

COOPERATIVE AGREEMENT NO. C-2-1889

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF COSTA MESA

FOR

THE BICYCLE CORRIDOR IMPROVEMENT PROGRAM PROJECT

BICYCLE EDUCATION AT SCHOOLS

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 Bicycle Education at Schools 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

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

3 **WHEREAS**, on August 13, 2012, AUTHORITY's Board of Directors, approved providing
4 funding of up to One Hundred Twenty Thousand Five Hundred Eighty Two dollars (\$120,582) in
5 CMAQ funds to be matched with Eighteen Thousand Eighteen Dollars (\$18,018) in CITY funds for
6 construction phase; and

7 **WHEREAS**, CITY and AUTHORITY agree that the total full funding for PROJECT including
8 engineering, right-of-way acquisition, construction management and construction shall be One
9 Hundred Thirty Eight Thousand Six Hundred dollars (\$138,600) or amount in accordance with
10 Exhibit A titled "Bicycle Corridor Improvement Program Funding Plan", which is attached herein and
11 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 PROJECT maintaining its eligibility for this
14 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") for
3 completion of PROJECT; and

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

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

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

10 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

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

8 **ARTICLE 2. SCOPE OF AGREEMENT**

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

14 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

15 AUTHORITY agrees to the following responsibilities for PROJECT:

- 16 A. AUTHORITY shall formally request on behalf of CITY that the Southern California
17 Association of Governments (hereinafter referred to as "SCAG") amend the FTIP to program up to
18 the amount in accordance with the funding plan outlined in Exhibit A, whereby AUTHORITY's
19 performance under this Cooperative Agreement is contingent upon SCAG, Caltrans and FHWA
20 approval.
- 21 B. AUTHORITY shall provide assistance to CITY in securing the CMAQ funds.
- 22 C. AUTHORITY shall not be obligated to program any amount beyond what has been
23 identified in this Agreement and what is ultimately approved for the project by Caltrans and FHWA.
- 24 D. AUTHORITY shall process any required FTIP amendments.
- 25 E. AUTHORITY shall review and approve CITY's request for obligation of CMAQ funds
26 prior to submittal to Caltrans District 12.

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

5 **ARTICLE 4. RESPONSIBILITIES OF CITY**

6 CITY agrees to the following responsibilities for PROJECT:

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

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

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

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

18 E. CITY is responsible for preparing and submitting all necessary Caltrans-required
19 documentation including E-76 Request. CITY agrees to submit an E-76 Request to Caltrans District
20 12 by February 1 of the fiscal year identified in Exhibit A.

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

24 G. CITY shall provide 13% of the Construction costs in CITY funds as the required local
25 match consistent with Exhibit A.

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

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

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

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

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

11 **ARTICLE 5. DELEGATED AUTHORITY**

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

16 **ARTICLE 6. AUDIT AND INSPECTION**

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

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1 **ARTICLE 7. INDEMNIFICATION**

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

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

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

18 **ARTICLE 8. ADDITIONAL PROVISIONS**

19 AUTHORITY and CITY agree to the following mutual responsibilities:

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

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

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

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

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

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

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

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

1 satisfactory evidence of such cause is presented to the other party, and provided further that such
2 nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the
3 AUTHORITY and CITY not performing.

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

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

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

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

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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	Attention: Ms. Marjorie Morris Threats Senior Contract Administrator 714-560-5633 Email: mthreats@octa.net
Cc: David Cho Assistant City Engineer	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.

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This Agreement shall be effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement No. C-2-1889 to be executed on the date first above written.

CITY OF COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Jim Righeimer
Mayor

By: _____
Darrell Johnson
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
Brenda Green
City Clerk

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

APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

By: _____
Tom Duarte
City Attorney

By: _____
Kia Mortazavi
Executive Director, Planning

Dated: _____

Dated: _____

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BCIP FUNDING PLAN

**BICYCLE CORRIDOR IMPROVEMENT PROGRAM FUNDING PLAN
CALL FOR PROJECTS**

Bicycle Education at Schools

Project Schedule and Funding

Schedule	Completion Date
Final Environmental Document	N/A
Begin Design Engineering	N/A
Plans, Specifications, and Cost Estimates complete	N/A
Start Right-of-Way Acquisition	N/A
Right-of-Way Certification	N/A
Submit Request for Authorization for Construction (E-76)	2/28/2014
Award Construction	07/01/2014
Project Completion (open for use)	06/30/2015

Funding

CMAQ: **\$120,582**

Local: **\$18,018**

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	2012-2013	\$120,582	87%
Local ¹	2012-2013	\$18,018	13%
TOTAL		\$138,600	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)

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.
- 2 The project contract was awarded on:
- 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

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