

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.78
(ID # 22705)

MEETING DATE:
Tuesday, August 29, 2023

FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION:
Approve the Cooperative Agreement between the County of Riverside and the Riverside County Transportation Commission (RCTC) for the Mid County Parkway Project – Construction Contract 3, District 5. [\$1,000,000 Total Cost – Gas Tax Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement between the County of Riverside and the Riverside County Transportation Commission (RCTC) for the Mid County Parkway Project – Construction Contract 3 and approve the transfer in the amount of \$1,000,000 to RCTC for FY 23/24, and authorize the Chair of the Board to execute the same.

ACTION:Policy


Mark Lancaster, Director of Transportation 8/8/2023

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Perez, Washington, and Gutierrez
Nays: None
Absent: None
Date: August 29, 2023
xc: Trans.

Kimberly A. Rector
Clerk of the Board

By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 1,000,000	\$ 0	\$ 1,000,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 100% Gas Tax/HUTA. There are no General Funds used in this project.			Budget Adjustment: No	
			For Fiscal Year: 23/24	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Riverside County Transportation Commission (RCTC) and County of Riverside Transportation Department (COUNTY) would like to partner to deliver the RCTC-led Mid County Parkway Project – Construction Contract 3 (MCP 3), which lies entirely within the jurisdiction of the County of Riverside. MCP 3’s limits are along Ramona Expressway from approximately one mile east of Rider Street to Warren Road.

The MCP 3 project proposes to widen Ramona Expressway to construct two additional lanes, one in each direction of travel, and a center median. In addition to the widening, a portion of Ramona Expressway will be realigned for the construction of a new bridge over the San Jacinto River to accommodate the ultimate eastbound configuration for Mid County Parkway, which will eventually carry three eastbound lanes of traffic.

Other incidental work will include the construction of a wildlife crossing, traffic signal relocations, drainage facility improvements, and any other associated work.

The COUNTY and RCTC have designated RCTC as the lead agency for the project. The Cooperative Agreement establishes the roles and responsibilities of each party for the design and construction of the project and obligates the COUNTY to contribute \$1,000,000 toward the performance of preliminary right-of-way and utility investigations, public outreach, design efforts, and construction.

The COUNTY will deposit the amount of \$1,000,000 in FY 23/24 upon an invoice or request letter from RCTC. Upon project completion, a final accounting will be performed, and any remaining balances will be refunded to the COUNTY.

County Counsel has approved the Agreement as to legal form.

Project No. D3-0079

Impact on Residents and Businesses

The proposed improvements will improve safety and enhance operational efficiency for local, regional, and interregional traveling motorists.

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STATE OF CALIFORNIA

Additional Fiscal Information

The COUNTY is responsible for contributing \$1,000,000 towards MCP 3. There are no General Funds used in this project.

Contract History and Price Reasonableness

N/A

ATTACHMENTS:

Vicinity Map
Cooperative Agreement



Jason Farin, Principal Management Analyst

8/23/2023



Kristine Bell-Valdez, Supervising Deputy County Counsel

8/16/2023

**COOPERATIVE AGREEMENT
BETWEEN
THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND
THE COUNTY OF RIVERSIDE
THROUGH THE COUNTY OF RIVERSIDE TRANSPORTATION AND LAND
MANAGEMENT AGENCY**

FOR THE MID COUNTY PARKWAY PROJECT - CONSTRUCTION CONTRACT 3

This Cooperative Agreement ("Cooperative Agreement") is made and entered into this 29 day of August, 2023 ("Effective Date") by and between the Riverside County Transportation Commission ("RCTC") and the County of Riverside, a political subdivision of the State of California, through the County of Riverside Transportation and Land Management Agency ("County"). RCTC and the County are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

RECITALS

WHEREAS, RCTC is undertaking the Mid County Parkway project ("MCP").

WHEREAS, RCTC, in cooperation with the Federal Highway Administration ("FHWA"), the California Department of Transportation ("Caltrans") and the County, as part of the MCP proposes to build a portion of the project in unincorporated Riverside County, which is referred to in this Cooperative Agreement as the "Project".

WHEREAS, the Project will include: two mix flow lanes in the eastbound direction from approximately one mile east of Rider Street to Warren Road. The design will include one of the two ultimate MCP bridges over the San Jacinto River, which will accommodate the eastbound lanes, but the consultant may break up the PS&E into two parts so that the roadway can be widened on each side of the bridge under one construction contract and the bridge itself (with approaching roadway) constructed with another construction contract, so that each part can be funded more easily. Also included will be traffic signals, drainage facilities, and wildlife crossings and associated work. The Project is further described and depicted in Exhibit "A" attached to this Cooperative Agreement and incorporated herein by reference.

WHEREAS, the Project is sometimes referred to by the Parties as the Mid County Parkway Project - Construction Contract 3.

WHEREAS, it is the intent of the Parties to enter into this Cooperative Agreement to establish and coordinate the responsibilities of the Parties with respect to the Project, establish certain opportunities for cooperation and coordination and set forth various responsibilities of the Parties all as further set forth herein.

WHEREAS, the Parties acknowledge that RCTC has or shall fully comply with the California Environmental Quality Act (CEQA) and all other applicable laws, as a precondition to construction of the Project.

WHEREAS, RCTC intends, pursuant to a public bidding process in accordance with State law, to select a construction contractor to complete the Project (“Contractor”).

WHEREAS, because the Project, if constructed, may impact County owned and/or maintained facilities, coordination between the Parties prior to and during construction of the Project is crucial to provide for mitigation of potential impacts that construction may have on the County, and to ensure that improvements within the County comply with applicable standards.

WHEREAS, the Project includes the following components:

- Plans, Specifications, and Estimate (PS&E)
- Right of Way Acquisition and Utility Relocation
- Construction
- Acceptance by the County for Operation and Maintenance of Improvements within County’s Jurisdiction

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by RCTC and the County as follows:

TERMS

1. **Definitions.** In addition to the definitions set forth in the recitals above, the following terms shall have the meanings as set forth below.

1.1 As used in this Cooperative Agreement, the term “County’s Jurisdiction” shall mean and refer to the areas within the Project limits either owned and/or maintained by the County. As used herein, the term “County’s Jurisdiction” expressly excludes the State highway right of way.

1.2 As used in this Cooperative Agreement, the term “County Standards” shall mean and refer to the County’s standard plans, specifications, policies, guidelines, and ordinances, design criteria, construction details, and testing/inspection requirements, and amendments and supplements thereto, for work within the County’s Jurisdiction, approved by the County and in effect prior to approval of the 60% complete PS&E package.

2. **Term.** This Cooperative Agreement shall be effective as of the Effective Date, and shall continue in effect until the Project is accepted by the County as referenced in

Sections 4.16 and 5.6, unless otherwise terminated as specified in this Cooperative Agreement (“Term”).

3. Agreement to Cooperate. The Parties agree to mutually cooperate in order to help ensure that the Project is successfully completed with minimum impact to both Parties, and the public, and the County commits to support the Project.

4. Obligations of the County. If consistent with all applicable local, state and federal laws and regulations, the County agrees as follows:

4.1 The County shall provide a County oversight engineer to oversee the work during plan preparation and construction, at its own cost.

4.2 The County shall timely review design plans for the Project, and provide any approvals or comments within thirty (30) days of receipt of the plans. If the County fails to provide any comments or its approval within said time period, RCTC shall provide notice to the Transportation Director of the County that the design plans shall be deemed approved by the County if no comments are received within an additional fifteen (15) days.

4.3 The County will be provided an opportunity to be involved in the process of selecting Project consultants in compliance with all applicable local, state and federal laws.

4.4 The County shall not directly or indirectly encourage any third parties to object, oppose, delay, frustrate, or disrupt the full and complete design, analysis, consideration, potential approval, or implementation of the Project. Such obligation shall extend both to RCTC’s processes regarding the Project, but also to any other federal, state, or local review or permitting processes.

4.5 The County shall not request any mitigation measures, conditions or exactions that are disproportionate to the Project impacts or that lack a nexus to the Project impacts, as reasonably determined by RCTC.

4.6 The County shall not take any action with the intent or effect of unnecessarily impacting the timely implementation of the Project by RCTC.

4.7 The County shall timely process the required encroachment permits to cover the Contractor’s work on the Project within the County right of way. Encroachment permits shall be processed in no more than five (5) working days after receipt of a complete encroachment permit application from Contractor. The County shall not issue any encroachment permits to any other contractors if the proposed work thereunder has the potential to delay or impact the Project, without first coordinating the same with the Contractor and RCTC. All required encroachment permits to be issued by County shall be issued in the name of RCTC.

4.8 The County shall permit ingress to and egress from the Project from County-maintained roads.

The County shall have appropriate representatives regularly attend meetings of the Contractor's task forces formed for public information, traffic management and detours, local street construction, and related construction work impacting the County, and shall provide input at such meetings related to Project work that may impact County residents.

4.9 The County shall waive any and all charges and fees related to plan review and inspections for the Project.

4.10 The County shall waive any street trenching restrictions/moratoriums currently in place within the County limits as respect to the Project work, and shall waive any other local requirements that prohibit or interfere with construction of the Project.

4.11 The County shall timely, so as not to delay the Project, review, approve, and execute any necessary agreements or amendments to agreements with RCTC, Caltrans and/or the Contractor related to the Project work or any Project facilities within the County's Jurisdiction.

4.12 The County shall relocate any County-owned utility that interferes with the Project.

4.13 The County shall not approve, without advance written notification to and consultation with RCTC, any land use plans, new projects or developments within its jurisdiction that are inconsistent with, may impact or that interfere with the Project.

4.14 The County shall not allow any encroachment within the County's right of way if such encroachment may interfere with the Project or the Project construction, without first coordinating the same with the Contractor and RCTC.

4.15 The County shall install, maintain, operate, and repair its facilities in a manner which avoids or minimizes, to the extent possible and reasonable, any impact to the Project.

4.16 Following completion of the Project work within the County's Jurisdiction and prior to final acceptance thereof, the County shall timely review and provide approval of the work or identify any punch list work within fifteen (15) days from the written request for the final inspection. The County shall assume responsibility of the Project facilities completed within the County's Jurisdiction upon acceptance of the work, and shall be solely responsible and liable for the operation, maintenance and use of, including all subsequent public use of, the Project, at no cost or expense to RCTC.

4.17 The County will make its best efforts to perform all obligations of the County related to the Project in such a manner as to allow the Project to progress as scheduled.

4.18 The County shall contribute one million dollars of local funds to RCTC within 30 days of the execution of this Cooperative Agreement, for the performance of preliminary right-of-way and utility investigations, public outreach, design efforts, and construction. Any unused funds will be refunded to the County.

5. Obligations of RCTC

5.1 RCTC shall be responsible for providing all services to complete the Project, or as reasonably necessary for Project completion. RCTC shall be responsible for the process of selecting Project consultants and the Contractor in compliance with all applicable local, state and federal laws. RCTC shall be responsible for obtaining all applicable environmental clearances and permits necessary to complete the Project, and for acquiring all right of way as further detailed in Article 6.

5.2 RCTC shall incorporate the County Standards for work within the County's Jurisdiction into the design, and shall require that improvements within the County's Jurisdiction be completed pursuant to such standards.

5.3 RCTC shall provide the County an opportunity to review and approve all design documents for the Project.

5.4 RCTC shall provide the County an opportunity to inspect the Project work during construction.

5.5 In the event the County and RCTC are in disagreement with a design standard or construction method, County's standards shall prevail for work within the County's Jurisdiction.

5.6 As between RCTC and the County, RCTC and its consultants shall be responsible for construction inspection of the Project work to ensure conformance with the construction contract. RCTC shall allow County staff access to the Project site, upon reasonable notice, to perform observation of any Project improvements. County inspectors shall communicate any construction deficiencies during construction, including a final punch list, to RCTC for completion. County has the final authority to accept the improvements.

5.7 RCTC shall assign all warranties for the Contractor work to the County upon County's acceptance of the Project.

5.8 RCTC shall require its Contractor to obtain all required permits and approvals for all Project work including encroachment permits from County for construction of any Project work within the County's Jurisdiction.

5.9 RCTC shall include, in its contract with the Contractor, a requirement that the Contractor include the County as an additional insured and as an indemnified party under said agreement.

5.10 As between the RCTC and the County, RCTC shall be responsible for design, reviews, approvals, and inspection of the Project work within the County's Jurisdiction to ensure conformance with the County Standards during completion of the Project design, selection of the Contractor, and during Project construction and maintenance periods.

5.11 Except in the case of an unforeseen circumstance, RCTC shall require its Contractor to provide at least a fifteen (15) day notification to County prior to any full or partial closure of any streets within County's Jurisdiction exceeding one (1) day in duration. Short term closures less than one (1) day in duration shall require forty eight (48) hours prior notice.

5.12 RCTC will institute a public outreach campaign to keep emergency responders, School District transportation departments, transit operators, the residents of the County and the general public apprised of the Project work, and any street closures and other impacts to use of the County right of way that may result from the Project. In addition, RCTC shall develop and maintain a written Emergency Response plan that includes emergency contact information for RCTC's Contractor, County of Riverside, City of Perris, emergency responders and Contractor personnel that would be expected to respond to an emergency situation.

5.13 RCTC shall provide to County as-built plans for Project work within County's Jurisdiction within 120 days of Notice of Completion.

6. RCTC Right of Way Obligations.

6.1 RCTC is responsible for all right of way work for the Project except as expressly set forth in this Cooperative Agreement.

6.2 RCTC 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 the Project or that violate County's encroachment policy.

6.3 RCTC will provide County a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements (if applicable) for County's concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts will be fully addressed prior to Right-of-Way Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the Project plans, specifications, and estimate.

6.4 RCTC 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.

6.5 Acquisition of right-of-way will not occur prior to the approval of the environmental document without written approval from the CEQA lead agency for the Project.

6.6 RCTC will utilize a properly licensed consultant for all right-of-way activities. RCTC shall provide the County with copies of appraisal reports and acquisition

documents upon request. RCTC will submit a draft Right-of-Way Certification to County prior to the scheduled Right-of-Way Certification milestone date for review. RCTC will submit a final Right-of-Way Certification to the County for approval prior to the advertising the construction contract. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless Parties mutually agree to other arrangements in writing.

6.7 RCTC shall be the lead agency on eminent domain activities, if required for the Project.

6.8 Title to any property to be transferred to County by RCTC shall be free of all encumbrances and liens, except as to those items which County agrees are not in conflict with use of the property for roadway purposes. Upon acceptance, RCTC will provide County with a policy of title insurance in County's name.

7. Dispute Resolution; Legal Disputes. Unless otherwise specified herein, the Parties shall comply with the following procedure in the case of a dispute, claim or controversy arising under or in relation to this Cooperative Agreement.

7.1 *Submission to RCTC Executive Director and Transportation Director.* The dispute shall be referred for negotiation to the RCTC Executive Director and the Director of the County Transportation Department ("Transportation Director"). The RCTC Executive Director and the Transportation Director agree to undertake good faith attempts to resolve said dispute, claim or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may then request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

7.2 If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the Executive Director and the Transportation Director, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity, including specific performance as set forth in Section 8.1.

7.3 To the extent legally permissible, the Parties agree not to take any action related to the dispute that would negatively impact the Project until the dispute resolution process is completed.

8. Specific Performance.

8.1 The Parties agree that irreparable damage would occur in the event that any of the provisions of this Cooperative Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties, in addition to any other available remedy in law or in equity, shall be entitled to specific performance of the terms hereof, including the issuance of an injunction or injunctions as a remedy for any such breach, to prevent breaches of this Cooperative Agreement and

to enforce specifically the terms and provisions of this Cooperative Agreement, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties further hereby waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief. Notwithstanding anything to the contrary contained in this Cooperative Agreement, should RCTC obtain County's specific performance, County shall not have to reimburse RCTC pursuant to Section 16 of this Cooperative Agreement. Should County have to reimburse RCTC pursuant to Section 16 of this Cooperative Agreement, RCTC shall not be entitled to County's specific performance.

8.2 Prior to either Party instituting an action for specific performance, the Parties shall comply with the dispute resolution process set forth above in Section 7.1, and consistent with Section 7.3, to the extent legally permissible, the Parties agree not to take any action related to the dispute that would negatively impact the Project until the dispute resolution process is completed.

9. Indemnification.

9.1 RCTC shall indemnify, defend and hold the County, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of RCTC, its officials, officers, employees, agents, consultants or contractors in the performance of RCTC's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys' fees.

9.2 The County shall indemnify, defend and hold RCTC, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of the County, its officials, officers, employees, agents, consultants or contractors in the performance of the County's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys' fees.

9.3 The indemnification provisions set forth in this Section 9 shall survive any expiration or termination of this Cooperative Agreement.

10. Disclaimer. In no event shall either Party be responsible or liable for the quality, suitability, operability or condition of any design or construction by the Project consultants or the Contractor, as applicable, and the Parties expressly disclaim any and all express or implied representations or warranties with respect thereto, including any warranties of suitability or fitness for use.

11. Force Majeure. The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; pandemics; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; laws or regulations that govern either Party; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Cooperative Agreement may also be extended in writing by mutual agreement between the Parties.

12. Amendments. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing; however, no amendments or other modifications of this Cooperative Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors or assigns.

13. Assignment of Cooperative Agreement. Neither Party may assign or transfer its respective rights or obligations under this Cooperative Agreement without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.

14. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Cooperative Agreement.

15. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Cooperative Agreement, which shall be interpreted to carry out the intent of the Parties hereunder.

16. Termination; Repayment Obligation.

16.1 Both RCTC and the County shall have the right, with or without cause, to terminate this Cooperative Agreement, by giving thirty (30) calendar days written notice to the other Party, specifying the date of termination, provided that in the case of a

termination for cause, prior notice and opportunity to cure, as specified below, shall first be provided to the Party in breach by the non-breaching Party. Notwithstanding the foregoing, following commencement of construction of the Project, the County may only terminate this Cooperative Agreement for cause, after providing RCTC notice of a material breach, and reasonable opportunity to cure, as specified below.

16.2 *County Termination for Convenience.* If the County terminates this Cooperative Agreement without cause, the County shall reimburse RCTC for its Project costs, including any Project termination costs, expended following the Effective Date of this Cooperative Agreement through the effective date of termination. In such case, the Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism. Upon repayment by County to RCTC in accordance with this section, all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work paid by RCTC for the Project prior to the date of termination and re-paid by County shall become the sole property of County. The foregoing shall be provided subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty.

16.3 *RCTC Termination for Convenience.* If RCTC terminates this Cooperative Agreement without cause, RCTC shall return to County any unspent portion of its contribution of one million dollars as set forth in Section 4.18 of this Agreement, and shall transfer to County all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work produced under this Agreement, to the extent procured or produced with funds provided by County. The foregoing shall be provided by RCTC subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty. In the case of a RCTC's termination for convenience, the County shall have no re-payment obligation whatsoever.

16.4 *County Termination for Cause.* If RCTC materially breaches this Cooperative Agreement in a manner that impedes the ability of the Project to proceed as planned, the County may terminate this Cooperative Agreement for cause, after providing RCTC notice of such material breach and a reasonable opportunity to cure of at least sixty (60) days, subject to extension as set forth in Section 16.5 below. In the case of a termination for cause, RCTC shall return to County any unspent portion of its contribution of one million dollars as set forth in Section 4.18 of this Agreement, and shall transfer to County all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work produced under this Agreement, to the extent procured or produced with funds provided by County. The foregoing shall be provided by RCTC subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty. The County shall notify RCTC of such material breach within thirty (30) days of the date that the County became aware of or reasonably should have become aware

of the breach. In the case of a termination for cause, the County shall have no re-payment obligation whatsoever. Prior to the County's termination for cause pursuant to this section, the Parties shall be required to undertake the dispute resolution process described in Section 7 above.

16.5 *RCTC Termination for Cause - Breach.* If the County refuses to issue permits for construction of the Project, takes any action in violation of the terms of this Cooperative Agreement that impedes the ability of the Project to proceed as planned, or fails to undertake its obligations under this Agreement, unless the County terminates for convenience as set forth above, RCTC may terminate this Cooperative Agreement for cause, after providing the County notice of such material breach and a reasonable opportunity to cure of at least sixty (60) days, subject to extension as set forth in Section 16.5 below, and the County shall reimburse RCTC for the Project costs expended following the Effective Date of this Cooperative Agreement through the effective date of termination. In such case, the Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism. Prior to RCTC's termination for cause pursuant to this section, the Parties shall be required to undertake the dispute resolution process described in Section 7 above and RCTC shall be required to provide County with a cost estimate for the Project costs expended following the Effective Date of this Cooperative Agreement through the proposed effective date of termination. Upon repayment by County to RCTC in accordance with this section, all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work paid by RCTC for the Project prior to the date of termination and repaid by County shall become the sole property of County. The foregoing shall be provided by RCTC subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty.

16.6 *Cure Period Extensions.* If the material breach identified by the non-breaching Party is not reasonably capable of cure within a sixty (60) day period following the non-breaching Party's delivery of its notice of breach, then:

- The breaching Party shall, within thirty (30) days following receipt of the notice of breach, provide a written response to the non-breaching Party that (i) identifies the actions to be undertaken to cure the material breach (the "Cure Activities") and (ii) identifies a schedule of performance for implementation and completion of the Cure Activities (the "Schedule");
- The non-breaching Party shall review the proposed Cure Activities and Schedule for purposes of confirming the reasonableness thereof;
- At the request of the non-breaching Party, representatives of the Parties shall meet and confer for purposes of addressing any questions or concerns with respect to the Cure Activities and the

Schedule;

- Upon confirming the reasonableness of the Cure Activities and Schedule (as may be adjusted to address concerns), the non-breaching Party shall grant an extension of the sixty (60) day cure period to correspond with the Schedule; and
- Provided that the breaching Party is diligently pursuing implementation of the Cure Activities in accordance with the Schedule, the breaching Party may request reasonable extensions of the Schedule, and the non-breaching Party shall not unreasonably withhold its consent to such requests.

The Parties shall continue to perform under this Cooperative Agreement during the cure period. Any dispute regarding Cure Activities or Schedule shall be subject to the dispute resolution process described in Section 7 above.

16.7 If this Cooperative Agreement is terminated, RCTC shall, at RCTC's expense, return the Project right-of-way to its original condition or to an acceptable safe and operable condition, as mutually agreed upon by the Parties.

16.8 The repayment obligation set forth in this Section 16 shall survive any expiration or termination of this Cooperative Agreement.

17. Predetermination. Nothing in this Cooperative Agreement is intended by the Parties nor should be interpreted as predetermining any decisions or approvals by either Party's boards or commissions.

18. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Cooperative Agreement, shall survive any such expiration or termination.

19. Third Party Beneficiaries. There are no third-party beneficiaries to this Cooperative Agreement.

20. Relationship of the Parties. RCTC is, for purposes relating to this Cooperative Agreement, an independent contractor of County and shall not be deemed an employee of County. It is expressly understood and agreed that RCTC (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which County employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the Parties and RCTC shall hold County harmless from any and all claims that may be made against County based upon any contention by a third party that an employer-employee relationship exists by reason of this Cooperative Agreement.

21. Delivery of Notices. All notices permitted or required under this Cooperative Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

COUNTY:
Riverside Transportation and
Land Management Agency
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Attn: Director of Transportation

COMMISSION:
Riverside County
Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501
Attn: Executive Director

Such notice shall be deemed made when personally delivered, electronically delivered to the Directors above provided that receipt of such electronic delivery is confirmed to the sending Party by the receiving Party, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

22. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Cooperative Agreement as though fully set forth herein.

23. Entire Agreement. This Cooperative Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings. All provisions of this Cooperative Agreement shall be interpreted and implemented in a manner consistent with all applicable laws and regulations that govern the Parties.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO
COOPERATIVE AGREEMENT NO. 22-31-045-00**


IN WITNESS WHEREOF, the Parties hereto have executed this Cooperative Agreement on the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**COUNTY OF RIVERSIDE
THROUGH THE COUNTY OF
RIVERSIDE TRANSPORTATION AND
LAND MANAGEMENT AGENCY**

By: _____
Anne Mayer, Executive Director

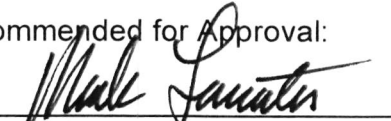
Approved by the
BOARD OF SUPERVISORS

By: 

KEVIN JEFFRIES
Chairman of the Board

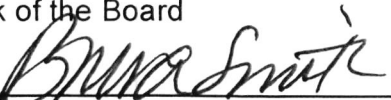
Approved as to Form:

By: _____
Best Best & Krieger LLP
General Counsel

Recommended for Approval:
By: 

MARK LANCASTER
Director of Transportation


ATTEST:
KIMBERLY RECTOR
Clerk of the Board

By: 

Deputy

(SEAL)

Approved as to Form:
County Counsel

By: 

DANIELLE MALAND
Deputy County Counsel

EXHIBIT "A"

The proposed Mid County Parkway - Construction Contract 3 Project will construct two mix flow lanes in the eastbound direction from approximately one mile east of Rider Street to Warren Road. The design will include one of the two ultimate MCP bridges over the San Jacinto River, which will accommodate the eastbound lanes, but the consultant may break up the PS&E into two parts so that the roadway can be widened on each side of the bridge under one construction contract and the bridge itself (with approaching roadway) constructed with another construction contract, so that each part can be funded more easily. Also included will be traffic signals, drainage facilities, wildlife crossings and associated work.

COUNTY OF RIVERSIDE
TRANSPORTATION DEPARTMENT

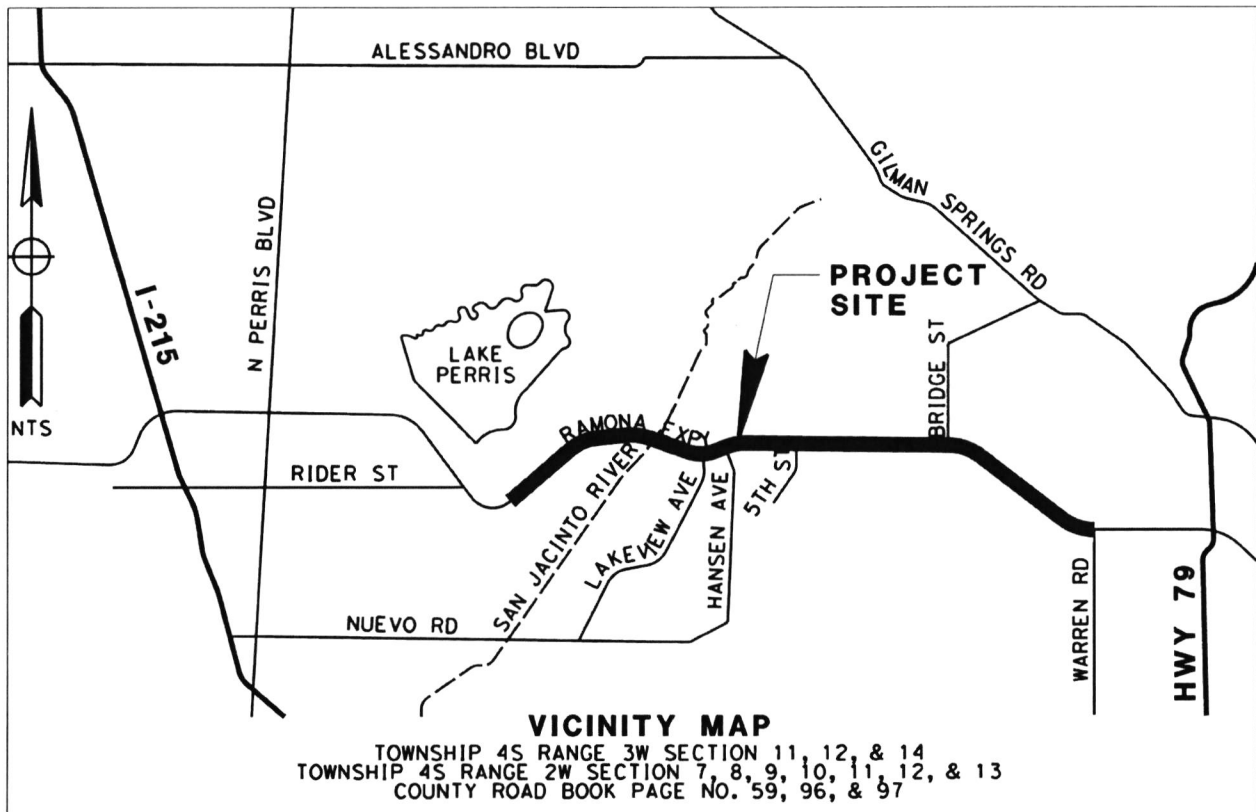
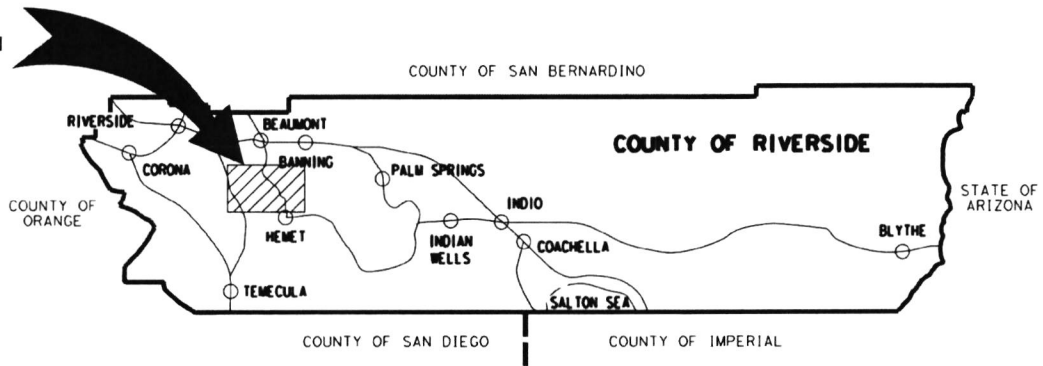
MID COUNTY PARKWAY PROJECT

CONSTRUCTION CONTRACT 3

1 MI E'LY RIDER STREET TO WARREN ROAD

COMMUNITIES OF NUEVO, LAKEVIEW,
AND GILMAN HOT SPRINGS

PROJECT
LOCATION



**COOPERATIVE AGREEMENT
BETWEEN
THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND
THE COUNTY OF RIVERSIDE
THROUGH THE COUNTY OF RIVERSIDE TRANSPORTATION AND LAND
MANAGEMENT AGENCY**

FOR THE MID COUNTY PARKWAY PROJECT - CONSTRUCTION CONTRACT 3

This Cooperative Agreement ("Cooperative Agreement") is made and entered into this 29 day of August, 2023 ("Effective Date") by and between the Riverside County Transportation Commission ("RCTC") and the County of Riverside, a political subdivision of the State of California, through the County of Riverside Transportation and Land Management Agency ("County"). RCTC and the County are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

RECITALS

WHEREAS, RCTC is undertaking the Mid County Parkway project ("MCP").

WHEREAS, RCTC, in cooperation with the Federal Highway Administration ("FHWA"), the California Department of Transportation ("Caltrans") and the County, as part of the MCP proposes to build a portion of the project in unincorporated Riverside County, which is referred to in this Cooperative Agreement as the "Project".

WHEREAS, the Project will include: two mix flow lanes in the eastbound direction from approximately one mile east of Rider Street to Warren Road. The design will include one of the two ultimate MCP bridges over the San Jacinto River, which will accommodate the eastbound lanes, but the consultant may break up the PS&E into two parts so that the roadway can be widened on each side of the bridge under one construction contract and the bridge itself (with approaching roadway) constructed with another construction contract, so that each part can be funded more easily. Also included will be traffic signals, drainage facilities, and wildlife crossings and associated work. The Project is further described and depicted in Exhibit "A" attached to this Cooperative Agreement and incorporated herein by reference.

WHEREAS, the Project is sometimes referred to by the Parties as the Mid County Parkway Project - Construction Contract 3.

WHEREAS, it is the intent of the Parties to enter into this Cooperative Agreement to establish and coordinate the responsibilities of the Parties with respect to the Project, establish certain opportunities for cooperation and coordination and set forth various responsibilities of the Parties all as further set forth herein.

WHEREAS, the Parties acknowledge that RCTC has or shall fully comply with the California Environmental Quality Act (CEQA) and all other applicable laws, as a precondition to construction of the Project.

WHEREAS, RCTC intends, pursuant to a public bidding process in accordance with State law, to select a construction contractor to complete the Project ("Contractor").

WHEREAS, because the Project, if constructed, may impact County owned and/or maintained facilities, coordination between the Parties prior to and during construction of the Project is crucial to provide for mitigation of potential impacts that construction may have on the County, and to ensure that improvements within the County comply with applicable standards.

WHEREAS, the Project includes the following components:

- Plans, Specifications, and Estimate (PS&E)
- Right of Way Acquisition and Utility Relocation
- Construction
- Acceptance by the County for Operation and Maintenance of Improvements within County's Jurisdiction

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by RCTC and the County as follows:

TERMS

1. Definitions. In addition to the definitions set forth in the recitals above, the following terms shall have the meanings as set forth below.

1.1 As used in this Cooperative Agreement, the term "County's Jurisdiction" shall mean and refer to the areas within the Project limits either owned and/or maintained by the County. As used herein, the term "County's Jurisdiction" expressly excludes the State highway right of way.

1.2 As used in this Cooperative Agreement, the term "County Standards" shall mean and refer to the County's standard plans, specifications, policies, guidelines, and ordinances, design criteria, construction details, and testing/inspection requirements, and amendments and supplements thereto, for work within the County's Jurisdiction, approved by the County and in effect prior to approval of the 60% complete PS&E package.

2. Term. This Cooperative Agreement shall be effective as of the Effective Date, and shall continue in effect until the Project is accepted by the County as referenced in

Sections 4.16 and 5.6, unless otherwise terminated as specified in this Cooperative Agreement ("Term").

3. Agreement to Cooperate. The Parties agree to mutually cooperate in order to help ensure that the Project is successfully completed with minimum impact to both Parties, and the public, and the County commits to support the Project.

4. Obligations of the County. If consistent with all applicable local, state and federal laws and regulations, the County agrees as follows:

4.1 The County shall provide a County oversight engineer to oversee the work during plan preparation and construction, at its own cost.

4.2 The County shall timely review design plans for the Project, and provide any approvals or comments within thirty (30) days of receipt of the plans. If the County fails to provide any comments or its approval within said time period, RCTC shall provide notice to the Transportation Director of the County that the design plans shall be deemed approved by the County if no comments are received within an additional fifteen (15) days.

4.3 The County will be provided an opportunity to be involved in the process of selecting Project consultants in compliance with all applicable local, state and federal laws.

4.4 The County shall not directly or indirectly encourage any third parties to object, oppose, delay, frustrate, or disrupt the full and complete design, analysis, consideration, potential approval, or implementation of the Project. Such obligation shall extend both to RCTC's processes regarding the Project, but also to any other federal, state, or local review or permitting processes.

4.5 The County shall not request any mitigation measures, conditions or exactions that are disproportionate to the Project impacts or that lack a nexus to the Project impacts, as reasonably determined by RCTC.

4.6 The County shall not take any action with the intent or effect of unnecessarily impacting the timely implementation of the Project by RCTC.

4.7 The County shall timely process the required encroachment permits to cover the Contractor's work on the Project within the County right of way. Encroachment permits shall be processed in no more than five (5) working days after receipt of a complete encroachment permit application from Contractor. The County shall not issue any encroachment permits to any other contractors if the proposed work thereunder has the potential to delay or impact the Project, without first coordinating the same with the Contractor and RCTC. All required encroachment permits to be issued by County shall be issued in the name of RCTC.

4.8 The County shall permit ingress to and egress from the Project from County-maintained roads.

The County shall have appropriate representatives regularly attend meetings of the Contractor's task forces formed for public information, traffic management and detours, local street construction, and related construction work impacting the County, and shall provide input at such meetings related to Project work that may impact County residents.

4.9 The County shall waive any and all charges and fees related to plan review and inspections for the Project.

4.10 The County shall waive any street trenching restrictions/moratoriums currently in place within the County limits as respect to the Project work, and shall waive any other local requirements that prohibit or interfere with construction of the Project.

4.11 The County shall timely, so as not to delay the Project, review, approve, and execute any necessary agreements or amendments to agreements with RCTC, Caltrans and/or the Contractor related to the Project work or any Project facilities within the County's Jurisdiction.

4.12 The County shall relocate any County-owned utility that interferes with the Project.

4.13 The County shall not approve, without advance written notification to and consultation with RCTC, any land use plans, new projects or developments within its jurisdiction that are inconsistent with, may impact or that interfere with the Project.

4.14 The County shall not allow any encroachment within the County's right of way if such encroachment may interfere with the Project or the Project construction, without first coordinating the same with the Contractor and RCTC.

4.15 The County shall install, maintain, operate, and repair its facilities in a manner which avoids or minimizes, to the extent possible and reasonable, any impact to the Project.

4.16 Following completion of the Project work within the County's Jurisdiction and prior to final acceptance thereof, the County shall timely review and provide approval of the work or identify any punch list work within fifteen (15) days from the written request for the final inspection. The County shall assume responsibility of the Project facilities completed within the County's Jurisdiction upon acceptance of the work, and shall be solely responsible and liable for the operation, maintenance and use of, including all subsequent public use of, the Project, at no cost or expense to RCTC.

4.17 The County will make its best efforts to perform all obligations of the County related to the Project in such a manner as to allow the Project to progress as scheduled.

4.18 The County shall contribute one million dollars of local funds to RCTC within 30 days of the execution of this Cooperative Agreement, for the performance of preliminary right-of-way and utility investigations, public outreach, design efforts, and construction. Any unused funds will be refunded to the County.

5. Obligations of RCTC

5.1 RCTC shall be responsible for providing all services to complete the Project, or as reasonably necessary for Project completion. RCTC shall be responsible for the process of selecting Project consultants and the Contractor in compliance with all applicable local, state and federal laws. RCTC shall be responsible for obtaining all applicable environmental clearances and permits necessary to complete the Project, and for acquiring all right of way as further detailed in Article 6.

5.2 RCTC shall incorporate the County Standards for work within the County's Jurisdiction into the design, and shall require that improvements within the County's Jurisdiction be completed pursuant to such standards.

5.3 RCTC shall provide the County an opportunity to review and approve all design documents for the Project.

5.4 RCTC shall provide the County an opportunity to inspect the Project work during construction.

5.5 In the event the County and RCTC are in disagreement with a design standard or construction method, County's standards shall prevail for work within the County's Jurisdiction.

5.6 As between RCTC and the County, RCTC and its consultants shall be responsible for construction inspection of the Project work to ensure conformance with the construction contract. RCTC shall allow County staff access to the Project site, upon reasonable notice, to perform observation of any Project improvements. County inspectors shall communicate any construction deficiencies during construction, including a final punch list, to RCTC for completion. County has the final authority to accept the improvements.

5.7 RCTC shall assign all warranties for the Contractor work to the County upon County's acceptance of the Project.

5.8 RCTC shall require its Contractor to obtain all required permits and approvals for all Project work including encroachment permits from County for construction of any Project work within the County's Jurisdiction.

5.9 RCTC shall include, in its contract with the Contractor, a requirement that the Contractor include the County as an additional insured and as an indemnified party under said agreement.

5.10 As between the RCTC and the County, RCTC shall be responsible for design, reviews, approvals, and inspection of the Project work within the County's Jurisdiction to ensure conformance with the County Standards during completion of the Project design, selection of the Contractor, and during Project construction and maintenance periods.

5.11 Except in the case of an unforeseen circumstance, RCTC shall require its Contractor to provide at least a fifteen (15) day notification to County prior to any full or partial closure of any streets within County's Jurisdiction exceeding one (1) day in duration. Short term closures less than one (1) day in duration shall require forty eight (48) hours prior notice.

5.12 RCTC will institute a public outreach campaign to keep emergency responders, School District transportation departments, transit operators, the residents of the County and the general public apprised of the Project work, and any street closures and other impacts to use of the County right of way that may result from the Project. In addition, RCTC shall develop and maintain a written Emergency Response plan that includes emergency contact information for RCTC's Contractor, County of Riverside, City of Perris, emergency responders and Contractor personnel that would be expected to respond to an emergency situation.

5.13 RCTC shall provide to County as-built plans for Project work within County's Jurisdiction within 120 days of Notice of Completion.

6. RCTC Right of Way Obligations.

6.1 RCTC is responsible for all right of way work for the Project except as expressly set forth in this Cooperative Agreement.

6.2 RCTC 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 the Project or that violate County's encroachment policy.

6.3 RCTC will provide County a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements (if applicable) for County's concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts will be fully addressed prior to Right-of-Way Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the Project plans, specifications, and estimate.

6.4 RCTC 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.

6.5 Acquisition of right-of-way will not occur prior to the approval of the environmental document without written approval from the CEQA lead agency for the Project.

6.6 RCTC will utilize a properly licensed consultant for all right-of-way activities. RCTC shall provide the County with copies of appraisal reports and acquisition

documents upon request. RCTC will submit a draft Right-of-Way Certification to County prior to the scheduled Right-of-Way Certification milestone date for review. RCTC will submit a final Right-of-Way Certification to the County for approval prior to the advertising the construction contract. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless Parties mutually agree to other arrangements in writing.

6.7 RCTC shall be the lead agency on eminent domain activities, if required for the Project.

6.8 Title to any property to be transferred to County by RCTC shall be free of all encumbrances and liens, except as to those items which County agrees are not in conflict with use of the property for roadway purposes. Upon acceptance, RCTC will provide County with a policy of title insurance in County's name.

7. Dispute Resolution; Legal Disputes. Unless otherwise specified herein, the Parties shall comply with the following procedure in the case of a dispute, claim or controversy arising under or in relation to this Cooperative Agreement.

7.1 *Submission to RCTC Executive Director and Transportation Director.* The dispute shall be referred for negotiation to the RCTC Executive Director and the Director of the County Transportation Department ("Transportation Director"). The RCTC Executive Director and the Transportation Director agree to undertake good faith attempts to resolve said dispute, claim or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may then request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

7.2 If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the Executive Director and the Transportation Director, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity, including specific performance as set forth in Section 8.1.

7.3 To the extent legally permissible, the Parties agree not to take any action related to the dispute that would negatively impact the Project until the dispute resolution process is completed.

8. Specific Performance.

8.1 The Parties agree that irreparable damage would occur in the event that any of the provisions of this Cooperative Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties, in addition to any other available remedy in law or in equity, shall be entitled to specific performance of the terms hereof, including the issuance of an injunction or injunctions as a remedy for any such breach, to prevent breaches of this Cooperative Agreement and

to enforce specifically the terms and provisions of this Cooperative Agreement, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties further hereby waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief. Notwithstanding anything to the contrary contained in this Cooperative Agreement, should RCTC obtain County's specific performance, County shall not have to reimburse RCTC pursuant to Section 16 of this Cooperative Agreement. Should County have to reimburse RCTC pursuant to Section 16 of this Cooperative Agreement, RCTC shall not be entitled to County's specific performance.

8.2 Prior to either Party instituting an action for specific performance, the Parties shall comply with the dispute resolution process set forth above in Section 7.1, and consistent with Section 7.3, to the extent legally permissible, the Parties agree not to take any action related to the dispute that would negatively impact the Project until the dispute resolution process is completed.

9. Indemnification.

9.1 RCTC shall indemnify, defend and hold the County, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of RCTC, its officials, officers, employees, agents, consultants or contractors in the performance of RCTC's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys' fees.

9.2 The County shall indemnify, defend and hold RCTC, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of the County, its officials, officers, employees, agents, consultants or contractors in the performance of the County's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys' fees.

9.3 The indemnification provisions set forth in this Section 9 shall survive any expiration or termination of this Cooperative Agreement.

10. Disclaimer. In no event shall either Party be responsible or liable for the quality, suitability, operability or condition of any design or construction by the Project consultants or the Contractor, as applicable, and the Parties expressly disclaim any and all express or implied representations or warranties with respect thereto, including any warranties of suitability or fitness for use.

11. Force Majeure. The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; pandemics; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; laws or regulations that govern either Party; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Cooperative Agreement may also be extended in writing by mutual agreement between the Parties.

12. Amendments. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing; however, no amendments or other modifications of this Cooperative Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors or assigns.

13. Assignment of Cooperative Agreement. Neither Party may assign or transfer its respective rights or obligations under this Cooperative Agreement without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.

14. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Cooperative Agreement.

15. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Cooperative Agreement, which shall be interpreted to carry out the intent of the Parties hereunder.

16. Termination; Repayment Obligation.

16.1 Both RCTC and the County shall have the right, with or without cause, to terminate this Cooperative Agreement, by giving thirty (30) calendar days written notice to the other Party, specifying the date of termination, provided that in the case of a

termination for cause, prior notice and opportunity to cure, as specified below, shall first be provided to the Party in breach by the non-breaching Party. Notwithstanding the foregoing, following commencement of construction of the Project, the County may only terminate this Cooperative Agreement for cause, after providing RCTC notice of a material breach, and reasonable opportunity to cure, as specified below.

16.2 *County Termination for Convenience.* If the County terminates this Cooperative Agreement without cause, the County shall reimburse RCTC for its Project costs, including any Project termination costs, expended following the Effective Date of this Cooperative Agreement through the effective date of termination. In such case, the Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism. Upon repayment by County to RCTC in accordance with this section, all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work paid by RCTC for the Project prior to the date of termination and re-paid by County shall become the sole property of County. The foregoing shall be provided subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty.

16.3 *RCTC Termination for Convenience.* If RCTC terminates this Cooperative Agreement without cause, RCTC shall return to County any unspent portion of its contribution of one million dollars as set forth in Section 4.18 of this Agreement, and shall transfer to County all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work produced under this Agreement, to the extent procured or produced with funds provided by County. The foregoing shall be provided by RCTC subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty. In the case of a RCTC's termination for convenience, the County shall have no re-payment obligation whatsoever.

16.4 *County Termination for Cause.* If RCTC materially breaches this Cooperative Agreement in a manner that impedes the ability of the Project to proceed as planned, the County may terminate this Cooperative Agreement for cause, after providing RCTC notice of such material breach and a reasonable opportunity to cure of at least sixty (60) days, subject to extension as set forth in Section 16.5 below. In the case of a termination for cause, RCTC shall return to County any unspent portion of its contribution of one million dollars as set forth in Section 4.18 of this Agreement, and shall transfer to County all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work produced under this Agreement, to the extent procured or produced with funds provided by County. The foregoing shall be provided by RCTC subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty. The County shall notify RCTC of such material breach within thirty (30) days of the date that the County became aware of or reasonably should have become aware

of the breach. In the case of a termination for cause, the County shall have no re-payment obligation whatsoever. Prior to the County's termination for cause pursuant to this section, the Parties shall be required to undertake the dispute resolution process described in Section 7 above.

16.5 RCTC Termination for Cause - Breach. If the County refuses to issue permits for construction of the Project, takes any action in violation of the terms of this Cooperative Agreement that impedes the ability of the Project to proceed as planned, or fails to undertake its obligations under this Agreement, unless the County terminates for convenience as set forth above, RCTC may terminate this Cooperative Agreement for cause, after providing the County notice of such material breach and a reasonable opportunity to cure of at least sixty (60) days, subject to extension as set forth in Section 16.5 below, and the County shall reimburse RCTC for the Project costs expended following the Effective Date of this Cooperative Agreement through the effective date of termination. In such case, the Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism. Prior to RCTC's termination for cause pursuant to this section, the Parties shall be required to undertake the dispute resolution process described in Section 7 above and RCTC shall be required to provide County with a cost estimate for the Project costs expended following the Effective Date of this Cooperative Agreement through the proposed effective date of termination. Upon repayment by County to RCTC in accordance with this section, all Project documents (including but not limited to designs, studies, or plans), Project improvements, Project warranties, title to property for the Project, and any other deliverables or work paid by RCTC for the Project prior to the date of termination and repaid by County shall become the sole property of County. The foregoing shall be provided by RCTC subject to Section 10 of this Agreement. Except as set forth in Section 6.8, any property for the Project conveyed pursuant to this section shall be provided by RCTC "as is" and without warranty.

16.6 Cure Period Extensions. If the material breach identified by the non-breaching Party is not reasonably capable of cure within a sixty (60) day period following the non-breaching Party's delivery of its notice of breach, then:

- The breaching Party shall, within thirty (30) days following receipt of the notice of breach, provide a written response to the non-breaching Party that (i) identifies the actions to be undertaken to cure the material breach (the "Cure Activities") and (ii) identifies a schedule of performance for implementation and completion of the Cure Activities (the "Schedule");
- The non-breaching Party shall review the proposed Cure Activities and Schedule for purposes of confirming the reasonableness thereof;
- At the request of the non-breaching Party, representatives of the Parties shall meet and confer for purposes of addressing any questions or concerns with respect to the Cure Activities and the

Schedule;

- Upon confirming the reasonableness of the Cure Activities and Schedule (as may be adjusted to address concerns), the non-breaching Party shall grant an extension of the sixty (60) day cure period to correspond with the Schedule; and
- Provided that the breaching Party is diligently pursuing implementation of the Cure Activities in accordance with the Schedule, the breaching Party may request reasonable extensions of the Schedule, and the non-breaching Party shall not unreasonably withhold its consent to such requests.

The Parties shall continue to perform under this Cooperative Agreement during the cure period. Any dispute regarding Cure Activities or Schedule shall be subject to the dispute resolution process described in Section 7 above.

16.7 If this Cooperative Agreement is terminated, RCTC shall, at RCTC's expense, return the Project right-of-way to its original condition or to an acceptable safe and operable condition, as mutually agreed upon by the Parties.

16.8 The repayment obligation set forth in this Section 16 shall survive any expiration or termination of this Cooperative Agreement.

17. Predetermination. Nothing in this Cooperative Agreement is intended by the Parties nor should be interpreted as predetermining any decisions or approvals by either Party's boards or commissions.

18. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Cooperative Agreement, shall survive any such expiration or termination.

19. Third Party Beneficiaries. There are no third-party beneficiaries to this Cooperative Agreement.

20. Relationship of the Parties. RCTC is, for purposes relating to this Cooperative Agreement, an independent contractor of County and shall not be deemed an employee of County. It is expressly understood and agreed that RCTC (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which County employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the Parties and RCTC shall hold County harmless from any and all claims that may be made against County based upon any contention by a third party that an employer-employee relationship exists by reason of this Cooperative Agreement.

21. Delivery of Notices. All notices permitted or required under this Cooperative Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

COUNTY:

Riverside Transportation and
Land Management Agency
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Attn: Director of Transportation

COMMISSION:

Riverside County
Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501
Attn: Executive Director

Such notice shall be deemed made when personally delivered, electronically delivered to the Directors above provided that receipt of such electronic delivery is confirmed to the sending Party by the receiving Party, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

22. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Cooperative Agreement as though fully set forth herein.

23. Entire Agreement. This Cooperative Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings. All provisions of this Cooperative Agreement shall be interpreted and implemented in a manner consistent with all applicable laws and regulations that govern the Parties.

[SIGNATURES ON FOLLOWING PAGE]

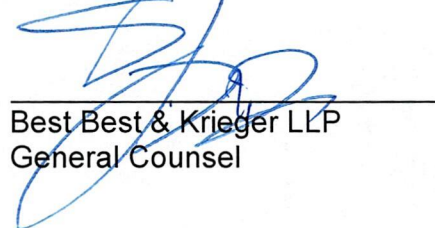
**SIGNATURE PAGE
TO
COOPERATIVE AGREEMENT NO. 22-31-045-00**

IN WITNESS WHEREOF, the Parties hereto have executed this Cooperative Agreement on the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

By: 
Anne Mayer, Executive Director

Approved as to Form:

By: 
Best Best & Krieger LLP
General Counsel

**COUNTY OF RIVERSIDE
THROUGH THE COUNTY OF
RIVERSIDE TRANSPORTATION AND
LAND MANAGEMENT AGENCY**


Approved by the
BOARD OF SUPERVISORS

By: 
KEVIN JEFFRIES
Chairman of the Board

Recommended for Approval:

By: 
MARK LANCASTER
Director of Transportation

ATTEST:
KIMBERLY RECTOR
Clerk of the Board

By: 
Deputy

(SEAL)

Approved as to Form:
County Counsel


By: 
DANIELLE MALAND
Deputy County Counsel

EXHIBIT "A"

The proposed Mid County Parkway - Construction Contract 3 Project will construct two mix flow lanes in the eastbound direction from approximately one mile east of Rider Street to Warren Road. The design will include one of the two ultimate MCP bridges over the San Jacinto River, which will accommodate the eastbound lanes, but the consultant may break up the PS&E into two parts so that the roadway can be widened on each side of the bridge under one construction contract and the bridge itself (with approaching roadway) constructed with another construction contract, so that each part can be funded more easily. Also included will be traffic signals, drainage facilities, wildlife crossings and associated work.