

HIGHWAY RAILROAD CROSSING SAFETY ACCOUNT (HRCSA) AGREEMENT  
City of Corona – McKinley Street Grade Separation Project  
Agreement No. 75GS0040  
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STATUTES 2020	CHAPTER 6	FISCAL YEAR 2020-21	APPR UNIT 20104	FUND 6063	SUBFUND 047	TASK/SUBTASK 2620 / 0420
S-DIST UNIT 75-3811	C-DIST UNIT 75-3811	EXP AUTH H040BA	PROGRAM CODE 20.30.010.400	FUND SOURCE HRCSA-1B		AMOUNT \$2,876,960
ITEM 2660-104-6063		PROJ NUMBER (City Code-XXX)		OBJECT 7049	PROJ ID 0021000795	ENCUMBRANC/CT NO. 75GS0040
I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance. FUNDS CERTIFIED BY:						DATE

**AGREEMENT**

THIS AGREEMENT made and entered into this **1st day of December, 2021**, by and between the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as “**State**”, and **The City of Corona** a political subdivision of the State of California, which includes Cities, Counties, and other Local Agencies, hereinafter referred to as “**Public Agency**”.

**WITNESSETH**

WHEREAS, pursuant to the provisions of Sections 8879.23(j) and 8879.63 of the California Government Code, the California Transportation Commission (CTC), by Resolution No. 07-06-030, issued on April 9, 2007, established Highway-Railroad Crossing Safety Account (HRCSA) Guidelines; and

WHEREAS, the CTC initiated a process to select projects and the **McKinley Street Grade Separation Project**, at **between McKinley Street and Sampson Avenue, in the City of Corona** hereinafter “**Project**” was selected for funding. **The City of Corona** hereinafter “**Public Agency**”; and

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

WHEREAS, the CTC, by Resolution No. **GS1B-A-2122-01**, has established a list of eligible projects and authorized the appropriation of funds from the Highway Railroad Crossing Safety Account and which satisfy the applicable CTC Guidelines; and

WHEREAS, an agreement is to be entered into between “**Public Agency**” and “**State**” to provide reimbursement to “**Public Agency**” in a sum not to exceed the CTC allocation of **\$2,876,960** (Resolution #**GS1B-A-2122-01**) dated October 14, 2021 from the HRCSA fund; and

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

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

1. **Public Agency** hereby reaffirms its prior certification that it has sufficient **Public Agency** funds to construct the **Project**.
2. **Public Agency** agrees to comply with all HRCSA guidelines as if set forth fully herein and in the **Baseline Agreement**.
3. The **Project** scope, a description of anticipated benefits, and delivery schedule are attached.
4. The **Project** budget and funding plan are attached.
5. **Public Agency** will undertake **Project** using its own documented management, project delivery procedures and practices.
6. The costs attributable to **Project** are limited to the following:  
  
The funds will be limited to the costs of construction work. The HRCSA funds will be limited to the costs of construction work. Project development and right-of-way costs should be covered with other non-state funds, which may be counted as a project match. Please refer to:  
<http://www.bondaccountability.dot.ca.gov/bondacc/documents/HRCSAProgramGuidelines.pdf>  
  
**Public Agency** agrees that the 48 CFR, Chapter 1 Part 31 et seq., Contract Cost Principles and Procedures, Federal Acquisition Regulations System, shall be used to determine the allowable individual items of indirect cost. **Public Agency** agrees to comply with the applicable Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments and CFR 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.
7. **Public Agency** agrees to submit quarterly reports on the activities and progress made toward implementation of the **Project**, including **Project** development prior to receipt of a HRCSA allocation, to the California Transportation Commission and to the California Department of Transportation.
8. As promptly as possible, and in any event within six months after the HRCSA allocation, **Public Agency** shall award a contract for construction of **Project** pursuant to the laws governing the **Public Agency** in the advertising and award of public construction contracts, and in conformance with plans and specifications prepared by or on behalf of **Public Agency**. Construction shall be under the control of **Public Agency**.
9. As the work progresses, and upon receipt of a valid invoice, not more frequently than once per month, the **State** will promptly reimburse **Public Agency** 5% of the total invoice, an amount equal to the proportion of matching funds to bond funds identified in the baseline agreement or at the time of allocation, up to the total amount allocated for **Project**. The CTC adoption of guidelines states that HRCSA project funding will usually be limited to

the costs of construction. Public Agency shall submit invoices in accordance with Chapter 5 of the Department of Transportation's Local Assistance Procedures Manual. The final invoice shall include a detailed statement of the direct cost of the Project.

10. Within six (6) months after the **Project** becoming operable, the **Public Agency**, will provide a final delivery/close out report to program manager. Final reports will be posted on the bond accountability web site and made available to the California Transportation Commission and the **State**. The report shall include a comparison between the **Project** application and the final **Project** detailing differences in the scope of the completed **Project**, its final costs compared to the approved **Project** budget, actual construction schedule compared to the initial **Project** schedule, and performance compared to anticipated benefits.
11. **Public Agency** will also provide a "Final Bill" to supplement the final delivery report at the completion of the **Project**. The **Final Bill** is to reflect final **Project** expenditures at the conclusion of all **Project** activities. The **Final Bill** will consist of a detailed statement of the cost of the **Project**, which will be furnished to the **State**. Upon approval of the **Final Bill**, **State** will pay **Public Agency** the balance not already reimbursed, if any, of **State's** share of said costs. If upon final accounting it develops that **State** previously paid more than its share of said participating portion of **Project** cost, computed in said manner, **Public Agency** will refund to bond fund the difference between **State's** share of the participating portion of **Project** cost, and the amount paid by **State**.
12. **Public Agency** agrees that the **State**, the California Department of General Services, the California Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. **Public Agency** agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated. **Public Agency** agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the **State** to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
13. Delivery by STATE of all State funds encumbered to reimburse allowable PROJECT costs pursuant to this AGREEMENT is contingent upon prior budget action by the Legislature, fund allocation by the CTC or the United States Department of Transportation, sale of bonds and receipt of bond proceeds by the STATE and submittal by RECIPIENT and approval by STATE of all PROJECT documentation, including, without limitation, that required by Government Code Section 14085. In the event of the imposition of additional conditions, delays, or a cancellation or reduction in funding, as approved by the Legislature, the CTC or the United States Department of Transportation, RECIPIENT shall be excused from meeting the time and expenditure constraints set forth in the Project Financial Plan and the Project Schedule to the extent of such delay, cancellation or reduction and the PROGRAM SUPPLEMENT will be amended to reflect

the resultant necessary changes in PROJECT funding, scope, or scheduling. Any obligation by **State** for payment of moneys contained herein is subject to and contingent upon the **Public Agency** establishing to the satisfaction of **State** that all sums expended by **Public Agency** for **Project**, for which **Public Agency** requests partial reimbursement from **State**, are reasonable and are a necessary part of **Project**.

14. Payment of invoiced **State** funds to **Public Agency** for **State**'s share of the **Project**, must be made within three years after the date of project allocation (October 14, 2021), otherwise the un-disbursed balance shall revert to **State**.

All work/provisions/requirements under this agreement are to be completed by the expiration date of this agreement, unless an extension of time is approved by the State in writing. **This contract will expire on December 1, 2024.**

15. Any progress payments made by **State** pursuant to Section 9 herein are not an admission by **State** that such expenditures were reasonable and a necessary part of the **Project**, and if **State** finds later that such expenditures were not reasonable and a necessary part of the **Project**, **Public Agency** will reimburse **State** for such advance funds. Should **Public Agency** fail to refund any moneys due **State** as provided herein or should **Public Agency** breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by **State**, then, within thirty (30) days of demand, or within such other period as may be agreed to in writing between the Parties, **State**, acting through the State Controller, the State Treasurer, the CTC or any other public entity or agency, may intercept, withhold and demand the transfer of an amount equal to the amounts paid by or owed to **State** for each PROJECT, from future apportionments or any other funds due **Public Agency**.
16. Three (3) copies of each invoice shall be submitted to the **State**. Include one (1) set of supporting documentation and two (2) additional copies of the invoice summary.
17. All invoices and all written correspondence from **Public Agency** to **State** will reference this Agreement Number HRCSA 75GS0040.

California Department of Transportation  
Division of Rail  
P.O. Box 942874-MS 74  
Sacramento, CA 94274-001  
Attn: Highway Railroad Crossing Safety Account

19. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
20. ASSIGNMENT: This Agreement is not assignable in whole or in part, without the consent of the **State** in the form of a formal written amendment.

21. **INDEMNIFICATION**: **Public Agency** agrees to indemnify, defend and save harmless the **State**, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
22. **DISPUTES**: **Public Agency** shall continue with its responsibilities under this Agreement during any dispute.
23. **GOVERNING LAW**: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
24. **UNENFORCEABLE PROVISION**: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
25. **RESOLUTION**: A County, City, District, or other local public body must provide the **“State”** with a copy of a resolution, order, motion, or ordinance of the local governing body, which by law has authority to enter into an agreement, and authorizing execution of the agreement.
26. **AIR OR WATER POLLUTION VIOLATION**: Under the State laws, the **Public Agency** shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
27. **DISPUTES**:
- A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the Department's Contract Officer, who may consider any written or verbal evidence submitted by the contractor. The decision of the Contract Officer, issued in writing, shall be the final decision of the Department.
  - B. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the **Public Agency** from full and timely performance in accordance with the terms of the Agreement.
  - C. The final decision by the Department's Contract Officer does not preclude subsequent litigation of the dispute in a court of competent jurisdiction.
28. **TERMINATION**:

A. The Department of Transportation reserves the right to terminate this Agreement upon written notice to **Public Agency** in the event **Public Agency** violates the conditions of the Agreement.

B. No such termination shall become effective if, within thirty (30) days after receipt of Notice of Termination, **Public Agency** either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, **Public Agency** proceeds thereafter to complete the cure in a manner and time line acceptable to the **State**. Any such termination shall be accomplished by delivery to **Public Agency** of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this Agreement is terminated and date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, **Public Agency** and the **State** shall meet to attempt to resolve any dispute.

C. In the event the **State** terminates the Agreement for cause, **Public Agency** shall be reimbursed its authorized costs up to the **State's** proportionate and maximum share of allowable Project costs incurred to the date of **Public Agency's receipt** of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by **Public Agency** to effect such termination following receipt of that termination notice.

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

30. SPECIFIC STATUTORY REFERENCE: Any reference to certain statutes in this Agreement shall not relieve the **Public Agency** from the responsibility of complying with all other statutes applicable to the service, work, or rental to be furnished there under.
31. LIABILITY INSURANCE PROVISIONS:
- A. **Public Agency** is responsible for any deductible or self-insured retention contained within the insurance program.
  - B. The insurance policy shall contain a provision that states that coverage will not be cancelled without 30 days prior written notice to the **State**.
  - C. Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the **State** at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of this Agreement.
  - D. In the event **Public Agency** fails to keep in effect at all times the specified insurance coverage, the **State** may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.
  - E. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the **State**.
  - F. The **State** will not be responsible for any premiums or assessments on the policy.
    - 1) Commercial General Liability
      - a) **Public Agency** shall maintain general liability with limits of not less than **\$1,000,000** per occurrence for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the contractor's limit of liability.
      - b) The State of California, its officers, agents, employees, and servants shall be included as additional insured, but only with respect to work performed for the State of California under this Agreement. The insurance carrier should provide an endorsement for the additional insured statement.
    - 2) Workers' Compensation/Employer's Liability

**Public Agency** shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement, including special coverage extensions where applicable. Employer's liability limits of **\$1,000,000** per incident shall be required.
32. LABOR CODE COMPLIANCE: PREVAILING WAGES: If the work performed on this Project is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, repair or maintenance **Public Agency** must conform to the provisions of Labor Code sections 1720 through 1815 and all applicable regulations and coverage determinations issued by the Director of Industrial Relations. **Public Agency** agrees to include

prevailing wage requirements in its contracts for public work. Work performed by **Public Agency**'s own forces is exempt from the Labor Code's prevailing wage requirements.

33. PREVAILING WAGE REQUIREMENTS IN SUBCONTRACTS: **Public Agency** shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code section 1720(a)(1). Subcontracts shall include all prevailing wage requirements set forth in **Public Agency**'s contracts.

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

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
BY

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**W. Kyle Grading**  
Division Chief, Rail and Mass Transportation

CITY OF CORONA

BY

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**Savat Khamphou,**  
Public Works Director

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Attest