THE CITY OF BARSTOW
CROSSROADS OF OPPORTUNITY

March 11, 2011

Local Agency Formation Commission
Kathleen Rollings-McDonald
215 North "D" Street, Suite 204
San Bernardino, CA 92415-0490

Subject: Departmental Review Committee – LAFCO 3165

Dear Ms. Rollings-McDonald:

During the Departmental Review Committee meeting held on March 10, 2011, the committee discussed impacts that the proposed Island Annexation (LAFCO 3165) could have on the City of Barstow. Part of that discussion included the pending Lenwood Grade Separation project and how the previously agreed upon shared costs could change significantly if the Annexation is implemented. The Lenwood Grade Separation is a joint project between the County of San Bernardino and the City of Barstow, with SANBAG managing the project. The Grade Separation is designed to fly over the two intercontinental tracks owned and operated by the BNSF Railway and Union Pacific Railroad. Currently, this intersection is impacted 120 times a day by train traffic. Train impacts are expected to increase to 150 trains per day in the near future. The only other route that can be used to bypass the rail crossing is to go north on Lenwood Road to Highway 58. Unfortunately, the at-grade crossing of the Mojave River was washed out in December for the second time in five years. This makes that route questionable in the long term and increases the importance of the Lenwood Grade Separation project. The estimated cost for the Grade Separation is $31,359,000.

The City, SANBAG, and County entered into a Three Party Agreement ("Agreement") to split the cost of right of way ("ROW") equally between the City and County based on the number of parcels in each jurisdiction. The Agreement also formally placed SANBAG as the lead agency for this project. On page 2 of 9 on the attached Agreement, under the third Whereas, and then again in section 1.8, it identifies the percentage and estimated cost per agency. Based on where parcels are currently located within each jurisdiction, the County's shared cost is estimated at 90.6% or $2,711,651 and the City's shared cost is estimated at 9.4% or $281,527. It is obvious to the City that if the proposed Annexation is finalized, these percentages will be reversed, meaning the City will be responsible for 90.6% of the costs.

I have also attached a complete draft financial plan for the Grade Separation project. You will note that the ROW share is now 50%/50%. The overall costs have been lowered due to SANBAG's efforts to find more money. For example, they are proposing to infuse $3,450,000 of CMAQ money into this project and to issue an $11 million bond (MLH Measure I Bond shows $6 million on the chart, but that's been

changed). This will require the City to commit all of its Major Local Highway ("MLH") funds to this project for many years to support the bond payment. The City can use MLH funds to reconstruct its major arterials, like Main Street or Barstow Road. SANBAG is always financially creative, and has found several additional sources of funding to help offset the increased expense the City believes will be coming its way. Some of the proposed funds must be approved by the Desert/Mountain SANBAG Committee and the full SANBAG Board, so these funds are not assured.

In fairness to Supervisor Mitzelfelt, he has agreed verbally to keep the project at a 50%/50% split for both ROW and construction cost moving forward. The current Agreement; however, is very clear on how costs are to be allocated. In Section 2.1 (page 3 of 9), it states that each jurisdiction will pay the ROW cost associated with parcels located in its jurisdiction. The Annexation will transfer all County property south of the railroad tracks and west of Lenwood Road to the City. If the same formula is used to craft the Agreement for the construction phase, the City could be expected to fund a very large portion of the overall cost of construction; especially if SANBAG is not successful in securing additional funds.

The City understands the Island Annexation is mandated by the state. The City of Barstow is, however, requesting that LAFCO consider deferring the Annexation until all parties involved in the Lenwood Grade Separation project can come to an agreement of terms, and those terms are memorialized in a formal Agreement. All parties to the Agreement have been working to find an acceptable solution to this turn of events, so the City does not expect a long delay. Nonetheless, when dealing with three separate and distinct agencies, it may take longer than the normal Annexation process allows.

Thank you for your consideration of the City's request to delay the Annexation. Please give me a call if you have any questions relating to this complicated issue. I can be reached on my cellular phone at 760.447.1302, or during normal work hours at my office at 760.255-5106.

Sincerely,

Ronald O. Rector
Community & Economic Development Director
City of Barstow

Cc: Supervisor Brad Mitzelfelt
Charles C. Mitchell, Barstow City Manager
Duane Baker, SANBAG

Lenwood Grade Sep. R/W

County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

☒ New ☐ Change ☐ Cancel	Vendor Code	Dept. SC / TRA	A	Contract Number
County Department: Public Works- Transportation		Dept. TRA	Orgn. TRA	Contractor's License No.
County Department Contract Representative: Brendon Biggs, P.E., Chief		Telephone: (909)387-8166		Total Contract Amount: $ 2,711,651

Contract Type: ☐ Revenue ☒ Encumbered ☐ Unencumbered ☐ Other:

If not encumbered or revenue contract type, provide reason:

Commodity Code	Contract Start Date	Contract End Date	Original Amount	Amendment Amount
			$	$

Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount
SAA	TRA	TRA	200	2445	11H14239	$ 2,711,651
						$
						$

Project Name: Lenwood Road Grade Separation Right of Way

Estimated Payment Total by Fiscal Year					
FY	Amount	I/D	FY	Amount	I/D
10/11	2,711,651	I			

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name: City of Barstow — hereinafter called CITY

Address: 220 E Mountain View Street, Ste A

Barstow, CA 92311

Telephone: (760) 255 - 5154 — Federal ID No. or Social Security No.:

Name: San Bernardino County Transportation Authority — hereinafter called AUTHORITY

Address: 1170 W. 3rd Street, 2nd Floor

San Bernardino, CA 92410

Telephone: (909) 884 - 8276 — Federal ID No. or Social Security No.:

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH

WHEREAS, the County of San Bernardino (hereinafter referred to as "COUNTY"), San Bernardino County Transportation Authority (hereinafter referred to as "AUTHORITY") and the City of Barstow (hereinafter referred to as "CITY") have previously entered into an Agreement, County Contract No. 10-17, that included the preparation

Auditor/Controller-Recorder Use Only

☐ Contract Database	☐ FAS
Input Date	Keyed By

of preliminary engineering, environmental and final design work for the construction of a rail-highway grade separation project on Lenwood Road at Burlington Northern & Santa Fe (BNSF) Railway, located in the Barstow area (hereinafter referred to as "PROJECT"); and

WHEREAS, the AUTHORITY, COUNTY and CITY desire to proceed with the Right of Way ("ROW") work associated with the PROJECT. The ROW work includes, but not limited to acquisition of various properties and administrative services; and

WHEREAS, the PROJECT is partially within the unincorporated area of the COUNTY, and partially within the incorporated area of the CITY, and will be of mutual benefit to the COUNTY and CITY; and

WHEREAS, the total ROW work cost is estimated to be $2,993,178. The COUNTY's share of ROW cost is estimated at $2,711,651 (90.6%) and the CITY's share of ROW cost is estimated at $281,527 (9.4%), as more particularly set forth in Exhibit "A", attached hereto and incorporated herein by reference. Costs are proportioned based on ROW work in each parties' jurisdiction; and

WHEREAS, the AUTHORITY has no financial obligation towards the ROW component of the PROJECT; it will continue as PROJECT overseer, and will serve as lead agency for the ROW component of the PROJECT as agreed upon by all parties; and

WHEREAS, a future written agreement between the AUTHORITY, COUNTY and CITY will define the responsibilities and obligations for the construction component of the PROJECT; and

WHEREAS, the AUTHORITY, COUNTY and CITY desire to set forth responsibilities and obligations of each as they pertain to participation and funding of the PROJECT ROW work.

NOW, THEREFORE, AUTHORITY, COUNTY and CITY agree to the following:

1.0 AUTHORITY AGREES TO:

1.1 Continue to provide management and oversight services for the PROJECT, and act as the Lead Agency for the PROJECT's ROW Work.

1.2 Obtain a no-cost permit from the COUNTY and CITY for work within the COUNTY and CITY's rights of way.

1.3 Ensure its contractor(s) comply with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages. AUTHORITY shall indemnify, defend (with counsel reasonably approved by COUNTY and CITY), and hold harmless COUNTY and CITY and their officers, employees, volunteers, and agents from any and all claims, actions, losses, damages, and/or liability arising out AUTHORITY's obligations set forth in this paragraph.

1.4 Require AUTHORITY's contractor(s) and subcontractor(s) to pay the minimum of prevailing wages.

1.5 Require its contractor(s) and vendor(s) hired for the ROW work to have appropriate and adequate insurance coverage for the mutual protection and benefit of all parties.

1.6 Permit the COUNTY and CITY to participate in the review and approval of all ROW Work, including, but not limited to the engineering plans and properties subject to acquisition/appraisal.

1.7 Obtain approval from COUNTY and CITY prior to approving any increase in ROW work costs.

1.8 Submit to COUNTY and CITY, at least on a quarterly basis, an itemized accounting along with the supporting documentation of actual PROJECT ROW costs incurred by AUTHORITY to date and which have not already been paid by COUNTY or CITY, and a statement for COUNTY's (90.6%) and CITY's (9.4%) proportionate shares of the PROJECT ROW costs, as provided herein.

1.9 Provide services to acquire right of way, including contacting the owner or occupant, entering properties, inspecting and negotiating takes and easements, including improvements.

2.0 COUNTY AGREES TO:

2.1 Pay its share of the PROJECT ROW costs, which are estimated to be $2,711,651 (90.6%). All costs associated with ROW work shall be paid by either party dependent upon jurisdiction. For example, if a parcel to be acquired is located completely within COUNTY (or CITY), the COUNTY (or CITY) shall pay all costs of right-of-way acquisition. If a parcel is located 75% in the CITY and 25% in the COUNTY, the CITY would pay 75% and the COUNTY would pay 25% of the cost of right-of-way acquisition. In no event shall COUNTY's share of PROJECT ROW cost exceeds 10% ($2,982,816) of the estimate of COUNTY's share of PROJECT ROW costs absent a written amendment to this agreement approved by all parties.

2.2 Reimburse the AUTHORITY for COUNTY's share of the PROJECT's ROW costs within thirty (30) working days after receipt of an itemized statement, as set for in paragraph 1.8 of this Agreement, setting forth all actual PROJECT ROW costs incurred by AUTHORITY to date and which have not already been paid by the COUNTY or CITY, together with adequate documentation of said expenditures.

2.3 Provide a no-cost permit to AUTHORITY for its work in COUNTY's right of way.

2.4 Consider using the power of Eminent Domain to acquire any necessary rights of way at a public hearing noticed and conducted in accordance with California Code of Civil Procedure, Section 1245.235, for the purpose of considering the adoption of a resolution of necessity, should AUTHORITY be unable to acquire the necessary right of way located within the limits of the COUNTY. If COUNTY elects to proceed with using its power of Eminent Domain, it shall do so in a timely manner and at no cost to the AUTHORITY. The Parties acknowledge and understand that this Agreement does not obligate COUNTY in any way to use the power of Eminent Domain to acquire any rights of way within the COUNTY. COUNTY's use of the power of Eminent Domain is conditioned by law upon certain findings and determinations that the COUNTY, in its sole discretion, must make in accordance with the California Code of Civil Procedure. COUNTY makes no warranty or guarantee of the eventual result or outcome of its discretionary consideration of the use of Eminent Domain to acquire any rights of way within the COUNTY or of any actual Eminent Domain proceeding. If the COUNTY is unsuccessful in obtaining right of way, then the AUTHORITY and COUNTY shall endeavor to agree upon an alternative course of action. If, after thirty (30) days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

2.5 Provide a qualified representative who shall have the authority to discuss and attempt to resolve issues concerning the ROW work.

2.6 Participate with AUTHORITY and/or CITY in the review and approval of all ROW Work, including, but not limited to the engineering plans and properties subject to acquisition/appraisal.

3.0 CITY AGREES TO:

3.1 Pay its share of the PROJECT ROW costs, which are estimated to be $281,527 (9.4%). All costs associated with ROW work shall be paid by either party dependent upon jurisdiction. For example, if a parcel to be acquired is located completely within COUNTY (or CITY), the COUNTY (or CITY) shall pay all costs of right-of-way acquisition. If a parcel is located 75% in the CITY and 25% in the COUNTY, the CITY would pay 75% and the COUNTY would pay 25% of the cost of right-of-way acquisition. In no event shall CITY's share of PROJECT ROW cost exceeds 10% ($309,680) of the estimate of CITY's share of PROJECT ROW costs absent a written amendment to this agreement approved by all parties.

3.2 Reimburse the AUTHORITY for CITY's share of the PROJECT's ROW costs within thirty (30) working days after receipt of an itemized statement, as set for in paragraph 1.8 of this Agreement, setting forth all actual PROJECT ROW costs incurred by the AUTHORITY to date and which have not already been paid by the CITY or COUNTY, together with adequate documentation of said expenditures.

3.3 Provide a no-cost permit to the AUTHORITY for its work in CITY's right of way.

3.4 Consider using the power of Eminent Domain to acquire any necessary rights of way at a public hearing noticed and conducted in accordance with California Code of Civil Procedure, Section 1245.235, for the purpose of considering the adoption of a resolution of necessity, should AUTHORITY be unable to acquire the necessary right of way located within the limits of the CITY. If CITY elects to proceed with using its power of Eminent Domain, it shall do so in a timely manner and at no cost to the AUTHORITY. The Parties acknowledge and understand that this Agreement does not obligate CITY in any way to use the power of Eminent Domain to acquire any rights of way within the CITY. CITY's use of the power of Eminent Domain is conditioned by law upon certain findings and determinations that the CITY, in its sole discretion, must make in accordance with the California Code of Civil Procedure. CITY makes no warranty or guarantee of the eventual result or outcome of its discretionary consideration of the use of Eminent Domain to acquire any rights of way within the CITY or of any actual Eminent Domain proceeding. If the CITY is unsuccessful in obtaining right of way, then the AUTHORITY and CITY shall endeavor to agree upon an alternative course of action. If, after thirty (30) days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

3.5 Provide a qualified representative who shall have the authority to discuss and attempt to resolve issues concerning the ROW work.

3.6 Participate with AUTHORITY and/or COUNTY in the review and approval of all ROW Work, including, but not limited to the engineering plans and properties subject to acquisition/appraisal.

4.0 IT IS MUTUALLY AGREED:

4.1 AUTHORITY agrees to indemnify, defend (with counsel reasonably approved by COUNTY and CITY) and hold harmless the COUNTY and CITY and their officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the AUTHORITY's negligent acts or omissions which arise from the AUTHORITY's performance of its obligations under this Agreement.

4.2 COUNTY agrees to indemnify, defend (with counsel reasonably approved by AUTHORITY and CITY) and hold harmless the AUTHORITY and CITY and their officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the COUNTY's negligent acts or omissions which arise from the COUNTY's performance of its obligations under this Agreement.

4.3 CITY agrees to indemnify, defend (with counsel reasonably approved by AUTHORITY and COUNTY) and hold harmless the AUTHORITY and COUNTY and their officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the CITY's negligent acts or omissions which arise from the CITY's performance of its obligations under this Agreement.

4.4 In the event the AUTHORITY and/or COUNTY and/or the CITY is 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 COUNTY and/or CITY shall indemnify the other to the extent of its comparative fault. Furthermore, if the AUTHORITY or COUNTY or CITY attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the AUTHORITY or COUNTY or CITY agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

4.5 In the event of litigation arising from this agreement, each party to the agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 3.1, 3.2 and 3.3 indemnification.

4.6 AUTHORITY, COUNTY and CITY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrant that through their programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of AUTHORITY, COUNTY and CITY's performance of this Agreement.

4.7 If either AUTHORITY or COUNTY or CITY requests additional work that is beyond the scope of the original PROJECT ROW work, and not considered by all parties to be a necessary part of the PROJECT ROW work, said work, if approved by all parties, will be paid solely by the agency requesting the work, unless all parties agree to allocate the cost in accordance with the percentage allocation provided in this Agreement, or in some other mutually acceptable manner.

4.8 If this Agreement is funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009, the AUTHORITY, COUNTY and CITY shall comply with the following provisions:

Use of ARRA Funds and Requirements - This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the COUNTY for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. AUTHORITY and its contractor must contact the COUNTY contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. AUTHORITY and its contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the COUNTY may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. AUTHORITY and its contractor agree to fully cooperate in providing information or documents as requested by the COUNTY pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

AUTHORITY and its contractor may also be required to register in the Central Contractor Registration (CCR) database at http://www.ccr.gov and may be required to have its

subcontractors also register in the same database. AUTHORITY and its contractor must contact the COUNTY with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards - In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. AUTHORITY and its contractor agree to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, AUTHORITY and its contractor agree to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

AUTHORITY and its contractor may be required to provide detailed information regarding expenditures so that the COUNTY may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. AUTHORITY and its contractor agree to fully cooperate in providing information or documents as requested by the COUNTY pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Whistleblower Protection

AUTHORITY and its contractor agree that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

AUTHORITY and its contractor agree that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.

4.9 This Agreement may be terminated by either party, with or without cause, upon thirty (30) days advance written notice to the other party. In the event of cancellation as provided herein, all PROJECT ROW costs required to be paid by the parties prior to the effective date of cancellation shall be paid by the parties based upon where the work actually occurred (e.g. whether the work occurred in the COUNTY's or CITY's jurisdiction).

4.10 Except with respect to the parties' operation, maintenance and indemnification obligations contained herein, and if paragraph 4.9 of this Agreement has not been enforced, this Agreement shall terminate upon completion of the PROJECT ROW work and payment of final billing by COUNTY and CITY for their shares of the PROJECT ROW costs.

4.11 This Agreement contains the entire agreement of the parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all parties.

4.12 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between AUTHORITY, COUNTY and CITY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT ROW work, shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California.

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

4.14 Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease or reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

4.15 No waiver of any default shall constitute a waiver of any other default or breach, 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.

4.16 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this agreement is frustrated.

4.17 This Agreement may be signed in counterparts, each of which shall constitute an original.

4.18 This Agreement shall take effect on the date it is signed by all parties.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of all parties.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers thereunto duly authorized.

COUNTY OF SAN BERNARDINO:

► _____
Gary C. Ovitt, Chairman, Board of Supervisors

Date: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD
Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY:

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Date: _____

Address _____

_____

CITY OF BARSTOW:

By _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Date: _____

Address _____

_____

APPROVED AS TO FORM AND PROCEDURE:

By: _____
Jean-Rene Basle
AUTHORITY Counsel

APPROVED AS TO FORM AND PROCEDURE:

By: _____
CITY Attorney

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to BOS for Signature
► _____	► _____	► _____
County Counsel		Department Head
Date _____	Date _____	Date _____

EXHIBIT A
ESTIMATE OF PROJECT COSTS

FOR COUNTY OF SAN BERNARDINO/CITY OF BARSTOW
FOR THE LENWOOD ROAD GRADE SEPARATION PROJECT - RIGHT OF WAY

IN THE BARSTOW AREA

PHASES OF WORK	TOTAL COST OF PROJECT	COUNTY OF SAN BERNARDINO SHARE	% OF PROJECT COUNTY	CITY OF BARSTOW SHARE	% OF PROJECT CITY
Right of Way Acquisition	$2,153,792	$2,000,971	92.9%	$152,821	7.1%
Right of Way Appraisal	$380,000	$287,000	75.5%	$93,000	24.5%
Contingency	$459,386	$423,680	92.2%	$35,706	7.8%
TOTAL	$2,993,178	$2,711,651	90.6%	$281,527	9.4%

Feb 4,2011

		Buy-Down Total Project Cost								Barstow (50%)					County (50%)				
	Total	MLH Measurel	MLH Measurel Bonds	CMAQ	Demo	TCIF	BNSF	SLPP	Remaining Balance	Barstow's Share	Barstow	Barstow DIF	Barstow MI Local	Credit/ Deficit	County's Share	STP-LR	Measure I	Credit/ Deficit	Total
PA&ED																			
PS&E	$4,409,000	$935,000							$3,474,000	$1,737,000	$724,000		$250,000	-$763,000	$1,737,000		$2,500,000	$763,000	$4,409,000
ROW	$4,650,000	$0		$3,450,000	$450,000				$750,000	$375,000			$750,000	$375,000	$375,000			-$375,000	$4,650,000
Constructi	$22,300,000		$6,000,000		$750,000	$6,700,000	$1,097,565	$2,161,000	$5,591,435	$2,795,718		$1,500,000	$1,683,718	$388,001	$2,795,718	$2,407,718		-$388,000	$22,300,001
Total	$31,359,000	$935,000	$6,000,000	$3,450,000	$1,200,000	$6,700,000	$1,097,565	$2,161,000	$9,815,435	$4,907,718	$724,000	$1,500,000	$2,683,718	$1	$4,907,718	$2,407,718	$2,500,000	$0	$31,359,001

Notes:

BNSF's share = 5% (Federal funds) of 70% of the total project cost.

Avaiable MLH = No. Desert Meas I x 25% = $3,519,000x25%= $880,000

MLH Measure I bond capacity = $14.5M

Barstow MI Local is approx. $1.9M per year.

Barstow's total = $4,907,718

County's total = $4,907,718

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA AND RECORD OF ACTION

June 7, 2011

FROM: **GRANVILLE M. BOWMAN, Director**
Department of Public Works – Transportation

SUBJECT: **COOPERATIVE AGREEMENT WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION AND THE CITY OF BARSTOW FOR THE LENWOOD ROAD RAIL-HIGHWAY GRADE SEPARATION PROJECT**

RECOMMENDATION(S)

1. Approve Cooperative **Agreement No.11-279** among the County of San Bernardino (County), the City of Barstow (City), and the San Bernardino Associated Governments, acting as both the San Bernardino County Transportation Authority (Authority) and the San Bernardino County Transportation Commission (Commission), setting forth the roles and responsibilities for administering and funding of the $27,092,000 estimated cost of right-of-way services and construction for the Lenwood Road, at Burlington Northern & Santa Fe (BNSF) Rail-Highway Grade Separation project (Project).
2. Authorize the Director of Public Works to increase the Cooperative Agreement construction contract amount by up to 10 percent (County share from 0$ to $610,465), should final construction costs ultimately exceed current estimates.

(Affected Districts: First)
(Presenter: Granville M. Bowman, Director, 387-7906)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

Create, Maintain and Grow Jobs and Economic Value in the County.
Ensure Development of a Well-Planned, Balanced, and Sustainable County.
Maintain Public Safety.
Pursue County Goals and Objectives by Working with Other Governmental Agencies.

FINANCIAL IMPACT

Approval of this item will result in no Net County Costs (Discretionary General Funding) as the Department of Public Works (Department) is not financed by the General Fund. Instead the Department is financed by Gas Tax, fees, and other local, state, and federal funding. The total estimated cost for Project right-of-way and construction is $27,092,000. The funding for this cost will be financed by San Bernardino Associated Governments ($26,207,000) and the City ($885,000). The County has no share of cost as funding was advanced in a previous agreement approved by the County of San Bernardino Board of Supervisors (Board) on January 12, 2010

RECEIVED
JUN 10 2011
LAFCO
San Bernardino County

cc: PW-Schindler w/ agree
Contractor c/o PW w/ agree
Auditor-Accts Pay Mgr w/ agree
EBIX-BPO c/o Risk Mgmt
PW-Bowman
County Counsel-Runyan
CAO-Valdez
File - w/ agree
jll 06/07/11

ITEM 57

Record of Action of the Board of Supervisors

APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors

MOTION	SECOND	AYE	RECUSED	MOVE	AYE
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD
BY _____
DATED: June 07, 2011

3165
Rev 4-19-11

(Item No. 49). However, if construction phase costs exceed the current estimate of $22,300,000, within 10 percent, the City shall pay the first $504,535 of the additional costs, and then the remaining cost will be borne equally between the City and County. In no event shall the County increased cost exceed $610,465 without an amendment to the agreement.

BACKGROUND INFORMATION

Approval of Recommendation No. 1 will authorize the County to enter into a cooperative with the Authority, Commission and City for purposes of allocating funds and setting forth the responsibilities of each agency relative to the right-of-way and construction components of the Project. The construction consists of a grade-separated crossing of Lenwood Road over the BNSF railroad, in the unincorporated area of the County and the City of Barstow. The entire project is a component of the Alameda Corridor East, a national goods movement plan for the movement of goods from the Ports of Los Angeles and Long Beach to the rest of the United States. Lenwood Road is a major north/south arterial that crosses Interstate 15 and State Route 58 at a strategic location that is increasingly being developed as warehouse and distribution centers.

Approval of Recommendation No. 2 will authorize the Director of Public Works to increase the Cooperative Agreement construction contract amount by up to 10 percent, should the ultimate construction phase costs exceed current estimates due to eligible costs resulting from increased bid/contract prices or change orders resulting from unforeseen conditions. The City shall be responsible to pay the first $504,535, then any additional costs, up to 10 percent above the construction estimate, will be borne equally by the City and County in accordance with Section 5.3 of the Cooperative Agreement. The County's additional cost increase shall not exceed $610,465.

On January 12, 2010 (Item No. 49), the Board of Supervisors (Board) approved Agreement No. 10-17 between Authority and the City for Project Approval and Environmental Documentation (PA&ED) and the Plans, Specifications and Estimates (PS&E) for the Project. These components of the Project are complete and all parties to the Agreement desire to advance forward to the final phases of the Project.

In accordance with the Agreement, the Commission will serve as the lead agency in the right-of-way activities and construction of the Project and will continue as Project manager. The Commission shall coordinate with the County and City to participate in all phases of the right-of-way and construction of the Project and shall invoice City for City's share of right-of-way and construction costs. Additionally, the County and City agree to authorize the Commission to acquire in the each of their names voluntary and permanent property rights within their jurisdictional boundaries. Upon acquisition, the County and City shall accept acquired Project rights-of-way within each of their jurisdictional boundaries within thirty (30) days of Commission's request and shall accept at no cost to Commission. More specifically, pursuant to the terms of the Agreement, the Board authorizes and directs the Clerk of the Board to execute an acceptance, in substantially the form attached as Exhibit "B" to the Agreement, within thirty (30)

days of receipt of a quit claim deed from Commission conveying its interest in such acquired rights-of-way to the County. Further, the Agreement authorizes the Director of Public Works, or designee, to approve any increase in right-of-way costs or agreements with property owners and to approve the Commission's filing of a Notice of Completion for the Project. Finally, the terms of this Agreement are subject to the availability of funds for the Project.

This Agreement is effective on the date it is approved by all parties and shall remain in effect through June 30, 2015. Prior to the award of a construction contract, this Agreement may be terminated by any party, with or without cause, upon thirty days advance written notice to the other parties. A future amendment to County Contract No. 10-17 is anticipated to increase City's funding obligations for the PS&E phase of the Project, up to $250,000.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott M. Runyan, Deputy County Counsel, 387-9022) on May 23, 2011, and the County Administrative Office (Beatriz Valdez, Principal Administrative Analyst, 387-1852) on May 31, 2011.

County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

☒ New ☐ Change ☐ Cancel	Vendor Code	SC	Dept. TRA	A	Contract Number
County Department: Public Works- Transportation		Dept. TRA	Orgn. TRA		Contractor's License No.
County Department Contract Representative: Carrie Schindler, P.E., Chief		Telephone: (909)387-8166			Total Contract Amount: $ XXX

Contract Type: ☐ Revenue ☒ Encumbered ☐ Unencumbered ☐ Other:

If not encumbered or revenue contract type, provide reason:

Commodity Code	Contract Start Date	Contract End Date	Original Amount	Amendment Amount
			$	$

Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount
RWR	TRA	TRA	200	2445	11TA1599	$ XXX
						$
						$

Project Name: Lenwood Road Grade Separation Right of Way and Construction

Estimated Payment Total by Fiscal Year

FY	Amount	I/D	FY	Amount	I/D
10/11	XXX	I			

THIS **CONTRACT is entered into in the State of** California by and between the County of San Bernardino, hereinafter called the County, and

Name: City of Barstow — hereinafter called CITY

Address: 220 E Mountain View Street, Ste A

Barstow, CA 92311

Telephone: (760) 255 - 5154 — Federal ID No. or Social Security No.:

Name: San Bernardino County Transportation Authority — hereinafter called AUTHORITY

Address: 1170 W. 3rd Street, 2nd Floor

San Bernardino, CA 92410

Telephone: (909) 884 - 8276 — Federal ID No. or Social Security No.:

Name: San Bernardino County Transportation Commission — hereinafter called COMMISSION

Address: 1170 W. 3rd Street, 2nd Floor

San Bernardino, CA 92410

Telephone: (909) 884 - 8276 — Federal ID No. or Social Security No.:

Auditor/Controller-Recorder Use Only

☐ Contract Database	☐ FAS
Input Date	**Keyed By**

C11199

IT IS HEREBY AGREED AS FOLLOWS:

THIS AGREEMENT is made and entered into as of the Effective Date, as defined herein, by and between San Bernardino Associated Governments, acting as the San Bernardino County Transportation Authority, (hereinafter referred to as "AUTHORITY"), San Bernardino Associated Governments, acting as the San Bernardino County Transportation Commission, (hereinafter referred to as "COMMISSION"), County of San Bernardino (hereinafter referred to as "COUNTY") and City of Barstow (hereinafter referred to as "CITY").

WITNESSETH

WHEREAS, the COUNTY, AUTHORITY and the CITY, collectively known as PARTIES, have previously entered into an Agreement, County Contract No. 10-17, that included the preparation of preliminary engineering, environmental and final design ("PS&E") work for the construction of a rail-highway grade separation project on Lenwood Road at Burlington Northern & Santa Fe ("BNSF") Railway, located in the Barstow area (hereinafter referred to as "PROJECT"); and

WHEREAS, AUTHORITY has determined that this PROJECT and expenditure phases are approved by the SANBAG Mountain/Desert Committee and are eligible to receive Measure I 2010-2040 North Desert subarea Major Local Highway Program funds; and

WHEREAS, AUTHORITY, COMMISSION, COUNTY and CITY desire to proceed with the Right of Way ("ROW") work associated with the PROJECT. The ROW work includes, but is not limited to, acquisition and management of various properties necessary for the PROJECT, utility relocations, and administrative services; and

WHEREAS, AUTHORITY, COMMISSION, COUNTY and CITY also desire to proceed with the construction phase of the PROJECT. Work associated with the construction phase of the PROJECT includes, but is not limited to, procurement of a construction management consultant to manage the project and provide inspection, surveying and materials testing during construction; and Advertisement, Award and Administration ("AAA") of the construction contract; and

WHEREAS, as of the effective date of this Agreement the PROJECT is partially within the unincorporated area of the COUNTY (50%), and partially within the incorporated area of the CITY (50%), and will be of mutual benefit to the COUNTY and CITY; and

WHEREAS, the total cost of the ROW phase of the PROJECT is estimated to be $4,792,000 which is partially offset by $3,450,000 in Congestion Management Air Quality ("CMAQ") funds and $457,000 in Measure I Major Local Highway-North Desert funds, leaving a balance of $885,000, the cost of which is to be borne by CITY using Measure I Local funds; and

WHEREAS, the total cost of the construction phase of the PROJECT is estimated to be $22,300,000 which is partially offset by state and federal funds estimated to be $10,061,000, BNSF railroad's fair share contribution estimated at $1,102,535, and SANBAG bond proceeds in the amount of $11,000,000, leaving a balance of $136,465, which shall be borne by CITY using CITY's Development Impact Fee funds. The debt service on the $11,000,000 SANBAG bond proceed will be retired through future revenues from the Measure I Major Local Highway-North Desert program; and

WHEREAS, AUTHORITY, COMMISSION, COUNTY, and CITY are entering into this Agreement with the understanding that CITY will reimburse AUTHORITY for eligible PROJECT ROW and construction phase expenditures and that to date, the COUNTY has paid its fair share of estimated PROJECT ROW and construction phase costs in the design phase of the PROJECT; and

WHEREAS, COMMISSION wishes to be the lead agency on the PROJECT ROW and construction phase of the PROJECT; and

WHEREAS, AUTHORITY, COMMISSION, COUNTY, and CITY desire to set forth responsibilities and obligations of each phase as they pertain to participation and funding of the PROJECT ROW work and property acquisition and construction phases of the PROJECT.

NOW, THEREFORE, AUTHORITY, COMMISSION, COUNTY and CITY mutually agree to the following:

1.0 AUTHORITY AGREES TO:

1.1 Contribute $457,000 of Measure I Major Local Highway-North Desert funds toward the estimated $4,792,000 in PROJECT ROW and property acquisition costs for PROJECT. An estimate of costs for the PROJECT ROW phase is provided in Exhibit "A" to this Agreement.

1.2 Contribute $11,000,000 of SANBAG bond proceeds toward the estimated total construction cost of $22,300,000 for PROJECT. An estimate of costs for the PROJECT construction phase is provided in Exhibit "A" to this Agreement, attached and incorporated herein by this reference.

2.0 COMMISSION AGREES TO:

2.1 Contribute $3,450,000 in CMAQ funds toward the estimated $4,792,000 in PROJECT ROW and property acquisition costs for PROJECT. An estimate of costs for the PROJECT ROW phase is provided in Exhibit "A" to this Agreement.

2.2 Contribute $10,061,000 toward the estimated total construction cost of $22,300,000 for PROJECT, including $6,700,000 of State Trade Corridor Improvement Funds ("TCIF"), $1,200,000 in federal earmarks, and $2,161,000 in State Local Partnership Program ("SLPP") funds. An estimate of costs for the PROJECT construction phase is provided in Exhibit "A" to this Agreement.

2.3 Continue to provide management and oversight services for the PROJECT, and act as the lead agency for the PROJECT's ROW and construction phases.

2.4 Include COUNTY and CITY in Project Development Team ("PDT") meetings, if and when such meetings are held, and related communications on PROJECT progress and to provide at least quarterly schedule updates to COUNTY and CITY. COUNTY and CITY shall assign a project liaison for the purpose of attending PDT meetings.

2.5 Obtain a no-cost permit from the COUNTY and CITY for work within the COUNTY and CITY's rights of way.

2.6 Ensure its contractor(s) comply with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages. COMMISSION shall indemnify, defend (with counsel reasonably approved by COUNTY and CITY), and hold harmless COUNTY and CITY and their officers, employees, volunteers, and agents from any and all claims, actions, losses, damages, and/or liability arising out COMMISSION's obligations set forth in this paragraph.

2.7 Require its contractor(s) and vendor(s) hired for the ROW and construction work to have appropriate and adequate insurance coverage for the mutual protection and benefit of all parties.

2.8 Permit the COUNTY and CITY to participate in the review of all ROW work, including, but not limited to the engineering plans and properties subject to acquisition/appraisal.

2.9 Obtain approval from COUNTY and CITY prior to approving any increase in ROW costs or agreements with property owners. COUNTY's Director of the Public Works, or designee, is authorized to exercise COUNTY's approval under this Paragraph.

2.10 Obtain approval from COUNTY and CITY prior to filing the Notice of Completion for the PROJECT. Filling of the Notice of Completion shall constitute completion of construction. COUNTY's Director of the Public Works, or designee, is authorized to exercise COUNTY's approval under this Paragraph.

2.11 Submit to COUNTY and CITY, at least on a quarterly basis, an itemized accounting along with the supporting documentation of actual PROJECT ROW (including property acquisition costs) and/or construction costs incurred by COMMISSION to date and which have not already been paid by COUNTY and/or CITY, and a statement for COUNTY's and/or CITY's proportionate shares of the PROJECT ROW (including property acquisition costs) and/or construction costs, as identified in Exhibit "A".

2.12 To provide all necessary ROW services to acquire right of way for PROJECT through negotiated purchases of property, or if necessary, through Eminent Domain. Voluntary acquisitions may be acquired in the name of the local jurisdiction in which the property lies.

2.13 Consider using the power of Eminent Domain to acquire any necessary rights-of-way for PROJECT in COMMISSION's name at a public hearing noticed and conducted in accordance with California Code of Civil Procedure, Section 1245.235, for the purpose of considering the adoption of a resolution of necessity, should COMMISSION be unable to acquire through negotiated purchases the necessary right of way located within the limits of the COUNTY or CITY. If the COMMISSION is unsuccessful in obtaining necessary right of way for PROJECT, then AUTHORITY, COMMISSION and COUNTY or CITY shall endeavor to agree upon an alternative course of action. If, after thirty (30) days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

2.14 In the event that COMMISSION exercises its powers of eminent domain and acquires property, COMMISSION agrees to convey by quit claim deed to CITY all PROJECT acquired rights-of-way located within CITY's jurisdictional boundaries and to convey by quit claim deed to COUNTY all PROJECT acquired rights-of-way located within COUNTY's jurisdictional boundaries within thirty (30) days of COMMISSION's request to accept such acquired property and at no expense to the COMMISSION. Said properties shall be clean and all rubbish, excess materials, falsework, temporary structures and equipment shall be removed. All parts of the properties shall be left in a neat and presentable condition.

2.15 To undertake and lead the AAA and construction management for the construction phase of the PROJECT.

2.16 To administer the construction phase of PROJECT in accordance with the terms and conditions of CITY's Construction and Maintenance Agreement with BNSF Railroad.

2.17 That COMMISSION, at COMMISSION's sole discretion, may assign additional resources to the PROJECT construction phase to facilitate its timely completion.

2.18 To be the lead agency responsible for administration of the TCIF funds on the PROJECT and to apply for fund reimbursements accordingly to the extent that TCIF funds are allocated to the PROJECT by the State.

2.19 Prepare and submit to COUNTY and/or CITY an original and two copies of signed invoices for reimbursement of those eligible PROJECT expenditures according to the requirements specified in Exhibit "A". Invoices may be submitted to COUNTY and/or CITY as frequently as monthly.

2.20 Establish and maintain an accounting system conforming to Generally Accepted Accounting Principles ("GAAP") to support COMMISSION request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by COMMISSION.

2.21 Prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT expenditures for those activities described in the work activities, and to submit that Report and invoice no later than 120 days following the completion of those

expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to COUNTY and CITY, must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described in Exhibit "A".

2.22 Have a PROJECT-specific audit completed by COUNTY and/or CITY, at COUNTY'S and/or CITY'S option and expense, upon completion of the PROJECT.

2.23 To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to COUNTY and CITY or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of COUNTY and CITY. Copies will be made and furnished by COMMISSION upon request.

3.0 COUNTY AGREES TO:

3.1 When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of AUTHORITY or COMMISSION performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to COUNTY when planning and conducting additional audits.

3.2 Provide a no-cost permit to COMMISSION's construction contractor for its work in COUNTY's right of way.

3.3 Provide a qualified representative who shall have the authority to discuss and attempt to resolve issues concerning the ROW work and property acquisition.

3.4 Participate with AUTHORITY and/or COMMISSION and/or CITY in the review of all ROW work and property acquisition, including, but not limited to the engineering plans and properties subject to acquisition/appraisal.

3.5 Authorize COMMISSION to acquire in the COUNTY's name those voluntary and permanent property rights within the jurisdictional boundaries of COUNTY needed for PROJECT.

3.6 To accept all PROJECT acquired rights-of-way located within COUNTY's jurisdictional boundaries within thirty (30) days of COMMISSION's request accept such acquired property and at no expense to the COMMISSION. COUNTY's Board of Supervisors, by approval of this Agreement, authorizes and directs the County Clerk to execute an acceptance, in substantially the form attached hereto as Exhibit "B", within thirty (30) days of receipt of a quit claim deed from COMMISSION conveying its interest in such acquired rights-of-way in accordance with Section 2.14.

3.7 Should the pending annexation of unincorporated County land into the City of Barstow be completed prior to completion of PROJECT and thereby change the jurisdictional share of costs from 50% COUNTY/50% CITY to 25% COUNTY/75% CITY, the COUNTY, in consideration of COMMISSION's contribution of $3,450,000 of Federal Congestion Mitigation Air Quality funds to buy down the PROJECT ROW costs, and COMMISSION's $2,161,000 contribution in State Local Partnership Program Funds plus AUTHORITY's contribution of $11,000,000 in SANBAG bond proceeds to buy down PROJECT construction costs, will not seek to adjust COUNTY's $2,500,000 total contribution toward PROJECT costs.

4.0 CITY AGREES TO:

4.1 Enter into an amendment of County Contract No. 10-17 and contribute up to an additional $250,000 in Measure I Local funds toward completion of the preliminary engineering, environmental and final design (PS&E) work for the PROJECT.

4.2 Contribute Measure I Local funds, in the amount of $885,000 toward the estimated $4,792,000 PROJECT ROW and property acquisition costs.

4.3 Pay using Barstow Development Impact Fee funds, $136,465 of the estimated $22,300,000 total PROJECT construction phase costs.

4.4 Reimburse COMMISSION for CITY's share of the PROJECT's ROW, property acquisition and construction costs as identified herein and as shown in Exhibit "A", within thirty (30) working days after receipt of an itemized statement, as set for in paragraph 2.19 of this Agreement, setting forth all actual PROJECT ROW, property acquisition and construction phase costs incurred by COMMISSION to the date of the itemized statement and which have not already been paid by the CITY or COUNTY, together with adequate documentation of said expenditures.

4.5 When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of AUTHORITY or COMMISSION performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to CITY when planning and conducting additional audits.

4.6 Provide a no-cost permit to COMMISSION's construction contractor for its work in CITY's right of way.

4.7 Provide a qualified representative who shall have the authority to discuss and attempt to resolve issues concerning the ROW work and property acquisition.

4.8 Participate with AUTHORITY or COMMISSION and/or COUNTY in the review of all ROW work and property acquisition, including, but not limited to the engineering plans and properties subject to acquisition/appraisal.

4.9 Authorize the COMMISSION to acquire in the CITY's name those voluntary and permanent property rights within the jurisdictional boundaries of CITY needed for PROJECT.

4.10 Enter into a Construction and Maintenance ("C&M") Agreement with BNSF railroad for construction of the PROJECT and ongoing maintenance of the completed PROJECT thereafter. CITY will be responsible to secure BNSF's payment of fair share contribution of PROJECT costs as identified in the C&M Agreement, and to reimburse AUTHORITY the full amount of this fair share contribution within 30 days of receipt of payment from BNSF.

4.11 Involve the COMMISSION in CITY's negotiations with BNSF railroad on the terms and conditions of the C&M Agreement. The CITY shall obtain COMMISSION's approval of any and all terms and conditions of the C&M Agreement that pertain to construction of PROJECT prior to executing said C&M Agreement.

4.12 To accept all PROJECT acquired rights-of-way located within CITY's jurisdictional boundaries within thirty (30) days of COMMISSION's request to accept such acquired property and at no expense to the COMMISSION. The CITY Council, by approval of this Agreement, authorizes and directs the CITY Clerk to execute an acceptance, in substantially the form attached hereto as Exhibit "B", within thirty (30) days of receipt of a quit claim deed from COMMISSION conveying its interest in such acquired rights-of-way in accordance with Section 2.14.

5.0 IT IS MUTUALLY AGREED:

5.1 All obligations of the AUTHORITY, COMMISSION, CITY and COUNTY under the terms of this Agreement are subject to the availability of funds shown in Exhibit "A". If the AUTHORITY determines that bond financing is not, or will not be available in the amount(s) and/or for the project phase(s) as shown in Exhibit "A", it will immediately notify the other parties to this Agreement, who will then meet and confer to develop an alternative funding plan for completion of the PROJECT. If mutual, written agreement on an alternative funding plan cannot be reached within 30 days, this Agreement shall be deemed to be terminated by mutual consent and the parties shall settle all obligations up to the date of termination in accordance with the terms of this Agreement.

5.2 To abide by all applicable federal, state and local laws and regulations pertaining to the PROJECT ROW and construction phases, including policies in the applicable program in

the Measure I 2010-2040 Strategic Plan, as amended, as of the date of execution of this Agreement.

5.3 The final PROJECT construction phase cost may ultimately exceed current estimates of PROJECT construction phase cost. Any additional eligible costs resulting from increased bid/contract prices or change orders arising from unforeseen conditions, including utility relocations except in the case that prior rights dictate that it is not a PROJECT cost, above the estimated total of the PROJECT construction phase cost of $22,300,000, shall be borne by CITY up to the first $504,535, then borne equally by the COUNTY and CITY thereafter. In no event shall the COUNTY be responsible for additional costs in excess of $610,465 without an amendment to this agreement pursuant to Section 5.5 and 5.22, below.

5.4 COMMISSION shall notify COUNTY and CITY of the bids/contract received and the amounts thereof. Within ten (10) days thereafter, CITY, COUNTY, AUTHORITY and COMMISSION shall determine the cost of the PROJECT construction phase.

5.5 If, upon opening of bids/negotiation of contract for the PROJECT construction phase, it is found that a cost overrun of the estimated PROJECT construction phase costs will occur, COUNTY, CITY, AUTHORITY and COMMISSION shall meet and confer to develop an alternative funding plan for completion of the PROJECT. If mutual, written agreement on an alternative funding plan cannot be reached within 30 days, this Agreement shall be deemed to be terminated by mutual consent and the parties shall settle all obligations up to the date of termination in accordance with the terms of this Agreement.

5.6 Eligible PROJECT reimbursements shall include only those expenses incurred by AUTHORITY for PROJECT ROW and PROJECT construction phase work activities that are described in this Agreement and Exhibit "A" and shall not include escalation or interest.

5.7 Property acquisition costs include, but are not limited to, the negotiated purchase price of property acquired, any payments for relocation assistance pursuant to state and/or federal law, any award made to any property owner, business owner, or other party in any condemnation action, whether by judgment or other order of the court, any award of litigation expenses, costs, or interest, and costs of hazardous materials testing and any clearing/demolition on acquired properties.

5.8 AUTHORITY or COMMISSION consultant or legal services costs in acquiring ROW, property management services costs, utility relocation costs, and administrative services costs shall be considered ROW costs.

5.9 Neither AUTHORITY or COMMISSION nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless AUTHORITY, or COMMISSION, each if its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

5.10 Neither AUTHORITY or COMMISSION nor any officer, director, employee, or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully defend, indemnify and save harmless AUTHORITY, and COMMISSION, each of its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement.

5.11 Neither CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY or COMMISSION and under or in connection with any work, authority or jurisdiction delegated to AUTHORITY or COMMISSION under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY or COMMISSION shall fully defend, indemnify and save harmless CITY , its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY or COMMISSION under or in connection with any work, authority or jurisdiction delegated to AUTHORITY or COMMISSION under this Agreement.

5.12 Neither CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by COUNTY and under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully defend, indemnify and save harmless CITY , its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement.

5.13 Neither COUNTY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY or COMMISSION and under or in connection with any work, authority or jurisdiction delegated to AUTHORITY or COMMISSION under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY or COMMISSION shall fully defend, indemnify and save harmless COUNTY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY or COMMISSION under or in connection with any work, authority or jurisdiction delegated to AUTHORITY or COMMISSION under this Agreement.

5.14 Neither COUNTY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY and under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless COUNTY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

5.15 In the event AUTHORITY and/or COMMISSION and/or COUNTY and/or the CITY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, AUTHORITY and/or COMMISSION and/or COUNTY and/or CITY shall indemnify the other to the extent of its comparative fault. Furthermore, if AUTHORITY or COMMISSION or COUNTY or CITY attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, AUTHORITY or COMMISSION or COUNTY or CITY agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

5.16 In the event of litigation arising from this Agreement, each party to the Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or

attorney(s) fees relative to paragraphs 5.9 through 5.15 indemnification or any fees incurred through the condemnation process.

5.17 COUNTY and CITY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrant that through their programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of COUNTY and CITY's performance of this Agreement.

5.18 This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by AUTHORITY.

5.19 If either AUTHORITY or COMMISSION or COUNTY or CITY requests additional work that is beyond the scope of the original PROJECT ROW work, and not considered by all parties to be a necessary part of the PROJECT ROW work, said work, if approved by all parties, will be paid solely by the agency requesting the work, unless all parties agree to allocate the cost in accordance with the percentage allocation provided in this Agreement, or in some other mutually acceptable manner.

5.20 Prior to the award of a construction contract for the PROJECT, this Agreement may be terminated by any party, with or without cause, upon thirty (30) days advance written notice to the other parties prior to the award date of the PROJECT's construction contract. In the event of cancellation by the COUNTY or CITY as provided herein, all PROJECT ROW and property acquisitions costs required to be paid by the COUNTY or CITY prior to the effective date of cancellation shall be paid to AUTHORITY or COMMISSION by the COUNTY and/or CITY based upon where the work actually occurred (e.g. whether the work occurred in the COUNTY's or CITY's jurisdiction): also any costs incurred by AUTHORITY or COMMISSION following the termination of work, including, but not limited to, abandoning any pending eminent domain matters shall be paid to AUTHORITY or COMMISSION by COUNTY and/or CITY.

5.21 Except with respect to the parties' operation, maintenance and indemnification obligations contained herein, and if this Agreement has not been terminated in accordance with Section 5.5 and 5.20, this Agreement shall terminate upon completion of the PROJECT ROW work, property acquisition, construction phase costs, and payment of final billing by COUNTY and/or CITY for their shares of the PROJECT ROW, property acquisition, and construction costs or June 30, 2015 (whichever occurs first).

5.22 COMMISSION shall acquire all property for PROJECT in either the name of the COUNTY or the CITY, dependent upon the jurisdictional boundary in which each property is located. This Agreement contains the entire agreement of the parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all parties.

5.23 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between AUTHORITY, COMMISSION, COUNTY, and CITY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT ROW work, property acquisition, and construction phase, shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California.

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

5.25 Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease or reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.26 No waiver of any default shall constitute a waiver of any other default or breach, 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.

5.27 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this agreement is frustrated.

5.28 This Agreement may be signed in counterparts, each of which shall constitute an original.

5.29 This Agreement shall take effect on the date it is signed by all parties (the "Effective Date").

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of all parties.

///

///

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers thereunto duly authorized.

COUNTY OF SAN BERNARDINO:

► _____
Josie Gonzales, Chair, Board of Supervisors

Date: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD
Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY:

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Date: _____

Address _____

_____

CITY OF BARSTOW:

By _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Date: _____

Address _____

_____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION:

By _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Date: _____

Address _____

_____

APPROVED AS TO FORM:

By: _____
Terri Highsmith
CITY Attorney

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelley
AUTHORITY Counsel
COMMISSION Counsel

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to BOS for Signature
► _____	► _____	► _____
County Counsel		Department Head
Date _____	Date _____	Date _____

EXHIBIT "A"
FOR COUNTY OF SAN BERNARDINO/CITY OF BARSTOW/AUTHORITY/COMMISSION

FUNDING PLAN FOR THE LENWOOD ROAD GRADE SEPARATION PROJECT IN THE BARSTOW AREA

LENWOOD ROAD GRADE SEPARATION FUNDING PLAN — 05-Apr-11

		Buy-Down Total Project Cost							Barstow			County	Total
Project Phase	Estimated Cost	MLH Measure I	MLH Measure I Bonds	CMAQ	Demo	TCIF	BNSF	SLPP	Barstow (Prior)	Barstow DIF	Barstow MI Local	County Measure I Local	
PA/ED and PS&E	$4,409,000	$935,000							$724,000		$250,000	$2,500,000	$4,409,000
ROW	$4,792,000	$457,000		$3,450,000							$885,000		$4,792,000
Construction	$22,300,000		$11,000,000		$1,200,000	$6,700,000	$1,102,535	$2,161,000		$136,465	$0		$22,300,000
Total	$31,501,000	$1,392,000	$11,000,000	$3,450,000	$1,200,000	$6,700,000	$1,102,535	$2,161,000	$724,000	$136,465	$1,135,000	$2,500,000	$31,501,000
									Barstow's total =		$1,995,465		

Exhibit "B"

CITY OF BARSTOW
[STREET ADDRESS]
[CITY], CALIFORNIA [ZIP CODE]

QUIT CLAIM DEED CERTIFICATION
California Government Code 27281

This is to certify that the real property conveyed by the attached instrument dated _____, 20__ from the San Bernardino County Transportation Commission, a California transportation commission, as Grantor to the City of _____, as Grantee, is hereby accepted by order of the City Council of the City of _____, County of San Bernardino, State of California, as the governing board of said grantee, and consents to the recordation thereof by its duly authorized officer.

Date: _____

By:_____
Name:_____
Title:_____

ATTEST:

_____
JoAnne V. Cousino, City Clerk
City of Barstow

COUNTY OF SAN BERNARDINO
[STREET ADDRESS]
[CITY], CALIFORNIA [ZIP CODE]

QUIT CLAIM DEED CERTIFICATION
California Government Code 27281

This is to certify that the real property conveyed by the attached instrument dated _____, 20__ from the San Bernardino County Transportation Commission, a California transportation commission, as Grantor to the County of San Bernardino, as Grantee, is hereby accepted by order of the Board of Supervisors of the County of San Bernardino, State of California, as the governing board of said grantee, and consents to the recordation thereof by its duly authorized officer.

Date: _____

By:_____
Name:_____
Title:_____

ATTEST:

_____
Laura H. Welch, Clerk of the Board of Supervisors
County of San Bernardino

SANBAG Contract No. C11199
by and between SANBAG and City of Barstow and San Bernardino County
for ROW and Construction of Lenwood Road Grade Separation

FOR ACCOUNTING PURPOSES ONLY			
☐ Payable ☒ Receivable	Vendor Contract # _____ Vendor ID _____	Retention: ☐ Yes _____ % ☐ No	☒ Original ☐ Amendment
Notes:			

Original Contract:	$ 1,021,465	**Previous Amendments**	$ _____
		Previous Amendments Contingency / Allowance Total:	$ _____
Contingency / Allowance Amount	$ 0	**Current Amendment:**	$ _____
		Current Amendment Contingency / Allowance:	$ _____

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

Contract TOTAL ► $ 1,021,465

* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.

▼Include funding allocation for the original contract or the amendment

Main Task/ Project	Level 1	Level 2	Cost Code/ Object	Grant ID/ Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amndmnt Amt
0881	640	640	53750	6010	Local Project Funds (City of Barstow)	$ 885,000
0881	650	644	53701	6010	Local Project Funds (City of Barstow)	$ 136,465
_____	_____	_____	_____	_____	_____	$ _____
_____	_____	_____	_____	_____	_____	$ _____

Original Board Approved Contract Date:	5/4/11	Contract Start: 5/17/11	Contract End: 6/30/15
New Amend. Approval (Board) Date:	_____	Amend. Start: _____	Amend. End: _____

Allocate the **Total Contract Amount** or **Current Amendment** amount between **Approved Budget Authority** in the current year and **Future Fiscal Year(s) Unbudgeted Obligation.**

Approved Budget Authority ►	Fiscal Year: 10/11 $ 0	**Future Fiscal Year(s) – Unbudgeted Obligation ►**	$ 1,021,465

☒ Budget authority for this contract currently exists in Task No. 0881 (C-Task may be used here.).
☐ A budget amendment is required. A Budget Amendment Request is attached.

CONTRACT MANAGEMENT
Check all applicable boxes:
☒ Intergovernmental ☐ Private ☐ Federal Funds ☒ State/Local Funds
☐ Disadvantaged Business Enterprise (DBE) ☐ Underutilized DBE (UDBE)

Task Manager: Garry Cohoe	**Contract Manager**: Scott Neff

Task Manager Signature Date

Contract Manager Signature Date

Chief Financial Officer Signature Date

Finance will not process any payments without budget authority and properly executed contracts.