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COOPERATIVE AGREEMENT NO. C-7-1857
BETWEEN
ORANGE COUNTY TRANSPORTATION AUTHORITY
AND
CITY OF GARDEN GROVE
FOR
THE BICYCLE CORRIDOR IMPROVEMENT PROGRAM PROJECT
CITY OF GARDEN GROVE BICYCLE CORRIDOR IMPROVEMENTS PROJECT

THIS COOPERATIVE AGREEMENT is effective this _____ day of _____ 2017, 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 Garden Grove, 11222 Acacia Parkway, Garden Grove, California 92840, a municipal corporation duly organized and existing under the constitution and laws of the State of California (hereinafter referred to as "CITY") each individually known as "PARTY" and collectively known as "PARTIES."

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 the final design and construction of the City of Garden Grove Bicycle Corridor Improvements 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 Improvement Program ("CMAQ") funds; and

WHEREAS, the CMAQ program is authorized under Fixing America's Surface Transportation (FAST) Federal Transportation Act; and

1 **WHEREAS**, CITY is an eligible sub-recipient of federal funding under the CMAQ program, and
2 PROJECT is eligible for CMAQ funding contingent on California Department of Transportation
3 (“Caltrans”) and the Federal Highway Administration (“FHWA”) approval; and

4 **WHEREAS**, on August 8, 2016, AUTHORITY’s Board of Directors (BOARD), approved funding
5 of up to Seventy-Six Thousand, Eight Hundred Twenty-Six dollars (\$76,826) in CMAQ funds to be
6 matched with Ten Thousand, Four Hundred Seventy-Six dollars (\$10,476) in local funds for the design
7 phase of PROJECT and One Million, Thirty-Seven Thousand, One Hundred Fifty-Two dollars
8 (\$1,037,152) in CMAQ funds to be matched with One Hundred Forty-One Thousand, Four Hundred
9 Twenty-Nine dollars (\$141,429) in CITY funds for the construction phase of PROJECT; and

10 **WHEREAS**, AUTHORITY and CITY agree that the total funding for the final design and
11 construction of PROJECT shall be One Million, Two Hundred Sixty-Five Thousand, Eight Hundred
12 Eighty-Three dollars (\$1,265,883) or amount in accordance with Exhibit A, entitled “Bicycle Corridor
13 Improvement Program Funding Plan”, which is attached herein and incorporated by reference; and

14 **WHEREAS**, AUTHORITY and CITY agree that CMAQ funding for PROJECT is contingent
15 upon funding being available through FAST Act and PROJECT maintaining its eligibility for this
16 funding; and

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

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

25 **WHEREAS**, this Cooperative Agreement defines the specific terms and conditions and funding
26 responsibilities between the PARTIES for completion of PROJECT; and

1 **WHEREAS**, On August 8, 2016, AUTHORITY's BOARD approved this Cooperative
2 Agreement; and

3 **WHEREAS**, On _____, 20___, CITY's City Council approved this Cooperative
4 Agreement;

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

7 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

23 C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any term(s)
24 or condition(s) of this Cooperative Agreement shall not be construed as a waiver or relinquishment of
25 CITY's right to such performance or to future performance of such term(s) or condition(s), and
26 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any

1 portion of this Cooperative Agreement shall not be binding upon CITY except when specifically
2 confirmed in writing by an authorized representative of CITY by way of a written amendment to this
3 Cooperative Agreement and issued in accordance with the provisions of this Cooperative Agreement.

4 **ARTICLE 2. SCOPE OF AGREEMENT**

5 This Cooperative Agreement specifies the terms and conditions, roles and responsibilities of
6 PARTIES as they pertain to the subjects and PROJECT addressed herein. PARTIES agree that each
7 shall cooperate and coordinate with the other in all activities covered by this Cooperative Agreement
8 and any other supplemental agreements, including Letter Agreements which may be required to
9 facilitate purposes thereof.

10 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

11 AUTHORITY agrees to the following responsibilities for PROJECT:

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

16 B. AUTHORITY shall process any required FTIP amendments.

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

18 D. AUTHORITY is not required to program or provide any amount beyond what has been
19 identified in this Cooperative Agreement as CMAQ and what is ultimately approved for PROJECT in
20 CMAQ by Caltrans and FHWA.

21 E. AUTHORITY shall review CITY's request for obligation of CMAQ funds which must
22 receive AUTHORITY approval prior to submittal to Caltrans District 12 for reimbursement.

23 F. AUTHORITY shall cancel PROJECT if CITY has not submitted a complete request for
24 authorization to proceed ("E-76 Request") to Caltrans and AUTHORITY, including prior environmental
25 approval by February 1 of the year the funds are programmed.

26 G. AUTHORITY reserves the right to change the fund sources programmed to the

1 PROJECT.

2 **ARTICLE 4. RESPONSIBILITIES OF CITY**

3 CITY agrees to the following responsibilities for PROJECT:

4 A. CITY shall act as the lead agency for the final design and construction of PROJECT.

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

8 C. CITY shall submit National Environmental Policy Act (NEPA) and the California
9 Environmental Quality Act (CEQA) environmental documentation to Caltrans for approval prior to
10 November 30 or of the fiscal year the funds are programmed in accordance to Exhibit A.

11 D. CITY is responsible for preparing and submitting to AUTHORITY an Engineer's
12 Estimate of PROJECT cost ninety (90) days prior to E-76 Request.

13 E. CITY is responsible for preparing and submitting all necessary Caltrans-required
14 documentation including E-76 Request. CITY agrees to submit an E-76 Request including all required
15 forms and prior approvals including NEPA to Caltrans District 12 by February 1 of the year the funds
16 are programmed, consistent with the fiscal year identified in Exhibit A.

17 F. CITY acknowledges that if the E-76 Request for CMAQ funds is not submitted to
18 Caltrans by February 1 of the year the funds are programmed, or CITY has not advanced PROJECT
19 to ready-to-list stage as determined through Caltrans guidelines by this date, or PROJECT is found
20 ineligible by Caltrans and FHWA, the proposed funding shall be cancelled by AUTHORITY.

21 G. CITY shall provide a minimum of twelve percent (12%) of the final design and
22 construction costs in CITY funds as the required local match consistent with Exhibit A. Any savings
23 recognized in the PROJECT will be credited or reimbursed proportionally to the amount contributed
24 to the PROJECT by each fund type.

25 H. CITY shall follow applicable procurement procedures outlined in the Caltrans Local
26 Assistance Program Guide Chapter 10 Consultant Selection and Chapter 15 Advertise and Award

1 Project.

2 I. CITY shall not advertise or award a contract before FHWA authorization to proceed.

3 J. CITY shall invoice Caltrans at minimum once every six (6) months.

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

5 L. If CITY receives local, state, or federal funds from a non-AUTHORITY source, CITY
6 will not invoice Caltrans for the amount received from the other non-AUTHORITY source(s).

7 M. CITY shall notify AUTHORITY regarding any funds from non-AUTHORITY sources
8 received for the PROJECT and AUTHORITY funds may not pay for expenses already supported
9 through these non-AUTHORITY funds.

10 N. CITY agrees that AUTHORITY reserves the right to change the fund source
11 programmed to the PROJECT.

12 O. CITY shall submit semi-annual status reports for PROJECT to AUTHORITY due on
13 April 30 for the prior six (6)-month period (July through December), and due on October 30 for the
14 prior six (6)-month period (January through June), (Exhibit B, entitled "Semi-Annual Report Form").

15 P. CITY shall submit a final report to AUTHORITY within six (6) months of Caltrans
16 payment of final progress invoice for PROJECT in accordance with Exhibit C, entitled "Final Project
17 Report Form."

18 Q. CITY is responsible for completing PROJECT in accordance with the Bicycle Corridor
19 Improvement Program Funding Plan (Exhibit A), and to abide by all CMAQ programming guidelines,
20 and any and all other federal, state, and Caltrans requirements.

21 R. If reimbursed costs are deemed ineligible by FHWA or Caltrans or CITY is required to
22 return any funds for any reason, those costs shall be the sole responsibility of CITY.

23 **ARTICLE 5. DELEGATED AUTHORITY**

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

1 Chief Executive Officer, or designee.

2 **ARTICLE 6. AUDIT AND INSPECTION**

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

12 **ARTICLE 7. INDEMNIFICATION**

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

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

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

1 **ARTICLE 8. ADDITIONAL PROVISIONS**

2 PARTIES agree to the following mutual responsibilities:

3 A. Term of Agreement: This Cooperative Agreement shall continue in full force and effect
4 through December 31, 2024 or until final acceptance by AUTHORITY, whichever is later. This
5 Cooperative Agreement may only be extended upon mutual agreement by both PARTIES.

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

10 C. Termination for Convenience: This Cooperative Agreement may be terminated by
11 either PARTY after giving thirty (30) days prior written notice to the other PARTY.

12 D. Amendments: This Cooperative Agreement may be amended in writing at any time by
13 the mutual consent of PARTIES. No amendment shall have any force or effect unless executed in
14 writing by PARTIES.

15 E. PARTIES shall comply with all applicable federal, state, and local laws, statutes,
16 ordinances and regulations of any governmental authority having jurisdiction over PROJECT.

17 F. Legal Authority: PARTIES hereto consent that they are authorized to execute this
18 Cooperative Agreement on behalf of said PARTIES and that, by so executing this Cooperative
19 Agreement, PARTIES hereto are formally bound to the provisions of this Cooperative Agreement.

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

25 H. Counterparts of Agreement: This Cooperative Agreement may be executed and
26 delivered in any number of counterparts, each of which, when executed and delivered shall be deemed

1 an original and all of which together shall constitute the same agreement. Facsimile signatures will
2 be permitted.

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

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

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

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

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

25 N. Notices: Any notices, requests, or demands made between the PARTIES pursuant to
26 this Cooperative Agreement are to be directed as follows:

<p>To CITY:</p>	<p>To AUTHORITY:</p>
<p>City of Garden Grove</p>	<p>Orange County Transportation Authority</p>
<p>11222 Acacia Parkway, Garden Grove, California 92840</p>	<p>550 South Main Street P. O. Box 14184 Orange, California 92863-1584</p>
<p>Attention: Erin Webb Senior Planner (714)-741-5313 Email: erinw@ci.garden-grove.ca.us</p>	<p>Attention: Luis Martinez Associate Contract Administrator (714)-560-5767 Email: lmartinez1@octa.net With a copy that shall not constitute Notice to: Cc: Louis Zhao Section Manager, Transit and Local Transportation Programming</p>

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

P. 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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1 IN WITNESS WHEREOF, the PARTIES hereto have caused this Cooperative Agreement
2 No. C-7-1857 to be executed on the date first above written.

3 CITY OF GARDEN GROVE

ORANGE COUNTY TRANSPORTATION AUTHORITY

4 By: _____
5 Steve Jones
6 Mayor

By: _____
Darrell Johnson
Chief Executive Officer

7 ATTEST:

8 By: _____
9 Teresa Pomeroy
10 City Clerk

11 APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

12 By: _____
13 Omar Sandoval
14 City Attorney

By: _____
Kia Mortazavi
Executive Director, Planning

15 Dated: _____

Dated: _____

PV
GM