

DRAFT

COOPERATIVE AGREEMENT NO. C-X-XXXX

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF XXXXX

FOR

THE ARTERIAL PAVEMENT MANAGEMENT PROGRAM PROJECT

XXXXXXXXXX

THIS COOPERATIVE AGREEMENT is effective this _____ day of _____

2014, 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 XXXXXX, XXXXXX, 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 construction of XXXXX project as defined in the scope of work provided in the Arterial Pavement Management Program 2014 Call for Projects, herein incorporated by reference; (hereinafter referred to as "PROJECT"); and

WHEREAS, the Arterial Pavement Management Program is funded with Regional Surface Transportation Program (hereinafter referred to as "RSTP") funds; and

WHEREAS, the RSTP program is authorized under Moving Ahead for Progress in the 21st Century (MAP-21) Federal Transportation Act; and

WHEREAS, CITY is an eligible sub-recipient of Federal funding under the RSTP program, and PROJECT is eligible for RSTP funding contingent on California Department of Transportation (hereinafter referred to as "Caltrans") and the Federal Highway Administration (hereinafter referred to as FHWA) approval; and

1 **WHEREAS**, on November 10, 2014, AUTHORITY’s Board of Directors, approved providing
2 funding of up to XXXXX dollars (\$XXXXX) in RSTP funds to be matched with XXXXX dollars (\$XXXXX)
3 in CITY funds for the construction phase; and

4 **WHEREAS**, CITY and AUTHORITY agree that the total full funding for PROJECT including
5 construction management and construction shall be XXXXX dollars (\$XXXXX) in accordance with
6 Exhibit A titled “Arterial Pavement Management Program Funding Plan”, which is attached herein and
7 incorporated by reference; and

8 **WHEREAS**, AUTHORITY and CITY agree that RSTP funding for PROJECT is contingent upon
9 funding being available through MAP-21 and PROJECT maintaining its eligibility for this funding; and

10 **WHEREAS**, AUTHORITY and CITY agree that Caltrans and FHWA authorization is required
11 following AUTHORITY’s amendment to the Federal Transportation Improvement Program (hereinafter
12 referred to as “FTIP”), and in order to proceed or commence each phase of PROJECT for performance
13 under this Cooperative Agreement; and

14 **WHEREAS**, AUTHORITY is responsible for programming the funds to specific projects within
15 Orange County; and Caltrans administers the RSTP program on behalf of the FHWA and is responsible
16 for acquiring federal approvals for PROJECT on behalf of CITY, determining federal eligibility,
17 compliance with federal requirements, and reimbursement for project activities; and

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

20 **WHEREAS**, CITY agrees to act as lead agency for construction engineering, construction
21 management and construction of PROJECT; and

22 **WHEREAS**, this Cooperative Agreement defines the specific terms and conditions and funding
23 responsibilities between AUTHORITY and CITY (hereinafter referred to as “PARTIES”) for completion
24 of PROJECT; and

25 **WHEREAS**, AUTHORITY’s Board of Directors approved the Cooperative Agreement on XXX
26 day of XXX, 201X; and

1 **WHEREAS**, CITY's Council approved the Cooperative Agreement on _____day of
2 _____ 201X.

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

5 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

1 **ARTICLE 2. SCOPE OF AGREEMENT**

2 This Agreement specifies the roles and responsibilities of the Parties as they pertain to the
3 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate
4 and coordinate with the other in all activities covered by this Agreement and any other supplemental
5 agreements that may be required to facilitate purposes thereof.

6 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

7 AUTHORITY agrees to the following responsibilities for PROJECT:

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

12 B. AUTHORITY shall provide assistance to CITY in securing the RSTP funds.

13 C. AUTHORITY shall not be obligated to program any amount beyond what has been
14 identified in this Agreement and what is ultimately approved for the project by Caltrans and FHWA.

15 D. AUTHORITY shall process any required FTIP amendments.

16 E. AUTHORITY shall review and approve CITY's request for obligation of RSTP funds prior
17 to submittal to Caltrans District 12.

18 F. AUTHORITY may cancel projects for which CITY has not submitted request for
19 authorization to proceed (hereinafter referred to as "E-76 Request") or has not advanced PROJECT to
20 ready-to-list stage as determined by Caltrans guidelines by February 1 of the fiscal year identified in
21 Exhibit A as required in Article 4, paragraph E.

22 **ARTICLE 4. RESPONSIBILITIES OF CITY**

23 CITY agrees to the following responsibilities for PROJECT:

24 A. CITY will act as the lead agency for the construction engineering, construction and
25 construction management of PROJECT.

26 B. CITY will comply with all local, state, and federal project delivery requirements including
but not limited to Disadvantaged Business Enterprise, American with Disabilities Act, and Buy America

1 provisions.

2 C. CITY will submit National Environmental Policy Act (NEPA) and the California
3 Environmental Quality Act (CEQA) environmental documentation to Caltrans for approval by November
4 1 of the programming fiscal year as provided in the project schedule in Exhibit A.

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

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

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

14 G. CITY acknowledges that they will not advertise for construction until the E-76 request is
15 approved by FHWA

16 H. CITY shall provide XX% of the Construction costs in CITY funds as the required local
17 match consistent with Exhibit A.

18 I. CITY will invoice Caltrans at minimum once every six months.

19 J. CITY agrees that any cost overruns shall be the responsibility of CITY.

20 K. CITY will submit semi-annual status reports for PROJECT to AUTHORITY due on
21 March 1 for the prior six month period and due on September 1 for the prior six (6) month period
22 (EXHIBIT B titled "Semi-Annual Report Form").

23 L. CITY will submit a final report to AUTHORITY within six (6) months of Caltrans payment
24 of final progress invoice for PROJECT in accordance with Exhibit C titled "RSTP Final Project Report
25 Form."
26

1 M. CITY is responsible for completing PROJECT in accordance with the funding plan
2 (EXHIBIT A), and to abide by all RSTP programming guidelines, and any and all other federal, state,
3 and Caltrans requirements.

4 **ARTICLE 5. DELEGATED AUTHORITY**

5 The actions required to be taken by CITY in the implementation of this Agreement are
6 delegated to its Chief Executive Officer, Public Works Director, or designee, and the actions required to
7 be taken by AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's
8 Chief Executive Officer or designee.

9 **ARTICLE 6. AUDIT AND INSPECTION**

10 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
11 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
12 representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts,
13 and other data and records of CITY for a period of four (4) years after final payment, or until any on-
14 going audit is completed. For purposes of audit, the date of completion of this Agreement shall be the
15 date of CITY's payment of AUTHORITY's final billing (so noted on the invoice) under this Agreement.
16 AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above
17 provision with respect to audits shall extend to and/or be included in contracts with CITY's contractor.

18 **ARTICLE 7. INDEMNIFICATION**

19 A. To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and
20 expense with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect, and hold
21 harmless AUTHORITY, its officers, directors, employees, and agents (collectively the "Indemnified
22 Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs,
23 judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses
24 including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising
25 from injuries to or death of persons (CITY's employees included), for damage to property, including
26 property owned by AUTHORITY, or from any violation of any federal, state, or local law or ordinance,
alleged to be caused by the negligent acts, omissions or willful misconduct of CITY, its officers,

1 directors, employees or agents in connection with or arising out of the performance of this Agreement.

2 B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole
3 cost and expense with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold
4 harmless CITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"),
5 from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments,
6 arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal
7 costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to
8 or death of persons (AUTHORITY's employees included), for damage to property, including property
9 owned by CITY, or from any violation of any federal, state, or local law or ordinance, alleged to be
10 caused by the negligent acts, omissions or willful misconduct of AUTHORITY, its officers, directors,
11 employees or agents in connection with or arising out of the performance of this Agreement.

12 C. The indemnification and defense obligations of this Agreement shall survive its
13 expiration or termination.

14 **ARTICLE 8. ADDITIONAL PROVISIONS**

15 A. Term of Agreement: This Agreement shall be effective on _____20___, and shall be
16 in full force and effect for ___ months through _____ 20___ or until final acceptance by
17 AUTHORITY, whichever is later.

18 B. Termination: In the event either Party defaults in the performance of their obligations
19 under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party
20 shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other
21 Party.

22 C. Termination for Convenience: Either Party may terminate this Agreement for its
23 convenience by providing thirty (30) days' prior written notice of its intent to terminate for convenience to
24 the other Party.

25 D. AUTHORITY and CITY shall comply with all applicable federal, state, and local laws,
26 statutes, ordinances and regulations of any governmental authority having
jurisdiction over the PROJECT.

1 E. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to
2 execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties
3 hereto are formally bound to the provisions of this Agreement.

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

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

11 H. Force Majeure: Either Party shall be excused from performing its obligations under this
12 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
13 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;
14 commandeering of material, products, plants or facilities by the federal, state or local government;
15 national fuel shortage; or a material act or omission by the other Party; when satisfactory evidence of
16 such cause is presented to the other Party, and provided further that such nonperformance is
17 unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

18 I. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations, duties,
19 or authority hereunder may be assigned in whole or in part by either Party without the prior written
20 consent of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be
21 deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to
22 any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

23 J. Governing Law: The laws of the State of California and applicable local and federal
24 laws, regulations and guidelines shall govern this Agreement.

25 K. Litigation fees: Should litigation arise out of this Agreement for the performance thereof,
26 the court shall award costs and expenses, including attorney's fees, to the prevailing party.

L. Notices: Any notices, requests, or demands made between the Parties pursuant to this Agreement are to be directed as follows:

To XXXXX (Name of Local Agency)	To AUTHORITY:
Local Agency Name	Orange County Transportation Authority
Local Agency Address	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Name Title Telephone Number E-mail address	Attention: CA's name CA's Title Tel: (714) 560-XXXX E-mail: XXXX@octa.net C: Ben Ku, Senior Transportation Funding Analyst

This Agreement shall be made effective upon execution by both Parties.

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

XXXX (Agency)

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
XXXXXXXXX
XXXX (Title)

By: _____
Darrell Johnson
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
XXXXXX
City Clerk

By: _____
Kennard R. Smart, Jr.
General Counsel

APPROVED AS TO FORM

APPROVAL RECOMMENDED:

By: _____
XXXXXXXXXX
City Attorney

By: _____
Kia Mortazavi
Executive Director, Planning

Dated : _____

Dated : _____