COOPERATIVE AGREEMENT NO. C-2-1890

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF COSTA MESA

FOR

THE BICYCLE CORRIDOR IMPROVEMENT PROGRAM PROJECT

FAIRVIEW PARK MULTI-PURPOSE TRAIL

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 Costa Mesa, 77 Fair Drive, Costa Mesa, CA 92626, 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 Fairview Park Multi-Purpose Trail project as defined in the scope of work provided in the Bicycle Corridor Improvement Program 2012 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) Federal Transportation Act; and

WHEREAS, CITY is an eligible sub-recipient of Federal funding under the CMAQ program, and PROJECT is eligible for CMAQ funding contingent on California Department of Transportation

(hereinafter referred to as "Caltrans") and the Federal Highway Administration (hereinafter referred to as FHWA) approval; and

WHEREAS, on August 13, 2012, AUTHORITY's Board of Directors, approved providing funding of up to Eight Hundred Thirty Five Thousand Nine Hundred Fifty Night ($835,959) in CMAQ funds to be matched with Four Hundred Eleven Thousand Seven Hundred and Forty One dollars ($411,741) in CITY funds for construction phase; and

WHEREAS, CITY and AUTHORITY agree that the total full funding for PROJECT including engineering, right-of-way acquisition, construction management and construction shall be One Million Two Hundred Forty Seven Thousand Seven Hundred dollars ($1,247,700) in accordance with Exhibit A titled "Bicycle Corridor Improvement Program Funding Plan", which is attached herein and incorporated by reference; and

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

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

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

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

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

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

WHEREAS, AUTHORITY's Board of Directors approved the Cooperative Agreement on 13th day of August, 2012; and

WHEREAS, CITY's Council approved the Cooperative Agreement on _____day of _____ 2014.

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

ARTICLE 1. COMPLETE AGREEMENT

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

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

C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any

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

ARTICLE 2. SCOPE OF AGREEMENT

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

ARTICLE 3. RESPONSIBILITIES OF AUTHORITY

AUTHORITY agrees to the following responsibilities for PROJECT:

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

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

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

D. AUTHORITY shall process any required FTIP amendments.

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

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

ARTICLE 4. RESPONSIBILITIES OF CITY

CITY agrees to the following responsibilities for PROJECT:

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

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 provisions.

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

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

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

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

G. CITY shall provide 33% of the Construction costs in CITY funds as the required local match consistent with Exhibit A.

H. CITY will invoice Caltrans at minimum once every six months.

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

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

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

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

ARTICLE 5. DELEGATED AUTHORITY

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

ARTICLE 6. AUDIT AND INSPECTION

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

/

ARTICLE 7. INDEMNIFICATION

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

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

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

ARTICLE 8. ADDITIONAL PROVISIONS

AUTHORITY and CITY agree to the following mutual responsibilities:

A. Term of Agreement: This Cooperative Agreement shall continue in full force and effect through December 31, 2017 or until final acceptance by AUTHORITY, whichever is later. This Cooperative Agreement may be extended at the mutual consent of both parties.

B. Termination: This Cooperative Agreement is null and void if project is not funded. AUTHORITY shall cancel projects for which CITY has not submitted an E-76 Request by February 1 of the fiscal year for which funds are programmed and, or has not advanced PROJECT to ready

/

stage as determined by AUTHORITY. This Cooperative Agreement may be terminated by either party after giving thirty (30) days written notice.

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

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

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

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

G. Counterparts of Agreement: This Cooperative 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. Facsimile signatures will be permitted.

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

nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the AUTHORITY and CITY not performing.

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

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

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

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

/

/

/

/

/

/

/

/

/

/

12

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

To CITY:	**To AUTHORITY:**
City of Costa Mesa	Orange County Transportation Authority
Transportation Services Division 77 Fair Drive Costa Mesa, CA 92626	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Mr. Raja Sethuraman Transportation Services Manager 714-754-5032 Email: raja.sethuraman@costamesaca.gov Cc: David Cho Assistant City Engineer	Attention: Ms. Marjorie Morris Threats Senior Contract Administrator 714-560-5633 Email: mthreats@octa.net Cc: Louis Zhao Transportation Funding Analyst

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-2-1890 to be executed on the date first above written.

CITY OF COSTA MESA

By: _____
Jim Righeimer
Mayor

ATTEST:

By: _____
Brenda Green
City Clerk

APPROVED AS TO FORM:

By: _____
Tom Duarte
City Attorney

Dated: _____

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Darrell Johnson
Chief Executive Officer

APPROVED AS TO FORM:

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

APPROVAL RECOMMENDED:

By: _____
Kia Mortazavi
Executive Director, Planning

Dated: _____

BCIP FUNDING PLAN

BICYCLE CORRIDOR IMPROVEMENT PROGRAM FUNDING PLAN
CALL FOR PROJECTS

FAIRVIEW PARK MULTI-PURPOSE TRAIL

Project Schedule and Funding

Schedule	Completion Date
Final Environmental Document	6/1/2014
Begin Design Engineering	12/12/2012
Plans, Specifications, and Cost Estimates complete	8/1/2014
Start Right-of-Way Acquisition	N/A
Right-of-Way Certification	8/1/2014
Submit Request for Authorization for Construction (E-76)	8/1/2014
Award Construction	2/3/2015
Project Completion (open for use)	8/3/2015

Construction funding authorized through this agreement:

Funding
CMAQ: **$835,959** Local: **$411,741**

Preliminary Engineering

Fund Source	Fiscal Year	Original Planned Allocation	Proportion
N/A	N/A	N/A	N/A
	TOTAL	$	N/A

Right-of-Way

Fund Source	Fiscal Year	Original Planned Allocation	Proportion
N/A	N/A	N/A	N/A
	TOTAL	$	N/A

Construction

Fund Source	Fiscal Year	Original Planned Allocation Range	Proportion
CMAQ[1]	2013-2014	$835,959	67%
Local[1]	2013-2014	$411,741	33%
	TOTAL	$1,247,700	100%

1. If needed, CMAQ and local amounts will be reduced proportionally.

Project Manager Name (Print): _____ Date: _____

Signature: _____

QUARTERLY/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)

	Local Match						
Phase	(ENTER SOURCE)	(ENTER SOURCE)	(ENTER SOURCE)	CMAQ	Other OCTA Funding	Total	Match Rate
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)		

OCTA

BCIP: Final Cost

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

OCTA

BCIP: FINAL COST

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

Proiect Title

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

Name

Title Public Works Director

Signature

Date

OCTA

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