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**DRAFT
COOPERATIVE AGREEMENT NO. C-X-XXX**

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

<INSERT NAME OF CITY>

FOR

THE BICYCLE CORRIDOR IMPROVEMENT PROGRAM PROJECT

SELECTED PROJECT NAME HERE

THIS COOPERATIVE AGREEMENT is effective this _____day of _____ 2019, 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 the City of <INSERT NAME OF CITY>_____, <INSERT ADDRESS>, 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 project approval and environmental documentation, preliminary engineering, engineering, right-of-way acquisition, and/or construction for XXXXXXXX Project as defined in the scope of work provided in the 2019 Bicycle Corridor Improvement Program (BCIP) Call for Projects (Call), 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 (hereinafter referred to as "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 <INSERT DATE>, AUTHORITY’s Board of Directors (“Board”), approved
5 providing funding of up to <INSERT AMOUNT>dollars (\$<INSERT AMOUNT IN NUMBERS>) in
6 CMAQ funds to be matched with <INSERT AMOUNT>dollars (\$<INSERT AMOUNT IN NUMBERS>
7 in CITY funds for XX phase, and <INSERT AMOUNT>dollars (\$<INSERT AMOUNT IN NUMBERS>
8 in CMAQ funds to be matched with <INSERT AMOUNT>dollars (\$<INSERT AMOUNT IN NUMBERS>
9 in CITY funds for construction phase; and

10 **WHEREAS**, CITY and AUTHORITY agree that the total funding for PROJECT including
11 engineering, right-of-way acquisition, construction management and construction shall be <INSERT
12 AMOUNT> dollars (\$<INSERT AMOUNT IN NUMBERS>) or amount in accordance with Exhibit A
13 titled “Bicycle Corridor Improvement Program Funding Plan”, which is attached herein and
14 incorporated by reference; and

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

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

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

26 **WHEREAS**, CITY agrees to act as lead agency for engineering, right-of-way acquisition,

1 construction management and construction of PROJECT; and

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

4 **WHEREAS**, <INSERT BOARD DATE>, AUTHORITY's Board approved this Cooperative
5 Agreement; and

6 **WHEREAS**, <INSERT CITY COUNCIL DATE> CITY's City Council approved this Cooperative
7 Agreement on _____ day of _____ 2019.

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 made
12 applicable by reference, constitutes the complete and exclusive statement of the term(s) and
13 condition(s) of this Cooperative 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 condition(s)
16 of this Cooperative Agreement. The above referenced Recitals are true and correct and are
17 incorporated by reference herein.

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

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

1 or condition(s) of this Cooperative Agreement shall not be construed as a waiver or relinquishment of
2 CITY's right to such performance or to future performance of such term(s) or condition(s), and
3 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any
4 portion of this Cooperative Agreement shall not be binding upon CITY except when specifically
5 confirmed in writing by an authorized representative of CITY by way of a written amendment to this
6 Cooperative Agreement and issued in accordance with the provisions of 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 PROJECT addressed herein. PARTIES agree that each
10 will cooperate and coordinate with the other in all activities covered by this Cooperative Agreement
11 and any other supplemental agreements that may be required to facilitate purposes thereof.

12 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

13 AUTHORITY agrees to the following responsibilities for PROJECT:

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

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

19 C. AUTHORITY shall not be authorized to program any amount beyond what has been
20 identified in this Agreement as CMAQ and what is ultimately approved for PROJECT in CMAQ by
21 Caltrans and FHWA.

22 D. AUTHORITY shall process any required FTIP amendments.

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

25 F. AUTHORITY shall cancel PROJECT if CITY has not submitted request for
26 authorization to proceed (hereinafter referred to as "E-76 Request") by February 1 of the year the

1 funds are programmed.

2 AUTHORITY reserves the right to change the fund source programmed to the PROJECT.

3 G. AUTHORITY shall work with the CITY to process an amendment to the Master Plan of
4 Arterial Highways (MPAH) for the PROJECT, a condition upon receipt of funding, if needed.

5 H. AUTHORITY shall cancel the PROJECT if the amendment to the MPAH has not been
6 requested and processed by the timeframe identified in the award letter.

7 **ARTICLE 4. RESPONSIBILITIES OF CITY**

8 CITY agrees to the following responsibilities for PROJECT:

9 A. CITY possesses the legal authority to deliver this project and to finance, acquire, and
10 construct the proposed project; and by formal action (e.g. resolution) the Implementing Agency's
11 governing body authorizes the implementation of the bicycle project, including all understanding and
12 assurances contained therein, and authorizes the person identified as the official representative of the
13 Implementing agency to act in connection with the Project and to provide such additional information
14 as may be required.

15 B. CITY shall act as the lead agency for the project approval and environmental
16 documentation phase, preliminary engineering, engineering, right-of-way, construction and
17 construction management of PROJECT.

18 C. CITY shall comply with all local, State, and Federal project delivery requirements
19 including, but not limited to, Disadvantaged Business Enterprise, American with Disabilities Act, and
20 Buy America provisions.

21 D. CITY shall submit National Environmental Policy Act (NEPA) and the California
22 Environmental Quality Act (CEQA) environmental documentation to Caltrans for approval by
23 November 1 of the prior year of the programmed funds as provided in the Project schedule in Exhibit

24 A.

25 E. CITY is responsible for preparing and submitting to AUTHORITY an Engineer's
26 Estimate of PROJECT cost ninety (90) days prior to E-76 Request, and no later than November 1 of

1 the prior fiscal year of the programmed funding year identified in Exhibit A.

2 F. CITY is responsible for preparing and submitting all necessary Caltrans-required
3 documentation, including E-76 Request. CITY agrees to submit an E-76 Request to Caltrans District
4 12 by February 1 of the year the funds are programmed, consistent with the fiscal year identified in
5 Exhibit A.

6 G. CITY acknowledges that if the E-76 Request for CMAQ funds is not approved by
7 Caltrans by May 1 of the year the funds are programmed, or CITY has not advanced PROJECT to
8 ready-to-list stage as determined through Caltrans guidelines by this date, or PROJECT is found
9 ineligible by Caltrans and FHWA, the proposed funding shall be cancelled by AUTHORITY.

10 H. CITY shall provide a minimum of ____ percent (XX%) of the Project Approval and
11 Environmental Documentation, Preliminary Engineering, Right-of-Way, Construction, and
12 Construction Management costs in CITY funds as the required local match consistent with Exhibit A.

13 I. CITY will follow applicable procurement procedures outlined in the Caltrans Local
14 Assistance Program Guide

15 J. City will not advertise or award a contract before FHWA authorization to proceed.

16 K. CITY shall invoice Caltrans at minimum once every six months.

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

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

20 N. CITY will notify AUTHORITY regarding any non-AUTHORITY revenues received for
21 the PROJECT and AUTHORITY funds may not pay for expenses already supported through these
22 non-AUTHORITY revenues.

23 O. CITY will notify OCTA if CMAQ funding or projects are used for other than the intended
24 purposes as defined by federal or state guidelines, the implementing agency may be required to remit
25 all state and federal funds back to the OCTA.

26 P. CITY agrees that AUTHORITY reserves the right to change the fund source

1 programmed to the PROJECT.

2 Q. CITY shall submit semi-annual status reports for PROJECT to AUTHORITY due on
3 April 30 for the prior six (6)-month period and due on October 30 for the prior six (6)-month period
4 (EXHIBIT B titled "Semi-Annual Report Form").

5 R. CITY shall 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 "Final Project
7 Report Form."

8 S. 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, and
10 State (Caltrans) requirements.

11 T. CITY shall work with the AUTHORITY to request an Amendment to the MPAH if needed
12 as a condition to receive Call funding.

13 U. CITY shall maintain and operate the property acquired, developed, rehabilitated, or
14 restored for the life of the resultant facility(ies) or activity. With approval of AUTHORITY, Caltrans, the
15 Implementing Agency or its successors in interest in the property may transfer responsibility to
16 maintain and operate the property.

17 **ARTICLE 5. DELEGATED AUTHORITY**

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

22 **ARTICLE 6. AUDIT AND INSPECTION**

23 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
24 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
25 representatives of AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and
26 other data and records of CITY for a period of four (4) years after final payment, or until any on-going

1 audit is completed. For the purposes of audit, the date of completion of this Agreement shall be the
2 date of Caltrans' payment of CITY's final billing (so noted on the invoice) under this Cooperative
3 Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts.
4 The above provision with respect to audits shall extend to and/or be included in construction contracts
5 with CITY's contractor(s).

6 **ARTICLE 7. INDEMNIFICATION**

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

13 B. AUTHORITY shall indemnify, defend and hold harmless CITY, 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, omissions or willful misconduct by AUTHORITY, its officers, directors, employees or
18 agents in connection with or arising out of the performance of this Cooperative Agreement.

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

21 **ARTICLE 8. ADDITIONAL PROVISIONS**

22 AUTHORITY and CITY agree to the following mutual responsibilities:

23 A. Term of Agreement: This Cooperative Agreement shall continue in full force and effect
24 through December 31, XXXX or until final acceptance by AUTHORITY, whichever is later. This
25 Cooperative Agreement may only be extended upon mutual consent of PARTIES.
26

1 B. Termination: This Cooperative Agreement is null and void if PROJECT is not funded.
2 AUTHORITY shall cancel projects for which CITY has not submitted an E-76 Request by February 1
3 of the fiscal year for which funds are programmed, not requested and received approval for the MPAH
4 amendment as required by XX date, and/or has not advanced PROJECT to ready stage as determined
5 by AUTHORITY. This Cooperative Agreement may be terminated by either PARTY after giving thirty
6 (30) days written notice to the other PARTY.

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

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

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

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

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

24 H. Force Majeure: Either AUTHORITY or CITY shall be excused from performing its
25 obligations under this Cooperative Agreement during the time and to the extent that it is prevented from
26 performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of

1 fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or
2 local government; national fuel shortage; or a material act or omission by the other PARTY; when
3 satisfactory evidence of such cause is presented to the other PARTY, and provided further that such
4 nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the
5 AUTHORITY or CITY not performing.

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

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

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

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

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