

COOPERATIVE AGREEMENT NO. C-X-XXX

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

XXXXX

FOR

THE BICYCLE CORRIDOR IMPROVEMENT PROGRAM PROJECT

XXXXX

THIS COOPERATIVE AGREEMENT is effective this ____day of _____ 2016, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and City of XXXXX, a municipal corporation duly organized and existing under the constitution and laws of the State of California (hereinafter referred to as "CITY").

RECITALS:

WHEREAS, AUTHORITY and CITY desire to enter into a Cooperative Agreement to define the roles and responsibilities related to funding between AUTHORITY and CITY for engineering, right-of-way acquisition, and construction of XXXXX project as defined in the scope of work provided in the Bicycle Corridor Improvement Program 2016 Call for Projects, herein incorporated by reference; (hereinafter referred to as "PROJECT"); and

WHEREAS, the Bicycle Corridor Improvement Program is funded with Congestion Mitigation and Air Quality (hereinafter referred to as "CMAQ") funds; and

WHEREAS, the CMAQ program is authorized under Moving Ahead for Progress in the 21st Century (MAP-21) and Fixing America's Surface Transportation (FAST) Federal Transportation Act; and

WHEREAS, CITY is an eligible sub-recipient of Federal funding under the CMAQ program,

1 and PROJECT is eligible for CMAQ funding contingent on California Department of Transportation
2 (hereinafter referred to as "Caltrans") and the Federal Highway Administration (hereinafter referred
3 to as FHWA) approval; and

4 **WHEREAS**, on XXXXXX, 2016, AUTHORITY's Board of Directors, approved providing
5 funding of up to XXXXX dollars (\$XXXXX) in CMAQ funds to be matched with XXXXX dollars
6 (\$XXXXX) in CITY funds for preliminary engineering phase, and XXXXX dollars (\$XXXXX) in CMAQ
7 funds to be matched with XXXXX dollars (\$XXXXX) in CITY funds for construction phase; and

8 **WHEREAS**, CITY and AUTHORITY agree that the total full funding for PROJECT including
9 engineering, right-of-way acquisition, construction management and construction shall be XXXXX
10 dollars (\$XXXXX) or amount in accordance with Exhibit A titled "Bicycle Corridor Improvement
11 Program Funding Plan", which is attached herein and incorporated by reference; and

12 **WHEREAS**, AUTHORITY and CITY agree that CMAQ funding for PROJECT is contingent
13 upon funding being available through MAP-21 and FAST and PROJECT maintaining its eligibility for
14 this funding; and

15 **WHEREAS**, AUTHORITY and CITY agree that Caltrans and FHWA authorization is required
16 following AUTHORITY's amendment to the Federal Transportation Improvement Program
17 (hereinafter referred to as "FTIP"), and in order to proceed or commence each phase of PROJECT
18 for performance under this Cooperative Agreement; and

19 **WHEREAS**, AUTHORITY is responsible for programming the funds to specific projects
20 within Orange County; and Caltrans administers the CMAQ program on behalf of the FHWA and is
21 responsible for acquiring federal approvals for PROJECT on behalf of CITY, determining federal
22 eligibility, compliance with federal requirements, and reimbursement for project activities; and

23 **WHEREAS**, CITY agrees that AUTHORITY reserves the right to change the fund source
24 programmed to the PROJECT;

25 **WHEREAS**, CITY agrees to act as lead agency for engineering, right-of-way acquisition,
26 construction management and construction of PROJECT; and

1 **WHEREAS**, this Cooperative Agreement defines the specific terms and conditions and
2 funding responsibilities between AUTHORITY and CITY (hereinafter referred to as "PARTIES"
3 collectively or as "PARTY" individually) for completion of PROJECT; and

4 **WHEREAS**, CITY's Council approved the Cooperative Agreement on _____day of
5 _____ 2016.

6 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CITY as
7 follows:

8 **ARTICLE 1. COMPLETE AGREEMENT**

9 A. This Cooperative Agreement, including any attachments incorporated herein and
10 made applicable by reference, constitutes the complete and exclusive statement of the term(s) and
11 condition(s) of this agreement between AUTHORITY and CITY and it supersedes all prior
12 representations, understandings, and communications. The invalidity in whole or in part of any term
13 or condition of this Cooperative Agreement shall not affect the validity of other term(s) or condition(s)
14 of this Cooperative Agreement. The above referenced Recitals are true and correct and are
15 incorporated by reference herein.

16 B. AUTHORITY's failure to insist on any instance(s) of CITY's performance of any
17 term(s) or condition(s) of this Cooperative Agreement shall not be construed as a waiver or
18 relinquishment of AUTHORITY's right to such performance or to future performance of such term(s)
19 or condition(s), and CITY's obligation in respect thereto shall continue in full force and effect.
20 Changes to any portion of this Cooperative Agreement shall not be binding upon AUTHORITY
21 except when specifically confirmed in writing by an authorized representative of AUTHORITY by way
22 of a written amendment to this Cooperative Agreement and issued in accordance with the provisions
23 of this Cooperative Agreement.

24 C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any
25 term(s) or condition(s) of this Cooperative Agreement shall not be construed as a waiver or
26 relinquishment of CITY's right to such performance or to future performance of such term(s) or

1 condition(s), and AUTHORITY's obligation in respect thereto shall continue in full force and effect.
2 Changes to any portion of this Cooperative Agreement shall not be binding upon CITY except when
3 specifically confirmed in writing by an authorized representative of CITY by way of a written
4 amendment to this Cooperative Agreement and issued in accordance with the provisions of this
5 Cooperative Agreement.

6 **ARTICLE 2. SCOPE OF AGREEMENT**

7 This Cooperative Agreement specifies the terms and conditions, roles and responsibilities of
8 PARTIES as they pertain to the subjects and projects addressed herein. Both AUTHORITY and
9 CITY agree that each will cooperate and coordinate with the other in all activities covered by this
10 Cooperative Agreement and any other supplemental agreements that may be required to facilitate
11 purposes thereof.

12 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

13 AUTHORITY agrees to the following responsibilities for PROJECT:

14 A. AUTHORITY shall formally request on behalf of CITY that the Southern California
15 Association of Governments (hereinafter referred to as "SCAG") amend the FTIP to program up to
16 amount funds in accordance with the funding plan outlined in Exhibit A, whereby AUTHORITY's
17 performance under this Cooperative Agreement is contingent upon SCAG, Caltrans and FHWA
18 approval.

19 B. AUTHORITY shall provide assistance to CITY in securing the CMAQ funds.

20 C. AUTHORITY shall not be obligated to program any amount beyond what has been
21 identified in this Agreement and what is ultimately approved for PROJECT by Caltrans and FHWA.

22 D. AUTHORITY shall process any required FTIP amendments.

23 E. AUTHORITY shall review and approve CITY's request for obligation of CMAQ funds
24 prior to submittal to Caltrans District 12.

25 F. AUTHORITY may cancel projects for which CITY has not submitted request for
26 authorization to proceed (hereinafter referred to as "E-76 Request") or has not advanced PROJECT

1 to ready-to-list stage as determined by Caltrans guidelines by February 1 of the fiscal year identified
2 in Exhibit A as required in Article 4, paragraph E.

3 **ARTICLE 4. RESPONSIBILITIES OF CITY**

4 CITY agrees to the following responsibilities for PROJECT:

5 A. CITY shall act as the lead agency for the engineering, right-of-way, construction and
6 construction management of PROJECT.

7 B. CITY shall comply with all local, state, and federal project delivery requirements
8 including but not limited to Disadvantaged Business Enterprise, American with Disabilities Act, and
9 Buy America provisions.

10 C. CITY shall submit National Environmental Policy Act (NEPA) and the California
11 Environmental Quality Act (CEQA) environmental documentation to Caltrans for approval by
12 November 1 of the programming fiscal year as provided in the project schedule in Exhibit A.

13 D. CITY is responsible for preparing and submitting to AUTHORITY an Engineer's
14 Estimate of PROJECT cost ninety (90) days prior to E-76 Request, and no later than November 1 of
15 the fiscal year identified in Exhibit A.

16 E. CITY is responsible for preparing and submitting all necessary Caltrans-required
17 documentation including E-76 Request. CITY agrees to submit an E-76 Request to Caltrans District
18 12 by February 1 of the fiscal year identified in Exhibit A.

19 F. CITY acknowledges that if the E-76 Request is not submitted to Caltrans with a copy
20 to AUTHORITY by February 1, or CITY has not advanced PROJECT to ready-to-list stage as
21 determined through Caltrans guidelines by this date, the proposed funding shall be cancelled by
22 AUTHORITY.

23 G. CITY shall provide ____ percent (XX%) of the Preliminary Engineering Phase cost
24 and Construction costs in CITY funds as the required local match consistent with Exhibit A.

25 H. CITY shall invoice Caltrans at minimum once every six months.

26 I. CITY agrees that any cost overruns shall be the responsibility of CITY.

1 J. If CITY receives local, state, or federal funds from a non-AUTHORITY source, CITY
2 will not invoice AUTHORITY for the amount received from the other non-AUTHORITY source(s).

3 K. CITY will notify AUTHORITY regarding any non-AUTHORITY revenues received for
4 the PROJECT and AUTHORITY funds may not pay for expenses already supported through these
5 non-AUTHORITY revenues.

6 L. CITY shall submit semi-annual status reports for PROJECT to AUTHORITY due on
7 January 15 for the prior six (6)-month period and due on July 15 for the prior six (6)-month period
8 (EXHIBIT B titled "Quarterly/Semi-Annual Report Form").

9 M. CITY shall submit a final report to AUTHORITY within six (6) months of Caltrans
10 payment of final progress invoice for PROJECT in accordance with Exhibit C titled "BCIP Final
11 Project Report Form."

12 N. CITY is responsible for completing PROJECT in accordance with the funding plan
13 (EXHIBIT A), and to abide by all CMAQ programming guidelines, and any and all other federal,
14 state, and Caltrans requirements.

15 **ARTICLE 5. DELEGATED AUTHORITY**

16 The actions required to be taken by CITY in the implementation of this Cooperative
17 Agreement are delegated to its Director of Public Works, or designee, and the actions required to be
18 taken by AUTHORITY in the implementation of this Cooperative Agreement are delegated to
19 AUTHORITY's Chief Executive Officer, or designee.

20 **ARTICLE 6. AUDIT AND INSPECTION**

21 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
22 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
23 representatives of AUTHORITY to inspect and audit all work, materials, payroll, books, accounts,
24 and other data and records of CITY for a period of four (4) years after final payment, or until any on-
25 going audit is completed. For the purposes of audit, the date of completion of this Agreement shall
26 be the date of Caltrans' payment of CITY's final billing (so noted on the invoice) under this

1 agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts.
2 The above provision with respect to audits shall extend to and/or be included in construction
3 contracts with CITY's contractor.

4 **ARTICLE 7. INDEMNIFICATION**

5 A. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
6 employees and agents from and against any and all claims (including attorney's fees and reasonable
7 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,
8 worker's compensation subrogation claims, damage to or loss of use of property alleged to be
9 caused by the negligent acts, omissions or willful misconduct by CITY, its officers, directors,
10 employees or agents in connection with or arising out of the performance of this Cooperative
11 Agreement.

12 B. AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,
13 employees and agents from and against any and all claims (including attorney's fees and reasonable
14 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,
15 worker's compensation subrogation claims, damage to or loss of use of property alleged to be
16 caused by the negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors,
17 employees or agents in connection with or arising out of the performance of this Cooperative
18 Agreement.

19 C. The indemnification and defense obligations of this Cooperative Agreement shall
20 survive its expiration or termination.

21 **ARTICLE 8. ADDITIONAL PROVISIONS**

22 AUTHORITY and CITY agree to the following mutual responsibilities:

23 A. Term of Agreement: This Cooperative Agreement shall continue in full force and effect
24 through December 31, 2024 or until final acceptance by AUTHORITY, whichever is later. This
25 Cooperative Agreement may be extended at the mutual consent of both PARTIES.
26

1 B. Termination: This Cooperative Agreement is null and void if PROJECT is not funded.
2 AUTHORITY shall cancel projects for which CITY has not submitted an E-76 Request by February 1
3 of the fiscal year for which funds are programmed and, or has not advanced PROJECT to ready
4 stage as determined by AUTHORITY. This Cooperative Agreement may be terminated by either
5 PARTY after giving thirty (30) days written notice to the other PARTY.

6 C. This Cooperative Agreement may be amended in writing at any time by the mutual
7 consent of both PARTIES. No amendment shall have any force or effect unless executed in writing
8 by both PARTIES.

9 D. AUTHORITY and CITY shall comply with all applicable federal, state, and local laws,
10 statues, ordinances and regulations of any governmental authority having jurisdiction over
11 PROJECT.

12 E. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to
13 execute this Cooperative Agreement on behalf of said PARTIES and that, by so executing this
14 agreement, the PARTIES hereto are formally bound to the provisions of this Cooperative
15 Agreement.

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

21 G. Counterparts of Agreement: This Cooperative Agreement may be executed and
22 delivered in any number of counterparts, each of which, when executed and delivered shall be
23 deemed an original and all of which together shall constitute the same agreement. Facsimile
24 signatures will be permitted.

25 H. Force Majeure: Either AUTHORITY or CITY shall be excused from performing its
26 obligations under this Cooperative Agreement during the time and to the extent that it is prevented from

1 performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of
2 fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or
3 local government; national fuel shortage; or a material act or omission by the other PARTY; when
4 satisfactory evidence of such cause is presented to the other PARTY, and provided further that such
5 nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the
6 AUTHORITY or CITY not performing.

7 I. Assignment: Neither this Cooperative Agreement, nor any of the AUTHORITY and
8 CITY rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either
9 AUTHORITY or CITY without the prior written consent of the other PARTY in its sole and absolute
10 discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent
11 to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any
12 right to consent to such subsequent assignment.

13 J. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to
14 authorize or require any PARTY to issue bonds, notes or other evidences of indebtedness under the
15 terms, in amounts, or for purposes other than as authorized by local, state or federal law.

16 K. Governing Law: The laws of the State of California and applicable local and federal
17 laws, regulations and guidelines shall govern this Cooperative Agreement.

18 L. Litigation fees: Should litigation arise out of this Cooperative Agreement for the
19 performance thereof, the court shall award costs and expenses, including attorney's fees, to the
20 prevailing PARTY.

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1 M. Notices: Any notices, requests, or demands made between the PARTIES pursuant to
2 this Cooperative Agreement are to be directed as follows:

To CITY:	To AUTHORITY:
	Orange County Transportation Authority
	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention:	Attention:

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N. Successors and Assigns: The provisions of this Cooperative Agreement shall bind and inure to the benefit of each of the PARTIES hereto, and all successors or assigns of PARTIES hereto.

O. Time is of the Essence: Time is of the essence for the work identified in Exhibit A. All work must be completed no later than forty-two (42) months after the E-76 request approval date.

This Agreement shall be effective upon execution by both PARTIES.

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement No. C-X-XXXX to be executed on the date first above written.

CITY OF ANAHEIM

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
XXXXXX
Mayor

By: _____
Darrell Johnson
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
XXXXXX
City Clerk

By: _____
James M. Donich
General Counsel

APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

By: _____
XXXXXX
City Attorney

By: _____
Kia Mortazavi
Executive Director, Planning

Dated: _____

Dated: _____

BICYCLE CORRIDOR IMPROVEMENT PROGRAM FUNDING PLAN

XXXXXXX

Project Schedule and Funding

Schedule	Completion Date
Final Environmental Document	
Begin Design Engineering	
Plans, Specifications, and Cost Estimates complete	
Start Right-of-Way Acquisition	
Right-of-Way Certification	
California Transportation Commission Allocation	
Award Construction Deadline	
Project Completion (open for use)	

Construction funding authorized through this agreement:

CMAQ: \$XXXX LOCAL MATCH: \$XXXXXX

Preliminary Engineering (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Proportion
TOTAL			

Right-of-Way (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Proportion
TOTAL			

Construction (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Proportion
TOTAL			

Project Manager Signature: _____

Project Manager Name: _____

SEMI ANNUAL REPORT FORM

Project Title: _____

Agency: _____ Date: _____

Schedule	Original Completion Date	Current Completion Date
Draft Environmental Document		
Final Environmental Document		
Begin Design Engineering		
Plans, Specifications, and Cost Estimates complete		
Start Right-of-Way Acquisition		
Right-of-Way Certification		
Submit Request for Authorization for Const (E-76)		
Ready to Advertise		
Award Construction		
Project Completion (open for use)		

Funding Table:

Preliminary Engineering (\$000's)

Fund Source	Fiscal Year	Planned Obligation	Current Estimates	Actual Expended	Remaining Allocation

Right-of-Way (\$000's)

Fund Source	Fiscal Year	Planned Obligation	Current Estimates	Actual Expended	Remaining Allocation

Construction (\$000's)

Fund Source	Fiscal Year	Planned Obligation	Revised Allocation	Actual Expended	Remaining Allocation

Major Activities: _____

Status: _____

Issues: _____

Name/Title: _____
Phone: _____ Email: _____



EXHIBIT C: FINAL PROJECT REPORT FORM

Date _____

Instructions

The responsible agency should fill out the following: 1) Final Project Form, 2) Final Cost, 3) Certificate of Completion. Page 4, the OCTA Staff Verification will be filled out by OCTA staff. In addition, the agency must attach before (if available) and after **photographs** of the project site and the address or location of the site under the Location and Scope of work section.

Agency

Project

Location and Scope of Work

Verification of Match
(Actual Expenditures)

Phase	Local Match			CMAQ	Other OCTA Funding	Total	Match Rate
	(ENTER SOURCE)	(ENTER SOURCE)	(ENTER SOURCE)				
Engineering	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Right-of-Way	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

Project Schedule

Phase	Proposed	Actual
Draft Environmental Document		
Final Environmental Document		
Begin Design Engineering		
Plans, Specifications, and Cost Estimates complete		
Start Right-of-Way Acquisition		
Right-of-Way Certification		
Ready to Advertise		
Award Construction		
Project Completion (open for use)		



BCIP: Final Cost

Item #	Description	Unit	Quantity	Unit Price	Amount
				\$ - \$	-



BCIP: FINAL COST

I hereby certify that the statements provided here are true and correct.

Project Title

	Yes	No	N/A
1 The project is designed to city/county and other participating jurisdictions' standards.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 The project contract was awarded on: <input type="text" value="ENTER DATE"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 The total cost of the contract is equal to or less than the total BCIP funds awarded and matching funds provided.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 The city/county provided matching funds to the project.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Right-of-way was acquired in conformance with city/county procedures.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 All required environmental documentation is complete and certified.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 An updated project schedule is included with the final invoice.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 The final invoice is attached with all the necessary documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Name

Title

Signature

Date



BCIP: OCTA Staff Verification

OCTA STAFF USE ONLY

Orange County Transportation Authority staff has inspected the project site and certifies that the project is complete and ready for use.

Project Title

Name

Title

Signature

Date