



COMMITTEE TRANSMITTAL

**December 9, 2013**

**To:** Members of the Board of Directors

**From:** *WK*  
Wendy Knowles, Clerk of the Board

**Subject:** Cooperative Agreement with the California Department of Transportation for the West County Connectors Landscaping Project

Regional Planning and Highways Committee Meeting of December 2, 2013

**Present:** Directors Bates, Donchak, Harper, Lalloway, Miller, Murray, Nelson, and Spitzer

**Absent:** None

**Committee Vote**

This item was passed by the Members present.

**Committee Recommendation**

Authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-3-2093 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$4,900,000, for the West County Connectors landscaping project.



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Cooperative Agreement with the California Department of  
Transportation for the West County Connectors  
Landscaping Project**

**Staff Report**



**December 2, 2013**

**To:** Regional Planning and Highways Committee

**From:** Darrell Johnson, Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Darrell Johnson", is written over the "From:" line.

**Subject:** Cooperative Agreement with the California Department of Transportation for the West County Connectors Landscaping Project

### **Overview**

The Orange County Transportation Authority proposes to enter into a cooperative agreement with the California Department of Transportation for the West County Connectors landscaping project along portions of Interstate 405, Interstate 605, and State Route 22.

### **Recommendation**

Authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-3-2093 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$4,900,000, for the West County Connectors landscaping project.

### **Discussion**

The West County Connectors project constructs direct high-occupancy vehicle (HOV) connectors from State Route 22 to Interstate 405 (I-405) and from I-405 to Interstate 605, with a second HOV lane in each direction on I-405 between the two direct HOV connectors. The project has reconstructed the Valley View Street bridge overcrossing, and reconstruction of the Seal Beach Boulevard bridge overcrossing is currently underway. Construction of the roadway portion of the project is scheduled to be completed in late 2014. The follow-on replacement landscaping project is scheduled to begin at the completion of the roadway construction in early 2015.

The landscaping work was excluded from the roadway construction contract due to a lengthy plant establishment period required by the California Department of Transportation (Caltrans). The landscaping work and plant establishment period would unnecessarily retain the roadway heavy civil

contractor through a three-year plant establishment period which can potentially raise bid prices. It is standard practice for Caltrans to separate the landscaping into separate follow-on contracts which are relatively minor in scope and cost in relation to the major roadway work. The follow-on replacement landscape contract must be ready for construction at the conclusion of the roadway construction contract in early 2015. Therefore, it is now necessary to begin final design of the landscaping project.

Staff proposes to use a consultant to complete the landscaping contract plans, specifications, and estimate (PS&E), which will be requested in a separate item for Board of Directors' consideration. The PS&E will be funded with Congestion Mitigation and Air Quality (CMAQ) funds in the amount of \$300,000. The CMAQ funds will be directly withdrawn by the Orange County Transportation Authority (OCTA) as the implementing agency for the design phase. Caltrans, as the owner/operator of the state highway system, is required to fund and perform independent quality assurance for the consultant-produced PS&E at no cost to OCTA.

Staff proposes to use Caltrans for the advertisement, award, and administration of the landscape construction contract. A cooperative agreement is required between Caltrans and OCTA to document the obligations of each party. The cost required for the packaging of final contract documents, certification of right-of-way required for the project, contract advertisement, award, approval, construction contract administration including construction management, and construction capital costs will be funded with CMAQ funds in the amount of \$4,600,000. The CMAQ funds will be designated to, and directly withdrawn by, Caltrans as the implementing agency for the construction phase.

While OCTA normally provides construction management field staff on larger Caltrans-administered highway construction contracts, the construction administration effort required for a landscape contract of this size and nature does not require appreciable resources during construction, and very minimal resources are needed during the plant establishment period. Caltrans will provide monthly contract cost and schedule status, and OCTA staff will monitor cash flow and perform independent monitoring and change control. The landscape construction is scheduled to be completed in approximately 12 months.

Fiscal Impact

The funding for Cooperative Agreement No. C-3-2093 is included in OCTA's Fiscal Year 2013-14 Budget, Capital Programs Division, Account 0010-F7200-F10-9084, and is funded through CMAQ. Caltrans will directly withdraw \$4,600,000, and OCTA will withdraw \$300,000.

**Summary**

Staff requests Board of Directors' approval for the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-3-2093 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$4,900,000, for the West County Connectors landscaping project.

**Attachment**

- A. Draft Cooperative Agreement No. C-3-2093 Between Orange County Transportation Authority and California Department of Transportation for the West County Connectors Landscaping Project

**Prepared by:**



Dennis Mak, P.E.  
Project Manager  
(714) 560-5826

**Approved by:**



Jim Beil, P.E.  
Executive Director, Capital Programs  
(714) 560-5646



Virginia Abadessa  
Director, Contracts Administration and  
Materials Management  
(714) 560-5623



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Cooperative Agreement with the California Department of  
Transportation for the West County Connectors  
Landscaping Project**

**Attachment A**

12-ORA-405-20.6/24  
Project Number: 1200000037  
EA: 0716U  
Agreement 12-0686  
OCTA Agreement No. C-3-2093

**DRAFT COOPERATIVE AGREEMENT NO. C-3-2093 BETWEEN  
ORANGE COUNTY TRANSPORTATION AUTHORITY AND  
CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE  
WEST COUNTY CONNECTORS LANDSCAPING PROJECT**

This Agreement, effective on \_\_\_\_\_, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

Orange County Transportation Authority, a public entity, referred to hereinafter as OCTA.

**RECITALS**

1. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this Agreement, replacement planting for the direct HOV connectors from Route 405 to Route 605 between Katella Ave. and Seal Beach Blvd., and from Route 22 to Route 405 between Seal Beach Blvd. and Valley View St. will be referred to hereinafter as PROJECT. This description only serves to identify the PROJECT. The project scope of work is defined in the appropriate authorizing documents per the Project Development Procedures Manual.
3. All responsibilities assigned in this Agreement to complete the following PROJECT COMPONENTS will be referred to hereinafter as OBLIGATIONS:
  - Plans, Specifications, and Estimate (PS&E)
  - Right of Way Support (R/W SUPPORT)
  - CONSTRUCTION SUPPORT
  - CONSTRUCTION CAPITAL
4. This Agreement is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding the PROJECT.
5. The following work associated with this PROJECT has been completed or is in progress
  - CALTRANS approved the Project Report.
  - CALTRANS approved the Environmental Impact Report.
6. OCTA prepared the environmental documentation for the PROJECT.
7. In this Agreement capitalized words represent defined terms and acronyms.

8. PARTNERS hereby set forth the terms, covenants, and conditions of this Agreement, under which they will accomplish OBLIGATIONS.

### **RESPONSIBILITIES**

9. OCTA is SPONSOR for 100% of PROJECT.
10. The FUNDING PARTNER(S) and the details of the funding commitments are documented in the latest FUNDING SUMMARY.
11. OCTA is IMPLEMENTING AGENCY for PS&E.
12. CALTRANS is IMPLEMENTING AGENCY for RIGHT OF WAY.
13. CALTRANS is IMPLEMENTING AGENCY for CONSTRUCTION.
14. CALTRANS is the CEQA lead agency for PROJECT.
15. CALTRANS is the NEPA lead agency for PROJECT.
16. CALTRANS will provide Independent Quality Assurance (IQA) for the portions of WORK within existing and proposed SHS right of way. Per NEPA assignment and CEQA statutes, CALTRANS will perform its QC/QAP process review for environmental documentation.

### **SCOPE**

#### **Scope: General**

17. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
18. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
19. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN.
20. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
21. Each PARTNER will ensure that personnel participating in OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.



22. PARTNERS will invite each other to participate in the selection of any consultants who participate in OBLIGATIONS.
23. If WORK is done under contract (not completed by a PARTNER's own employees) and is governed by the California Labor Code's definition of "public works" (section 1720(a)), that PARTNER will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of the Department of Industrial Relations.
24. Any PARTNER responsible for completing WORK shall make its personnel and consultants that prepare WORK available to help resolve WORK related problems and changes for the entire duration of the PROJECT including PROJECT COMPONENT work that may occur under separate agreements.
25. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right of way. Contractors and/or agents, and utility owners will not perform activities within the SHS right of way without an encroachment permit issued in their name.
26. If any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
27. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.
28. If a PARTNER receives a public records request pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public documents. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
29. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.

30. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
31. OCTA, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing SHS right of way. OCTA will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
32. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
33. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
34. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this Agreement.
35. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with only a final report for OBLIGATIONS completed in that component.
36. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right of way as part of WORK become the property of CALTRANS.  

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right of way.
37. IMPLEMENTING AGENCY for a PROJECT COMPONENT will accept, reject, compromise, settle, or litigate claims of any non-Agreement parties hired to do WORK in that component.
38. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this Agreement in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.
39. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.

40. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds, each PARTNER will comply, and will ensure that any party hired to participate in OBLIGATIONS will comply with the federal cost principles of 2 CFR, Part 225, and administrative requirements outlined in 49 CFR, Part 18. These principles and requirements apply to all funding types included in this Agreement.
41. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this Agreement.
42. PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.
43. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA (if PROJECT utilizes federal funds), and OCTA will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTNERS have thirty (30) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to mediation. Mediation will follow the process described in the General Conditions section of this Agreement.

44. If FUNDING PARTNERS fund any part of PROJECT with state or federal funds, each FUNDING PARTNER will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.
45. If FUNDING PARTNERS fund any part of PROJECT with federal funds, any PARTNER that hires another party to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual*.
46. PARTNERS will not incur costs beyond the funding commitments in this Agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, IMPLEMENTING AGENCY will promptly notify SPONSOR.

47. If WORK stops for any reason, IMPLEMENTING AGENCY will place PROJECT right of way in a safe and operable condition acceptable to CALTRANS.
48. If WORK stops for any reason, each PARTNER will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each PARTNER's responsibilities in this Agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
49. Each PARTNER accepts responsibility to complete the activities that it selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this Agreement.

**Scope: Environmental Permits, Approvals and Agreements**

50. PARTNERS have determined that there are no environmental permits, approvals or agreements necessary for PROJECT. If PARTNERS later determine that an environmental permit, approval or agreement is necessary PARTNERS will amend this Agreement to ensure completion and implementation of all environmental permits, approvals, and agreements.

**Scope: Right of Way (R/W)**

51. CALTRANS will provide a land surveyor licensed in the State of California to be responsible for surveying and right of way engineering. All survey and right of way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.
52. CALTRANS will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of PROJECT or that violate CALTRANS' encroachment policy.
53. CALTRANS will provide a Right of Way Certificate prior to PROJECT advertisement.
54. Physical and legal possession of right of way must be completed prior to construction advertisement, unless PARTNERS mutually agree to other arrangements in writing. Right of way conveyances must be completed prior to OBLIGATION COMPLETION, unless PARTNERS mutually agree to other arrangements in writing.
55. CALTRANS' acceptance of right of way title is subject to review of an Updated Preliminary Title Report provided by OCTA verifying that the title is free of all encumbrances and liens. Upon acceptance, OCTA will provide CALTRANS with a Policy of Title Insurance in CALTRANS' name.

56. The California Transportation Commission will hear and may adopt Resolutions of Necessity. However, the authorization to hear and adopt Resolutions of Necessity may be assigned to OCTA if such assignment is approved in writing by CALTRANS.

**Scope: Construction**

57. CALTRANS will not employ any firm to perform PROJECT construction management that prepared PROJECT plans, specifications, and estimate and CALTRANS will ensure that any such firm will not be employed by or under contract to the PROJECT construction contractor. However, PARTNERS may retain such a firm to check shop drawings, do soil foundation tests, test construction materials, and perform construction surveys.
58. CALTRANS will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code.  
  
By accepting responsibility to advertise and award the construction contract, CALTRANS also accepts responsibility to administer the construction contract.
59. CALTRANS will provide a RESIDENT ENGINEER and CONSTRUCTION SUPPORT staff that are independent of the design engineering company and construction contractor.
60. CALTRANS will provide a landscape architect who will be responsible for all landscaping activities within the SHS.
61. CALTRANS will implement changes to the construction contract through Change Orders. PARTNERS will review and concur on all Change Orders over \$50,000.
62. If FUNDING PARTNERS fund any part of OBLIGATIONS with state or federal funds CALTRANS will use a CALTRANS-approved construction contract claims process, will administer all claims through said process, and will be available to provide advice and technical input in any claims process.
63. If the lowest responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, PARTNERS must be involved in determining how to proceed. If PARTNERS do not agree in writing on a course of action within fifteen (15) working days, the IMPLEMENTING AGENCY shall not award the construction contract.
64. CALTRANS will require the construction contractor to furnish payment and performance bonds naming CALTRANS as obligee and to carry liability insurance in accordance with CALTRANS specifications.
65. PARTNERS confirm that upon OBLIGATION COMPLETION, no maintenance agreement will be necessary.

## COST

### **Cost: General**

66. OCTA's maximum obligation under this Agreement is an amount not to exceed \$4,900,000.
67. PARTNERS will document specific funding, billing, and payment details in a FUNDING SUMMARY. The FUNDING SUMMARY is incorporated and made an express part of this Agreement.

A valid FUNDING SUMMARY must be in place at all times until OBLIGATION COMPLETION.

PARTNERS will create a new FUNDING SUMMARY each time the funding, billing and payment details of PROJECT change. The FUNDING SUMMARY is only valid after each FUNDING PARTNER signs and dates the FUNDING SUMMARY. The most current fully executed FUNDING SUMMARY supersedes any previous FUNDING SUMMARY created for this Agreement.

Replacement of the FUNDING SUMMARY will not require an amendment to the body of this Agreement unless the rules of the new funds require it.

Each PARTNER will designate a legally authorized representative to sign the FUNDING SUMMARY on its behalf.

68. PARTNERS may invoice the appropriate FUNDING PARTNER according to the terms documented in the FUNDING SUMMARY.
69. If OCTA has received Electronic Funds Transfer (EFT) certification from CALTRANS then OCTA will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
70. Unless otherwise documented in the FUNDING SUMMARY, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.
71. Unless otherwise documented in the FUNDING SUMMARY, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
72. After PARTNERS agree that all WORK is complete for a PROJECT COMPONENT, PARTNER(S) will submit a final accounting for all OBLIGATIONS costs. Based on the

final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this Agreement.

73. If FUNDING PARTNERS fund OBLIGATIONS with American Recovery and Reinvestment Act (ARRA) funds, PARTNERS will adopt the terms, conditions, requirements, and constraints of the American Recovery and Reinvestment Act of 2009.
74. If FUNDING PARTNERS fund OBLIGATIONS with Proposition 1B Bond funds, PARTNERS will meet the requirements of California Government Code Section 8879.20 et al. (Proposition 1 legislation), the governor's Executive Order 2007-S-02-07, and the California Transportation Commission (CTC) program guidelines for the applicable account.

Right of way purchased using Proposition 1B Bond funds will become the property of CALTRANS, and any revenue from the sale of excess lands originally purchased with bond funds will revert to CALTRANS.

75. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS cost.
76. CALTRANS, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
77. OCTA, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside of the existing SHS right of way.
78. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
79. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS cost.
80. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS cost.
81. Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.

Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its QC/QAP process review for environmental documentation.

82. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
83. Fines, interest, or penalties levied against a PARTNER will be paid, independent of OBLIGATIONS cost, by the PARTNER whose actions or lack of action caused the levy.

84. If federal funds are used on PROJECT while this Agreement is active CALTRANS will administer all federal subvention funds documented on the FUNDING SUMMARY.
85. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS cost only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this Agreement.

If OCTA invoices for rates in excess of DPA rates, OCTA will fund the cost difference and reimburse CALTRANS for any overpayment.

86. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
87. If CALTRANS reimburses OCTA for any costs later determined to be unallowable, OCTA will reimburse those funds.
88. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
89. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this Agreement to place PROJECT right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this Agreement.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

90. If there are insufficient funds in this Agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTNER implementing commitments or conditions accepts responsibility to fund these activities, as they apply to each PARTNER's responsibilities, until such time as PARTNERS amend this Agreement.

Each PARTNER may request reimbursement for these costs during the amendment process.



91. Except as otherwise provided in this Agreement, PARTNERS will pay invoices within thirty (30) calendar days of receipt of invoice.

**Cost: Environmental Permits, Approvals and Agreements**

92. The cost of coordinating, obtaining, complying with, implementing, including renewing and amending resource agency permits, agreements, and approvals is an OBLIGATIONS cost.

**Cost: Construction Support**

93. The cost of source inspection is an OBLIGATIONS cost.

**Cost: Construction Capital**

**SCHEDULE**

94. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

**GENERAL CONDITIONS**

95. PARTNERS understand that this Agreement is in accordance with and governed by the Constitution and laws of the State of California. This Agreement will be enforceable in the State of California. Any PARTNER initiating legal action arising from this Agreement will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this Agreement resides, or in the Superior Court of the county in which PROJECT is physically located.
96. All OBLIGATIONS of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
97. When CALTRANS performs IQA activities it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA activities.
98. Neither OCTA nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this Agreement. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless OCTA and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this Agreement.

99. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by OCTA, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon OCTA under this Agreement. It is understood and agreed that OCTA, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by OCTA, its contractors, sub-contractors, and/or its agents under this Agreement.
100. PARTNERS do not intend this Agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. PARTNERS do not intend this Agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
101. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this Agreement.
102. PARTNERS will not interpret any ambiguity contained in this Agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
103. A waiver of a PARTNER's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.
104. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
105. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.

106. PARTNERS will first attempt to resolve Agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of OCTA will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this Agreement. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this Agreement resides or in the Superior Court of the county in which PROJECT is physically located. The prevailing PARTNER will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this Agreement or to enforce the provisions of this article including equitable relief.

107. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
108. If any provisions in this Agreement are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other Agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement.
109. PARTNERS intend this Agreement to be their final expression and supersedes any oral understanding or writings pertaining to OBLIGATIONS.
110. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this Agreement to include completion of those additional tasks.
111. Except as otherwise provided in the Agreement, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
112. Partners agree to sign a COOPERATIVE AGREEMENT CLOSURE STATEMENT to terminate this Agreement. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated, modified in writing by mutual agreement, or expire by the statute of limitations. The expected date for the COOPERATIVE AGREEMENT CLOSURE STATEMENT is March 1, 2020.

113. The following documents are attached to, and made an express part of this Agreement:  
SCOPE SUMMARY.

## **DEFINITIONS**

**ARRA** – American Recovery and Reinvestment Act of 2009

**CALTRANS STANDARDS** – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

**CEQA (California Environmental Quality Act)** – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

**CFR (Code of Federal Regulations)** – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government

**CONSTRUCTION CAPITAL** – See PROJECT COMPONENT.

**CONSTRUCTION SUPPORT** – See PROJECT COMPONENT.

**COOPERATIVE AGREEMENT CLOSURE STATEMENT** – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this Agreement and in all amendments to this Agreement.

**FHWA** – Federal Highway Administration

**FHWA STANDARDS** – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at [www.fhwa.dot.gov/topics.htm](http://www.fhwa.dot.gov/topics.htm).

**FUNDING PARTNER** – A PARTNER, designated in the FUNDING SUMMARY, that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds it commits in this Agreement.

**FUNDING SUMMARY** – An executed document that lists the funding, billing, and payment commitments. Commitments include, but are not limited to, FUNDING PARTNER(S), fund source, fund type, payment method, invoice frequency, deposit amounts, and PROJECT COMPONENT(S) in which funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

**GAAP (Generally Accepted Accounting Principles)** – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

**HM-1** – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

**HM-2** – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

**HM MANAGEMENT ACTIVITIES** – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

**IMPLEMENTING AGENCY** – The PARTNER is responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

**IQA (Independent Quality Assurance)** – Ensuring that the IMPLEMENTING AGENCY’s quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan (QMP). IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another PARTNER.

**NEPA (National Environmental Policy Act of 1969)** – This federal act establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

**OBLIGATION COMPLETION** – PARTNERS have fulfilled all OBLIGATIONS included in this Agreement, and all amendments to this Agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

**OBLIGATIONS** – All responsibilities included in this Agreement.

**OMB (Office of Management and Budget)** – This federal office oversees the preparation of the federal budget and supervises its administration in Executive Branch agencies.

**PARTNER** – Any individual signatory party to this Agreement.

**PARTNERS** – The term that collectively references all of the signatory agencies to this Agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER’s individual actions legally bind the other PARTNER.

**PROJECT COMPONENT** – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.

- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

**PROJECT MANAGEMENT PLAN** – A group of documents used to guide a project’s execution and control throughout that project’s lifecycle.

**PS&E (Plans, Specifications, and Estimate)** – See PROJECT COMPONENT.

**QMP (Quality Management Plan)** – An integral part of the PROJECT MANAGEMENT PLAN that describes IMPLEMENTING AGENCY’s quality policy and how it will be used.

**QC/QAP (QUALITY CONTROL/QUALITY ASSURANCE PROGRAM) - CALTRANS** quality control and quality assurance procedures for all environmental documents as described in the Jay Norvell Memos dated July 2, 2007 (available at [http://www.dot.ca.gov/ser/memos.htm#LinkTarget\\_705](http://www.dot.ca.gov/ser/memos.htm#LinkTarget_705)). This also includes the independent judgment analysis and determination under CEQA that the environmental documentation meets CEQA Guideline requirements.

**RESIDENT ENGINEER** – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer must be independent of the design engineering company and the construction contractor.

**R/W (Right of Way) SUPPORT** – See PROJECT COMPONENT.

**SCOPE SUMMARY** – The attachment in which each PARTNER designates its commitment to specific scope activities within each PROJECT COMPONENT as outlined by the *Workplan Standards Guide for the Delivery of Capital Projects* available at [www.dot.ca.gov/hq/projmgmt/guidance.htm](http://www.dot.ca.gov/hq/projmgmt/guidance.htm).

**SHS (State Highway System)** – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

**SPONSOR** – Any PARTNER that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. If a PROJECT has more than one SPONSOR, funding

adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

**WORK** – All scope activities included in this Agreement.



### **CONTACT INFORMATION**

The information provided below indicates the primary contact information for each PARTNER to this Agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this Agreement.

The primary Agreement contact person for CALTRANS is:

Eric Dickson, Sr. Landscape Architecture

3347 Michelson Dr. Suite 100

Irvine, California 92612

Office Phone: 949-724-2814

Mobile Phone: 949-279-8755

Email: Eric\_Dickson@dot.ca.gov

The primary Agreement contact person for OCTA is:

Dennis Mak, Project Manager

550 S. Main St.

Orange, CA 92863

Office Phone: 714-560-5874

Email: dmak@octa.net

**SIGNATURES**

PARTNERS declare that:

1. Each PARTNER is an authorized legal entity under California state law.
2. Each PARTNER has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

ORANGE COUNTY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
Adnan Maiah  
Deputy District Director  
Capital Projects Outlay Program

By: \_\_\_\_\_  
Darrell Johnson  
Chief Executive Officer

CERTIFIED AS TO FUNDS:

ATTEST:

By: \_\_\_\_\_  
Neda Ansari  
District Budget Manager

By: \_\_\_\_\_  
Kennard R. Smart, Jr.  
General Counsel

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Jim Beil, P.E.  
Executive Director  
Capital Programs

### SCOPE SUMMARY

4	5	6	7	8	Description	CT	OCTA	N/A
3	185				Prepare Base Maps and Plan Sheets for PS&E Development		X	
3	205	05			Required permits			X
3	205	15			Railroad Agreements		X	
3	205	25			Agreement for Material Sites		X	
3	205	30			Executed Maintenance Agreement			X
3	205	45			MOU From Tribal Employment Rights Office (TERO)			X
3	205	55			NEPA Delegation	X		
3	230	05			Draft Roadway Plans		X	
3	230	10			Draft Highway Planting Plans		X	
3	230	15			Draft Traffic Plans		X	
3	230	20			Transportation Management Plan		X	
3	230	25			Draft Utility Plans		X	
3	230	30			Draft Drainage Plans		X	
3	230	35			Draft Specifications		X	
3	230	40			Draft Plans, Specifications, and Estimates Quantities and Estimates		X	
3	230	55			Structures Draft Plans, Specifications, and Estimates Incorporation			X
3	230	60			Updated Project Information for Plans, Specifications, and Estimates Package		X	
3	230	90			NEPA Delegation	X		
3	230	99			Other Draft Plans, Specifications, and Estimates Products		X	
3	235	05			Environmental Mitigation		X	
3	235	10			Detailed Site Investigation for Hazardous Waste		X	
3	235	30			Hazardous Substances Disclosure Document (HSDD)		X	
3	235	40			Updated Environmental Commitments Record		X	
3	235	45			NEPA Delegation	X		
3	240				Draft Structures Plans, Specifications, and Estimates			X
3	250				Final Structures PS&E Package			X
3	255	05			Circulated and Reviewed Draft District Plans, Specifications, and Estimates Package		X	
3	255	10			Updated Plans, Specifications, and Estimates Package		X	
3	255	15			Environmental Re-evaluation	X		
3	255	20			Final District Plans, Specifications, and Estimates Package	X		
3	255	25			Geotechnical Information Handout		X	
3	255	30			Materials Information Handout		X	
3	255	35			Construction Staking Package and Control		X	
3	255	40			Resident Engineer's Pending File		X	
3	255	45			NEPA Delegation	X		
3	255	50			Secured Lease for Resident Engineer Office Space or Trailer	X		
3	255	55			Contractor Outreach	X		
3	255	65			Right of Way Certification Documentation	X		
3	255	70			Right of Way Engineering Products		X	
3	255	75			Upgrade/Updated Right of Way Certification Document	X		
3	260				Contract Bid Documents Ready to List	X		
4	195	40			Property Management	X		
4	195	45			Excess Land	X		
4	200				Utility Relocation	X		
4	220	05			Existing Land Net	X		
4	220	10			Land Net Map	X		

4	220	15		Right of Way Maps	X		
4	220	20		Acquisition Documents	X		
4	220	25		Documents to Convey Property Rights	X		
4	220	35		Field Located Right of Way	X		
4	225			Obtain Right of Way Interests for Project Right of Way Certification	X		
4	245			Post Right of Way Certification Work			X
3	265			Awarded and Approved Construction Contract	X		
5	270			Construction Engineering and General Contract Administration	X		
5	275			Construction Engineering and General Contract Administration of Structures Work	X		
5	285	05	05	Need for Contract Change Order Determination	X		
5	285	05	10	Draft Contract Change Order	X		
5	285	05	15	Contract Change Order Approval	X		
5	285	05	20	Payments for Contract Change Order Work	X		
5	285	10	05	Field Surveys for Contract Change Order	X		
5	285	10	10	Staking for Contract Change Order	X		
5	285	10	15	Other Functional Support	X		
5	290	05		Analysis of Notices of Potential Claims	X		
5	290	10		Supporting Documentation and Responses to Notices of Potential Claims	X		
5	290	15		Reviewed and Approved Claim Report	X		
5	290	20		District Claim Meeting or Board of Review	X		
5	290	25		Arbitration Hearing	X		
5	290	30		Negotiated Claim Settlement	X		
5	290	35		Technical Support	X		
5	295			Accept Contract, Prepare Final Construction Estimate, and Final Report	X		
4	300			FINAL RIGHT OF WAY ENGINEERING	X		

# FUNDING SUMMARY Number 1

Project Number: 1200000037  
 Agreement: 12-0686  
 OCTA Agreement No. C 3-2093

## Part I – FUNDING SUMMARY table

Funding Source	Funding Partner	Fund Type	PA&ED Support	PS&E Support	R/W Capital	R/W Support	CON Capital	CON Support	Totals by Fund Type
IMPLEMENTING AGENCY - >				OCTA	CALTRANS		CALTRANS		
FEDERAL	OCTA	CMAQ	\$0	\$300,000	\$0	\$0	\$3,800,000	\$800,000	\$4,900,000
		Totals by Component	\$0	\$300,000	\$0	\$0	\$3,800,000	\$800,000	\$4,900,000

This table represents full funding of each PROJECT COMPONENT in Agreement 12-0686.

Billing and payment details follow.

PA&ED = Project Report and Environmental Document  
 PS&E = Plans, Specifications, and Estimate  
 R/W = Right-of-Way  
 CON = Construction  
 CMAQ = Congestion Mitigation and Air Quality

# FUNDING SUMMARY Number 1

Project Number: 1200000037  
Agreement: 12-0686  
OCTA Agreement No. C 3-2093

## Part II – Billing and Payment Details

### Cost: PS&E (Plans, Specifications, and Estimate)

1. OCTA is the IMPLEMENTING AGENCY for PS&E as described in the Responsibilities section of this Agreement.

Therefore, based on the funding types displayed in the FUNDING SUMMARY table for this PROJECT COMPONENT:

- No invoicing will occur for this PROJECT COMPONENT.

### Cost: Right of Way (R/W) Support

2. CALTRANS is the IMPLEMENTING AGENCY for RIGHT OF WAY SUPPORT as described in the Responsibilities section of this Agreement.

Therefore, based on the funding types displayed in the FUNDING SUMMARY table for this PROJECT COMPONENT:

- No invoicing will occur for this PROJECT COMPONENT.

# FUNDING SUMMARY Number 1

Project Number: 1200000037  
Agreement: 12-0686  
OCTA Agreement No. C 3-2093

## **Cost: CONSTRUCTION SUPPORT**

3. CALTRANS is the IMPLEMENTING AGENCY for CONSTRUCTION SUPPORT as described in the Responsibilities section of this Agreement.

Therefore, based on the funding types displayed in the FUNDING SUMMARY table for this PROJECT COMPONENT:

- No invoicing will occur for this PROJECT COMPONENT.

## **Cost: CONSTRUCTION CAPITAL**

4. CALTRANS is the IMPLEMENTING AGENCY for CONSTRUCTION CAPITAL as described in the Responsibilities section of this Agreement.

Therefore, based on the funding types displayed in the FUNDING SUMMARY table for this PROJECT COMPONENT:

- No invoicing will occur for this PROJECT COMPONENT.

# FUNDING SUMMARY Number 1

Project Number: 1200000037  
Agreement: 12-0686  
OCTA Agreement No. C 3-2093

## Part III – Signature Page

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

ORANGE COUNTY TRANSPORTATION  
AUTHORITY

APPROVED:

APPROVED:

By \_\_\_\_\_  
Adnan Maiah  
Deputy District Director  
Capital Projects Outlay Program

By \_\_\_\_\_  
Darrell Johnson  
Chief Executive Officer

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Neda Ansari  
District Budget Manager

APPROVED:  
By: \_\_\_\_\_  
Jim Beil, P.E.  
Executive Director  
Capital Programs

\_\_\_\_\_  
HQ Accounting