

**ATTACHMENT 3**

1 COOPERATIVE AGREEMENT NO. C-0-0634  
2 BETWEEN  
3 THE ORANGE COUNTY TRANSPORTATION AUTHORITY  
4 AND  
5 THE CITY OF COSTA MESA  
6 FOR  
7 CONSTRUCTION AND RIGHT-OF-WAY FUNDING OF THE  
8 IMPROVEMENTS AT THE  
9 INTERSTATE 405/STATE ROUTE 55 INTERCHANGE  
10 JUNE 2000  
11 THIS AGREEMENT, is made and entered into this 24 day of June  
12 2000, by and between the Orange County Transportation Authority, 550 South Main Street, P.O.  
13 Box 14184, Orange California 92663-1584, a public corporation of the State of California  
14 (hereinafter referred to as "AUTHORITY") and the City of Costa Mesa, a municipal corporation  
15 (hereinafter referred to as "CITY").  
16 RECITALS:  
17 WHEREAS, the AUTHORITY in cooperation with the California Department of  
18 Transportation (hereinafter referred to as "CALTRANS"), pursuant to Streets and Highways Code  
19 Sections 114 and 130, have mutually agreed to cooperate in the development of improvements to  
20 Interstate 405 and State Route 55 consisting of adding a High-Occupancy Vehicle (HOV) direct  
21 connector from the southbound State Route 55 to northbound Interstate 405, and the reverse  
22 movement (referred to herein as "TRANSITWAY PROJECT" or "MOS-3"); and  
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1           WHEREAS, CITY wishes to construct a series of local access improvements, (hereinafter  
 2 referred to as "CITY IMPROVEMENTS" or "MOS-2"), along Interstate 405 in the same area of the  
 3 TRANSITWAY PROJECT as shown on Exhibit A. These CITY IMPROVEMENTS include 1) an  
 4 off ramp braid at Bristol Street, 2) a new off ramp at Avenue of the Arts and 3) a new on ramp at  
 5 Anton Avenue; and

6           WHEREAS, on February 28, 1994, the CITY and AUTHORITY entered into Agreement  
 7 No. C-93-626, combining the TRANSITWAY PROJECT and CITY IMPROVEMENTS into a single  
 8 project (hereinafter referred to as "COMBINED PROJECT"). The Agreement addressed the terms,  
 9 conditions, and funding responsibilities between the AUTHORITY and CITY for design of the  
 10 COMBINED PROJECT; and

11           WHEREAS, the CITY and AUTHORITY agreed in Agreement C-93-626 that a separate  
 12 cooperative agreement be developed addressing right-of-way acquisition, utility relocation,  
 13 construction, and construction management of the COMBINED PROJECT; and

14           WHEREAS, CITY has entered into numerous agreements with owners of properties located  
 15 near the COMBINED PROJECT in order to acquire property needed for construction of the CITY  
 16 IMPROVEMENTS. These agreements (hereinafter referred to as the "PROPERTY OWNER  
 17 AGREEMENTS") are on file with the Costa Mesa City Clerk. In the PROPERTY OWNER  
 18 AGREEMENTS the CITY agreed to certain commitments to the owners regarding the protection,  
 19 repair, restoration of their property that may be needed as a result of the construction of CITY  
 20 IMPROVEMENTS and the manner in which construction is conducted so as to minimize the impact  
 21 on, and any inconvenience to, the on-going use and ingress and egress of the public onto the  
 22 owners property. Also, the CITY entered into indemnification commitments with these property  
 23 owners; and

24           WHEREAS, this Cooperative Agreement No. C-0-0634 defines the roles and funding  
 25 responsibilities of the AUTHORITY and CITY for right-of-way acquisition, utility relocation,  
 26 construction, and construction management of the COMBINED PROJECT;

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

3 ARTICLE 1. COMPLETE AGREEMENT

4 The Agreement, including all exhibits and documents incorporated herein and made  
5 applicable by reference, constitutes the complete and exclusive statement of the terms and  
6 conditions of the agreement between the AUTHORITY and CITY and it supersedes all prior  
7 representations, understandings and communications regarding COMBINED PROJECT right-of-way  
8 acquisition, utility relocation, construction, and construction management

9 ARTICLE 2. RESPONSIBILITIES OF AUTHORITY

10 AUTHORITY agrees to the following responsibilities:

11 A. AUTHORITY shall be financially responsible for the actual costs of the TRANSITWAY  
12 PROJECT (MOS-3) including: 1) acquisition of right-of-way designated as "OCTA/STATE  
13 ACQUIRED PARCELS" on Exhibit B, which is attached to and by this reference, incorporated in and  
14 made part of this Agreement, and 2) construction, utility relocation and construction management.

15 B. AUTHORITY shall be responsible for providing a portion of the funding for actual cost  
16 of CITY IMPROVEMENTS as estimated on Exhibit B. The AUTHORITY shall provide 50% of the  
17 incremental cost increase resulting from combining the TRANSITWAY PROJECT and CITY  
18 IMPROVEMENTS for the southbound State Route 55 to northbound Interstate 405 mixed flow  
19 connector. The net AUTHORITY contribution for the mixed flow connector will be 22% of the entire  
20 connector cost. The AUTHORITY shall also be responsible for 50% of the Airport Channel box  
21 culvert.

22 C. AUTHORITY shall be responsible for acquisition of the right-of-way parcels  
23 designated as "OCTA/STATE ACQUIRED PARCELS", listed on Exhibit B.

24 D. AUTHORITY shall be responsible for the actual cost of right-of-way support costs  
25 incurred by CALTRANS in the support of the CITY obtaining and transferring CITY acquired parcels  
26 to the State.

1 E. AUTHORITY shall provide staff to manage, administer, coordinate and oversee the  
2 TRANSITWAY PROJECT and CITY IMPROVEMENTS at no cost to the City.

3 F. AUTHORITY shall be responsible for entering into a Cooperative Agreement with  
4 CALTRANS to advertise, award and administer the COMBINED PROJECT construction contract.

5 G. AUTHORITY shall pay for all COMBINED PROJECT utility relocations, construction  
6 and construction management costs in anticipation of reimbursement by the CITY for the portion of  
7 such costs attributable to the CITY IMPROVEMENTS.

8 H. AUTHORITY shall invoice CITY monthly for construction and construction  
9 management costs. Invoices shall be based upon a percentage of the COMBINED PROJECT  
10 construction and construction management cost. The percentage shall be calculated upon the ratio  
11 of the CITY IMPROVEMENTS cost to the COMBINED PROJECT cost as estimated on Exhibit B  
12 and to be determined by the bid unit prices. The estimated billing percentage is 24.05%.

13 I. AUTHORITY shall make accounting records available to CITY for review and audit  
14 for three years following completion of construction.

15 J. AUTHORITY shall coordinate execution of the Agreements between CALTRANS and  
16 the CITY related to construction and ultimate responsibilities for maintenance and operation of CITY  
17 IMPROVEMENTS.

18 K. AUTHORITY shall monitor the activities of all parties, ensure that all parties support  
19 and adhere to COMBINED PROJECT quality, schedule and budget goals.

20 L. AUTHORITY shall track all contract change orders issued by Caltrans and segregate  
21 the cost thereof to determine their applicability to the TRANSITWAY PROJECT or CITY  
22 IMPROVEMENTS.

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1 approval of the CITY, the cost of CALTRAN's or AUTHORITY's defense of all CITY  
 2 IMPROVEMENT related claims which may be filed by the construction contractor. The actual  
 3 construction costs shall be based upon final quantities determined after completion of all work with  
 4 final costs as verified by normal accounting audit procedures. The CITY shall be responsible for an  
 5 estimated 24.05% of the final COMBINED PROJECT cost, as shown on Exhibit B.

6 F. CITY shall reimburse the AUTHORITY within thirty (30) days of receipt of an invoice  
 7 from the AUTHORITY for expenditures associated with COMBINED PROJECT for which the CITY  
 8 is responsible pursuant to the provisions of this Agreement.

9 ARTICLE 4. IT IS MUTUALLY UNDERSTOOD AND AGREED

10 The AUTHORITY and CITY agree to the following mutual responsibilities:

11 A. That the COMBINED PROJECT shall proceed in accordance with the schedule and  
 12 budget defined in the Measure M Strategic Plan for Freeway Projects, as adopted by the  
 13 AUTHORITY.

14 B. That in the event that the TRANSITWAY PROJECT and CITY IMPROVEMENTS are  
 15 constructed together and the CITY does not meet the funding commitments for the CITY  
 16 IMPROVEMENTS, AUTHORITY reserves the right to withhold future CITY Measure M Turnback  
 17 funds equal to amount of the unpaid CITY share of the project.

18 C. That if funding becomes available through the Governors transportation plan within  
 19 180 days after award of the construction contract for eligible use on the CITY IMPROVEMENTS,  
 20 these funds shall be used to offset the local match requirement for the I-405 Northbound Bristol  
 21 Street off-ramp braid project.

22 D. The CITY and AUTHORITY hereby agree to the design quantities as set forth in the  
 23 final Plan, Specifications and Estimate Plans (PS&E) and that this Agreement shall be amended to  
 24 reflect actual bid unit prices which shall determine the project cost shares and monthly percentage  
 25 project billings from the AUTHORITY to the CITY. Upon completion of the project, contract change  
 26 orders, or portions thereof, attributable to the CITY IMPROVEMENTS shall be finalized to determine

1 the final project cost to the CITY. The AUTHORITY shall be fully responsible for those contract  
2 change orders, or a portions thereof, attributable to the TRANSITWAY PROJECT.

3 E. The CITY shall be consulted on all change orders on CITY IMPROVEMENTS with an  
4 estimated cost of over \$25,000 before implementation, except when necessary for the safety of  
5 motorists and/or pedestrians or for protection of property.

6 F. That the AUTHORITY and CITY shall negotiate in good faith to resolve the cost  
7 issues in the event the bid amount exceeds 10% of the estimated costs as shown on Exhibit B. In  
8 the event the CITY elects not to continue with funding of he CITY IMPROVEMENTS, and the  
9 AUTHORITY elects to proceed with the TRANSITWAY PROJECT separately, then CITY shall fund  
10 any cost of re-design of COMBINED PROJECT required for AUTHORITY to proceed with the  
11 TRANSITWAY PROJECT. In the event the AUTHORITY elects not to continue with funding of the  
12 TRANSITWAY PROJECT, and the CITY elects to proceed with the CITY IMPROVEMENTS  
13 separately, then AUTHORITY shall fund any cost of re-design of COMBINED PROJECT required  
14 for CITY to proceed with CITY IMPROVEMENTS.

15 G. That the CITY and AUTHORITY shall split equally the environmental mitigation costs  
16 resulting from enclosing Airport Channel in a concrete box culvert. The environmental mitigation  
17 cost has not been determined by the governing agencies but is estimated to be \$200,000 to  
18 \$300,000.

19 H. That any notices, requests and demands made between the parties pursuant to this  
20 Agreement are to be directed as follows:

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1 To CITY  
 2 City of Costa Mesa  
 3 P.O. Box 1200, 77 Fair Drive  
 4 Costa Mesa, CA 92628-1200  
 5 ATTENTION: William J. Morris  
 6 Public Services Director  
 7 (714/754-5343)

To AUTHORITY  
 Orange County Transportation Authority  
 Contracts Admin. & Materials Management  
 550 South Main Street  
 P.O. Box 14184  
 Orange CA 92863-1584  
 ATTENTION: Donna Pagel  
 Sr. Procurement Administrator  
 (714/560-5614)

10 I. That this Agreement and the provisions contained herein may be altered, changed, or  
 11 amended only by written mutual consent of the parties to this Agreement.

12 J. That this Agreement shall remain in effect until completion of the project or  
 13 December 31, 2004, whichever is earlier.

14 K. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,  
 15 employees and agents from and against any and all claims (including attorney's fees and  
 16 reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including  
 17 death, damage to or loss of use of property caused by the negligent acts, omissions or willful  
 18 misconduct by CITY, its officers, directors, employees, or agents in connection with or arising out of  
 19 the performance of this Agreement.

20 L. AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,  
 21 employees and agents from and against any and all claims (including attorney's fees and  
 22 reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including  
 23 death, damage to or loss of use of property caused by the negligent acts, omissions or willful  
 24 misconduct by AUTHORITY, its officers, directors, employees, or agents in connection with or  
 25 arising out of the performance of this Agreement.

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M. After receipt of reasonable notice and during the regular business, the CITY and AUTHORITY agree to provide one another, or agents thereof, access to books, records, payroll documents and facilities as necessary to examine, audit and inspect all accounting books, records, work data, documents and activities directly related hereto. AUTHORITY and CITY shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible during performance hereunder and for a period of four (4) years from the date of final payment by CITY to the AUTHORITY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-0-0634 to be executed on the date first written above.

CITY OF COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: [Signature]  
Mayor, City of Costa Mesa

By: [Signature]  
Lisa Mills  
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: [Signature]  
Mary T. Elliott - Deputy  
City Clerk

By: [Signature]  
Kennard R. Smart, Jr.  
General Counsel

APPROVED AS TO FORM:

By: [Signature]  
City Attorney