

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *crf*

BOARD AGENDA # \*C-4

Urgent  Routine

AGENDA DATE November 18, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of the Cooperative Agreement No. 10-312 with the State of California, Department of Transportation (Caltrans) for the State Route (SR) 99/Kiernan Road Interchange Project

STAFF RECOMMENDATIONS:

1. Approve the Cooperative Agreement, No. 10-312 with the State of California, Department of Transportation (Caltrans) for the State Route (SR) 99/Kiernan Road Interchange Project.
2. Authorize the Chairman of the Board to execute a contract with the State of California, Department of Transportation (Caltrans).

FISCAL IMPACT:

The Cooperative Agreement commits Stanislaus County to provide funding for the Project Approval and Environmental Documentation (PA&ED) phase of the SR99/Kiernan Road Interchange project. Public Works staff will request proposals from consultants to provide this service. A contract recommendation will be returned to the Board for approval. The PA&ED phase of the work will be funded with the voluntary regional transportation contribution received from Kaiser Permanente in 2004. These funds were provided by Kaiser Permanente to mitigate traffic impacts in the Salida area. The anticipated cost of the study is approximately \$1,000,000.

BOARD ACTION AS FOLLOWS:

No. 2008-785

On motion of Supervisor Monteith, Seconded by Supervisor Grover  
and approved by the following vote,  
Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice Chairman DeMartini  
Noes: Supervisors: None  
Excused or Absent: Supervisors: Mayfield  
Abstaining: Supervisor: None

- 1)  Approved as recommended
- 2)  Denied
- 3)  Approved as amended
- 4)  Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

## **DISCUSSION:**

Stanislaus County, in cooperation with Caltrans District 10, proposes to reconstruct the SR 99/Kiernan Road interchange in the community of Salida. This project will help to alleviate traffic congestion, improve operations, and increase the capacity of the interchange. The area is experiencing increased growth which will yield higher traffic volumes on the existing facility in the near future. Two build alternatives and the no-build alternative are proposed for further consideration. The two build alternatives range in cost from \$38.2 to \$67.5 million (in today's dollars) for construction and right of way. The project is proposed for funding by the Stanislaus County Public Facilities Fees and State Transportation Improvement Program funds.

The proposed interchange improvements include reconstruction of the existing interchange to provide improved operations for turning movements to and from SR 99, as well as associated local road improvements at adjacent intersections. The proposed project consists of two components: 1) reconstruction of the interchange and 2) construction of auxiliary lanes in both northbound and southbound direction of SR 99 from Kiernan Avenue to Pelandale Avenue.

The interchange is located in the north part of Stanislaus County and on the northern edge of the City of Modesto, providing access to commercial and residential properties in the community of Salida. This area is undergoing rapid commercial and residential development and has resulted in generating considerable traffic to the interchange. During peak traffic periods, the interchange operates at the level of service E/F conditions.

The Stanislaus County Board of Supervisors adopted the "Salida Now" initiative in August 2007, which provides infrastructure funding for industrial and commercial development. With a population of about 14,000, Salida is the largest town in unincorporated Stanislaus County. Salida's location along SR 99 at the far northern end of the County puts it within long-distance commuting range of the Bay Area. Stanislaus County is now underway with the adoption of the Salida Community Plan, which will define the growth parameters for the next 20 years of the Salida Area.

Stanislaus County Public Works is in the process of completing the planning phase of the project and producing a Project Study Report (PSR). The PSR was funded with contributions from developers in conjunction with the Salida Community Plan. The attached Cooperative Agreement between the County and the Caltrans allows work to continue on the next phase of the project. The next project phase is formally known as Project Approval and Environmental Document (PA&ED). The Cooperative Agreement stipulates that the design work and environmental documentation to complete this phase will be performed and paid for by Stanislaus County. Caltrans will provide and fund Caltrans Independent Quality Assurance (IQA) and costs incurred in their role as Lead Agency for the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) for the review, comment and approval of the project environmental documentation.

This Cooperative Agreement supersedes any previous Memorandum of Understanding or agreement relating to the project. Future project phases for plans, specifications and estimates, right of way, landscape maintenance and construction will be the subject of separate future agreements.

Approval of the Cooperative Agreement No. 10-312 with the State of California, Department of Transportation (Caltrans) for the State Route (SR) 99/Kiernan Road Interchange Project

**POLICY ISSUES:**

The Board should consider if the recommended actions are consistent with its priorities of providing a safe community, a healthy community and a well-planned infrastructure system.

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

LB\DH\RM:lc  
L:\ROADS\SR99.Kiernan Coop 11-18-08

10-STA-99 PM 22.3/22.7  
SR 99/Kiernan Rd Interchange Project  
EA: 10-0L330K  
District Agreement No. 10-312

**COOPERATIVE AGREEMENT**

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_, 2008,  
is between the STATE OF CALIFORNIA, acting by and through its Department of  
Transportation, referred to herein as "STATE", and the

COUNTY OF STANISLAUS, a political  
subdivision of the State of California, referred to herein  
as "COUNTY".

**RECITALS**

1. STATE and COUNTY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within COUNTY's jurisdiction.
2. COUNTY intends to reconstruct the interchange at State Route (SR) 99/Kiernan Road in and near the City of Salida, in Stanislaus County, referred to herein as "PROJECT"
3. COUNTY is willing to fund one hundred percent (100%) of costs, except that the costs of STATE's Independent Quality Assurance (IQA) of PROJECT Project Approval and Environmental Document (PA&ED) hereinafter referred to as WORK, and STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review, comment, and approval of the PROJECT environmental documentation prepared entirely by COUNTY, will be borne by STATE.
4. STATE funds will not be used to finance any of the WORK costs except as set forth in this Agreement.
5. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
6. PROJECT Plans, Specifications and Estimates (PS&E), Right of Way (R/W), landscape maintenance and construction will be the subject of a separate future agreement or agreements.
7. This Agreement will define roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding environmental documentation, studies, and reports necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with NEPA, if applicable.
8. The parties now define herein below the terms and conditions under which PROJECT is to be developed and financed.

**SECTION I**

**COUNTY AGREES:**

1. To fund one hundred percent (100%) of all WORK costs except for costs of STATE's IQA and STATE's review and approval of the PROJECT environmental documentation for CEQA and NEPA, if applicable.
2. To not use STATE funds for any WORK costs except as set forth in this Agreement.

3. All PROJECT work performed by COUNTY, or performed on COUNTY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, directives and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, concurrence, and approval at appropriate stages of development.
4. All PROJECT work, except as set forth in this Agreement, is to be performed by COUNTY. Should COUNTY request that STATE perform any portion of PROJECT work, except as otherwise set forth in this Agreement, COUNTY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed Agreement.
5. To have a Project Report (PR) prepared, at no cost to STATE, and to submit to STATE for STATE's review and concurrence at appropriate stages of development. The PR for PROJECT shall be signed on behalf of COUNTY by a Civil Engineer registered in the State of California.
6. Personnel who prepare the preliminary engineering studies and environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems, which may arise during PS&E, right of way, and construction phases of the PROJECT, and/or to make design revisions for contract change orders.
7. To permit STATE to monitor, participate, and oversee selection of personnel who will prepare the PR, conduct environmental studies and prepare environmental documentation for PROJECT. COUNTY agrees to consider any request by STATE to avoid a contract award or to discontinue services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
8. To make written application to STATE for necessary encroachment permits authorizing entry of COUNTY onto SHS right of way to perform required WORK as more specifically defined elsewhere in this Agreement. COUNTY shall also require COUNTY's consultants and contractors to make written application to STATE for the same necessary encroachment permits.
9. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside existing SHS right of way that could impact PROJECT as part of performing any work pursuant to this Agreement. If COUNTY discovers hazardous material or contamination within the PROJECT study area during said investigation, COUNTY shall immediately notify STATE.
10. If COUNTY terminates the WORK prior to completion, COUNTY shall also be liable to compensate STATE for all the expenses incurred by STATE with regard to this Agreement.

**SECTION II**

**STATE AGREES:**

1. At no cost to COUNTY, to complete STATE's review as CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documentation prepared and submitted by COUNTY and to provide IQA of all COUNTY work necessary for completion of the PR for PROJECT done by COUNTY, including, but not limited to, investigation of potential hazardous material sites undertaken by COUNTY or its designee, and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by COUNTY, while cooperating in timely processing of documents necessary for completion of the environmental documentation and PR for PROJECT.
2. Upon proper application by COUNTY and by COUNTY's contractor, to issue, at no cost to COUNTY and COUNTY's contractor, the necessary encroachment permits for required work within the SHS right of way as more specifically defined elsewhere in this Agreement.

**SECTION III**

**IT IS MUTUALLY AGREED:**

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT PA&ED phase administered by COUNTY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by COUNTY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by COUNTY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by COUNTY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and COUNTY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this Agreement authorizing such services to be performed by STATE.
3. The preparation of environmental documentation, including the related investigative studies and technical environmental reports for PROJECT shall be performed in

accordance with all applicable Federal and STATE standards and practices current as of the date of performance.

4. STATE will be the CEQA Lead Agency and COUNTY will be a CEQA Responsible Agency. STATE will be the NEPA Lead Agency, if applicable. COUNTY will assess PROJECT impacts on the environment and COUNTY will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and if applicable, NEPA. COUNTY will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including the administrative draft, draft, administrative final, and final environmental documentation, as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering, preparation of the PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks by COUNTY.

5. COUNTY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be a PROJECT cost.
6. COUNTY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permits, agreements, and/or environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
7. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental reports, permits, agreements, environmental commitments and/or environmental approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
8. COUNTY, subject to STATE's prior review and approval, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process the NEPA, if applicable, environmental process, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.



STATE, as a PROJECT cost, shall be responsible for overseeing the planning, scheduling and holding of all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. COUNTY, to the satisfaction of STATE and subject to all of STATE's and FHWA's policies and procedures, shall be responsible for performing the planning, scheduling and details of holding all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. STATE will participate as CEQA Lead Agency and if applicable, the NEPA Lead Agency, in all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process, for PROJECT. COUNTY shall provide STATE the opportunity to provide comments on any public meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such public meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings.

9. In the event COUNTY would like to hold separate and/or additional public meetings/hearings regarding the PROJECT, COUNTY must clarify in any meeting/hearing notices, exhibits, handouts or other materials that STATE is the CEQA Lead Agency and if applicable, the NEPA Lead Agency, and COUNTY is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings/hearings are not part of the CEQA and if applicable, NEPA, public review process. COUNTY shall provide STATE the opportunity to provide comments on any meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings solely with respect to text or graphics that could lead to public confusion over CEQA and if applicable, NEPA, related roles and responsibilities.
10. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
11. The party that discovers HM will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

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

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

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

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

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

14. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
15. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
16. Remedial actions proposed by COUNTY on SHS right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices and standards and practices mandated by those Federal and State regulatory agencies.
17. A separate Cooperative Agreement or agreements will be required to address and cover responsibilities and funding for PS&E, R/W, landscape maintenance, and the construction phase of PROJECT.
18. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
19. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority, or jurisdiction conferred upon COUNTY or arising under this agreement. It is understood and agreed that, COUNTY will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY under this agreement.

20. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE or arising under this agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless COUNTY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this agreement.
21. Prior to the commencement of any work pursuant to this Agreement, either STATE or COUNTY may terminate this Agreement by written notice to the other party.
22. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
23. This Agreement shall terminate upon satisfactory completion of all PROJECT obligations of COUNTY and the delivery of required PA&ED PROJECT documents, with concurrence of STATE, or on January 6, 2015, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the PROJECT claims are settled, dismissed or paid.

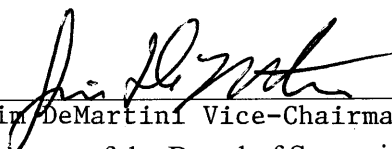
SIGNATURES ON FOLLOWING PAGE:

STATE OF CALIFORNIA  
Department of Transportation

COUNTY OF STANISLAUS  
1010 Tenth Street  
Modesto, CA 95354

WILL KEMPTON  
Director

By: \_\_\_\_\_  
KOME AJISE  
District Director  
District 10

By:   
Jim DeMartini Vice-Chairman  
of the Board of Supervisors

Attest:   
CHRISTINE FERRARO TALLMAN  
Clerk of the Board of Supervisors

Approved as to Form and Procedure

Approved as to Content

\_\_\_\_\_  
Attorney  
Department of Transportation

By:   
MATT MACHADO  
Director of Public Works

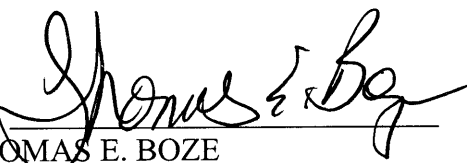
Certified as to State Funds

APPROVED AS TO FORM:

\_\_\_\_\_  
ANNE WELLS  
District 10 Budget Manager

John P. Doering,  
County Counsel

Certified as to Financial Terms and Conditions

By:   
THOMAS E. BOZE  
Deputy County Counsel

\_\_\_\_\_  
Accounting Administrator