

**SB 132 FUNDING AGREEMENT
FOR
MCKINLEY GRADE SEPARATION PROJECT IMPROVEMENTS
WITH THE CITY OF CORONA**

1. Parties and Date.

1.1 This Agreement is executed and entered into this 18 day of July, 2018, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (“COMMISSION”) and the CITY OF CORONA (“CITY”). COMMISSION and CITY are sometimes collectively referred to herein as the “Parties”.

2. Recitals.

2.1 COMMISSION is a county transportation commission created and existing pursuant to California Public Utilities Code Sections 130053 and 130053.5.

2.2 The CITY is a municipal corporation and general law city authorized to undertake transportation improvements within its jurisdiction.

2.3 Pursuant to Senate Bill 132, amendment to Budget Act of 2016, 2660-110-0042, for local assistance of the Riverside County Transportation Efficiency Corridor, funds from the State Highway Account (“Funds”) shall be made available for three (3) transportation projects on the State Highway System (“On-System Projects”), within the county of Riverside.

2.4 The McKinley Grade Separation Project is one of the On-System Projects identified in SB 132 and will improve the existing at-grade crossing of the Burlington Northern Santa Fe Railway at McKinley Street (the “Project”).

2.5 Pursuant to Senate Bill 107, amendment to Budget Act of 2016, the California Department of Transportation (“Caltrans”) intends to make available the Funds directly to COMMISSION.

2.6 The Funds shall be made available to COMMISSION pursuant to the terms of that certain Master Funding Agreement (“Master Agreement”) entered into between Caltrans and COMMISSION for the transfer of Funds for eligible projects, including the Project.

2.7 Senate Bill 132 and Senate Bill 107 provide that the Funds shall be available for encumbrance and liquidation until June 30, 2023.

2.8 The Master Agreement terminates on July 1, 2023. COMMISSION is required under the terms of the Master Agreement to request final reimbursement of eligible project expenditures to Caltrans no later than April 15, 2023. As further set forth herein, to be eligible for reimbursement under this Agreement, the CITY shall be required to submit all invoices for Project costs to COMMISSION no later than March 15, 2023.

2.9 COMMISSION will fund the Project in accordance with the terms of this Agreement, and the Master Agreement. Funding for the Project hereunder is contingent on the continued effect of and availability of funding under the Master Agreement.

3. Terms.

3.1 Description of Work. This Agreement is intended to distribute Funds to the CITY for the Project, which will improve the existing at-grade crossing of the Burlington Northern Santa Fe Railway at McKinley Street, separate heavily congested McKinley Street near SR-91 from the BNSF railroad in the City of Corona, and to potentially expand McKinley Avenue from four to six lanes, as determined necessary based on a future traffic study ("the Work"). The Work, including a timetable and a detailed scope of work, is more fully described in Exhibit "A" attached hereto and, pursuant to Section 3.15 below, is subject to modification as requested by the CITY and approved by COMMISSION. The Work may include, as further set forth in Exhibit "A":

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

The Project is more fully described in Exhibit "A" attached hereto. It is understood and agreed that the CITY shall expend Funds only as set forth in this Agreement and only for the Work. The Parties agree that the exact scope of the Work has not been determined by CITY. The Work shall not include nor will reimbursement be made for analysis, feasibility assessments or alternative evaluations comparing options for separating the crossing i.e., railroad over street versus street over railroad. CITY shall proceed with the Work only upon determination of the crossing type, and only following an amendment to this Agreement to more specifically define the Work. The City Manager and the COMMISSION Executive Director shall have authority to execute such amendments.

Any use of funds provided pursuant to this Agreement shall be subject to the review and approval of COMMISSION.

3.2 COMMISSION Funding Amount. COMMISSION hereby agrees to distribute to the CITY, on the terms and conditions set forth herein, and in the attached exhibits, a sum not to exceed Eighty-Four Million, Four Hundred Fifty Thousand Dollars (\$84,450,000) to be used exclusively for reimbursing the CITY for eligible Work expenses as described herein ("Funding Amount"). The CITY acknowledges and agrees that the Funding Amount may be less than the actual cost of the Work, and that COMMISSION shall not contribute Funds in excess of the maximum authorized in this section.

3.2.1 Eligible Work Costs. The total Work costs (“Total Work Cost”) may include the following items, provided that such items are included in the Project scope of work attached as Exhibit “A”: (1) CITY and/or consultant costs associated with direct Work coordination and support; (2) funds expended in preparation of preliminary engineering studies; (3) funds expended for preparation of environmental review documentation for the Work; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the CITY, and costs of reviewing appraisals and offers for property acquisition; (5) costs reasonably incurred if condemnation proceeds; (6) costs incurred in the preparation of plans, specifications, and estimates by CITY or consultants; (7) BNSF, Riverside County Flood Control District, and other agency costs for review of plans, specifications and estimates, if required for the Work; (8) CITY costs associated with bidding, advertising and awarding of the Work contracts, and with obtaining and maintaining any required permits for construction ; (9) construction costs, including change orders to construction contract approved by the CITY; (10) construction management, field inspection and material testing costs; (11) BNSF flagging costs related to shoefly and track work; and (12) CITY administrative costs.

3.2.1.1 Right-of-Way Acquisition. The Parties acknowledge that in order to protect the CITY’s ability to deliver the Project in a timely cost effective manner, the CITY may purchase parcels of property in advance of the completion of the Project’s final design (PS&E). The Parties acknowledge that acquired parcels or remnants purchased in advance of final design may not ultimately be required for the Project. Upon completion of the Project’s final design, the CITY shall provide COMMISSION with a detailed list of all parcels purchased by the CITY for which it received Funds pursuant to this Agreement. The CITY shall identify any parcels or remnants thereof which were acquired using Funds and are not required for construction of the Project. A preliminary list shall be submitted to the COMMISSION 30 days before the issuance of bid documents for construction of the Project and a final list shall be submitted to the COMMISSION no later than 30 days following the recording of the Certificated of Completion for the Project.

3.2.1.2 Valuation and Repayment of Any Property Remnants. Upon receipt of the CITY’s final list, COMMISSION shall meet with the CITY for the purpose of identifying any parcel or reasonably usable remnant of a parcel for which Funds were expended that may reasonably be developed for other use by the CITY and/or sold. The Parties shall confer in good faith to agree upon the disposition of such parcels and remnant parcels and their fair market value as of a date agreed to by the parties, but in no event later than the date of completion of the Project. “Fair Market Value” shall have the definition set forth in Code of Civil Procedure Section 1263.320 and “remnant” shall have the definition set forth in Code of Civil Procedure Section 1240.410. Nothing herein shall preclude the CITY and COMMISSION from beginning the meetings earlier in the event both parties agree that the parcel or remnant will not be used for the Project.

3.2.1.3 Reimbursement for Unused Parcels. Following recordation of the Certificate of Completion for the Project, the CITY shall be responsible for promptly reimbursing COMMISSION for any Funds that were used to acquire parcels which are completely unused in the Project. If CITY funds other than Funds were used to purchase the Parcel, those local funds shall be considered in determining the reimbursement amount.

3.2.1.4 Appeal to Commission. In the event of a disagreement between the Parties regarding the reimbursement of Funds under this section 3.2.1, either party may appeal, in writing, to the COMMISSION Board. The COMMISSION Board's determination regarding excess right-of-way and value pursuant to this section shall be final.

3.2.2 Ineligible Work Costs. The Total Work Cost shall not include the following items which shall be borne solely by the CITY without reimbursement: (1) any CITY fees attributed to the processing of the Work; (2) expenses for items of work not included within the scope of work in Exhibit "A"; and (3) analysis, feasibility assessments or alternative evaluations comparing options for separating the crossing i.e., railroad over street versus street over railroad; and (4) any costs not in compliance with Caltrans funding requirements.

3.2.3 Cost Savings. In the event that bids for the Work are lower than anticipated, or there are cost savings for any other reason, such savings may be allocated by COMMISSION as Project contingency funds to be used for change order costs or additional property acquisition costs. The CITY shall inform COMMISSION of any cost savings and the Parties shall amend this Agreement to reflect the reallocation of Funds. COMMISSION's Executive Director and the CITY Manager shall be authorized to execute any such amendment.

3.2.4 No Funding for Temporary Improvements. Only segments or components of the Work that are intended to form part of or be integrated into the Work may be funded by Funds. No improvement which is temporary in nature, including but not limited to temporary roads, curbs, or drainage facilities, shall be funded with Funds except as needed for staged construction of the Work. Funds may be utilized to construct a BNSF shoefly, if necessary for completion of the Work.

3.3 CITY's Funding Obligation to Complete the Work. In the event that the Funds allocated to the Work represent less than the total cost of the Work, the CITY shall provide such additional funds as may be required to complete the Work as described in Exhibit "A", or as otherwise required.

3.3.1 CITY's Obligation to Repay Funds to COMMISSION. In the event that: (i) the CITY, for any reason, determines not to proceed with or complete the Work; or (ii) the Work is not timely completed, subject to any extension of time granted by COMMISSION pursuant to Section 3.15; the CITY agrees that any Funds that were distributed to the CITY for the Work shall be repaid in full to COMMISSION. The Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism which may include, but is not limited to, withholding of the CITY's allocation of Measure A Local Streets and Roads revenues. The CITY acknowledges and agrees that COMMISSION shall have the right to withhold any Measure A Local Streets and Roads revenues due the CITY, in an amount not to exceed the total of the funds distributed to the CITY, and/or initiate legal action to compel repayment, if the CITY fails to repay COMMISSION within a reasonable time period not to exceed 180 days from receipt of written notification from COMMISSION that repayment is required.

3.4 Work Responsibilities of the CITY. The CITY shall be responsible for the following aspects of the Work, in compliance with state and federal law provided that such items are included in the Project scope of work attached as Exhibit "A": (i) development and approval

of plans, specifications and engineer's estimate (PS&E), environmental clearance, right of way acquisition, and obtaining all permits required by impacted agencies prior to commencement of the Work ; (ii) all aspects of bidding, awarding, and administration of the contracts for the Work; (iii) all construction management of any construction activities undertaken in connection with the Work, including survey and material testing; and (iv) development of a budget for the Work prior to award of any contract for the Work, taking into consideration available funding, including Funds.

3.5 Term/Notice of Completion. The term of this Agreement shall be from the date first herein above written until: (i) the date COMMISSION formally accepts the Work as complete, which shall occur upon its acceptance by COMMISSION's Executive Director; (ii) termination of this Agreement pursuant to Section 3.9; or (iii) the CITY has fully satisfied its obligations under this Agreement, including full repayment of Funds to COMMISSION as provided herein. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

3.6 Representatives of the Parties. COMMISSION's Executive Director, or his or her designee, shall serve as COMMISSION's representative and shall have the authority to act on behalf of COMMISSION for all purposes under this Agreement. The CITY hereby designates the Public Works Director, or his or her designee, as the CITY's representative to COMMISSION. The CITY's representative shall have the authority to act on behalf of the CITY for all purposes under this Agreement and shall coordinate all activities of the Work under the CITY's responsibility. The CITY shall work closely and cooperate fully with COMMISSION's representative and any other agencies which may have jurisdiction over or an interest in the Work.

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

3.8 Review of Services. The CITY shall allow COMMISSION's Representative to inspect or review the progress of the Work at any reasonable time in order to determine whether the terms of this Agreement are being met.

3.9 Termination. This Agreement may be terminated for cause or convenience as further specified below.

3.9.1 Termination for Convenience.

3.9.1.1 Notice. Either COMMISSION or the CITY may, by written notice to the other party, terminate this Agreement, in whole or in part, for convenience or by giving thirty (30) days' written notice to the other party of such termination and specifying the effective date thereof. In addition, and not as a limitation to the foregoing, COMMISSION may terminate this Agreement for convenience should Funds become unavailable for the Project and/or should Caltrans terminate the Master Agreement.

3.9.1.2 Effect of Termination for Convenience. In the event that the CITY terminates this Agreement for convenience, the CITY shall, within 180 days, repay to COMMISSION in full all Funds provided to the CITY under this Agreement. In the event that COMMISSION terminates this Agreement for convenience, COMMISSION shall, within 90 days, distribute to the CITY Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the CITY regarding the Work at the time of the notice of termination; provided, however, that COMMISSION shall be entitled to exercise its rights under Section 3.14.2, including but not limited to conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the non-terminating party of the amounts due it under this Section 3.9.1.2.

3.9.2 Termination for Cause.

3.9.2.1 Notice. Either COMMISSION or the CITY may, by written notice to the other party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other party, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a 30-day period to cure any alleged breach. During the 30-day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured.

3.9.2.2 Effect of Termination for Cause. In the event that the CITY terminates this Agreement in response to COMMISSION's uncured material breach hereof, COMMISSION shall, within 90 days, distribute to the CITY Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the CITY regarding the Work at the time of the notice of termination. In the event that COMMISSION terminates this Agreement in response to the CITY's uncured material breach hereof, the CITY shall, within 180 days, repay to COMMISSION in full all Funds provided to the CITY under this Agreement. Notwithstanding termination of this Agreement by COMMISSION pursuant to this Section 3.9.2.2, COMMISSION shall be entitled to exercise its rights under Section 3.14.2, including but not limited to conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the terminating party of the amounts due it under this Section 3.9.2.2.

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

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

3.11 Progress Reports. COMMISSION may request the CITY to provide COMMISSION with progress reports concerning the status of the Work.

3.12 Indemnification.

3.12.1 CITY Responsibilities. In addition to the indemnification required under Section 3.10, the CITY agrees to indemnify and hold harmless COMMISSION, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to any act of the CITY or its subcontractors whatsoever, regardless of fault, including negligent acts, errors or omissions or willful misconduct, except that caused by the sole negligence of COMMISSION. The CITY will reimburse COMMISSION for any expenditures, including reasonable attorneys' fees, incurred by COMMISSION, in defending against claims ultimately determined to be due to any act of the CITY or its subcontractors whatsoever, regardless of fault, including negligent acts, errors or omissions or willful misconduct, except that caused by the sole negligence of COMMISSION.

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

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

3.13.1 Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$2,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Work or be no less than two times the occurrence limit. Such insurance shall:

3.13.1.1 Name COMMISSION and CITY, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Work and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;

3.13.1.2 Be primary with respect to any insurance or self-insurance programs covering COMMISSION and CITY, and/or their respective officials, officers, employees, agents, and consultants; and

3.13.1.3 Contain standard separation of insured provisions.

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

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

3.13.4 Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

3.14 Procedures for Distribution of Funds to CITY; Deadline for Submission of Invoices.

3.14.1 Initial Payment by the CITY. The CITY shall be responsible for initial payment of all the Work costs as they are incurred. Following payment of such Work costs, the CITY shall submit invoices to COMMISSION requesting reimbursement of eligible Work costs. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the CITY, and documents evidencing the CITY's payment of the invoices or demands for payment. The CITY shall submit invoices not more often than monthly and not less often than quarterly.

3.14.2 Review and Reimbursement by COMMISSION. Upon receipt of an invoice from the CITY, COMMISSION may request additional documentation or explanation of the Work costs for which reimbursement is sought. For undisputed amounts, the COMMISSION shall reimburse CITY for PROJECT related expenses pursuant to the CITY's invoice as allowed under regulations established for SB 132 funding. In the event that COMMISSION or Caltrans disputes the eligibility of the CITY for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the CITY may appeal COMMISSION's decision as to the eligibility of one or more invoices to COMMISSION's Executive Director. The CITY may appeal the decision of the Executive Director to the full COMMISSION Board, the decision of which shall be final. If the appeal relates to an invoice rejected, in whole or in part, by Caltrans, the COMMISSION will submit the appeal to Caltrans, and the decision of Caltrans shall be final. Additional details concerning the procedure for the CITY's submittal of invoices to COMMISSION and COMMISSION's consideration and payment of submitted invoices similar to Exhibit "B", attached hereto.

3.14.2.1 Compliance with Caltrans Requirements. The CITY is not required to use the recommended forms attached as part of Exhibit "B", and may instead use its own forms. However, the CITY acknowledges that the Funds are State funds provided through Caltrans, and the CITY shall comply with all applicable Caltrans requirements including, but not limited to, the Caltrans Local Assistance Procedures Manual and Caltrans Construction Manual. Per the Master Agreement, Caltrans will not require pre-award audits of any agreements related to On-System Projects. Caltrans will require one or more cooperative agreements for the Project. The CITY shall comply with all applicable terms and conditions of such cooperative agreements. The

Caltrans cooperative agreement(s) for the Project, once executed and provided to CITY, shall be automatically incorporated into this Agreement by reference.

3.14.3 Deadline for Submission of Invoices. Notwithstanding any other provision of this Agreement, to be eligible for reimbursement, all invoices for Project costs must be submitted to Commission by March 15, 2023. Any invoices submitted after the foregoing date shall be ineligible for reimbursement under this Agreement.

3.14.4 Funding Amount/Adjustment. If a post Work audit or review indicates that COMMISSION has provided reimbursement to the CITY in an amount in excess of the maximum Funds provided for in section 3.2 of this Agreement, , or if any audit or review indicates that COMMISSION has provided reimbursement of ineligible Work costs, the CITY shall reimburse COMMISSION for the excess or ineligible payments within 30 days of notification by COMMISSION.

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

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

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

3.18 Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Work under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least three (3) years following termination of this Agreement, and they shall have access to such information during the three-year period for the purposes of examination or audit.

3.19 Equal Opportunity Employment. The Parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.20 Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

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

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

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

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

CITY OF CORONA
Public Works Department
400 S. Vicentia Ave
Corona, CA 92882

COMMISSION
Riverside County Transportation Commission
4080 Lemon, 3rd Floor
Mailing address: P.O. Box 12008
Riverside, CA 92501

ATTN: Public Works Director

ATTN: Executive Director

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

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

3.26 Contract Amendment. In the event that the Parties determine that the provisions of this Agreement should be altered, the Parties may execute a contract amendment to add any provision to this Agreement or delete or amend any provision of this Agreement. All such contract amendments must be in the form of a written instrument signed by the original signatories to this Agreement, or their successors or designees.

3.27 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any previous agreements or understandings.

3.28 No Waiver. Failure of COMMISSION to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.29 Validity of Agreement. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

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

3.31 Survival. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

3.32 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

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

[Signatures on following page]

**SIGNATURE PAGE
TO
SB 132 FUNDING AGREEMENT
FOR
MCKINLEY GRADE SEPARATION PROJECT IMPROVEMENTS
WITH THE CITY OF CORONA**

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF CORONA

By: _____
Chair

By: _____
(Name, Title)

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger
Counsel to the Riverside County
Transportation Commission

By: _____
Dean Derleth, City Attorney

EXHIBIT “A”

PROJECT DESCRIPTION AND/OR DEPICTION, SCOPE OF WORK, FUNDING AND TIMETABLE

SCOPE OF WORK: The Project includes the construction of a four-lane or six-lane overcrossing bridge of McKinley Street with sidewalks, streetlights and bike lanes over the existing BNSF tracks and Arlington Channel. The needed number of lanes through the corridor shall be determined based on traffic studies and modeling. McKinley Street is currently listed in the City’s General Plan as a 4-Lane Major Arterial, which is defined as a roadway with 106 feet of right-of-way width and includes 4 traffic lanes, a 14-foot median, and two 12-foot parkways (one on each side of the roadway). However, the classification of McKinley may need to be modified to a 6-Lane Major Arterial, which is defined as a roadway with 130 feet of right-of-way width and includes: 6 traffic lanes, a 14-foot median, and two 12-foot parkways. This proposed modification will only be approved if the traffic studies and modeling support it. With this modification, the City’s street classification will match the RTIP project description of a 6-lane grade separation structure. The Project will construct a direct connection for southbound traffic to Samson Avenue and a new alternate connector road from McKinley Street to Sampson Avenue and possibly Anselmo Drive with necessary traffic signals. Modifications to Caltrans traffic signals, striping and off-and on-ramps for the eastbound SR-91; the intersection of Estelle Street, and the intersection of Magnolia Avenue will also be constructed. Street lights, signs and landscaping disturbed or removed to accommodate the construction of the Project will be restored in kind. For general location and site map, see attached.

The Phases of Work to be performed under this Agreement include the Project Approvals and Environmental Documents; Plans, Specifications and Estimates; Right-of-Way Acquisition and Utility Relocation; and Construction.

FUNDING: Proposed local, state and/or federal funding for each Phase of Work:

PHASE	SB 132 Funds	LOCAL	TUMF ZONE	TOTAL
PA&ED		\$400,000	\$100,000	\$500,000
PS&E	\$5,450,000	\$4,550,000	\$1,000,000	\$11,000,000
RIGHT-OF-WAY	\$21,000,000			\$21,000,000
CONSTRUCTION	\$58,000,000			\$58,000,000
TOTAL	\$84,450,000	\$4,950,000	\$1,100,000	\$90,500,000

TIMETABLE:

Notice to Proceed	August 2018
Design Connector Road Option	November 2018
Project Approvals & Environmental Documents	December 2018 to March 2020
Issue for Bid	October 2020
Construction	March 2021 to January 2023

Exhibit A

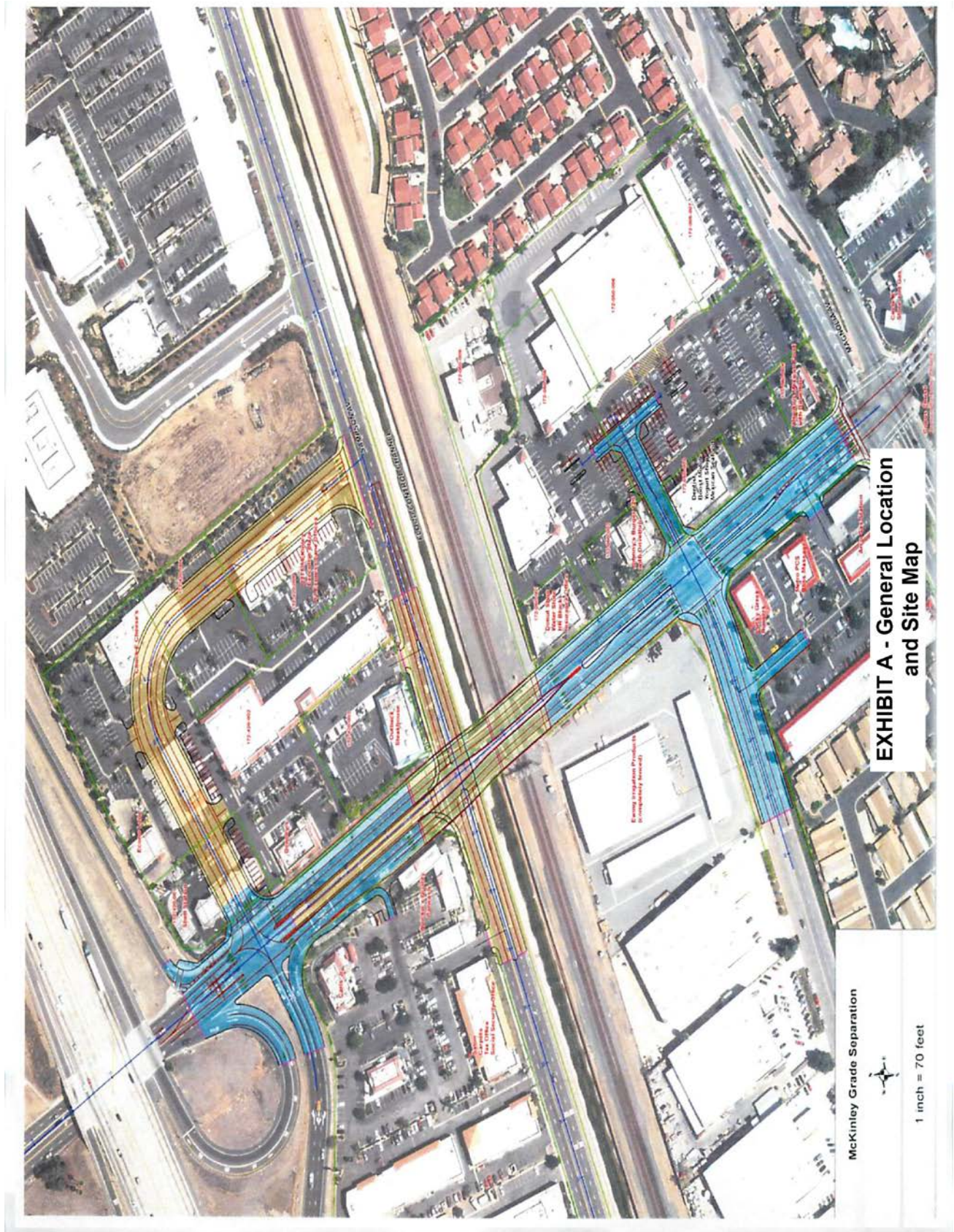


Exhibit A

EXHIBIT “B”

PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. COMMISSION recommends that the CITY incorporate Exhibit “B-1” into its contracts with any subcontractors to establish a standard method for preparation of invoices by contractors to the CITY and ultimately to COMMISSION for reimbursement of CITY contractor costs.
2. Each month the CITY shall submit an invoice for eligible Work costs incurred during the preceding month. The original invoice shall be submitted to COMMISSION’s Executive Director with a copy to COMMISSION’s Project Coordinator. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit “B-2”.
3. Each invoice shall include documentation from each contractor used by the CITY for the Work, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a monthly progress report and spreadsheets showing the hours or amounts expended by each contractor or consultant for the month and for the entire Work to date. A sample progress report is attached as Exhibits “B-4”. All documentation from the CITY’s contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit “B-3”.
4. If the CITY is seeking reimbursement for direct expenses incurred by CITY staff for eligible Work costs, the CITY shall detail the same level of information for its labor and any expenses in the same level of detail as required of contractors pursuant to Exhibit “B” and its attachments.
5. Charges for each task and milestone listed in Exhibit “A” shall be listed separately in the invoice.
6. Each invoice shall include a certification signed by the CITY Representative or his or her designee which reads as follows:

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

Signed _____

Title _____

Date _____

Invoice No. _____

Exhibit B

7. For undisputed amounts, the COMMISSION shall reimburse the CITY for PROJECT related expenses pursuant to the CITY's invoice as allowed under regulations established for SB 132. If COMMISSION or Caltrans disputes any portion of an invoice, payment for that portion will be withheld, without interest, pending resolution of the dispute.
8. The final payment under this Agreement will be made only after: (i) the CITY has obtained a Release and Certificate of Final Payment from each contractor or consultant used on the Work; (ii) the CITY has executed a Release and Certificate of Final Payment; and (iii) the CITY has provided copies of each such Release to COMMISSION.

EXHIBIT “B-1”
SAMPLE FORM - ELEMENTS OF COMPENSATION

For the satisfactory performance and completion of the Work under this Agreement, City will pay the Consultant compensation as set forth herein. The total compensation for this service shall not exceed (____INSERT WRITTEN DOLLAR AMOUNT____) (\$__INSERT NUMERICAL DOLLAR AMOUNT__) without written approval of City’s City Engineer (“Total Compensation”).

1. ELEMENTS OF COMPENSATION.

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

1.1 DIRECT LABOR COSTS.

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

1.1.1 DIRECT SALARY COSTS

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

1.1.2 MULTIPLIER

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

1.1.2.1 Direct Salary Costs _____

1.1.2.2 Payroll Additives _____

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

1.1.2.3 Overhead Costs

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

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

1.2 **FIXED FEE.**

1.2.1 A Fixed Fee of _____ shall be paid to Consultant for Consultant's complete and satisfactory performance of this Agreement and all Services required. The Fixed Fee shall be paid in monthly installments based upon the percentage of the Services completed at the end of each billing period, as determined in the sole discretion of the City. Consultant shall not be entitled to and shall forfeit any portion of the Fixed Fee not earned as provided herein.

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

1.3 **ADDITIONAL DIRECT COSTS.**

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

Rates for identified Additional Direct Costs are as follows:

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

Travel by air and travel in excess of 100 miles from the Consultant's office nearest to City's office must have City's prior written approval to be reimbursed under this Agreement.

Exhibit "B-1"

2. DIRECT SALARY RATES

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

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

<u>POSITION OR CLASSIFICATION</u>	<u>RANGE OF HOURLY RATES</u>
-----------------------------------	------------------------------

[sample]

Principal	\$.00 - \$.00/hour
Project Manager	\$.00 - \$.00/hour
Sr. Engineer/Planner	\$.00 - \$.00/hour
Project Engineer/Planner	\$.00 - \$.00/hour
Assoc. Engineer/Planner	\$.00 - \$.00/hour
Technician	\$.00 - \$.00/hour
Drafter/CADD Operator	\$.00 - \$.00/hour
Word Processor	\$.00 - \$.00/hour

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

3. INVOICING.

- 3.1 Each month the Consultant shall submit an invoice for Work performed during the preceding month. The original invoice shall be submitted to City's City Engineer with two (2) copies to City's Project Coordinator.
- 3.2 Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by City's Representative.
- 3.3 Base Work and Extra Work shall be charged separately, and the charges for each task and Milestone listed in the Scope of Work, shall be listed separately. The

Exhibit "B-1"

charges for each individual assigned by the Consultant under this Agreement shall be listed separately on an attachment to the invoice.

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

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

Signed _____
Title _____
Date _____
Invoice No. _____

4. PAYMENT

- 4.1 City shall pay the Consultant within four to six weeks after receipt by City of an original invoice. Should City contest any portion of an invoice, that portion shall be held for resolution, without interest, but the uncontested balance shall be paid.

The final payment for Work under this Agreement will be made only after the Consultant has executed a Release and Certificate of Final Payment.

EXHIBIT "B-2"
Sample Cover Letter to COMMISSION

Date

Ms. Anne Mayer
Executive Director
Riverside County Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501
ATTN: Accounts Payable

Re: Project Title - Invoice #__

Enclosed for your review and payment approval is the City of _____'s invoice for professional and technical services that was rendered by our contractors in connection with the _____ Agreement No. _____ effective (Month/Day/Year). The required support documentation received from each contractor is included as backup to the invoice.

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

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

Amount due this Invoice:	\$0,000,000.00 =====
---------------------------------	--------------------------------

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

By: _____
Name
Title

cc:

Exhibit "B-2"

EXHIBIT "B-3"

Sample Letter from Contractor to City/County

Month/Date/Year

Attn: Accounts Payable

Invoice

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

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

Total Base Contract Amount: \$000,000.00

Authorized Extra Work (if Applicable) \$000,000.00

TOTAL AUTHORIZED CONTRACT AMOUNT: \$000,000.00

Total Invoice to Date: \$000,000.00

Total Previously Billed: \$000,000.00

Balance Remaining: \$000,000.00

Amount Due this Invoice: \$000,000.00

=====

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

By: _____

Name

Title

Exhibit "B-3"

EXHIBIT B-4
Sample Progress Report

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

A. Activities and Work Completed during Current Work Periods

TASK 01 – 100% PS&E SUBMITTAL

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

B. Current/Potential Problems Encountered & Corrective Action

Problems	Corrective Action
None	None

C. Work Planned Next Period

TASK 01 – 100% PS&E SUBMITTAL

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