency, or a qualified consultant, are utilized, administration of the personnel contract shall be performed by a qualified Right of Way person employed or retained by STATE.

11. To certify legal and physical control of right of way ready for construction and that all right of way parcels were acquired in accordance with applicable State and Federal laws and regulations, subject to review and concurrence by STATE prior to the advertisement for bids for the contract to construct PROJECT.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).

2. The SPR, approved on November 14, 2006, is by this reference, made an express part of this Agreement. If there is a conflict of terms between the SPR and this Agreement, the terms of this Agreement shall prevail.

3. The basic design features shall comply with those addressed in the approved SPR, unless modified as required for completion of the PROJECT's environmental documentation and/or if applicable, requested by the Federal Administration (FHWA).

4. The Right of Way acquisition for PROJECT shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be considered by STATE for approval via the processes outlined in STATE's Highway Design Manual and appropriate memoranda and design bulletins published by STATE. In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current 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 changes on PROJECT.

5. STATE agrees to obtain, at AUTHORITY's cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties otherwise mutually agree in writing. If the parties agree in writing that AUTHORITY is responsible for obtaining said project permits, agreements, and/or approvals from appropriate regulatory agencies, then those said costs shall be a PROJECT cost.

6. STATE shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s) and/or approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.

7. If, during performance of right of way activities or performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with California Environmental Quality Act (CEQA) and if applicable, National Environmental Policy Act (NEPA), this Agreement will be amended to include completion of those additional tasks by AUTHORITY.

8. If there is a legal challenge to the environmental documentation, including investigative studies and/or technical environmental report(s), permit(s), agreement(s), and/or approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.

9. 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.

10. 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.

11. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

    AUTHORITY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. AUTHORITY will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

12. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

    Any management activity cost related to HM-2 is a PROJECT construction cost.

13. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.

14. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.

15. A separate Cooperative Agreement or agreements will be required to address landscape maintenance, landscape design and to cover responsibilities and funding for the construction phase of PROJECT.

16. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties 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.

17. 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 or arising 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.

18. 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 or arising 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.

19. Prior to the commencement of any work pursuant to this Agreement, either STATE or AUTHORITY may terminate this Agreement by written notice to the other party.

20. 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.

21. 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 December 31, 2015, 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-related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related claims are settled, dismissed or paid.

SIGNATURES ON FOLLOWING PAGE:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

WILL KEMPTON
Director

By: _____ -for-
RAYMOND W. WOLFE, PhD
District Director

APPROVED AS TO FORM AND PROCEDURE:

By: _____
Attorney,
Department of Transportation

CERTIFIED AS TO FUNDS:

By: _____
District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS AND POLICIES:

By: _____
Accounting Administrator

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Paul M. Eaton
SANBAG Vice President

Attest: _____
VICKI WATSON
Board Secretary

APPROVED AS TO FORM AND PROCEDURE:

By: _____
JEAN-RENE BASLE
Counsel

EXHIBIT A

COST ESTIMATE

AUTHORITY 100%	STIP/RIP	MEASURE I	STATE 0%	TOTAL
R/W Support	$585,000		0	$585,000
R/W Capital	$1,229,000	$1,321,000	0	$2,550,000
	$1,814,000	$1,321,000	0	$3,135,000

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Fl, San Bernardino, CA 92410
Phone: (909) 884-8276 Fax: (909) 885-4407
Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

•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: 19

Date: November 5, 2008

Subject: Cooperative Agreement No. C09055 with Caltrans for Interstate 215 (I-215) Segment 5 Right of Way Capital and Support costs.

Recommendation:* 1. Approve Cooperative Agreement No. C09055 with Caltrans for I-215 Segment 5 Right of Way Capital and Support costs.

2. Approve a budget amendment to the FY 2008/2009 Budget for an additional $1,321,000 in Task 83609000.

Background: **This is a new cooperative agreement.** Caltrans is the lead agency for the purposes of right-of-way (R/W) acquisitions for the I-215 corridor project located in the City of San Bernardino. In May 2008 the Board addressed the R/W funding shortfalls on the I-215 corridor by utilizing State Transportation Improvement Program (STIP) and Measure I Valley Freeway Program funds. The action called for the I-215 Segment 5 R/W capital shortfall to be funded by Measure funds. The Measure I funds contribution requires a copperative agreement with Caltrans to formalize both parties commitments and responsibilities.

Financial Impact: This action is not consistent with the adopted 2008/2009 FY budget. Task 83609000 needs to be increased by $1,321,000. The funding source is Measure I Valley Program.

The total funding required for Segment 5 R/W capital and support costs is $3,135,000, consisting of $1,814,000 in STIP funds and $1,321,000 in Measure funds. The STIP funds have been approved by the California Transportation Commission.

Approved Consent

Approved
Board of Directors

Date: *November 5, 2008*

Moved: *McCallon* *Second:* *Jahn*

In Favor: *24* *Opposed:* *0* *Abstained:* *0*

Witnessed: Anna Aldana

Reviewed By: This item was reviewed and unanimously recommended for approval by the Major Projects Committee on October 9, 2008. *(Meeting chaired by Mayor John Pomierski)*

Responsible Staff: Garry Cohoe, Director of Freeway Construction