

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement”), ENTERED INTO EFFECTIVE ON _____ 2021 (“Effective Date”), is by and among the County of Orange, a political subdivision of the State of California (referred to herein as “County”), the Orange County Transportation Authority (“OCTA”), and the City of San Clemente, a municipal corporation (referred to herein as “City”), collectively known as the “Parties,” and is entered into to affirm support for three major south county transportation projects: (1) the Los Patrones Parkway Extension (“LPPE”) as a non-tolled county primary arterial highway; (2) high occupancy vehicle (“HOV”) lane improvements on Interstate 5 between Avenida Pico and the San Diego County Line; and (3) the Ortega Highway (“State Route 74”) widening in San Juan Capistrano from two (2) lanes four (4) lanes.

RECITALS

WHEREAS, in relation to transportation planning, the County General Plan Transportation Element sets forth policies on the development of transportation facilities necessary to accommodate the County’s orderly growth. The Transportation Element identifies goals, objectives, policies, and implementation programs that affect the transportation system and provide guidance for future transportation planning efforts within the unincorporated areas; and

WHEREAS, the County provides engineering services for roadways in unincorporated areas and regional flood control programs throughout Orange County. This includes programming, design, legislation tracking, project management, traffic safety, and development support services for roadways within unincorporated areas; and

WHEREAS, OCTA is responsible for the continuing, comprehensive, and collaborative transportation planning process in Orange County; and

WHEREAS, OCTA is the designated County of Orange Transportation Commission (CTC) and is charged with approval of all projects utilizing federal and state highway and transit funds and is responsible for transportation programming and the development and update of the OCTA Long-Range Transportation Plan (“LRTP”); and

WHEREAS, OCTA selects projects for the LRTP that have been studied and publicly vetted through system plans such as major investment studies, corridor studies, interjurisdictional multimodal plans, transit system studies, the Master Plan of Arterial Highways (“MPAH”), active transportation strategic plans, and the like; and

WHEREAS, OCTA is responsible for determining if sufficient regional planning has occurred to justify adding Orange County projects to the financially constrained Federal Transportation Improvement Program, Regional Transportation Plan, and regional travel demand model; and

WHEREAS, the Federal Transportation Improvement Program and Regional Transportation Plan reflects the projects and overall vision defined in OCTA’s LRTP; and

WHEREAS, the Foothill Eastern Transportation Corridor Agency (“F/ETCA”), is a joint Powers Authority organized under state law and Joint Exercise of Powers Agreements (“JPAs”); and

WHEREAS, over decades, Rancho Mission Viejo, LLC, a Delaware limited liability company (referred to herein as “the Ranch”), and the County have entitled and developed (and are continuing to develop) a master planned community in South Orange County called the “Ranch Plan Planned Community” (the “Ranch Plan”), originally approved by the County in 2004; and

WHEREAS, the approved Ranch Plan was not conditioned on the extension of SR-241; and

WHEREAS, F/ETCA failed to obtain necessary approvals for the southern extension of SR-241 from Oso Parkway to I-5. This route would have directly or indirectly impacted the San Mateo State Park and San Onofre State Beach (the “Green Alignment”). Additionally, a coalition of environmental interests and State agencies brought litigation to stop the Green Alignment. In 2016, TCA and those plaintiffs entered into a settlement under which TCA abandoned the Green Alignment and initiated evaluation of alternative alignments; and

WHEREAS, in 2017, F/ETCA commenced a South County Traffic Relief Effort (“SCTRE”), wherein it explored 23 alternatives to the SR-241 extension that would have gone through the San Mateo State Park and in close proximity to San Onofre State Beach (the “Green Alignment”). Alternatives encompassed within the SCTRE included two possible alignments (Alternatives 14 and 17 in the March 2020 SCTRE Project Scoping Summary and Alternatives Screening Report (“SCTRE Report”)), which alternatives (if implemented) would allow roadway encroachment through certain open space areas in San Clemente protected by Measure V, a 2007 City voter initiative, and developing areas set aside under habitat protection agreements and conservation easements.

WHEREAS, the City commissioned a traffic study using OCTA and County traffic models. The traffic study concluded that extension of the SR-241 could be addressed by other means; and

WHEREAS, in 2017, the City, The Reserve Maintenance Corporation and Capistrano Unified School District, brought a lawsuit, *City of San Clemente, et al. v. Foothill/Eastern Transportation Corridor Agency, et al.* Riverside Superior Court Case No. RIC1800232 (the “2017 Lawsuit”), challenging the implementation of Alternatives 14 and 17 as violating the Streets & Highways Code section 541, challenging the Protective Agreement between Caltrans and F/ETCA, which documented that no new major thoroughfare would be constructed through an area identified as the “Avoidance Area” in Exhibit C to the Protective Agreement (including the San Mateo watershed and the San Onofre State Beach), and challenging the F/ETCA’s actions under the Mitigation Fee Act (Cal. Gov’t Code, § 66000, et seq.). The County was also initially named in this lawsuit. The lawsuit also initially alleged causes of action against the County for violation of the California Environmental Quality Act when the County entered into certain Freeway and other agreements with Caltrans; and

WHEREAS, on June 14, 2017, RMV terminated F/ETCA’s option on the right-of-way for “F” Street, which became Los Patrones Parkway; and

WHEREAS, on December 17, 2017, the County and City agreed to settle the 2017 Lawsuit as between themselves (“2017 Settlement”). In the 2017 Settlement, the County made clear that certain agreements between the County and Caltrans and the County and F/ETCA did not permit the utilization of Los Patrones Parkway as a toll road. In addition, the County agreed to revise the General Plan Circulation Plan to show Los Patrones Parkway as Secondary Arterial. The County performed the actions required by the 2017 Settlement, including the addition of Los Patrones Parkway from Oso Parkway to Cow Camp Road to the Master Plan of Arterial Highways (“MPAH”). The City subsequently dismissed the County from the litigation; and

WHEREAS, the County completed improvements for Los Patrones Parkway from Oso Parkway to its current terminus at Cow Camp in October 2019, which was opened as a non-tolled County arterial; and

WHEREAS, in March 2020, F/ETCA ended the SCTRE, recommending that the County advance a non-tolled extension of Los Patrones Parkway as a County arterial from its current terminus to Avenida La Pata (i.e., the “LPPE”), and expressing support of (i) Caltrans’ and OCTA’s efforts to complete high occupancy vehicle (“HOV”) lane improvements on I-5 between Avenida Pico and the San Diego County Line and (ii) the Ortega Highway (State Route 74) widening in San Juan Capistrano from two (2) lanes to four (4) lanes; and

WHEREAS, F/ETCA confirmed its decision not to exercise the option conveyed to F/ETCA by the Ranch to acquire the right-of-way to develop the remainder of SR-241 as a tolled freeway; instead the Ranch dedicated, and the County accepted, the right-of-way necessary to develop the LPPE as a free (non-tolled) County arterial; and

WHEREAS, in 2020, the Ranch submitted an application to the County (“2020 Application”) for (1) an amendment to the Circulation Plan component of the County’s General Plan, Transportation Element (“Transportation Element”), and (2) that the amendment be submitted to OCTA to amend the MPAH; and

WHEREAS, the 2020 Application included addition of the “LPPE” - a proposed southern extension of Los Patrones Parkway from its current terminus at Cow Camp Road to Avenida La Pata. The Ranch also requested deletion of future Cristianitos Road, which was to extend from Cow Camp Road to the Green Alignment); and

WHEREAS, the majority of LPPE is proposed to be constructed on unincorporated land owned by the Ranch (through its affiliated entities) and the County; however, the southernmost segment (approximately 1,000 feet) of the LPPE would be developed on County land located within the City’s jurisdiction. That segment would connect to Avenida La Pata, requiring (1) an amendment to the Mobility and Complete Streets Element (i.e., the Centennial General Plan Mobility Element) of the City’s General Plan to reflect the LPPE, and (2) possible encroachment permits issued by the City; and

WHEREAS, in April 2020, the OCTA Board of Directors directed OCTA staff to 1) work with F/ETCA, the County, and all stakeholders to develop a plan for a non-tolled LPPE; 2) work with Caltrans and the City of San Juan Capistrano to advance funding for the final design for the widening of Ortega Highway; and 3) work with Caltrans and the San Diego Association of Governments to advance the environmental process for I-5 HOV improvements; and

WHEREAS, on November 10, 2020, OCTA initiated the South County Multimodal Transportation Study to develop a comprehensive multimodal approach that can effectively address traffic growth and provide more travel choices for residents, commuters, and visitors while preserving the local sense of community. OCTA committed to providing South Orange County a consensus-driven, systemwide approach to all travel modes to maintain the quality of life and enhance the way people move; and

WHEREAS, in December 2020, the County, City and the Ranch, entered into a cooperative agreement to facilitate the County and City’s reviews and approvals of the 2020 Request (“2020 Request Cooperative Agreement”), wherein the City agreed to advance a General Plan amendment and agreed not to challenge the County’s addendum to Environmental Impact Report (“EIR”) 584 and 589 supporting the LPPE (“LPPE Addendum”) as approved by the Orange County Board of Supervisors on January 12, 2021, to meet expedited timelines to submit the LPPE for inclusion on the MPAH and to allow the County to apply for funding to advance the design and environmental review of LPPE; and

WHEREAS, the Parties have determined that design and development of the LPPE and will benefit the residents of the City and neighboring jurisdictions through continued cooperative efforts in lieu of SR-241 to develop a high quality, less costly, less damaging, and equally effective public transportation infrastructure to the region in the form of LPPE; and

WHEREAS, on January 12, 2021, the County Board of Supervisors amended the Orange County General Plan to add the LPPE to the transportation network, consistent with the recommendation the F/ETCA made in March 2020, and as a non-tolled County arterial from Cow Camp Road to Avenida La Pata; and

WHEREAS, on February 16, 2021, the City Council approved an amendment to the City General Plan to remove references to the Green Alignment and add LPPE to its roadway classifications to be consistent with the County’s General Plan and the conditionally approved amendment to the OCTA MPAH; and

WHEREAS, on March 16, 2021, OCTA finalized the amendment to the MPAH to add LPPE as a primary arterial roadway, consistent with the County and City General Plans; and

WHEREAS, on February 19, 2021, Senator Patricia Bates introduced Senate Bill 760 (“SB 760”) to amend California Streets and Highways Code section 541 to define the route for SR-241 as being from Oso Parkway east of the City of Mission Viejo to Route 91 in the City of Anaheim. SB 760 is supported by the City; and

WHEREAS, on February 19, 2021, Senator Bates also introduced Senate Bill 761 (“SB 761”) to add Government Code section 65569, which in its current draft reads: “(a) Notwithstanding any other law, a joint powers agency acting pursuant to Section 66484.3, state agency, transportation joint powers authority, or regional transportation agency, or a successor agency to any of those entities, shall not construct, fund, or operate, nor take property to construct, fund, or operate, a new major thoroughfare in the City of San Clemente in an area that is subject to a conservation easement or is protected as open space under a local initiative. (b) This section does not apply to State Route 5 and lands immediately adjacent to State Route 5 or the extension of Los Patrones Parkway as a non-tolled county arterial highway.” As of the Effective Date, SB 761 has been designated as a two-year bill and may be considered again in the 2022 State legislative session. SB 761 is supported by the City; and

WHEREAS, on April 6, 2021, the Parties convened to discuss solutions that would accomplish what proposed SB 760 and 761 set out to do without State intervention and to discuss solutions that would enable the Parties to work cooperatively moving forward to achieve south county mobility with the least cost and greatest benefit to public transportation while assuring the preservation of City open spaces; and

WHEREAS, to resolve disputes over SB 760 and SB 761 and to provide a roadmap for south county traffic relief moving forward, the Parties now wish to enter into a Cooperative Agreement, which is intended to express support for the three major transportation projects in south county: (1) the LPPE as a non-tolled County primary arterial highway; (2) HOV lane improvements on Interstate 5 between Avenida Pico and the San Diego County Line; and (3) the Ortega Highway (State Route 74) widening in San Juan Capistrano from two (2) lanes to four (4) lanes.

NOW, THEREFORE, it is mutually understood and agreed by the Parties as follows:

AGREEMENT

1. COMPLETE AGREEMENT

This Agreement, including any attachments incorporated herein and made applicable by reference and the recitals above, constitutes the complete and exclusive statement of the term(s) and conditions(s) approved by the Parties with respect to the subject matter hereof. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement. The above referenced Recitals are true and correct and are incorporated by reference herein.

2. SCOPE OF AGREEMENT

This Agreement specifies the intentions, duties, limitations, roles, and responsibilities of the Parties as they pertain to working cooperatively in the future on south county regional transportation solutions. The Parties agree that each will cooperate and coordinate with the others in all activities covered by this Agreement and any other supplemental agreements that may be required to facilitate the purposes thereof.

3. COUNTY OBLIGATIONS

- a. Agrees that the conclusion of the SCTRE resulted in three projects to be implemented to relieve south county traffic: (1) construction of LPPE as a non-tolled county primary arterial highway; (2) Caltrans' and OCTA's efforts to complete high occupancy vehicle (HOV) lane improvements on Interstate 5 between Avenida Pico and the San Diego County Line; and (3) the Ortega Highway (State Route 74) widening in San Juan Capistrano from two (2) lanes four (4) lanes, subject to appropriate environmental review.
- b. Agrees to support the three projects set forth in 3.a. as the major transportation projects to be pursued for south county traffic relief and that further road planning efforts will be subject to OCTA transportation system planning studies, as needed, regarding future transportation needs and solutions in south county that are developed with stakeholder consultation and public input.
- c. Agrees that the County will not build, support, or authorize a new major thoroughfare in the City in an area that is subject to an approved conservation easement or is protected as open space under a local initiative. (See Exhibit A for an illustrative but not definitive depiction of conservation easement areas in the City.)
- d. Agree to participate in OCTA led system planning studies regarding future transportation solutions that are developed with consultation with stakeholders and public input.
- e. Continue to support, conduct design and environmental review of, and provide funding, if available, for the completion of the LPPE as a non-tolled county arterial to provide the necessary transportation connectivity and options consistent with the recommendations of SCTRE. County shall work cooperatively with the other parties to identify and establish County's financial commitments with respect to the LPPE.
- f. Reiterate its commitment, as set forth in the 2020 Request Cooperative Agreement, that because the LPPE will extend into the City, subject to the terms of the LPPE Addendum, the Project may require additional City approvals to construct LPPE-related improvements within the City's boundaries (e.g., at the intersection at Avenida La Pata).
- g. Monitor the performance of LPPE for consistency with County standards. If County standards are not met, advance consideration of potential remedies in collaboration with affected jurisdictions and OCTA.
- h. Agree to support the efforts of OCTA to complete the ongoing South Orange County Multimodal Transportation Study through a cooperative process which

includes the Parties and use the results to guide future decisions related to south Orange County transportation solutions.

- i. If F/ETCA reinitiates planning efforts and/or studies relating to a southerly extension of the SR-241 and/or F/ETCA takes steps to design or construct a southerly extension of the SR-241, the parties, including the County Board member from the Fifth District, relevant OC Public Works staff, and County Counsel, will meet and confer in good faith to discuss whether F/ETCA's actions are in accord with this agreement and South County Mobility goals.

4. OCTA OBLIGATIONS

- a. Agrees that the conclusion of the SCTRE resulted in three projects to be implemented to relieve south county traffic: (1) construction of LPPE as a non-tolled county primary arterial highway; (2) Caltrans' and OCTA's efforts to complete high occupancy vehicle (HOV) lane improvements on Interstate 5 between Avenida Pico and the San Diego County Line; and (3) the Ortega Highway (State Route 74) widening in San Juan Capistrano from two (2) lanes four (4) lanes, subject to appropriate environmental review.
- b. Agrees that OCTA will not build, support, or authorize a new major thoroughfare in the City in an area that is subject to a conservation easement or is protected as open space under a local initiative.
- c. Agrees that no new major thoroughfare in the City in an area that is subject to a conservation easement or protected as open space under a local initiative will be included in the OCTA LRTP or submitted for inclusion in the Southern California Association of Governments Regional Transportation Plan.
- d. Agrees to lead transportation system planning studies, as needed, regarding future transportation needs and solutions in south county that are developed with stakeholder consultation and public input.
- e. Agrees to support the efforts of the other parties to identify and establish a funding plan for LPPE.
- f. Agrees to complete the ongoing South Orange County Multimodal Transportation Study through a cooperative process which includes the Parties and use the results to guide future decisions related to south Orange County transportation solutions.
- g. If F/ETCA reinitiates planning efforts and/or studies relating to a southerly extension of the SR-241 and/or F/ETCA takes steps to design or construct a southerly extension of the SR-241, the parties, including the appropriate OCTA representatives, will meet and confer in good faith to discuss whether F/ETCA's actions are in accord with this agreement and South County Mobility goals.

5. CITY OBLIGATIONS

- a. Agree that the conclusion of the SCTRE resulted in three projects to be implemented to relieve south county traffic: (1) construction of LPPE as a non-tolled County primary arterial highway; (2) Caltrans' and OCTA's efforts to complete high occupancy vehicle (HOV) lane improvements on Interstate 5 between Avenida Pico and the San Diego County Line; and (3) the Ortega Highway (State Route 74) widening in San Juan Capistrano from two (2) lanes to four (4) lanes.
- b. Agree to request that Senator Bates withdraw SB 760 and SB 761, reserving its right to propose and support legislation in the future should F/ETA or Caltrans re-initiate studies, advancement, or development of a freeway in and/or through San Clemente.
- c. Continue to support LPPE, work with County and Ranch pursuant to the 2020 Request Cooperative Agreement between the County, Ranch, and City, and work cooperatively with County for funding and construction phases of LPPE so long as LPPE during all phases of the process remains a non-tolled county arterial that substantially conforms to the project described in the LPPE Addendum approved by the Board of Supervisors on January 12, 2021.
- d. Agree to support the efforts of OCTA to complete the ongoing South Orange County Multimodal Transportation Study through a cooperative process which includes the Parties and use the results to guide future decisions related to south Orange County transportation solutions.
- e. If F/ETCA reinitiates planning efforts and/or studies relating to a southerly extension of the SR-241 and/or F/ETCA takes steps to design or construct a southerly extension of the SR-241, the parties, including the City Manager and Public Works Director and other appropriate representatives, will meet and confer in good faith to discuss whether F/ETCA's actions are in accord with this agreement and South County Mobility goals.
- f. The City reaffirms its commitment as contained in the 2020 Request Cooperative Agreement (as defined herein) to advance a General Plan amendment and not challenge the LPPE Addendum as approved by the Board January 12, 2021. In furtherance of that commitment, the City agrees to meet and confer with the Fifth District Supervisor, relevant OC Public Works personnel, and County Counsel prior to voting to remove the LPPE from the City's General Plan.

6. MISCELLANEOUS

- a. The Parties will cooperate on a joint statement prior to the first Party taking this Agreement to their governing body. The Parties shall publicly distribute the joint statement, to the media and the public following approval by the last Party's

governing body. No Party, without the prior written consent of the other Parties, may submit, issue, or make any statement, posting or comment (whether written, oral, or electronic), including but not limited to in any administrative or judicial tribunal or proceeding, to any person, organization, or agency, or on the internet, regarding this Agreement, that is inconsistent with or contradicts statements within the joint statement.

- b. Any amendments to this Agreement must be approved in writing by all Parties to this Agreement. An Amendment may be made to add parties to this Agreement.
- c. Any notices, requests and demands made between the Parties pursuant to this Agreement shall be in writing and (i) delivered personally, or (ii) sent by certified mail, return receipt requested, or (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by e-mail followed by a mailed copy or with receipt confirmed by telephone, to the below addresses (or to such other address as may from time to time be specified in writing by such Party) and shall be deemed delivered when actually received or when delivery is refused:

If to City: City of San Clemente
910 Calle Negocio,
San Clemente, California 92673
Attention: City Manager
Telephone: (949) 361-8341
Email: sundE@san-clemente.org

If to County: County of Orange, OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attention: James Treadaway
Title: OC Public Works Director
Telephone: (714) 667-9700
Email: james.treadaway@ocpw.ocgov.com

AND

County of Orange, Office of County Counsel
333 W. Santa Ana Blvd. Ste. 407
Santa Ana, CA 92701
Attention: Nicole Walsh
Title: Senior Assistant County Counsel
Telephone: (714) 834-6257
Email: nicole.walsh@coco.ocgov.com

If to OCTA: Kia Mortazavi
Executive Director, Planning

Orange County Transportation Authority
550 South Main Street
Orange, CA 92863
Telephone: (714) 560-5741
Email: kmortazavi@octa.net

AND

James Donich
OCTA General Counsel
555 Anton Blvd, Suite 1200
Costa Mesa, CA 92626
714-415-1015
jdonich@wss-law.com

- d. No Party shall have the right to assign this Agreement without the express written approval of the other Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors, assigns and legal representatives. A Party's failure to perform under any provision of this Agreement shall constitute a breach of contract subject to available remedies at law. Any waiver by any Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision of this Agreement.
- e. It is not intended by any of the provisions of this Agreement to create any third-party beneficiary hereunder. The duties, obligations, and responsibilities of the Parties with respect to such third parties shall remain as imposed by law. This Agreement shall not be construed to create a contractual relationship of any kind between a Party and the employees, contractors, or consultants of any other Party.
- f. The invalidity or unenforceability of any portion or provision hereof shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.
- g. This Agreement expires once the three projects have been constructed absent a renewal by the parties.
- g. Each Party represents and warrants that the execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of such Party's governing board, and the person executing this Agreement on behalf of such Party has been duly authorized and empowered to do so on behalf of such Party.
- h. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

- i. 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. Electronic signatures (e.g., DocuSign) will be permitted.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be entered into as of the Effective Date set forth above.

COUNTY OF ORANGE, a political subdivision of the State of California

By:
Title:

ORANGE COUNTY TRANSPORTATION AUTHORITY

By:
Title:

CITY OF SAN CLEMENTE, a municipal corporation

By:
Title:

[SIGNATURE PAGE CONTINUES NEXT PAGE]

Approved as to Form and Content
Leon J. Page, County Counsel

By: Nicole Walsh, Senior Assistant County Counsel

Approved as to Form and Content

By: Scott Smith, City Attorney

Approved as to Form and Content

By: James Donich, Esq.