

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	July 11, 2007
TO:	Riverside County Transportation Commission
FROM:	Min Saysay, Right-of-Way Manager
THROUGH:	Eric Haley, Executive Director
SUBJECT:	Agreement with Caltrans for the State Route 91 High Occupancy Vehicle Project from Adams Street to Interstate 215/State Route 60 Interchange

STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Approve Agreement No. 08-31-002-00 with Caltrans for the SR-91 high occupancy vehicle (HOV) project; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

BACKGROUND INFORMATION:

The SR-91 HOV project from Adams Street to the I-215/SR-60 interchange (Project) is one of the projects included in the Corridor Mobility Improvement Account (CMIA). Given the stringent deadlines associated with CMIA projects, Commission and the Caltrans District 8, Right-of-Way Department have decided to partner on acquiring the right-of-way required for construction of the Project.

The estimated number of right-of-way acquisitions, based on Alternative 5 of the Project, is 49 fee acquisitions and one temporary construction easement. Based on this right-of-way estimate, the projected budget, excluding right-of-way engineering, is \$23,853,310. The projected total costs are as follows:

Right-of-Way Capital Acquisition	\$19,885,000
Caltrans Right-of-Way Support	1,445,000
Commission Right-of-Way Support	1,531,310
Legal Costs (Eminent Domain, if necessary)	950,000
Routine Maintenance and Advertising	<u>42,000</u>
Total Projected Budget	\$23,853,310

For FY 2007/08, the projected costs are \$5,750,000, which is included in the budget.

An agreement was reached between Caltrans and Commission staff dividing right-of-way acquisition functions, to wit:

Caltrans District 8 right-of-way acquisition responsibilities:

- Right-of-Way Engineering
- Relocation Assistance
- Property Management
- Right-of-Way Certification
- Utility Relocation

Commission right-of-way acquisition responsibilities:

- Title and Escrow
- Phase I/Phase II Environmental Assessments
- Appraisal
- Appraisal Review
- Negotiations with Property Owners
- Resolutions of Necessity/Eminent Domain

It was further agreed that work will be coordinated with the Caltrans District Deputy Director of Right-of-Way. Commission staff will be certified and authorized to acquire right-of-way on behalf of Caltrans on a state highway project with the assistance of Commission consultants, and the Commission will hear resolutions of necessity. The cooperative agreement is currently being developed to define Caltrans and Commission responsibilities. The projected date of execution of this Cooperative Agreement is September 1, 2007.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2007/08	Amount:	\$5,750,000
Source of Funds:	CMAQ/Measure A			Budget Adjustment:	No
GLA No.:	222 31 81401 P3005 - \$5,000,000				
	222 31 81403 P3005 - \$ 750,000				
Fiscal Procedures Approved:	<i>Theresa Trevino</i>			Date:	6/27/07

Attachment: Draft Cooperative Agreement

08-Riv-91-PM 15.6/21.6
Add HOV lanes, Aux. Lanes, Bridge
Widening/Replacement, Braided
Ramps, Interchange Mod./Rec. and
Sound/Retaining Walls
EA 448401
District Agreement No. 8- -----

DRAFT (non executable)

NOTE: THIS IS A DRAFT AGREEMENT TO BE USED ONLY AS A WORKSHEET TO PROVIDE ADDITIONAL COMMENTS AND/OR EDITS ONLY. IT IS NOT INTENDED TO BE A COMPLETED AGREEMENT.

**RIGHT OF WAY
COOPERATIVE AGREEMENT**

This AGREEMENT, entered into effective on _____, 2007, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “STATE,” and the

RIVERSIDE COUNTY TRANSPORTATION
COMMISSION, a political subdivision of the State
of California, referred to herein as “RCTC.”

RECITALS

1. STATE and RCTC, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within the County of Riverside.
2. STATE and RCTC desire State Highway improvements consisting of adding HOV lanes, Auxiliary Lanes (Madison-Central), Bridge Widening & Replacement, EB/WB Braided Ramps, Interchange Modification/Reconstruction and Sound/Retaining Walls, referred to herein as “PROJECT”.
3. STATE is willing to fund one hundred percent (100%) of all capital outlay and support costs, except that the costs of STATE’s Independent Quality Assurance (IQA) for RCTC’s right of way activities.
4. RCTC had previously allocated \$3,968,310 from their RIP funding source for STATE’s use on PROJECT at a time when STATE was doing all PROJECT work. It has been later determined by both parties of this Agreement that the right of way activities will be accomplished jointly with RCTC performing right of way acquisition, title/escrow

services, environmental activities, appraisals, Resolution of Necessity, and eminent domain activities and STATE will perform all work to complete right of way engineering services, Relocation Assistance Program (RAP), property management services, right of way certification, utilities investigation and relocation services, hazardous waste investigation and disposal of any excess lands. It has also been agreed by both parties the STATE will reimburse RCTC \$1,531,310 from STATE's STIP/RIP funding source.

5. The parties now define herein below the terms and conditions under which PROJECT right of Way is to be acquired, engineered and financed.

SECTION I

RCTC AGREES:

1. RCTC agrees to perform all work necessary to complete Right of Way title/escrow and environmental activities, appraisals, acquire Resolution of Necessity, eminent domain activities and Right of Way acquisition for PROJECT.
2. All PROJECT work performed by RCTC, or performed on RCTC's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.
3. To have all necessary Right of Way Maps and Documents used to acquire right of way by RCTC prepared by or under the direction of a person authorized to practice land surveying in the State of California. Each Right of Way Map and Document shall bear the appropriate professional seal, certificate number, expiration date of registration certification and signature of the licensed person in Responsible Charge of Work.
4. To permit STATE to monitor, participate, and oversee the selection of personnel who will perform RCTC's designated right of Way activities and right of way acquisition services for PROJECT. RCTC agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
6. To make written application to STATE for necessary encroachment permits authorizing entry of RCTC onto the State Highway system (SHS) right of way to perform surveying and any right of way activities.
7. To acquire and furnish all right of way, if any, outside of the existing SHS right of way and to perform all right of way activities to complete right of way title/escrow and environmental clearance, appraisals, all eminent domain activities and acquire the Resolution of Necessity in accordance with procedures acceptable to STATE. These

activities shall comply with all applicable State and Federal laws and regulations, subject to STATE's IQA to ensure that the completed work and title to property acquired for PROJECT is acceptable for incorporation into the SHS right of way.

8. To utilize the services of a qualified public agency or a qualified consultant, as determined by STATE's District Division Chief of Right of Way, in all matters related to the acquisition of right of way in accordance with STATE's procedures as published in STATE's current Right of Way Manual. Whenever personnel other than personnel of a qualified public agency, or a qualified consultant, are utilized, administration of the personnel contract shall be performed by a qualified Right of Way person employed or retained by RCTC.
9. To certify legal and physical control of right of way ready for construction and that all right of way parcels were acquired in accordance with applicable State and Federal laws and regulations, subject to review and concurrence by STATE prior to the advertisement for bids for the contract to construct PROJECT.
10. To deliver to STATE legal title to the right of way, including access rights, free and clear of all encumbrances detrimental to STATE's present and future uses not later than the date of acceptance by STATE of maintenance and operation of the SHS facility. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid for by RCTC.
11. A copy of all original documents resulting from surveys performed for PROJECT, including original field notes, adjustment calculations, final results, and any document demonstrating compliance with STATE surveying procedures or the California Land Surveyor's Act, shall be delivered to STATE and shall become property of STATE. For aerial mapping, all information and materials listed in the document Materials Needed to Review Consultant Photogrammetric Mapping shall be delivered to STATE and shall become property of STATE.
12. All original recorded land title documents created by PROJECT shall be delivered to STATE and become property of STATE.

SECTION II

STATE AGREES:

1. At no cost to RCTC, to provide IQA of all work done by RCTC or its designee, including but not limited to, all right of way activities undertaken by RCTC or its designee, to provide prompt reviews and concurrence, as appropriate, of submittals by RCTC, while

cooperating in timely processing of documents necessary for completion of the PROJECT.

2. Upon proper application by RCTC and by RCTC's contractor, to issue, at no cost to RCTC and RCTC contractor, the necessary encroachment permits for required work within the SHS right of way as more specifically defined elsewhere in this Agreement.
3. STATE agrees to perform all work necessary to complete right of way engineering services, RAP, property management services, right of way certification, utility investigation and relocation services hazardous waste investigation and disposal of any excess lands for PROJECT.
4. STATE agrees to reimburse RCTC for previously paid funds, as described in Article 4, RECITALS, in the amount of \$1,531,310 from STATE's STIP/RIP funding source.
5. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, STATE shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation or removal.
6. To be responsible for the investigation of potential hazardous material sites within and outside of the existing SHS right of way that could impact PROJECT as part of performing any preliminary engineering work.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT right of way phase administered by RCTC. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by RCTC conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by RCTC and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by RCTC under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which

STATE will invoice its actual costs and RCTC will pay or authorize STATE to reimburse itself from then available PROJECT funds.

3. The right of way acquisition documentation and related technical reports/studies for PROJECT shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be considered by STATE for approval via the processes outlined in STATE's Highway Design Manual and appropriate memoranda and design bulletins published by STATE. In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with RCTC in a timely manner regarding the effect of proposed and/or required changes on PROJECT.
4. RCTC agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be paid by RCTC, as a PROJECT cost.
5. Any hazardous material or contamination of an HM-1 category found within existing SHS right of way during PROJECT shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within local road right of way during PROJECT shall be the responsibility of RCTC. For the purpose of this Agreement, hazardous material of HM-1 category is defined as that level or type of contamination which must be remediated by reason of its mere discovery regardless of whether it is disturbed by PROJECT or not. STATE shall sign the HM-1 manifest and pay all costs for remedy or remedial action within existing SHS right of way, except that if STATE determines, in its sole judgment, that STATE's cost for remedy or remedial action is increased as a result of RCTC's decision to proceed with PROJECT, that additional cost identified by STATE shall be borne by RCTC. RCTC shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within local road right of way or other property. While STATE will exert every reasonable effort to fund the remedy or remedial action for which STATE is responsible, in the event STATE is unable to provide funding, RCTC will have the option to either delay PROJECT until STATE is able to provide that corrective funding or RCTC may proceed with the remedy or remedial action as a PROJECT expense without any subsequent reimbursement by STATE.
6. Any remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within existing SHS right of way shall be the responsibility of STATE, who shall sign the HM-2 manifest and management of HM-2 will be a PROJECT cost if the PROJECT proceeds. Any remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within RCTC right of way shall be the responsibility of RCTC who shall sign the HM-2 manifest and

management of HM-2 will be at RCTC's cost, if the PROJECT proceeds. For the purposes of this Agreement any hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed had PROJECT not proceeded.

7. If hazardous material or contamination of either HM-1 or HM-2 category is found on new right of way acquired by or on account of RCTC for PROJECT, RCTC shall be responsible, at RCTC's expense, for all required remedy or remedial action and/or protection in the absence of a generator or prior property owner willing and prepared to perform that corrective work.
8. Remedial actions proposed by RCTC on SHS right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices and standards and practices mandated by those Federal and State regulatory agencies.
9. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
10. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by RCTC under or in connection with any work, authority or jurisdiction conferred upon RCTC and arising under this Agreement. It is understood and agreed that RCTC shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by RCTC under this Agreement.
11. Neither RCTC nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless RCTC and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
12. Prior to the commencement of any work pursuant to this Agreement, either STATE or RCTC may terminate this Agreement by written notice to the other party.

13. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
14. Those portions of this Agreement pertaining to the completion of PROJECT shall terminate upon the satisfactory completion of all post-construction obligations of STATE and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2019, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related claims are settled, dismissed or paid.

SIGNATURES ON FOLLOWING PAGE:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

RIVERSIDE COUNTY
TRANSPORTATION COMMISSION

WILL KEMPTON
Director

By: _____
ERIC HALEY
Executive Director

By: _____
MICHAEL A. PEROVICH
District Director

Attest: _____
Legal Counsel
BEST, BEST AND KRIEGER

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Attorney,
Department of Transportation

CERTIFIED AS TO FUNDS:

By: _____
District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS
AND POLICIES:

By: _____
Accounting Administrator

NOTE: AN ADDITIONAL PAGE MUST BE ADDED SHOWING COST ESTIMATE AND BREAK DOWN.