

1 **COOPERATIVE AGREEMENT NO. C-0-2266**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 **CITY OF FULLERTON**

6 **FOR**

7 **STAIR REPLACEMENT AT FULLERTON TRANSPORTATION CENTER**

8 **THIS COOPERATIVE AGREEMENT (Agreement)**, is effective this _____ day of
9 _____, 2020 ("Effective Date"), by and between the Orange County Transportation
10 Authority, 550 South Main Street, P.O. Box 14184, Orange California 92863-1584, a public corporation
11 of the State of California (herein referred to as "AUTHORITY") and City of Fullerton (hereinafter referred
12 to as "CITY") each individually known as "Party" and collectively known as the "Parties".

13 **RECITALS:**

14 **WHEREAS**, the stairs at the Fullerton Transportation Center (FTC) are in disrepair and need to
15 be replaced; and

16 **WHEREAS**, CITY and AUTHORITY agree to enter into this Cooperative Agreement to define
17 roles, responsibilities and funding for the Stair Replacement at the FTC Project (PROJECT).

18 **WHEREAS**, CITY will be the lead for design, inspection and right of way, and

19 **WHEREAS**, AUTHORITY will be the lead for the construction phase of the PROJECT, and

20 **WHEREAS**, on June 22, 2020 AUTHORITY's Board of Directors authorized the use of Federal
21 Transit Administration Section 5337 funding in the amount of One Million Two Hundred Ninety-Five
22 Thousand Dollars (\$1,295,000) for the PROJECT.

23 **WHEREAS**, the AUTHORITY's Board of Directors authorized this Cooperative Agreement on the
24 22nd day of June 2020; and

25 **WHEREAS**, the CITY'S City Council approved this Cooperative Agreement on the ____ day of
26 ____ 2020; and

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

2 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

23 **ARTICLE 2. SCOPE OF AGREEMENT**

24 This Agreement specifies the roles and responsibilities of the Parties as they pertain to the
25 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate and

26 /

1 coordinate with the other in all activities covered by this Agreement and any other supplemental
2 agreements that may be required to facilitate purposes thereof.

3 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

4 AUTHORITY agrees to the following responsibilities for PROJECT:

5 A. Provide a designated Project Manager to manage the PROJECT through the bid and
6 construction phase of the project.

7 B. Provide funding in the amount of One Million Two Hundred and Ninety-Five Thousand Dollars
8 (\$1,295,000) in Federal Transit Administration Section 5337 funds for the construction solicitation,
9 construction and construction management of the PROJECT.

10 C. Procure a contract for construction of the Project and provide construction management and
11 special inspection services for the PROJECT.

12 **ARTICLE 4. RESPONSIBILITIES OF CITY**

13 CITY agrees to the following responsibilities for PROJECT:

14 A. Provide final plans and specifications ready for AUTHORITY's Contractor to pull CITY
15 required building permits, and provide design support during construction at no cost to the AUTHORITY.

16 B. Provide all the needed right of way for the construction of the PROJECT, including access
17 and construction staging areas at no cost to the AUTHORITY.

18 C. Provide CITY required inspection services at no cost to the AUTHORITY.

19 D. Upon completion of the PROJECT, accept the PROJECT for maintenance purposes per
20 separate agreement.

21 **ARTICLE 5. DELEGATED AUTHORITY**

22 The actions required to be taken by CITY in the implementation of this Agreement are delegated
23 to its City Engineer, or designee, and the actions required to be taken by AUTHORITY in the
24 implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or designee.

25 /

26 /

ARTICLE 6. INDEMNIFICATION

A. To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and expense with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect, and hold harmless AUTHORITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (CITY's employees included), for damage to property, including property owned by AUTHORITY, or from any violation of any federal, state, or local law or ordinance, by the negligent acts, omissions or willful misconduct of CITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole cost and expense with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold harmless CITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (AUTHORITY's employees included), for damage to property, including property owned by CITY, or from any violation of any federal, state, or local law or ordinance, by the negligent acts, omissions or willful misconduct of AUTHORITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

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

/

/

/

ARTICLE 7. ADDITIONAL PROVISIONS

A. Term of Agreement: This Agreement shall be effective on _____20__ and shall be in full force and effect for 18 months through _____ 2021.

B. Termination: In the event either Party defaults in the performance of their obligations under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the option to terminate this Agreement upon thirty (30) days prior written notice to the other Party.

C. Termination for Convenience: Either Party may terminate this Agreement for its convenience by providing thirty (30) days prior written notice of its intent to terminate for convenience to the other Party.

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

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

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

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

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

is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

I. **Assignment:** Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

J. **Governing Law:** The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

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

L. **Notices:** Any notices, requests, or demands made between the Parties pursuant to this Agreement are to be directed as follows:

To: CITY	To AUTHORITY:
City of Fullerton	Orange County Transportation Authority
303 West Commonwealth Ave. Fullerton, Ca. 92632	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Meg McWade Public Works Director (714) 738-6723 MMcWade@cityoffullerton.com	Attention: Marjorie Morris-Threats Senior Contract Administrator Tel: (714) 560-5552 E-mail: mthreats@octa.net Cc: Lora Cross Project Manager Tel: (714) 560-5788 E-mail: lcross@octa.net

/

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-0-2266 to be executed as of the date of the last signature below.

CITY OF FULLERTON

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

Jennifer Fitzgerald
Mayor

By: _____

Darrell E. Johnson
Chief Executive Officer

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

By: _____

Lucinda Williams
City Clerk

By: _____

James M. Donich
General Counsel

Date: _____

Date: 8/6/2020

APPROVED AS TO FORM

APPROVAL RECOMMENDED:

By: _____

Richard D. Jones
City Attorney

By: _____

James G. Beil, P.E.
Executive Director, Capital Programs

Date: _____

Date: _____