

COOPERATIVE AGREEMENT NO. C-2-1894

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

COUNTY OF ORANGE

FOR

THE BICYCLE CORRIDOR IMPROVEMENT PROGRAM PROJECT

COYOTE CREEK CLASS I BIKEWAY

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 County of Orange, 300 N. Flower Street, Santa Ana, CA 92703, a municipal corporation duly organized and existing under the constitution and laws of the State of California (hereinafter referred to as "COUNTY").

COUNTY RECITALS:

WHEREAS, AUTHORITY and COUNTY desire to enter into a Cooperative Agreement to define the roles and responsibilities related to funding between AUTHORITY and COUNTY for engineering, right-of-way acquisition, and construction of Coyote Creek Class I Bikeway 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, COUNTY is an eligible sub-recipient of Federal funding under the CMAQ program, and PROJECT is eligible for CMAQ funding contingent on California Department of

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

3 **WHEREAS**, on August 13, 2012, AUTHORITY's Board of Directors, approved providing
4 funding of up to One million (\$1,000,000) in CMAQ funds to be matched with Five Hundred Twenty
5 One Thousand (\$521,000) in COUNTY funds for construction phase; and

6 **WHEREAS**, COUNTY and AUTHORITY agree that the total full funding for PROJECT
7 including engineering, right-of-way acquisition, construction management and construction shall be
8 One Million Five Hundred Twenty One Thousand (\$1,521,000) in accordance with Exhibit A titled
9 "Bicycle Corridor Improvement Program Funding Plan", which is attached herein and incorporated
10 by reference; and

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

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

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

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

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

26 **WHEREAS**, this Cooperative Agreement defines the specific terms and conditions and

1 funding responsibilities between AUTHORITY and COUNTY (hereinafter referred to as "PARTIES")
2 for completion of PROJECT; and

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

5 **WHEREAS**, COUNTY's Board of Supervisors approved the Cooperative Agreement on
6 _____ day of _____ 2014.

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

9 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

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

7 **ARTICLE 2. SCOPE OF AGREEMENT**

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

13 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

14 AUTHORITY agrees to the following responsibilities for PROJECT:

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

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

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

23 D. AUTHORITY shall process any required FTIP amendments.

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

26 F. AUTHORITY may cancel projects for which CITY has not submitted request for

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

4 **ARTICLE 4. RESPONSIBILITIES OF COUNTY**

5 COUNTY agrees to the following responsibilities for PROJECT:

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

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

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

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

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

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

24 G. COUNTY shall provide 34% of the Construction costs in COUNTY funds as the
25 required local match consistent with Exhibit A.

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

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

J. COUNTY 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. COUNTY 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. COUNTY 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 COUNTY 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 COUNTY shall maintain a complete set of records in accordance with generally accepted accounting principles. Upon reasonable notice, COUNTY shall permit the authorized representatives of AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and other data and records of COUNTY 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 COUNTY's contractor.

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ARTICLE 7. INDEMNIFICATION

A. COUNTY 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 COUNTY, 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 COUNTY, 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 COUNTY 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. 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 COUNTY 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 /

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

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

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

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

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

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

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

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

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

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

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

14 L. Litigation fees: Should litigation arise out of this Cooperative Agreement for the
15 performance thereof, the court shall award costs and expenses, including attorney's fees, to the
16 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 COUNTY:	To AUTHORITY:
County of Orange	Orange County Transportation Authority
Orange County Parks 13042 Old Myford Road Irvine, CA 92602	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Tuan Richardson Email: tuan.richardson@occr.ocgov.com	Attention: Ms. Marjorie Morris Threats Senior Contract Administrator 714-560-5633 Email: mthreats@octa.net
Cc: Charles Busslinger Senior Civil 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-2-1894 to be executed on the date first above written.

COUNTY OF ORANGE ORANGE COUNTY TRANSPORTATION AUTHORITY

By: Shawn Nelson Chairman of the Board of Supervisors By: Darrell Johnson Chief Executive Officer

Dated:

ATTEST: Susan Novak Clerk of the Board of Supervisors APPROVED AS TO FORM: Kennard R. Smart, Jr. General Counsel

Dated:

APPROVED AS TO FORM: Nicholas Chrisos Office of the County Counsel APPROVAL RECOMMENDED: Kia Mortazavi Executive Director, Planning

Dated: Dated:

BCIP FUNDING PLAN

BICYCLE CORRIDOR IMPROVEMENT PROGRAM CALL FOR PROJECTS

COYOTE CREEK CLASS I BIKEWAY

Project Schedule and Funding

Schedule	Completion Date
Final Environmental Document	2/1/2013
Begin Design Engineering	2/27/2012
Plans, Specifications, and Cost Estimates complete	8/24/2012
Start Right-of-Way Acquisition	8/24/2012
Right-of-Way Certification	1/1/2013
Authorization to Proceed for Construction submittal	2/1/2013
Authorization to Proceed for Construction	4/3/2013
Award Construction Deadline	9/3/2013
Project Completion (open for use)	3/1/2014

Construction funding authorized through this agreement:

Funding

BCIP CMAQ: **\$1,000,000**

Local Match: **\$521,000**

Preliminary Engineering

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

Right-of-Way

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

Construction

Fund Source	Fiscal Year	Original Planned Allocation Range	Proportion
Congestion Mitigation and Air Quality ¹	2012-2013	\$1,000,000	66%
County of Orange ¹	2012-2013	\$521,000	34%
TOTAL		\$1,521,000	100%

1. If needed, CMAQ and local match 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: _____

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)		



שאלה: מהו המסלול הנכון?

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

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 TE 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



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