

COOPERATIVE AGREEMENT BETWEEN COUNTY OF ORANGE AND CITY OF ANAHEIM FOR FUNDING AND CONSTRUCTION OF OC LOOP EL CAJON TRAIL BIKEWAY/MIXED USE PATH (SEGMENT H)

This Cooperative Agreement is made and entered into this _____ day of _____ 2019 (“**Agreement**”), by and between the **COUNTY OF ORANGE** (“**County**”), a political subdivision of the State of California, and the **CITY OF ANAHEIM**, a municipal corporation in the State of California, (“**City**”). The County and City shall sometimes be referred to separately as a “**Party**”.

RECITALS

- A. The County is improving safe bikeway circulation county-wide via design and construction of the proposed OC Loop El Cajon Trail bikeway/mixed use path, Segment H.
- B. The (“**Project**”) is that portion of Segment H of the OC Loop El Cajon Trail bikeway/mixed use path and appurtenances that will address protected bikeway discontinuity along Fairmont Blvd between the Anaheim City Limits at Fairmont Blvd and the intersection of Fairmont Blvd and La Palma Ave. A true and correct copy of a map depicting the Project area and public rights-of-way anticipated to be used for Project purposes is attached hereto and incorporated herein by this reference as **Exhibit “1.”**
- C. The City fully supports the Project and desires to cooperate with the County in implementing the Project.
- D. Pursuant to State and local guidelines, County prepared and filed an Initial Study IP 17-072 and Categorical Exclusion on July 27, 2017 for the Project to satisfy the statutory requirements of the California Environmental Quality Act of 1970 (CEQA), on August 8, 2017 as amended.

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual covenants and conditions contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. County and City Project Funding Obligations

County will be responsible for one hundred percent (100%) of the Project construction costs including design, right-of-way acquisition (if any), relocation and restoration of City owned utilities, inspection, construction and construction administration. The County will not be responsible for costs related to review, inspection, oversight, permitting, or any other Project-related administration duties performed by City which shall be solely borne by the City.

2. Right-of-Way Acquisition, Design & Construction

2.1 CEQA/NEPA. County is hereby designated as the Lead Agency for Project and is responsible for preparing, processing and securing all necessary environmental documents required by CEQA and NEPA, as amended.

2.2 Project Engineer. County is hereby designated as Project Engineer to perform all tasks necessary to prepare construction plans, specifications and cost estimates in accordance with criteria set forth in the current edition of the County of Orange Highway Design Manual, County of Orange Standard Plans, City Standard Plans, California Department of Transportation's Manuals, latest editions of Standard Plans and Standard Specifications, to advertise, award and administer the construction of Project and to execute and deliver all documents required in connection with the construction of Project. County shall comply with all applicable provisions of the Public Contract Code and other applicable laws.

2.3 General Plan Conformance. Pursuant to Government Code Section 65402, City shall render reports as to whether the Project conforms to the City's respective General Plan. Execution of this Agreement does not constitute such report.

2.4 Temporary County Highway Declaration. Prior to commencing work on the Project, County must pass a resolution in accordance with Streets & Highways Code sections 1700-1704 temporarily declaring the City roadways within the Project to be a County highway for purposes of Project right-of-way acquisition and construction only. Upon receipt of said County Resolution, City shall consent by resolution to said County highway status pursuant to California Streets & Highways Code section 1701; in substantial conformance with Exhibit 2. After County files a notice of completion and City accepts the improvements, the County shall adopt a resolution pursuant to Streets & Highways Code section 1704 declaring that the streets used for the Project are no longer County highways, and shall file said resolution with the Clerk of the City. During the period when the City roadways are classified as County highways, the City will have unimpeded access to accomplish all necessary City work, including the right to inspect, maintain, repair, construct, install, or upgrade its facilities, systems, or equipment, including its electric and street light systems. City shall coordinate with County to the extent the work impacts the Project.

2.5 Right-of-Way Acquisition. County shall be responsible for identifying right-of-way requirements within the Project limits, and shall also be responsible for any appraisals of properties needed for Project and right-of-way acquisition within County and City. If it is determined that any properties within City can only be acquired through eminent domain, the County will meet and confer with City to consider whether acquisition by eminent domain is appropriate. County will remain responsible for all applicable acquisition costs, including any resulting from the exercise of its eminent domain powers. If any acquisitions are to be conveyed to City, City shall review and approve deeds in advance.

2.6 Utility Relocation. County and City shall work together to identify all conflicting utilities within the Project. County shall issue all utility relocation request letters and perform temporary or permanent relocations of City owned utilities as required by City. City shall issue concurrence letters to all utility companies and/or approve Caltrans required City utility relocation

agreements for relocation requests within City roadways and assist with relocation efforts by County. Prior to completion of the Project by County, City owned utilities will be restored to the original locations or relocated per approved plans which have been approved by City in accordance with Section 2.7. For the restoration or relocation of City owned utilities, the County shall suggest using City approved contractors and, in the event the County or its contractors damage a City owned utility during the restoration or relocation, the County shall replace that damaged utility at its own cost and expense. County shall work with City on joint inspection of critical electrical connections and testing. City shall assume ownership and maintenance responsibilities of such utilities upon completion of installation.

2.7 Project Plans, Insurance & Warranties.

- a. County's Engineer or designee ("**County Engineer**") shall submit Project plans, specifications and engineer's estimate to City for review and approval prior to advertising Project for construction bids. Prior to County advertising Project, City shall promptly review the submittals of plans and special provisions for work within their respective City roadways and either approve or provide comments on said plans and special provisions within twenty (20) business days of receipt of such plans and special provisions from County for first submission, fifteen (15) business days thereafter. Should City fail to provide timely comments on, and/or approval of these plans or special provisions in accordance with this time period, County may make a written demand to City for a response. If City thereafter fails to provide comments on, and/or approve such plans or special provisions within seven (7) business days of receipt of such demand, such plans or special provisions shall be deemed approved by the City.
- b. City shall provide County with City insurance requirements for construction contractor prior to contract solicitation. County shall require its construction contractor to identify the City as an additional insured subject to City insurance requirements.
- c. County shall require its contractor to pass through and assign all warranties to City for Project work associated with City's roadways.

2.8 Project Advertisement. Upon written approval of the final Project plans, specifications and engineer's estimate by City, County shall perform all of the administrative work required for advertising for bids, dealing with bid disputes and awarding the construction contract to the lowest responsible bidder. County may in its discretion reject all bids. If, after bids are opened, it is determined that insufficient funds are available to construct Project, County and City shall meet and confer to determine a course of action for Project.

2.9 Project Inspection. County will invite City to attend the pre-construction meeting after award of the construction contract, including any other construction related meetings or coordination requirements that affect the City, such as roadway lane closures, sidewalk/crosswalk closures, traffic signal changes or street light outages, etc. City shall have access to their respective City roadways at all times during construction for the purpose of inspection. County shall notify

City 48 hours in advance prior to construction in the City's portions. City shall inspect regularly. Should City deem any remedial work to be necessary, the City shall notify County project inspector verbally thereof within one (1) business day of observation and in writing/texting within 3 business days, specifically describing the needed corrections and proposed remedial work. The City shall be solely responsible for any remedial work that is not brought to the County's attention prior to final project approval.

2.10 Contract Change Orders. County shall process any contract change orders ("CCOs") that are necessary for construction of the Project. If CCOs are needed within City right-of-way or property, the City shall review and approve such CCOs and provide a Project liaison ("City Engineer") during construction to coordinate CCO approval. City Engineer shall provide concurrence on CCOs within two (2) business days of County's submittal to City. If City fails to concur with or propose changes to CCO within such time, such CCO shall be deemed approved. County shall be financially responsible for the CCOs that are included in the County/City approved final Project scope of work.

2.11 Project Acceptance. Prior to County's acceptance of Project improvements and filing a notice of completion, the City Engineer shall review and provide written approval of all Project work within the City. The City Engineer's written approval shall only be withheld for work not completed in accordance with the approved construction contract documents for the Project. City shall conduct timely oversight inspections during construction to allow for corrections as the work occurs. City has ongoing obligation to regularly review contract work. County shall furnish City with one set of record drawings (As-Built drawings) for the completed Project and a copy of the filed notice of completion. No permanent County easements will be required by City for City to retain improvements.

2.12 Access. City hereby approves temporary Project site access in the public right of way to County employees and will require a right of way construction permit from its construction contractors/consultants.

2.13 Post-construction Project Maintenance/Utility Obligations. County shall maintain all Project improvements on County or County Flood Control District right-of-way or property. Upon City Engineer's written approval and acceptance of the Project, and County's issuance of the Notice of Completion for the Project, City shall assume ownership and maintenance obligations for improvements within City right-of-way or property, and City shall accept quitclaims from County for right-of-way acquired by County on City's behalf, if any.

3. Miscellaneous Obligations

3.1 Time is of the Essence. The Federal funding source for the Project requires timely environmental documents, design plans, and construction completion for approval of reimbursements. Therefore, time is of the essence. City agrees to execute their responsibilities and help facilitate Project in an expeditious manner so as not to jeopardize Project funding.

Indemnification & Hold Harmless. County agrees to indemnify, defend with counsel approved in writing, protect and hold harmless the City, its officers, elected or appointed officials, employees

and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the City, its officers, elected or appointed officials, employees and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of County's negligent or wrongful acts in performing under the terms of this Agreement. County shall defend, at its expense, including attorney fees, City, its officers, agents, employees, independent contractors and volunteers in any legal action or claim of any kind based upon such alleged acts or omissions. The County shall not be liable in any way or indemnify the City, its officers, elected or appointed officials, employees and volunteers for City's negligence or the negligence of City's officers, officials, employees or volunteers.

County agrees that it will follow its work management system field manual and the CalTrans manual of traffic controls for construction and maintenance work zones to avoid or minimize risk of loss.

City agrees to indemnify, defend with counsel approved in writing, protect and hold harmless the County, its officers, elected or appointed officials, employees and volunteers from and against any and all claims, demands, losses, defense cost or expenses, or liability of any kind or nature which the County, its officers, elected or appointed officials, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of the City's negligent or wrongful acts in performing under the terms of this Agreement. The City shall not be liable in any way or indemnify the County, its officers, elected or appointed officials, employees and volunteers for COUNTY's negligence or the negligence of County's officers, elected or appointed officials, employees or volunteers. If judgment is entered against City and County by a court of competent jurisdiction because of the concurrent active negligence of City or County, City and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Each Party agrees to fully cooperate with the other and assist the other Party hereto in all matters relating to losses covered by the terms of this Agreement, and more specifically but not being limited thereby, each Party will:

1. Give prompt notification of all occurrences covered or likely to be covered by the terms hereof, together with the particulars thereof the other part hereto;
2. If claim is made, or suit is brought against a Party on occurrences covered or likely to be covered by the terms hereof, such party shall immediately forward every claim, demand, notice, summons or other process received by it to the other Party hereto.

City may, at its own expense, participate in the defense of any suit, or in the prosecution of any appeal affecting matters herein involved where the duty of defense or prosecution is imposed on County, and where County has consented thereto.

3.2 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. No assignment of either Party's interest in this Agreement shall be made without the written consent of the other Party.

3.3 Entirety & Amendments. This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein. No alteration or variation of

the terms of this Agreement shall be valid unless made in writing and signed by the Parties; and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties.

3.4 Mutual Drafting. This Agreement shall be deemed to have been mutually drafted and shall be construed fairly and in accordance with its terms. No Party shall be entitled to any presumption or construction in such Party's favor as a result of any Party assuming the burden of memorializing the Parties' agreement hereunder.

3.5 Severability. If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

3.6 Notices. Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

City: City of Anaheim
Department of Public Works
200 South Anaheim Boulevard, 2nd Floor
Anaheim, CA 92805
Attention: Rudy Emami, Director of Public Works

County: County of Orange/OC Public Works Department
300 N. Flower Street, Room 764
Santa Ana, CA 92702-4048
Attn: Tim Nguyen, Senior Civil Engineer, Infrastructure Project
Management

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this Agreement, addressed in any other fashion shall be deemed not given.

3.7 Attorney's Fees. In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the Parties shall bear their own attorney's fees, costs and expenses.

3.8 Governing Law & Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

3.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

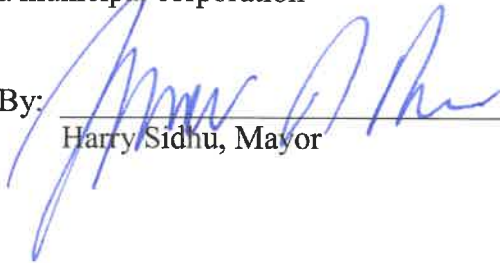
3.10 Termination. In the event County or City defaults in the performance of any of their obligations under this Agreement or materially breaches any of the provisions of this Agreement, City and County shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. In the event City or County cures such default within such thirty (30) day period, City and County's election to terminate shall be deemed revoked and of no further force and effect as to that particular default.

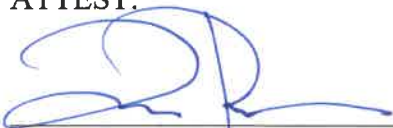
3.11 Availability of Funds. This Agreement is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the Parties to expend or as involving the Parties in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

IN WITNESS WHEREOF, CITY have caused this AGREEMENT to be executed by its respective mayor and attested by its respective Clerk, and COUNTY has caused this AGREEMENT to be executed by the Chairman of the Board of Supervisors and attested by its Clerk on the dates written opposite their signatures, all thereunto duly authorized by the City Council and the Board of Supervisors, respectively.

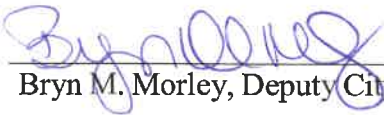
Date: 9/4/19

CITY OF ANAHEIM,
a municipal corporation

By: 
Harry Sidhu, Mayor

ATTEST:

Theresa Bass, City Clerk

APPROVED AS TO FORM
ROBERT FABELA, CITY ATTORNEY:

By: 
Bryn M. Morley, Deputy City Attorney

COUNTY OF ORANGE,
a political subdivision of the State of
California

Date: _____

By: _____
Chairperson, Board of Supervisors

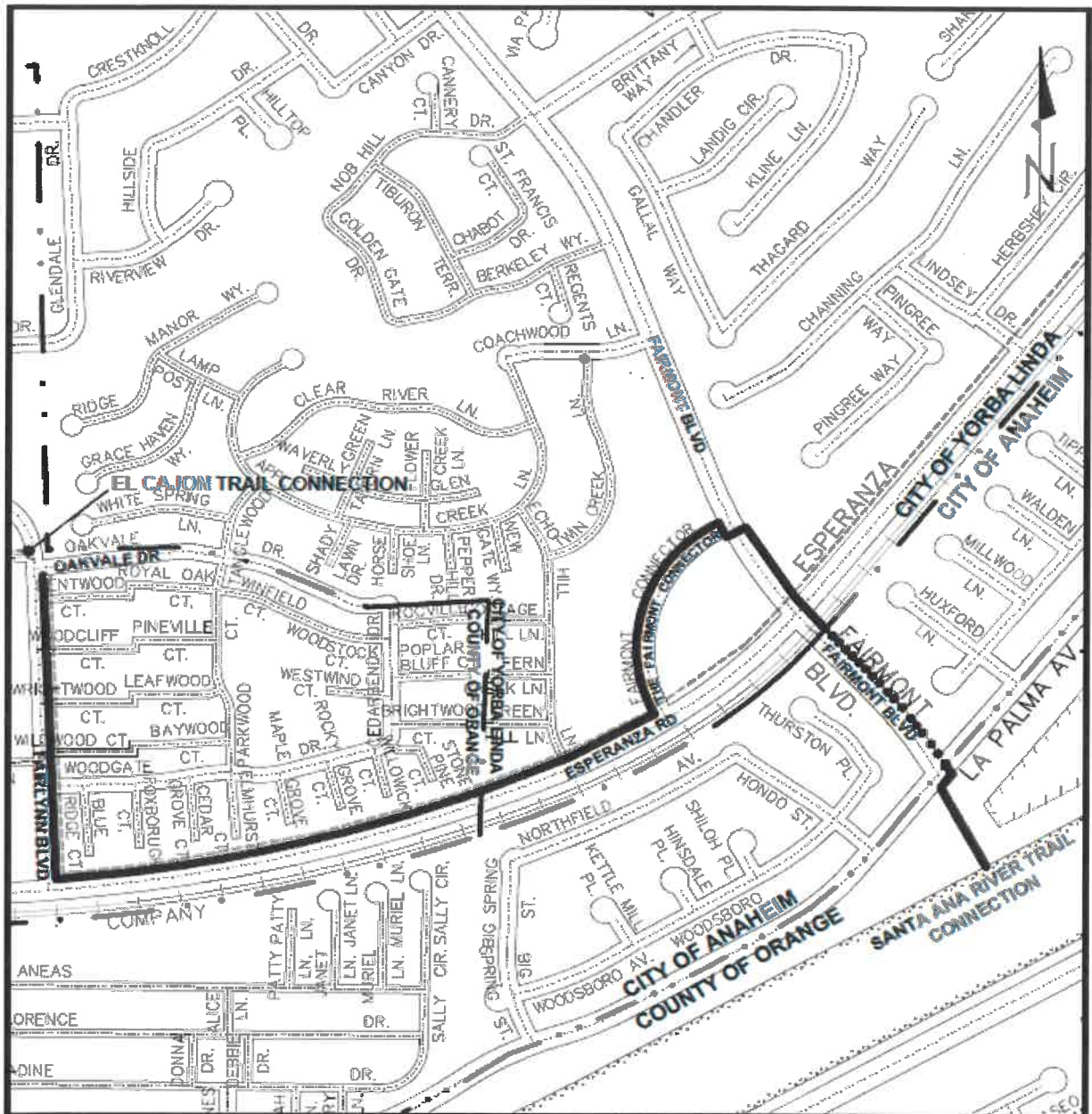
SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: _____
Robin Stieler
Clerk of the Board of Supervisors of
Orange County, California

By: 
Deputy

Exhibit 1
(Project Area)






		TOTAL PROPOSED BIKEWAY	ORANGE COUNTY PUBLIC WORKS OC Loop El Cajon Bikeway (Segment H)
		CITY OF ANAHEIM BIKEWAY PORTION	

Exhibit 2

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

___Date___

WHEREAS, those portions of Fairmont Blvd, from the northern City limits to the intersection of La Palma Ave., lying within the City Limits of Anaheim are deemed to be highways of County-wide importance; and

WHEREAS, the County of Orange proposes to construct roadway (bikeway) improvements along Fairmont Blvd (hereinafter referred to as the "City Street(s)"); and

WHEREAS, Streets & Highways Code Section 1700-1704 set forth procedures by which the County map perform improvements on City Street(s).

NOW, THEREFORE, BE IT RESOLVED that City's Street(s) are hereby declared to be a County highway for the purposes of construction by the County of Orange.

BE IT FURTHER RESOLVED that this Resolution be forwarded to the City, and that City's Street(s) shall become a County highway upon the consent of the City consistent with Streets & Highways Code Section 1701 and the Cooperative Agreement.

BE IT FURTHER RESOLVED that upon the filing of a Notice of Completion that all improvements to City's Street(s) are complete, the Board of Supervisors hereby declares City's Street(s) to no longer be a County highway, and instructs OC Public Works to file copies of this Resolution and the Notice of Completion with the City Clerk. Ten days after said filing, City's Street(s) shall cease to be a County highway.