

**COOPERATIVE AGREEMENT
BETWEEN
RIVERSIDE COUNTY TRANSPORTATION COMMISSION AND
CITY OF COACHELLA
FOR THE COACHELLA RAIL STATION FEASIBILITY STUDY AND INTEGRATED
LAND USE AND TRANSIT NETWORK STUDY 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 Coachella (“City”). RCTC and the City are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

2. Recitals.

2.1 RCTC and City submitted a joint application to the Southern California Association of Governments (SCAG)’s Regional Early Action Planning 2.0 (REAP 2.0) program for the Coachella Rail Station Feasibility Study and Integrated Land Use and Transit Network (“Project”). The Project includes conducting a transit station feasibility study and visioning plan to support the proposed Coachella Valley-San Gorgonio Pass Rail Corridor Service Tier II environmental work to be undertaken by RCTC (“Study Phase”).

2.2 SCAG and RCTC will be entering into a funding memorandum of agreement allocating the Project \$2,005,000 in REAP 2.0 funds (“SCAG MOU”).

2.3 As the only eligible recipient for REAP 2.0 funds, RCTC will serve as the Sponsoring Agency for the Project. The only funding RCTC will be contributing to the Project are the REAP 2.0 funds.

2.4 RCTC staff time will be reimbursed with REAP 2.0 funds.

2.5 The Project is located within the jurisdictional boundaries of the City of Coachella. City will serve as the Implementing Agency for the Project.

2.6 When RCTC and City submitted the REAP 2.0 application to SCAG for the Project, it was anticipated RCTC would only serve as a pass-through entity for the Project. Upon receiving notification that SCAG selected the Project for REAP 2.0 funding, the City requested RCTC’s assistance with managing the delivery of the project.

2.7 RCTC has agreed to provide project management services to the City for the Project and City will continue to serve as the Implementing Agency.

3. Terms.

3.1 Study Phase Work.

A. RCTC will work jointly with City for the Study Phase. RCTC shall select, retain, and oversee consultants to complete the Study Phase work and services including, but not limited to, preparation of the Study document. The Study Phase work and services shall be funded by the funding source set forth in Sections 2.3 and 2.4. The Parties agree that RCTC shall not have any obligation to fund the Study Phase work or services using its own funds. In the case that additional funds are needed to complete the Study Phase work or services, beyond the funding described in Sections 2.3 and 2.4, 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. Costs incurred by RCTC to facilitate completion of the Study Phase will be reimbursed by the funding source set forth in Sections 2.3 and 2.4.

C. RCTC shall complete the Study 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, 2025, or until written agreement by the Parties that the Study 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 Study document for the Project, completion of the Study Phase work and services, and the implementation of this Cooperative Agreement.

3.4 Obligations of the City.

A. The City shall provide a team of City staff with expertise in City Council priorities, land use, housing, and transportation, to collaborate and provide input on the Study Phase work and services at its own cost, and without reimbursement from the REAP 2.0 funds.

B. The City team shall timely review, approve and respond to RCTC and consultant requests and submittals for the Project including, but not limited to, Project communications plan, public engagement plan, Project branding and outreach materials, existing conditions memo, station site evaluation and selection report, transit-oriented development vision plan and land use strategy, infrastructure and public realm strategy, station renderings, building types, conceptual plans, mobility

hub plan, first/last mile analysis, phasing and financing strategy, metrics, business case analysis, market and real estate analysis, and general decisions regarding city land use, housing, and zoning polices.

3.5 Obligations of RCTC

- A. RCTC shall provide project management services for the Study Phase. RCTC shall be responsible for procuring, retaining, and overseeing consultant(s) as required for completion of the Study Phase, or as reasonably necessary for Study Phase completion.
- B. RCTC shall provide the City an opportunity to review and approve all study documents for the Project prior to finalization of such document for the Project.
- C. RCTC shall invoice SCAG for Study 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 SCAG shall be in a form and include such detail as reasonably requested by SCAG.

3.6 Incorporation of SCAG MOU.

A. City is aware of and has reviewed a copy of the draft SCAG MOU. RCTC shall provide the final version of the SCAG MOU to the City for review prior to execution. If the City objects to any provisions of the final SCAG MOU that impact the City, the City shall inform RCTC within ten (10) days of receipt of a copy thereof, and the Parties may terminate this Cooperative Agreement for mutual convenience. In such case, RCTC shall inform SCAG that RCTC and the City have elected not to proceed with Study Phase under the SCAG MOU.

B. If the City does not object to the terms of the final SCAG MOU, and RCTC has approved such terms, or if SCAG has agreed to amend the terms to the satisfaction of the Parties, RCTC will proceed with execution of the agreement. Once executed by SCAG and RCTC, a copy of the final SCAG MOU shall be provided to the City and maintained on file by the Parties. The executed SCAG MOU, once received by the City, shall be automatically incorporated into this Cooperative Agreement by reference, without further action of the Parties.

C. The City shall comply with all applicable provisions of the executed SCAG MOU, and shall timely comply with its obligations under this Cooperative Agreement, to ensure continued funding eligibility of the Project under the executed SCAG MOU. The Parties shall amend this Cooperative Agreement, as may be necessary, in order to incorporate and ensure compliance with applicable provisions of the executed SCAG MOU.

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 Default; Notice to Cure. If during the term of this Cooperative Agreement, either Party fails or delays to perform any material term of this Cooperative Agreement, the non-defaulting Party shall provide written notice to the other Party of breach. In the event that the defaulting Party fails to commence to cure, correct or remedy such breach within thirty (30) calendar days following receipt of written notice, or thereafter fails to diligently complete such cure, correction or remedy, a default of this Cooperative Agreement shall be deemed to have occurred.

3.15 Termination.

A. Either Party may terminate this Cooperative Agreement by giving thirty (30) days written notice thereof. The Parties acknowledge that if this Cooperative Agreement is terminated, RCTC will exercise its right to terminate that SCAG MOU.

B. The City shall reimburse RCTC, in full, for any costs or liability incurred by RCTC under the executed SCAG MOU as a result of either (i) the City's termination of this Cooperative Agreement, except in the case of a termination for RCTC's default; or (ii) RCTC's termination of this Cooperative Agreement for City's default.

C. No termination for default shall occur until the non-defaulting Party has provided notice and opportunity to cure in accordance with the terms of this Cooperative Agreement.

3.16 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.

3.17 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

3.18 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 Coachella
1515 6th Street
Coachella, CA 92236
Attention: City Manager

Copy to: Best, Best & Krieger, LLP
74760 Highway 111
Suite 100
Indian Wells, California 92210
Attention: Carlos Campos

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.

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

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

3.21 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.

3.22 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.

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

3.24 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.

3.25 Electronically Transmitted Signatures; Electronic Signatures. A manually signed copy of this Cooperative Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Cooperative Agreement for all purposes. This Cooperative Agreement may be signed using an electronic signature.

**SIGNATURE PAGE
TO
COACHELLA RAIL STATION FEASIBILITY STUDY AND INTEGRATED LAND USE
AND TRANSIT NETWORK STUDY PHASE**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF COACHELLA

By: _____
Anne Mayer, Executive Director

By: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
Counsel to RCTC

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

