ITEM NO. 13

STAFF REPORT

CITY OF OCEANSIDE

DATE: October 21, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **RESOLUTION ACCEPTING $425,000 IN GRANT FUNDS FROM THE BICYCLE TRANSPORTATION ACCOUNT PROJECT; APPROPRIATING FUNDS TO THE SAN LUIS REY RIVER TRAIL EXTENSION PROJECT; AND APPROVING OF THE GRANT AGREEMENT**

SYNOPSIS

Staff recommends that the City Council adopt a resolution accepting $425,000 in grant funds from the Bicycle Transportation Account Project, awarded to the City of Oceanside by the State of California for the extension of the San Luis Rey River Trail; approving the appropriation of these funds to the San Luis Rey River Trail Extension Project; approving the related Local Agency – State Agreement with the State of California; and authorizing the City Manager to execute the necessary documents.

BACKGROUND

The State of California provides funds through the Bicycle Transportation Account (BTA) Project for city projects that improve safety and convenience for bicycle commuters. Caltrans administers the BTA grant program and released applications on September 12, 2008. On December 11, 2008, the City of Oceanside submitted an application for the San Luis Rey River Trail Extension Project Phase II.

On July 1, 2009, the City Council approved the plans and specifications for the San Luis Rey River Trail Project Phase II. On August 12, 2009, at which time the BTA funds had not been awarded to the City, the City Council adopted a resolution amending the TransNet Local Streets and Roads Program of Projects of the Regional Transportation Improvements Program (RTIP) for FY 2010 to fully fund the San Luis Rey River Trail Project.

On August 27, 2009, the City was notified that the project was approved for funding and received grant contracts on September 17, 2009.

ANALYSIS

As a local agency, the City of Oceanside is a qualified recipient of BTA funds and the project meets all of the grant administrative requirements. The acceptance of the BTA funds will enable the City of Oceanside to utilize the previously amended TransNet RTIP funds in another capacity while still fully funding the San Luis Rey River Project.

FISCAL IMPACT

The San Luis Rey River Trail Extension Project Phase II total estimated cost is $479,938.02 for the general construction contract and other related construction costs. The City has been awarded $303,766 toward Phase II through the Proposition 50, River Parkways Grant program (904718700272.5325). The BTA grant funds in the amount of $425,000 will be appropriated to (904115500272). The combined grant funds of $728,766 will provide sufficient funds for the project.

Construction-phase project costs are budgeted as follows:

Direct Construction Costs	
Construction Contract	$373,897.50
15% Construction Change Order Contingency	$ 56,084.63
Total Direct Construction	$429,982.12
Construction Support Costs	
Construction Staking and Surveying	$ 20,000.00
Geotechnical Inspection	$ 15,000.00
Total Construction Support	$ 35,000.00
City Inspection and Administration	$ 15,000.00
Total Project, Construction Phase Cost	$479,938.02

COMMISSION OR COMMITTEE REPORT

At its meeting on November 17, 2008, the Bicycle Committee recommended that the City apply for BTA funds for the San Luis Rey River Trail Extension Project.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution accepting $425,000 in grant funds from the Bicycle Transportation Account Project, awarded to the City of Oceanside by the State of California for the extension of the San Luis Rey River Trail; approving the appropriation of these funds to the San Luis Rey River Trail Extension Project; approving the related Local Agency – State Agreement with the State of California; and authorizing the City Manager to execute the necessary documents.

PREPARED BY:

Megan Crooks
Management Analyst

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Margery Pierce, Neighborhood Services Director

George Buell, Development Services Director

Scott O. Smith, City Engineer

Teri Ferro, Financial Services Director

Attachments: Local Agency - State Agreement
Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ACCEPTING BICYCLE TRANPORTATION ACCOUNT PROJECT FUNDS IN THE AMOUNT OF $425,000 FOR THE SAN LUIS REY RIVER EXTENSION PROJECT PHASE II

WHEREAS, the Bicycle Transportation Account Project provides state funds committed to improve the safety and convenience of bicycle commuters;

WHEREAS, the City of Oceanside has been awarded $425,000 from the Bicycle Transportation Account Project for the extension of the San Luis Rey River Trail;

WHEREAS, the City of Oceanside and the State of California will enter into a Local Agency-State Agreement (BTA 09/10-11-SD-01) outlining the terms and conditions pursuant to which the grant funds shall be administered; and

WHEREAS, bicycle commuters and Oceanside residents will benefit from the extension of the San Luis Rey River Trail.

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. The Bicycle Transportation Account Project Funds from the State of California in the amount of $425,000 are accepted and will be budgeted to the project account.

SECTION 2. The City of Oceanside has reviewed, understands and approves the terms and conditions contained in the Local Agency-State Agreement, Agreement No. BTA 09/10-11-SD-01.

SECTION 3. The City Manager or his designee is appointed as agent of the City to conduct all negotiations, execute and submit all documents including, but not limited to, applications, agreements, and payment requests, which may be necessary for the completion of the project funded under the Bicycle Transportation Account Project.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this _____day of _____, 2009 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____

Mayor Of The City Of Oceanside

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

Patrick Hamilton, ASST.

City Attorney

LOCAL AGENCY - STATE AGREEMENT
For
BICYCLE TRANSPORTATION ACCOUNT PROJECT

11	City of Oceanside	Agreement No.	BTA 09/10-11-SD-01
District	Local Agency		

THIS AGREEMENT, made in duplicate entered into effect as of this 1st day of July 2009, by and between the political entity identified above, a political subdivision of the State of California, hereinafter referred to as "LOCAL AGENCY", and the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and together referred to as "PARTIES" or individually as a "PARTY".

WITNESSETH:

WHEREAS, under the provisions of Streets and Highways Code Section 2106 (b) and Sections 890 through 894.2, as implemented by regulations in Title 21, Division 2, Chapter 10, of the California Code of Regulations, Bicycle Transportation Account funds (herein referred to as STATE FUNDS) have been allocated to LOCAL AGENCY for the Bicycle Transportation Account project defined in "EXHIBIT A" attached hereto and hereafter referred to as "PROJECT"; and

Whereas, before STATE FUNDS will be made available for PROJECT, LOCAL AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the LOCAL AGENCY when receiving STATE FUNDS for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW THEREFORE, the PARTIES agree as follows:

ARTICLE I - Project Administration

1. This AGREEMENT shall have no force or effect with respect to PROJECT unless and until it has been fully executed by both STATE and LOCAL AGENCY,

2. EXHIBIT A designates the party responsible for implementing PROJECT, type of work, and location of PROJECT.

3. LOCAL AGENCY agrees to execute and return AGREEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may void AGREEMENT if not returned within the ninety (90) day period unless otherwise agreed by STATE in writing.

4. LOCAL AGENCY further agrees, as a condition to the release and payment of STATE FUNDS encumbered for the PROJECT described in EXHIBIT A, to comply with the terms and conditions of this AGREEMENT.

5. STATE FUNDS will not participate in any portion of PROJECT work performed in advance of the effective date of the executed AGREEMENT.

6. Projects allocated with STATE FUNDS from the Bicycle Transportation Account (BTA) will be administered in accordance with the current Bicycle Transportation Account (BTA) Guidelines, as adopted or amended, and in accordance with Chapter 21, "Bicycle Transportation Account (BTA)" of the Local Assistance Program Guidelines (LAPG) published by STATE.

7. LOCAL AGENCY shall provide or arrange for adequate supervision and inspection of PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, LOCAL AGENCY shall provide a full-time employee to be in responsible charge of PROJECT.

8. LOCAL AGENCY shall advertise, award, and administer the PROJECT construction contract or contracts.

9. The cost of maintenance, security, or protection performed by LOCAL AGENCY or contractor forces during any temporary suspension of PROJECT or at any other time may not be charged to the PROJECT.

10. LOCAL AGENCY shall design and construct PROJECT in accordance with Chapter 1000, Bikeway Planning and Design of the Highway Design Manual that describes minimum statewide design standards for bikeways and roads where bicycle travel is permitted and the California Manual on Uniform Traffic Control Devices that describes the uniform standards and specifications for all official traffic control devices.

11. LOCAL AGENCY shall comply with the Americans with Disabilities Act (ADA) of 1990 that prohibits discrimination on the basis of disability and all applicable regulations and guidelines issued pursuant to the ADA.

12. The Governor and the Legislature of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. LOCAL AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM attached hereto as Exhibit B and further agrees that any agreement entered into by LOCAL AGENCY with a third party for performance of work connected with PROJECT shall incorporate Exhibit B (with third party's name replacing LOCAL AGENCY) as parts of such agreement.

13. LOCAL AGENCY shall include in all subcontracts awarded when applicable, a clause that requires each subcontractor to comply with California Labor Code requirement that all workers employed on public works aspects of any project (as defined in California Labor Code §1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective at the date of contract award by the LOCAL AGNECY.

ARTICLE II - Rights of Way

1. No contract for the construction of PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, LOCAL AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. The furnishing of right of way by LOCAL AGENCY as provided for herein includes, and is limited to, the following:

a) Expenditures to purchase all real property required for PROJECT free and clear of liens, conflicting easements, obstructions and encumbrances, after crediting PROJECT with the fair market value of any excess property retained and not disposed of by LOCAL AGENCY.

b) The cost of furnishing of right of way as provided for herein includes, in addition to real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to owners or remainder real property not actually taken but injuriously affected by PROJECT.

c) The cost of relocation payments and services provided to owners and occupants pursuant to Government Code Sections 7260-7277 when PROJECT displaces an individual, family, business, farm operation or nonprofit organization.

d) The cost of demolition and/or the sale of all improvements on the right of way after credit are recorded for sale proceeds used to offset PROJECT costs.

e) The cost of unavoidable utility relocation, protection, or removal.

f) The cost of all necessary hazardous material and hazardous waste treatment, encapsulation or removal and protective storage for which LOCAL AGENCY accepts responsibility and where the actual generator cannot be identified and recovery made.

3. LOCAL AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for PROJECT, including, but not limited to, being clear as certified, or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with federal and state laws. LOCAL AGENCY shall pay from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to LOCAL AGENCY for the orderly prosecution of PROJECT work.

4. If PROJECT is not on STATE-owned right of way, PROJECT shall be designed and constructed in accordance with Chapter 1000, Bikeway Planning and Design of the Highway Design Manual that describes minimum statewide design standards for bikeways and roads where bicycle travel is permitted and the California Manual on Uniform Traffic Control Devices that describes the uniform standards and specifications for all official traffic control devices.

5. If PROJECT involves work within or partially within STATE-owned right of way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual, Highway Design Manual, and California Manual on Uniform Traffic Control Devices and where appropriate, an executed cooperative agreement between STATE and LOCAL AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. LOCAL AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE right of way or work which affects STATE facilities.

ARTICLE III - Engineering

1. LOCAL AGENCY eligible costs for preliminary engineering work includes all preliminary work directly related to PROJECT up to contract award for construction, including, but not limited to, preliminary surveys and reports, laboratory work, soil investigations, the preparation of plans, specifications and estimates (PS&E), advertising for bids, awarding of a contract and project development contract administration.

2. LOCAL AGENCY eligible costs for construction engineering includes actual inspection and supervision of PROJECT construction work; construction staking; laboratory and field testing; and the preparation and processing of field reports, records, estimates, final reports, and allowable expenses of employees/consultants engaged in such activities.

3. Preliminary and construction engineering costs included in the estimate contained in Exhibit A are eligible project costs. STATE reimbursement to LOCAL AGENCY will be on the basis of the actual cost thereof to LOCAL AGENCY including compensation and expense of personnel working on PROJECT, required materials, and automotive expense provided, however, LOCAL AGENCY shall contribute its general administrative and overhead expense.

4. LOCAL AGENCY employees or its subcontractor engineering consultant shall be responsible for all PROJECT engineering work.

5. LOCAL AGENCY shall not proceed with final design of PROJECT until final environmental approval of PROJECT. Final design entails the design work necessary to complete the PS&E and other work necessary for a construction contract but not required earlier for environmental clearance of that PROJECT.

6. LOCAL AGENCY shall certify compliance or documentation of Categorical Exemption determination with the applicable provisions of the California Environmental Quality Act (CEQA) as defined in Title 14, California Code of Regulations, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act.

ARTICLE IV - Maintenance and Management

1. LOCAL AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, LOCAL AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon LOCAL AGENCY acceptance of the completed construction contract, or upon the contractor(s) being relieved of the responsibility for maintaining and protecting PROJECT, LOCAL AGENCY will be responsible for the maintenance, ownership, liability, and expense thereof for PROJECT in a manner satisfactory to the authorized representative of STATE, and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of LOCAL AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, LOCAL AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representative of the STATE.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians, as PROJECT reasonably requires. Said operations and maintenance staff may be employees of LOCAL AGENCY, another unit of government, or contractor under agreement with LOCAL AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the completed PROJECT improvements.

ARTICLE V - Fiscal Provisions

1. STATE'S financial commitment of STATE FUNDS will occur only upon the execution of this AGREEMENT.

2. STATE shall have the right to terminate this AGREEMENT if a contract for construction of PROJECT has not been awarded by LOCAL AGENCY within the first fiscal year in which STATE FUNDS are allocated.

3. STATE shall have the right to terminate this AGREEMENT if PROJECT costs have not been invoiced by LOCAL AGENCY within the first fiscal year in which STATE FUNDS are allocated, and as a minimum, to submit invoices at least once every six (6) months thereafter.

4. LOCAL AGENCY may submit signed invoices in arrears for reimbursement of allowable PROJECT costs on a monthly or quarterly progress basis once the AGREEMENT has been executed by STATE.

5. LOCAL AGENCY agrees to submit a status report within thirty (30) days upon STATE'S request for the report. The PARTIES agree that STATE may void AGREEMENT if the status report is not returned within the thirty (30) day period unless otherwise agreed by STATE in writing.

6. LOCAL AGENCY agrees to complete PROJECT and submit a final invoice by April 1, 2012. STATE shall pay to LOCAL AGENCY the STATE FUNDS share of the actual cost of the PROJECT prior to June 30, 2012, the expiration date of STATE FUNDS included in this PROJECT.

7. Invoices shall be submitted on LOCAL AGENCY letterhead that includes the address of LOCAL AGENCY and shall be formatted in accordance with the current Bicycle Transportation Account (BTA) Guidelines, as adopted or amended, and in accordance with Chapter 21, "Bicycle Transportation Account (BTA)" of the Local Assistance Program Guidelines (LAPG) published by STATE.

8. Invoices must have at least one copy of supporting backup documentation for allowable costs incurred and claimed for reimbursement by LOCAL AGENCY. All costs charged to this AGREEMENT by LOCAL AGENCY shall be costs allowable under the California Bicycle Transportation Act. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of canceled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

9. Payments to LOCAL AGENCY can only be released by STATE as reimbursements of actual allowable PROJECT costs already incurred and paid for by LOCAL AGENCY.

10. State will withhold ten (10) percent of the total of all STATE FUNDS for each progress invoice until LOCAL AGENCY submits the final invoice.

11. The estimated total cost of PROJECT, the amount of STATE FUNDS obligated, the required matching funds, and the ratio of STATE FUNDS to LOCAL AGENCY funds may not be adjusted to cover PROJECT cost increases. LOCAL AGENCY agrees that any increases in PROJECT cost must be defrayed with LOCAL AGENCY'S own funds.

12. LOCAL AGENCY shall use its own non-STATE FUNDS to finance the local share of eligible costs and all PROJECT expenditures or contract items ruled ineligible for financing with STATE FUNDS. STATE shall make a final determination of LOCAL AGENCY cost eligibility for STATE FUNDED financing with respect to claimed PROJECT costs.

13. STATE FUNDS encumbered for PROJECT are available for liquidation only for three (3) years from the beginning of the State Fiscal Year in which the funds were appropriated in the State Budget. STATE FUNDS not liquidated within this period will be reverted unless a Cooperative Work Agreement (CWA) is submitted by LOCAL AGENCY and approved by the California Department of Finance in accordance with Government Code Section 16304.

14. The estimated costs of PROJECT are shown in EXHIBIT A. LOCAL AGENCY may, at its option, award contracts for amounts in excess of said estimates, and final project expenditures may exceed said estimates if sufficient local funds are available to finance the excess. It is understood that the allocation of STATE FUNDS shall not exceed that shown in EXHIBIT A.

15. In the event LOCAL AGENCY'S final costs of PROJECT are less than said estimate by reason of low bid or otherwise, the allocation of STATE FUNDS will be decreased in relationship to the percent funded by STATE as shown in EXHIBIT A.

16. Exhibit C defined as the "Certification of State Funding" template, shall be made a part of, and completed by STATE, prior to execution of this agreement.

17. Upon written demand by STATE, any overpayment to LOCAL AGENCY of amounts invoiced to STATE shall be returned to STATE.

ARTICLE VI - Audits, Third Party Contracting, Records Retention and Reports

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records when determined to be necessary or appropriate and LOCAL AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of Article VI.

2. LOCAL AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of LOCAL AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles; enable the determination of incurred costs at interim points of completion; and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.

3. For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance and costs of LOCAL AGENCY'S contracts with third parties pursuant to Government Code Section 8546.7, LOCAL AGENCY, LOCAL AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited

to, the costs of administering those various contracts. All of the above-referenced parties shall make such AGREEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to LOCAL AGENCY. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions and LOCAL AGENCY shall furnish copies thereof if requested.

4. Any subcontract entered into by LOCAL AGENCY as a result of this AGREEMENT shall contain all of the provisions of Article V, FISCAL PROVISIONS, and this ARTICLE VI, AUDITS, THIRD-PARTY CONTRACTING, RECORDS RETENTION AND REPORTS and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

5. To be eligible for local match credit, LOCAL AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE V in the same manner that is required of all other PROJECT expenditures.

6. In addition to the above, the pre-award requirements of third-party contractor/consultants with LOCAL AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES.

ARTICLE VII - Miscellaneous Provisions

1. LOCAL AGENCY agrees to use all PROJECT funds reimbursed hereunder only for Bicycle Transportation Account purposes that are in conformance with Streets and Highways Code Sections 890 through 894.2 and other applicable California laws.

2. LOCAL AGENCY shall conform to all applicable state and federal statutes and Local Assistance Program Guidelines (LPGL) and Local Assistance Procedures Manual (LAPM) as published by STATE and incorporated herein, including all subsequent approved revisions thereto applicable to PROJECT.

3. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

4. Minor changes may be made in the PROJECT as described in Exhibit A upon notice to STATE. No major change, however, may be made to said PROJECT except pursuant to an amendment to this agreement duly executed by STATE and LOCAL AGENCY.

5. LOCAL AGENCY and the officers and employees of LOCAL AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees, or agents of STATE.

6. LOCAL AGENCY certifies that neither LOCAL AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT, and LOCAL AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.

7. LOCAL AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by LOCAL AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the PROJECT work actually performed, or in STATE'S discretion, to deduct from the price of PROJECT, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8. In accordance with Public Contract Code, section 10296, LOCAL AGENCY hereby certifies under penalty of perjury that no more than one final unacceptable finding of contempt of court by a federal court has been issued against LOCAL AGENCY within the immediate preceding two (2) year period because of LOCAL AGENCY'S failure to comply with an order of a federal court that orders LOCAL AGENCY to comply with an order of the National Labor Relations Board.

9. LOCAL AGENCY shall disclose any financial, business or other relationship with STATE that may have an impact upon the outcome of this AGREEMENT. LOCAL AGENCY shall also list current contractors who may have a financial interest in the outcome of PROJECT undertaken pursuant to this AGREEMENT.

10. LOCAL AGENCY hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT initiated under this AGREEMENT.

11. LOCAL AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its sole discretion; to terminate this AGREEMENT without liability; to pay only for PROJECT work actually performed; or to deduct from PROJECT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

12. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE'S Contract Officer, who may consider any written or verbal evidence submitted by LOCAL AGENCY. The

decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

13. Neither the pending of a dispute nor its consideration by Contract Officer will excuse the LOCAL AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

14. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by LOCAL AGENCY under, or in connection with any work, authority or jurisdiction of LOCAL AGENCY arising under this AGREEMENT. It is understood and agreed that LOCAL AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims and suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by LOCAL AGENCY under this AGREEMENT.

15. Neither LOCAL AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under, or in connection with any work, authority or jurisdiction of STATE arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the LOCAL AGENCY and all of its officers and employees from all claims and suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

16. In the event of (a) LOCAL AGENCY failing to timely proceed with effective PROJECT work in accordance with this AGREEMENT; (b) failing to maintain any applicable bonding requirements; and (c) otherwise materially violating the terms and conditions of this AGREEMENT, STATE reserves the right to terminate funding for PROJECT upon thirty (30) days written notice to LOCAL AGENCY.

17. No termination notice shall become effective if within thirty (30) days after receipt of a Notice of Termination, LOCAL AGENCY either cures the default involved, or if the default is not reasonably susceptible of cure within said thirty (30) day period the LOCAL AGENCY proceeds thereafter to complete that cure in a manner and timeline acceptable to STATE.

18. Any such termination shall be accomplished by delivery to LOCAL AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt; specifying the reason for the termination; the extent to which funding of work under this AGREEMENT is terminated, and the date upon which such termination becomes effective if beyond thirty (30) days after receipt. During the period before the effective termination date, LOCAL AGENCY and STATE shall meet to attempt to resolve any dispute. If STATE terminates funding for PROJECT with

LOCAL AGENCY for the reasons stated in paragraph sixteen (16) of ARTICLE VI, STATE shall pay LOCAL AGENCY the sum due LOCAL AGENCY under this AGREEMENT prior to termination, provided; however, LOCAL AGENCY is not in default of the terms and conditions of this AGREEMENT and that the cost of any PROJECT completion to STATE shall first be deducted from any sum due LOCAL AGENCY.

19. The "PROJECT" shall be constructed as provided in this AGREEMENT and in accordance with those laws applicable to LOCAL AGENCY. In the case of inconsistency or conflicts, the terms of this agreement shall prevail.

20. Without the written consent of STATE, this AGREEMENT is not assignable by LOCAL AGENCY either in whole or in part.

21. 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 any of the PARTIES.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA Department of Transportation	LOCAL AGENCY City of Oceanside
By Ken McGuire	By _____
KEN McGUIRE, Chief Bicycle Facilities Unit Division of Local Assistance	Print Name: _____ Title: _____
Date: 10/12/09	Date: _____

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
BARBARA L. HAMILTON
Assistant City Attorney

EXHIBIT A

PROJECT DESCRIPTION AND COSTS	
Local Agency: City of Oceanside	**Agreement No.** BTA09/10-11-SD-01
Project Location: Oceanside & County of San Diego – along San Luis Rey River From Tyler St. to Santa Fe Drive.	
Type of Work: Construct Class I bikeway	
Length: 0.88 miles	

Funding Source	Engineering / Design	Right of Way Acquisition	Construction Contract	Total Cost	Percent
BTA	$0	$0	$425,000	$425,000	62.96%
Local	$0	$0	$0	$0	
Other	$0	$0	$250,000	$250,000	37.04%
Total	$0	$0	$675,000	$675,000	62.96%

EXHIBIT B

FAIR EMPLOYMENT AND HOUSING ACT ADDENDUM

1. In the performance of this AGREEMENT, LOCAL AGENCY will not discriminate against any employee for employment because of race, sex, sexual orientation, religion, age, ancestry, national origin, pregnancy leave, or disability leave. LOCAL AGENCY will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical or disability leave. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. LOCAL AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided STATE setting forth the provisions of this Fair Employment section.

2. LOCAL AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 1290-0 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs. Title 2, §7285.0, et seq.) The applicable regulations of the Fair Employment and Housing Commission Implementing Government Code, section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the LOCAL AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. LOCAL AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. The Contractor will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for purposes of investigation to ascertain compliance with the Fair Employment section of this AGREEMENT.

5. Remedies for Willful Violations:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which LOCAL AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that LOCAL AGENCY has violated the Fair Employment Practices Act and has issued an order under Labor Code, section

1426 which has become final or has obtained an injunction under Labor Code, section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this AGREEMENT either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services hereunder shall be borne and paid for by LOCAL AGENCY and by the surety under the performance bond, if any, STATE may deduct from any moneys due or thereafter may become due to LOCAL AGENCY, the difference between the price named in the AGREEMENT and the actual cost thereof to STATE to cure LOCAL AGENCY'S breach of this AGREEMENT.

EXHIBIT C

CERTIFICATION OF STATE FUNDING								
BTA 09/10-11-SD-01								
I hereby certify upon my own knowledge that budgeted funds are available for this encumbrance.								
Accounting Officer				Date	Funding			
Jan C. Yu				7/14/09	$ 425,000.00			
Chapter	Statues	Item	Fiscal Year	Program	BC	Category	Fund Source	BTA Funds
1	2009	2660-101-0045	2009/2010	2030010660	C	220000	T	**$425,000**
Expenditure Authorization Number: 50-957200-**30309**								
Encumbrance Document Number			Charge District	Expenditure Authorization			SUBJOB	
BTA**30309**-00			50	957200			**30309**	