

**Riverside County Transportation Commission
FEDERAL FUNDING COOPERATIVE AGREEMENT WITH THE CITY OF RIVERSIDE**

1. Parties and Date. This Agreement is made and entered into this ____ day of _____, 2021, by and between the Riverside County Transportation Commission, hereinafter referred to as "RCTC," and the City of Riverside, hereinafter referred to as "Agency".

2. Recitals.

2.1 In 1991 the United States Congress authorized the Congestion Mitigation and Air Quality Improvement (CMAQ) Program. CMAQ was most recently reauthorized on December 4, 2015, when the President of the United States signed into law P.L. 114-94, the Fixing America's Surface Transportation (FAST) Act. Under the FAST Act, CMAQ provides funding to areas in nonattainment or maintenance for ozone, carbon monoxide, and/or particulate matter provided that the projects are identified in the State Transportation Improvement Plan (STIP)/Federal Transportation Improvement Program (FTIP), and meet other funding requirements identified in the FAST Act; and

2.2 The California Department of Transportation (hereinafter referred to as "Caltrans") administers the CMAQ and STBG programs on behalf of the Federal Highway Administration (hereinafter referred to as "FHWA"); and

2.3 Within Riverside County, RCTC is responsible for directing the programming and allocation of CMAQ funding to projects within Riverside County; and

2.4 Agency submitted a request to RCTC to utilize CMAQ funds, attached hereto as Exhibit "A"; and

2.5 The request submitted by Agency describes a priority project which RCTC has determined merits funding and Agency is eligible to receive CMAQ funds. Agency's proposal is referred to herein as the "Project"; and

2.6 Contingent on Caltrans and/or FHWA approval of the Project, funding shall be programmed by RCTC in the form of CMAQ, as further specified herein; and

2.7 On December 9, 2020, RCTC's Board of Directors approved the programming by RCTC of up to Eighteen Million dollars (\$18,000,000) in CMAQ funds to be matched with Five Million dollars (\$5,000,000) in Agency funds for the Project; and

2.8 Agency shall be the direct recipient of any federal funds provided for the Project, and shall utilize the funding disbursed by Caltrans solely for the Project.

3. Terms.

3.1 Definition; Term of Agreement.

A. Definitions.

1. Days - As used in this Agreement, "days" shall be calendar days.

2. Effective Date – Refers to the date first specified above.

3. Funding Plan – The plan included as part of the attached Exhibit "A" specifying the funding amounts and funding sources for the Project.

4. Project – The project proposed by Agency, as described in Agency's proposal, attached hereto as Exhibit "A", which has been reviewed and approved by RCTC.

B. Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect through December 31, 2025, or until written agreement by the Parties that the Project has been completed, unless earlier terminated as provided herein.

C. Term Contingent on Funding. Notwithstanding the term as defined in subsection B above, the continuation of this Agreement and the programming of the federal funds specified hereunder is contingent on funding availability under the FAST Act, on the Project maintaining funding eligibility, and on FHWA and Caltrans approval of the Project, and each Project phase. The parties acknowledge that RCTC is not the funding entity hereunder, and shall have no responsibility or liability to Agency for failure of FHWA or Caltrans to fund the Project, or for any delay, cancellation, or reduction of federal funds.

3.2 Use of Funds.

A. Agency Responsibilities. Contingent on Southern California Association of Governments (hereinafter referred to as "SCAG"), Caltrans, and FHWA approval of the Project and the funding to be programmed hereunder, Agency shall have the responsibilities set forth in this Agreement, including the following.

1. Agency shall act as the lead agency for the engineering, right-of-way, construction, and construction management for the Project.

2. Agency shall submit National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) environmental documentation to Caltrans for approval.

3. Agency shall prepare and submit all necessary Caltrans-required documentation to Caltrans District 8 including the request for authorization to proceed (hereinafter referred to as "E-76 Request") as indicated on the Project schedule and Funding Plan.

4. Agency shall enter into any agreement(s) with Caltrans as required for receipt of CMAQ funds through Caltrans, and shall comply with all requirements of such agreement(s).

5. Agency shall be the direct recipient of all federal funds to be provided for the Project, and shall invoice Caltrans for Project costs at minimum once every six months, or as otherwise required by Caltrans.

6. Agency shall create any necessary Project records, reports, and financial accounts to permit disbursement of allocated funds to Agency, and shall ensure that federal and state reporting requirements are met.

B. Project Changes; Cost Overruns. The federal funds described in Section 3.4 and Exhibit "A" of this Agreement are specifically for the Project and make up the entire amount which RCTC has authorized for the Project. Any subsequent amendments to the Project scope or description are not covered by this Agreement, and the funding for any such amendments or for any Project cost overruns shall be the sole responsibility of Agency, unless otherwise approved in writing by RCTC.

C. Cost Savings. In the event that bids for the Project are lower than anticipated, or there are cost savings for any other reason, the Funding Plan shall be revised to apply such cost savings proportionately to each funding source listed in the Funding Plan. Agency shall inform RCTC of any cost savings and the parties shall amend this Agreement to reflect the revisions to the Funding Plan. RCTC's Executive Director and the Agency Manager shall be authorized to execute any such amendment.

D. Responsibility of Agency for Project Compliance with Federal Rules and Regulations. Agency shall be solely responsible and liable for compliance with all federal and state rules and regulations applicable to the CMAQ funds. Approval by RCTC of the Project does not evidence any opinion of or representation by RCTC of the Project's compliance with applicable federal or state rules and regulations regarding use of the CMAQ funds. If Caltrans or FHWA determine that any CMAQ funds were not spent in accordance with applicable federal or state rules and regulations, Agency shall be solely responsible for reimbursement of all such improperly expended funds and shall make such reimbursement in the manner specified in this Agreement.

E. Funding Reimbursement by Agency. If it is determined pursuant to a Project audit that any CMAQ funds provided to Agency have been improperly expended, Agency shall, at the direction of the agency performing the audit (e.g. RCTC, Caltrans, FHWA, or FTA) reimburse within thirty (30) days the full amount of such improperly

expended funds. The funds shall be reimbursed in accordance with the recommendations in the audit, with a notice to RCTC that the reimbursement was accomplished.

3.3 Additional Responsibilities of Agency

A. Indemnification. To the fullest extent permitted by law, Agency shall defend, indemnify and hold RCTC, its directors, officials, officers, employees, agents, and/or volunteers free and harmless from any and all liability from loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions, or willful misconduct of Agency or any of its directors, officials, officers, employees, agents, volunteers, or service providers arising out of or in connection with Agency's performance of this Agreement, or the Project, including, without limitation, the payment of consequential damages and attorneys' fees. Further, Agency shall defend, at its own expense, including the payment of attorneys' fees, RCTC, its officials, officers, employees, agents, and/or volunteers in any legal action based upon such acts, omissions, or willful misconduct. Agency shall reimburse RCTC, its directors, officials, officers, employees, agents, and/or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

B. Standard of Care; Performance Standards.

1. Agency shall implement the Project in a skillful and competent manner and in accordance with all applicable local, state, and federal laws, rules, and regulations. Agency shall be responsible to RCTC for any errors or omissions in its execution of this Agreement or the implementation of the Project.

2. Agency shall meet or exceed the following performance standards for the Project:

a. Adhere to the timeline set forth in this Agreement or as subsequently approved by RCTC.

b. Expend the funding specified herein entirely on the Project.

c. Implement the Project in a manner consistent with Exhibit "A" and all provisions of this Agreement.

d. Provide Project reporting to RCTC in a manner consistent with this Agreement.

e. Comply with any requirements and restrictions imposed by the authorizing language in the FAST Act, and with all requirements and restrictions imposed by FHWA or Caltrans applicable to the CMAQ funding including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award, 2 CFR Part 200.

C. Insurance. Agency shall obtain and require its subcontractors or sub-consultants to obtain insurance of the types and in the amounts described below for the entire term of this Agreement.

1. Commercial General Liability Insurance. Agency shall maintain and require its consultants and contractors to maintain sufficient insurance to cover the risks associated with the Project.

a. Name RCTC and its officials, officers, employees, agents, and consultants, as insureds with respect to performance of this Agreement. Such insured status shall contain no special limitations on the scope of its protection to the above-listed insureds.

b. Be primary and noncontributory with respect to any insurance or self insurance programs covering RCTC and its directors, officials, officers, employees, agents, and consultants.

c. Contain standard separation of insureds provisions.

2. Business Automobile Liability Insurance. If Agency hires or owns any vehicle during the term of this Agreement, Agency shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

3. Workers' Compensation Insurance. Agency shall maintain workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1,000,000 per accident.

4. Certificates/Insurer Rating/Cancellation Notice. Agency shall, prior to receiving any funding under this Agreement, furnish to RCTC properly executed certificates of insurance, certified copies of endorsements, and policies, if requested by RCTC which shall clearly evidence all insurance required in this Section. Agency shall not allow such insurance to be canceled, allowed to expire, or be materially reduced in coverage except on thirty (30) days prior written notice to RCTC.

D. Obligation to Provide Match Funding. Agency must provide funding at least equal to the amounts shown in Exhibit "A", attached hereto and incorporated by reference, as a match to the funds provided for the Project.

3.4 RCTC's Rights and Responsibilities.

A. RCTC shall formally request on behalf of Agency that SCAG amend the FTIP to program up to the amount in accordance with the Funding Plan.

B. RCTC shall provide assistance to Agency, as described in this Agreement, in securing the CMAQ funds in an amount not to exceed \$18,000,000, as further detailed in the Funding Plan.

C. RCTC shall not be obligated to program any amount in excess of the amount identified in subsection B above, or the amount ultimately approved for the Project by Caltrans and FHWA, if less than the amount set forth in subsection B above.

D. RCTC shall process any required FTIP amendments.

E. RCTC may cancel funding for the Project under this Agreement if Agency has not submitted an E-76 Request to Caltrans or has not advanced the Project to the "ready-to-list stage" as required by the Project schedule included in the attached Exhibit "A".

F. RCTC will consider requests for extensions of time if the reason for delay is above and beyond the Agency's control.

4. Accounting Records.

4.1 Retention of Records. Agency shall maintain complete and accurate records with respect to costs incurred and other records generated in relation to the Project, the CMAQ funds, or this Agreement. All such records shall be clearly identifiable. Agency shall allow representatives of RCTC, Caltrans, FHWA, and other designated agencies during normal business hours to examine, audit, and make transcripts or copies of such records. Agency shall maintain all work, data, documents, proceedings, and activities related to the foregoing for a period of three (3) years from the expiration of this Agreement, or such longer period as required by Caltrans, and shall allow inspection hereunder during such time.

4.2 Accounting of Funds. When requested by RCTC, Agency shall within fifteen (15) days provide RCTC with a full reporting and accounting of all funds CMAQ funds received by Agency.

5. Project Reports.

5.1 Reporting. Agency shall, in a timely manner, provide milestone reports detailing the Project's progress including a financial status report and milestone progress report in a form approved by RCTC, upon RCTC written request.

5.2 Responsibility for Federal Reporting. The responsibility for reporting associated with the CMAQ funds shall be exclusively that of the Agency and in no manner the responsibility of RCTC.

6. Annual Audit.

6.1 RCTC shall notify Agency in writing, by the end of the fiscal year, if Agency is required to conduct an annual financial audit of records pertaining to the Project. If an audit is required, it shall be completed and submitted to RCTC by December 31st of the following fiscal year ("Audit Deadline"). In order to ensure compliance with the Audit Deadline, Agency shall respond promptly to the auditor's requests for documentation and records.

6.2 RCTC may, in its sole and absolute discretion, grant an extension of the Audit Deadline upon written request of the Agency, which request shall include an explanation for the delay. No extension of the Audit Deadline shall exceed ninety (90) days.

6.3 Agency shall promptly resolve all audit matters to the satisfaction of RCTC, Caltrans or FHWA, as applicable.

6.4 If Agency fails to complete the audit by the Audit Deadline or by the date of any authorized extension, or if Agency fails to promptly resolve all audit matters to the satisfaction of RCTC, RCTC shall have the right to request suspension of Agency's funding by Caltrans.

7. General Provisions.

7.1 Compliance with Federal Procurement and Real Property Acquisition Requirements.

A. In addition to the terms specified herein, Agency shall also achieve and maintain full compliance with all federal contracting and procurement requirements and real property acquisition requirements applicable to the Project and Agency's organization. It is the responsibility of the Agency to be familiar with and to be in full compliance with all applicable Caltrans and federal requirements.

B. In the event of any failure or alleged failure to comply with federal or Caltrans contracting and procurement and real property acquisition requirements on the part of the Agency, Agency shall be solely responsible for any penalties, reimbursement of funds, costs of investigation, and remedy of such failures.

7.2 Termination of Agreement.

A. RCTC may, by written notice to Agency, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Agency of such termination, and specifying the effective date thereof. Agency may not terminate this Agreement except for cause.

B. In the event this Agreement is terminated in whole or in part as provided in subsection A of this Section, RCTC may reprogram CMAQ funding in its sole discretion.

C. If this Agreement is terminated as provided in subsection A of this Section, RCTC may require Agency, when implementing a Project, to provide to RCTC all finished or unfinished documents, including but not exclusive to, data, studies, drawings, and reports, prepared by Agency in connection with the performance of this Agreement.

7.3 Delivery of Notices. All notices permitted or required under this 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:

To RCTC: Riverside County Transportation Commission
4080 Lemon Street, Third Floor
P. O. Box 12008
Riverside, California 92502-2208
Attn: Anne Mayer, Executive Director
AMayer@rctc.org

To Agency: City of Riverside
Public Works Department
3900 Main Street, 4th Floor
Riverside, CA 92522

Attn: Swetaben Patel
SCPatel@riversideca.gov

Such notice shall be deemed made when personally delivered 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. Notice may also be provided via electronic mail and shall be deemed made the date sent, provided that any notice sent via electronic mail shall also be sent by U.S. mail, per the requirements set forth in the foregoing sentence, within twenty-four (24) hours of the notice via electronic mail. Notice sent via electronic mail that is not followed by notice sent via U.S. mail, as required in this paragraph, shall not be considered notice for purposes of this Agreement.

7.4 Attorneys' Fees. If any party commences an action against the other arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party's reasonable attorneys' fees and costs of suits.

7.5 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified in writing, signed by both parties.

7.6 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

7.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.

7.8 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties and shall not be assigned by Agency without the prior written consent of RCTC.

7.9 Administration.

A. RCTC's Executive Director, or his or her designee, shall administer this Agreement on behalf of RCTC.

B. Agency hereby designates Public Works Director__ or his or her designee, to act as its representative to administer this Agreement on behalf of Agency ("Agency's Representative"). Agency's Representative shall have full authority to represent and act on behalf of Agency for all purposes under this Agreement.

7.10 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.11 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement.

7.12 Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement by reference as though fully set forth herein.

7.13 Incorporation of Exhibit. This Agreement contains one (1) exhibit (Exhibit "A") which is attached hereto and incorporated into this Agreement by reference.

7.14 Legal Authority. RCTC and Agency represent and warrant that the persons signing below on behalf of each party is duly authorized to execute this Agreement on behalf of its respective party and that, by so executing, the parties hereto are formally bound to the provisions of this Agreement.

7.15 Electronically Transmitted or Electronic Signatures. A manually signed copy of this 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 Agreement for all purposes. This Agreement may be signed using an electronic signature.

[Signatures on following page]

**SIGNATURE PAGE
TO
FEDERAL FUNDING COOPERATIVE AGREEMENT**

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

**RCTC:
RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**AGENCY:
CITY OF RIVERSIDE**

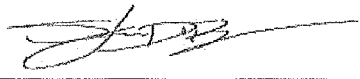
By: _____
Anne Mayer, Executive Director


By: _____

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By:  _____
Best Best & Krieger LLP
Counsel to the Riverside
County Transportation Commission

By:  _____
Title: Ruthann M. Salera
Deputy City Attorney

ATTEST:

By: _____

Title: _____

EXHIBIT "A"

SCOPE OF WORK: Replace the existing four-lane railroad crossing with a four-lane undercrossing grade separation on Third Street between Vine Street and Park Avenue in the city of Riverside.

FUNDING:

PHASE	CMAQ Funds	Local Funds	TOTAL
RIGHT-OF-WAY	\$18,000,000	\$5,000,000	\$23,000,000
TOTAL	\$18,000,000	\$5,000,000	\$23,000,000

TIMETABLE:

Phase	Start	End	Comments
Environmental	January 2019	February 2021	
Design (PS&E)	March 2021	December 2022	
Right of Way	July 2021	March 2023	
Construction	July 2023	December 2024	