

**COOPERATIVE AGREEMENT
BETWEEN**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION,
CITY OF LAKE ELSINORE**

**FOR THE INTERSTATE 15 (I-15) FRANKLIN STREET INTERCHANGE PROJECT
PLANS SPECIFICATIONS AND ESTIMATES PHASE**

1. Parties and Date. This Cooperative Agreement is made and entered into this ____ day of _____, 2023 ("Effective Date"), by and between the Riverside County Transportation Commission ("RCTC") and the City of Lake Elsinore ("City"). RCTC and the City are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

2. Recitals.

2.1 The Western Riverside Council of Governments (WRCOG) has allocated \$9.5 Million for the Plans, Specifications, and Estimates phase for the I-15 Franklin Street Interchange Project ("Project").

2.2 The PS&E phase for the Project includes preparation of the PS&E final design, right-of-way management, right-of-way acquisitions, and RCTC internal costs consisting of program management and legal services ("PS&E Phase")

2.3 WRCOG and City have entered in a funding agreement allocating the above referenced \$9.5 Million to City for the PS&E Phase. An additional \$3.0 Million in local funds from the City will be committed to the PS&E Phase, for a total of \$12.5 Million towards the PS&E Phase.

2.4 The Project is located adjacent to and within the jurisdictional boundaries of the City of Lake Elsinore and may require improvements to streets within the City.

2.5 The City has requested that RCTC be the lead agency for the PS&E Phase.

2.6 RCTC has agreed to act as the lead agency for the the PS&E Phase.

3. Terms.

3.1 PS&E Phase Work.

A. RCTC shall be the lead agency for the PS&E Phase. RCTC shall select, retain and oversee consultants to complete the PS&E Phase work and services including, but not limited to, preparation of the PS&E document. The PS&E Phase work and services shall be funded by the funding sources set forth in Section 2.3 above. The

Parties agree that RCTC shall not have any obligation to fund the PS&E Phase work or services using its own funds. In the case that additional funds are needed to complete the PS&E Phase work or services, beyond the funding described in Section 2.3, the City shall be responsible for identifying and obtaining such additional funding. Allocation of additional funding shall be by amendment to this Cooperative Agreement or by separate agreement.

B. RCTC shall complete the PS&E Phase work and services within the term of this Agreement, as provided in Section 3.2, unless extended by mutual agreement of the Parties.

C. Funding and responsibilities for any other phases of the Project, or construction of any portion or all of the Project, shall be by separate agreement.

3.2 Term of Agreement. The term of this Cooperative Agreement shall extend from the Effective Date and shall remain in effect through December 31, 2030, or until written agreement by the Parties that the PS&E Phase has been completed, unless earlier terminated as provided in this Cooperative Agreement.

3.3 Cooperation. RCTC and the City agree to cooperate in the development of the PS&E document for the Project, completion of the PS&E Phase work and services, and the implementation of this Cooperative Agreement.

3.4 Reporting. RCTC shall, in a timely manner, provide milestone reports to the City, detailing the progress of the PS&E Phase work and services.

3.5 Obligations of the City.

- A. RCTC shall submit invoices no less frequently than quarterly in any quarter in which reimbursable expenses are incurred but not to exceed once per month. The City shall timely review and pay approved invoices within thirty (30) days. The City shall promptly notify RCTC of any disputed charges.
- B. The City may provide a City oversight engineer or other City staff to oversee the PS&E Phase work and services at its own cost.
- C. The City shall process any City encroachment permits required for the PS&E Phase at no cost to RCTC or its consultant(s) provided that RCTC or the consultant(s), as the case may be, submits a complete application for such encroachment permits consistent with City's requirements. The determination on whether the application is complete and whether an encroachment permit may be issued shall be made by the City in its sole and absolute discretion pursuant to its municipal code, policies, procedures, and any other applicable law.
- D. The City shall timely review design plans for the Project including, but not limited to, the PS&E document and provide any approvals or

comments within thirty (30) days of receipt of the plans. If the City fails to provide any comments or its approval within said time period, RCTC shall provide notice to the City Engineer of the City that the design plans shall be deemed approved by the City if no comments are received within an additional 15 days. The CITY shall inspect any other PS&E Phase work or services upon written notice of completion of the work or services by RCTC to the City, and shall timely provide approval or identify any nonconformities identified by the City within thirty (30) days, or such other reasonable period requested by RCTC.

3.6 Obligations of RCTC

- A. RCTC shall serve as the lead agency for the PS&E Phase. RCTC shall be responsible for procuring, retaining and overseeing consultant(s) as required for completion of the PS&E Phase, or as reasonably necessary for PS&E Phase completion.
- B. RCTC shall provide the City an opportunity to review and approve all design documents for the Project prior to finalization of such design document for the Project for public bidding purposes.
- C. RCTC shall invoice the City for PS&E Phase expenses incurred in accordance with this Cooperative Agreement, no less frequently than quarterly in any quarter in which reimbursable expenses are incurred, but not to exceed once per month. Invoices submitted to the City shall be in a form and include such detail as reasonably requested by the City.
- D. RCTC shall require that the consultant(s) retained for the PS&E Phase include the City as an additional insured and indemnified party under RCTC's agreements with the consultant(s).

3.7 Mutual Indemnification.

A. RCTC shall, at its sole cost and expense, indemnify, defend and hold the City, its officials, officers, employees, consultants and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, judgments, penalties, damages or injuries, in law or in equity, to property or persons, including wrongful death, whether actual, alleged or threatened, which arise in any manner out of, pertain to, or relate to, in whole or in part, to any negligent acts, omissions or breach of law, recklessness, 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 but not limited to the payment of expert witness fees and reasonable attorneys' fees and costs.

B. The City shall, at its sole cost and expense, indemnify, defend and hold RCTC and its officials, officers, employees, consultants and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, judgments, penalties, damages or injuries, in law or in equity, to property or

persons, including wrongful death, whether actual, alleged or threatened, which in any manner arise out of, pertain to, or relate to, in whole or in part, to any negligent acts, omissions or breach of law, recklessness, or willful misconduct of City, its officials, officers, employees, agents, consultants or contractors in the performance of City obligations under this Cooperative Agreement, including but not limited to the payment of expert witness fees and reasonable attorneys' fees and costs.

3.8 Amendments. The terms and conditions of this Cooperative Agreement shall not be altered or modified at any time except by a written amendment executed by the mutual consent of the Parties by an instrument in writing.

3.9 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.

3.10 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 Funding Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

3.11 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.

3.12 RCTC Disclaimer. In no event shall RCTC 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 RCTC expressly disclaims any and all express or implied representations or warranties with respect thereto, including any warranties of suitability or fitness for use.

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

3.14 Termination. Any Party may terminate this Cooperative Agreement by giving thirty (30) days written notice thereof.

3.15 Assignment or Transfer. The Parties shall not assign, hypothecate, or transfer, either directly or by operation of law, this Cooperative Agreement or any interest herein without the prior written consent of the other Parties. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.16 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation

3.17 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To RCTC: Riverside County Transportation Commission
4080 Lemon Street, Third Floor
P.O. Box 12008
Riverside, CA 92502-2208
Attention: Executive Director

Copy to: Best, Best & Krieger, LLP
3390 University Ave. 5fl.
Riverside, CA 92501
Attention: Steven C. DeBaun

To City: City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attention: City Manager

Copy to: Leibold McClendon & Mann
9841 Irvine Center Drive
Suite 230
Irvine, California 92618
Attention: Barbara Leibold, City Attorney

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

3.18 Time of Performance. Time is of the essence in the performance of this Agreement.

3.19 Governing Law. This Agreement is in all respects governed by California law and venue for any dispute shall be in Riverside County.

3.20 Insurance. The Parties each verify that they are self-insured or maintain insurance coverage through a Joint Powers Authority in reasonable and customary amounts for their respective operations.

3.21 Authority to Enter into Agreement. Each Party warrants that the individuals who have signed this Cooperative Agreement have the legal power, right and authority to make this Cooperative Agreement and bind each respective Party.

3.22 Counterparts. This Cooperative Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

3.23 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.

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

[Signatures on following page]

**SIGNATURE PAGE
TO
INTERSTATE 15 FRANKLIN STREET INTERCHANGE PROJECT
PLANS SPECIFICATIONS, AND ESTIMATES PHASE COOPERATIVE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the Effective Date.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

By: _____
Anne Mayer, Executive Director

CITY OF LAKE ELSINORE

By: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
Counsel to RCTC

APPROVED AS TO FORM:

By: _____
Title: _____

ATTEST:

By: _____
Title: _____