

COOPERATIVE AGREEMENT NO. C-3-0209
FOR THE
ORANGE COUNTY CENTERLINE LIGHT RAIL SYSTEM

BY AND BETWEEN

THE CITY OF COSTA MESA
AND THE
ORANGE COUNTY TRANSPORTATION AUTHORITY

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CITY OF COSTA MESA
AND THE
ORANGE COUNTY TRANSPORTATION AUTHORITY

THIS AGREEMENT ("Agreement"), dated June 16, 2003, is made by and between the Orange County Transportation Authority ("Authority" or "OCTA"), a public corporation of the State of California, and the City of Costa Mesa ("City"), a municipal corporation duly organized and existing under the Constitution and the laws of the State of California.

RECITALS

WHEREAS, The Authority is responsible for preparing preliminary engineering (PE) plans and a Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) for the Centerline Light Rail System as defined by the Locally Preferred Alternative (LPA), currently defined as extending from the Santa Ana Transportation Center to the University of California, Irvine, and subject to any and all subsequent revisions to the LPA.

WHEREAS, The PE and the FEIS/EIR will lead to deciding the alignment, elevation, technology, and station locations of the Centerline Light Rail System.

WHEREAS, The Centerline Light Rail System will be refined in cooperation with the cities of Santa Ana, Costa Mesa and Irvine, each of the cities through which it traverses, in terms of measures to enhance ridership, avoid and/or minimize adverse impacts, and reduce construction and operational costs.

WHEREAS, The City has an interest in the Centerline Light Rail System alignment, technology, and station locations in terms of how they may positively benefit or adversely impact the City in terms of its land use and economic development plans, the mobility of its residents, the business climate, and the physical environment.

WHEREAS, The City and the Authority desire to cooperate to the end that the Centerline Light Rail System planning, engineering, and environmental activities are undertaken and completed in ways that meet the mutual objectives and goals of the parties.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1

SCOPE AND DEFINITIONS

1.1 Scope of Agreement

This Agreement specifies the roles and responsibilities of the Authority and the City in the PE and FEIS/EIR phases, including the planning, engineering, and environmental processes that will be used to bring forward for decision making the key issues involved in The CenterLine Light Rail System within the boundaries of City. This Agreement also specifies the manner in which the City will be reimbursed for its costs related to the activities and work it performs as part of the Agreement. Both the Authority and the City agree that each will cooperate and coordinate with the other in all activities covered by this Agreement relating to The CenterLine Light Rail System within the boundaries of City.

1.2 Definitions

For the purpose of this Agreement, the following terms shall have the meanings set forth below:

1.2.1 Alignment (Horizontal) is defined as the centerline of a right-of-way of approximately 30 feet in width required to place the tracks that allow the rail system vehicles to operate in both directions.

1.2.2 Authority Representative is defined as the Chief Executive Officer of the OCTA, or his/her authorized representative, who has the power to conduct meetings and make approvals as required by this Agreement.

1.2.3 CenterLine Light Rail System is defined as the alignment, elevation, right-of-way, technology, stations, trackage, parking structures, substations, maintenance yards, vehicles and other components that will undergo preliminary engineering and environmental review in the PE and FEIS/EIR phases.

1.2.4 The CenterLine Project (Project) is defined as any and all activities required to bring the Centerline Light Rail System to fruition during all phases, from planning to revenue service. Project activities include but are not limited to local, regional and federal governmental involvement and approvals; funding and budgeting; preparation of and modifications to the Locally Preferred Alternative (LPA) and the Project Management Plan (PMP); conceptual engineering; PE; all versions of environment impact statements/reports; final engineering, right-of-way acquisition; utilities coordination and relocation; procurement; construction; public involvement; transit-oriented development; testing and startup.

1.2.5 City Representative is defined as City Manager of the City, or his/her authorized representative, who has the power to conduct meetings and make approvals as required by this Agreement.

1.2.6 Elevation (Vertical) is defined as the vertical elevation of the track in relation to the surrounding landscape; the tracks may be placed at surface, may be elevated, may be placed in an open cut below surface, or may be below the surface in a tunnel.

1.2.7 FEIS/EIR is defined as the Final Environmental Impact Statement and Environmental Impact Report that analyzes the environmental impacts of a project. The FEIS/EIR is required by the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) as part of a project that uses federal, state, and local funds to construct and/or operate.

1.2.8 Joint Development is defined as a term of art for many different forms of public/private sector cooperation in the development of new structures and facilities to be built in and around CenterLine Rail Stations and CenterLine Rail Station Areas.

1.2.9 Locally Preferred Alternative (LPA) is defined as the preferred alignment, elevation, technology, station locations, and other components of The CenterLine Light Rail System that is established with the Cities and approved by the OCTA Board of Directors, including any approved modifications.

1.2.10 Participating Cities is defined as those cities in the current LPA, which are Santa Ana, Costa Mesa, and Irvine.

1.2.11 Preliminary Engineering (PE) is defined as the work necessary to bring the level of design for the alignment, elevation, technology, station locations and other components of The CenterLine Light Rail System sufficient to satisfy FEIS/EIR development and meet FTA requirements for advancing into final design. PE design is approximately 30% of final design.

1.2.12 Project Management Plan (PMP) is the document prepared by the Authority to describe The CenterLine Project and define the methodologies and implementation framework to be used in managing budgets, schedules, funding, procurement, staffing, public involvement, agency coordination, utilities coordination, right-of-way acquisition, consultants and contractors throughout all phases of development. The PMP is periodically updated and supplemented as the Project evolves in the various phases.

1.2.13 Station is defined as the location(s) where The CenterLine Light Rail System will stop at intervals to allow for passenger boarding and exiting including the facilities specifically required for transit passengers, buses, autos, pedestrians and bicycles to access the site.

1.2.14 Station Area is defined as the area extending approximately one-quarter of a mile from the centroid of each CenterLine Station.

1.2.15 Station Area Planning is defined as the comprehensive land use and development plans for Station Areas.

1.2.16 Transit-Oriented Development (TOD) is defined as the public and private sector facilities and investments planned and constructed in transit corridors which form a linkage between land use and transit services to enhance urban living, the economy, and the environment while increasing transit ridership.

1.2.17 Work Scope Authorization is defined as the document that the Authority and the City shall draft for the specific work items to be performed by City consultants. The Work Scope Authorization authorizes City-directed consultants to perform the necessary support work for the planning, PE, stations, station area plans, FEIS/EIR, and/or other agreed-upon work plans, and for the City to receive reimbursement from the Authority pursuant to the terms and conditions of the Agreement.

ARTICLE 2

PRELIMINARY ENGINEERING /FINAL ENVIRONMENTAL IMPACT STATEMENT WORK GUIDELINES

2.1 Engineering and Environmental Coordination Guidelines

2.1.1 The Authority and the City, in cooperation with other Participating Cities, shall establish general guidelines, working relationships, administrative policies, and approval procedures with respect to review of the PE work and the FIES/EIR work in order to permit the timely completion of this phase of The CenterLine Project. The major activities, the schedule, and the institutional coordination process will be in accordance with the Project Management Plan transmitted to the Federal Transit Administration (FTA).

2.1.2 The Authority will be updating the Project Management Plan on a periodic basis in accordance with FTA requirements.

2.1.3 It is agreed by both parties that it is desirable not to re-open for further analysis and decision making any scheduled milestone task once it is approved and/or adopted by the Authority Board of Directors.

2.2 Work to be performed by the Authority

2.2.1 Authority is the owner/operator of The CenterLine Light Rail System, and as such is responsible to plan, fund, design, construct, and operate the system.

2.2.2 PE and FEIS/EIR tasks: Authority will manage the PE, FEIS/EIR, and Project Management Consulting (PMC) contracts.

2.2.3 Public Outreach: Authority will manage the public involvement contracts and coordinate with the City as identified in Article 4 of this document.

2.2.4 Station Area Planning: Authority will manage the development of Station Area Plans.

2.2.5 Project Funding: Authority shall be the lead agency, and have sole discretion, for requesting state and federal funding for The CenterLine Project. Authority will be the lead agency in presenting The CenterLine Project to regional, state and federal agencies unless the City is requested by Authority to assist in presentations.

2.2.6 Authority will perform special studies as necessary.

2.2.7 Authority will manage the preliminary design review effort to correspond to the aggressive PE program schedule being established for The CenterLine Project.

2.3 Work to be Performed by City

2.3.1 City as Street Owners: The City owns, or has easements for use of, the streets in which The CenterLine Project will be constructed. Permanent easements may be needed by the Authority for operations and construction easements may be needed by its constructors to build the Centerline Light Rail System. When requested, City will help locate and identify easements required by the Authority. City will grant such permanent easements for City-owned streets to Authority with or without cost to the Authority. The necessary financial arrangements for the value of any land transfers will be considered between the City and Authority and will require City Council approval. City will assist the Authority in obtaining easements for use of streets not owned by City.

2.3.2 Participation in PE/FEIS: City agrees to assign sufficient staff to attend meetings, review documents, provide timely comments, go on tours, and otherwise reasonably assist Authority in the completion of the CenterLine PE and FEIS EIR work, including special studies as requested.

2.3.3 Environmental Impacts and Mitigations: City has provided formal comments and input to The CenterLine Draft Environmental Impact Statement (DEIS) and Supplemental Draft Environmental Impact Statement (SDEIS). City agrees that these comprise the full extent of City comments, and unless alternative and feasible mitigation for these impacts are discovered as part of the FEIS/EIR phase, these comments stand. City will comment on alternatives and alignments pursued during PE and will assist as requested in preparation of the FEIS/EIR.

2.3.4 Station Area Plans: City will assist in the preparation of Station Area Plans for each station site identified in the LPA.

2.3.5 Transit Oriented Development/Joint Development: City will continue to participate in furthering the goals of TOD as is consistent with the City's General Plan. City will work with Authority and the property owner to pursue opportunities to plan and construct improvements to the mutual benefit of The CenterLine and the property owner. City agrees to notify Authority of any proposed developments adjacent to CenterLine station sites that might be conducive to joint development projects or shared construction with the adjacent property owner.

2.3.6 Support of Authority Funding Requests: City agrees that, when reasonably requested by Authority, it will support local, state and federal funding for The CenterLine Project. Support may take the form of letters, meetings, presentations, tours, and other means of demonstrating city support for The CenterLine Project.

2.3.7 Action Regarding PE and FEIS Decisions: City recognizes that Authority is making a significant investment in the PE and FEIS/EIR work, and that future phases of The CenterLine Project will be costly. City agrees that, prior to the conclusion of PE and FEIS/EIR, and if requested by Authority and agreeable to City, City will take final and formal action as appropriate in regard to the system route, technology, station site and design, environmental mitigations, project schedule, and other related decisions.

2.3.8 Utilities: City will coordinate with Authority to identify impacted utilities, and to review the relocation designs and locations. If the City is eligible for utility relocation funding, the City and Authority shall work together in securing these funds in advance of The CenterLine Project construction.

2.3.9 Drainage: City will coordinate with Authority regarding the drainage design so that this work is completed in conformance with the utility relocation design work and in accordance with the City's drainage plan and County of Orange Master Plan of Drainage.

2.3.10 Traffic: City will jointly review with Authority the traffic evaluation issues of the PE design.

2.3.11 Site Visits: The City will advise and coordinate with the Authority at least 10 working days prior to any site visits to other transit properties related to technical and system research.

ARTICLE 3

AUTHORITY FUNDING FOR PE/FEIS WORK BY CITY

3.1 Funding Allocation

The Authority has committed the sum in a Not to Exceed Amount of \$250,000 to the City of Costa Mesa to fund in part the City's participation in The CenterLine Project's PE and FEIS/EIR phases.

3.2 Invoicing Procedures

3.2.1 The parties agree that the following procedures shall be observed for submission by the City to the Authority of quarterly invoices for the work performed by the City under this Agreement. The City shall submit to the Authority the following:

3.2.1.1 Request for reimbursement to include a certification letter from the Public Works Director stating the staff support plan has been authorized, or that planned project contracting will be used, or that a combination of both will be utilized.

3.2.1.2 City's cost estimate of the staff support plan.

3.2.1.3 City's invoice for \$125,000 (50% of the total allocated amount).

3.2.2 Work to be performed by City consultants requires execution of a Work Scope Authorization prior to the start of work.

3.2.3 Authority shall release \$125,000 (50% of the total allocated amount) to the City after the invoice is approved by Authority. The City shall draw down this initial 50% amount with quarterly invoices. The remaining \$125,000 shall be paid by Authority to City as quarterly invoices are received and approved by the Authority.

3.2.4 Invoices shall be in a format prescribed by the Authority, shall specify costs incurred for the invoice period, shall include a summary of costs invoiced to

date, and shall be supported by appropriate documentation. Documentation in support of costs shall include a breakout of approved hourly rates for City employees, invoices for consultants, supporting documentation for all expenses invoiced and, in accordance with FTA requirements, a progress report summarizing the work performed during the period. Invoices shall be addressed to the designated Authority Representative. The final invoice shall be submitted to the Authority as soon as practicable following the completion of the work.

3.3 Payment of Invoices

The Authority shall review, approve, and make payment for all accepted work included in each invoice presented by the City within thirty (30) days of receipt thereof; provided, however, that such payments shall be conditional subject to post-audit adjustments. The Authority may withhold amounts on a billing which are not properly documented or lack supporting information required by the Authority's invoicing format and procedures.

3.4 Audit and Inspection

After receipt of reasonable notice and during normal business hours, Authority shall have reasonable rights to inspect and audit the other's records relating to its performance hereunder from the date of execution through and until three (3) years after completion of The CenterLine Project work or from the date of final payment by the Authority, which ever is later.

ARTICLE 4

PUBLIC INVOLVEMENT ON-CALL CONSULTING SERVICES

4.1 Mutual Responsibilities

4.1.1 Authority and the City have mutually agreed to work collaboratively with on-call firms in the development of City-specific public involvement programs, including community and local government relations, minority outreach, project management and oversight, graphics, copywriting, opinion research and polling, computer simulations, creating and managing an interactive website, mailing, and printing for The CenterLine Project.

4.1.2 Authority and City recognize the need for placing firms, through a competitive procurement, on an on-call list for public involvement services. As the needs arise, firms will be awarded Contract Task Orders (CTOs) on a competitive basis in accordance with the Authority's CTO process.

4.1.3 The Authority and City agree that all work performed by on-call consultants will be administered in accordance with the agreement between the Authority and the consultant.

4.2 Responsibilities of the Authority

4.2.1 Authority will fund the full cost of public involvement programs related to the on-call list of consultants as agreed to by the parties and specified below in Article 4.4.

4.2.2 Authority will manage, administer, coordinate and oversee public involvement for the Project in order to ensure that all parties support and adhere to the Project schedule, quality and budget goals.

4.3 Responsibilities of the City

4.3.1 City will establish the needs and purposes for which on-call public involvement services are needed, develop a scope of work, if required, and assist Authority in choosing on-call consultants to perform the work using the CTO process.

4.3.2 City will coordinate and monitor on-call consultants' work to assure successful and timely performance of the work.

4.4 Funding for Public Involvement On-Call Consultant Services

4.4.1 The Authority will fund services up to a maximum amount of \$60,000 for the fiscal year 2002/2003. Such monies shall be used to pay for the consultant services.

4.4.2 Funding for the fiscal year 2003/2004, if any, will require approval of the Authority's Board of Directors and be added to this agreement by amendment.

ARTICLE 5

MISCELLANEOUS PROVISIONS

5.1 Indemnification

The City shall indemnify, defend and hold harmless the Authority, its officers, directors, employees and agents from, and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, damage to, or loss of property caused by the negligent acts, omissions or willful

misconduct by the City, its officers, directors, employees, or agents in connection with or arising out of the performance of the Agreement.

The Authority shall indemnify, defend and hold harmless City, its officers, directors, employees and agents from, and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, damage to, or loss of property caused by the negligent acts, omissions or willful misconduct by the Authority, its officers, directors, employees or agents arising out of the performance of this Agreement.

5.2 Approvals; Further Documents

Where the Agreement requires approval, consent, permission, satisfaction, agreement, or authorization by either party, such approval, consent, permission, satisfaction, agreement, or authorization shall not be unreasonably withheld. The parties agree to execute such further documents, agreements, instruments, and notices as may be necessary or appropriate to effectuate the transactions contemplated by this Agreement so long as it is in compliance with the City's adopted General Plan.

5.3 Notices

Any notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of delivery to the addresses set forth below, or five (5) days after deposit in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City:

City of Costa Mesa
City Hall
77 Fair Drive
Costa Mesa, CA 92626
Attention: Allan Roeder
City Manager
Tel: (714) 754-5328

With courtesy copies to:

City of Costa Mesa
City Hall
77 Fair Drive
Costa Mesa, CA 92626
Attention: Peter Naghavi
Manager of Transportation Services
Tel: (714) 754-5182

To Authority:

Orange County Transportation Authority
550 South Main Street
P O Box 14184
Orange, CA 9863-1584
Attention: Kathleen Perez
Section Manager, CAMM
Tel: (714) 560-5743

With Courtesy copies to:

Orange County Transportation Authority
500 South Main Street
P.O. Box 14184
Orange, CA 9863-1584
Attention: Charles Guess
Program Manager
The CenterLine Project
Tel: (714) 560-5775

The parties also may designate other procedures for the giving of notice as required or permitted under the terms of the Agreement, but each such alternate procedure shall be described in writing and signed by the Authority Representative and the City Representative.

5.4 Waiver

The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one of more instances, shall be deemed to be or construed as a waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

5.5 Entire Agreement; Modification

The Agreement, with attachments, contains the entire agreement of the parties with respect to the matters addressed herein. While this Agreement may be amended by agreement of the parties at any time, it may not be amended, modified, superseded or canceled, nor may any of the terms, covenants, representations, warranties, or conditions hereof be waived, except by written instrument executed by the parties after approval of said amendment(s) by the governing bodies of the Parties.

5.6 Time of Essence

Time is of the essence in this Agreement, and the parties shall act accordingly in terms of meeting the schedule dates.

5.7 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

5.8 Severability

In the event that any portion hereof is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

5.9 Gender and Tense

As used in this Agreement, the masculine, feminine, and neuter genders, and the singular and plural numbers shall each be deemed to include the other or other whenever the context so indicates.

5.10 Headings

The headings which appear at the commencement of each section in the Attachments are descriptive only and for convenience in references to this Agreement. Should there be any conflict between any heading and the section itself, the section itself and not the heading shall control as to content.

5.11 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 materials, products, plants or facilities by the federal, state or local government; nation 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.

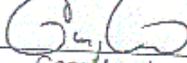
5.12 Release of Information

No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by City to any other person or agency without prior coordination with the Authority, except as necessary for the performance of services under this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be coordinated with the Authority prior to release, unless otherwise agreed to by City and Authority.

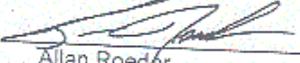
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

ORANGE COUNTY TRANSPORTATION AUTHORITY

CITY OF COSTA MESA

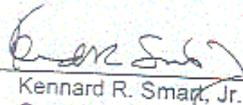
By 
Gary Monahan
Mayor

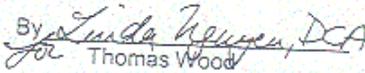
By _____
Arthur T. Leahy
Chief Executive Officer

By 
Allan Roeder
City Manager

APPROVED AS TO FORM:

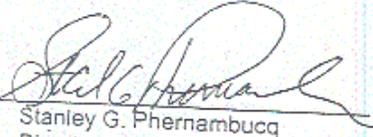
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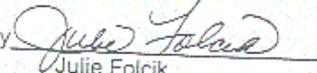
By 
Kennard R. Smart, Jr.
General Counsel

By 
for Thomas Wood
Acting City Attorney

APPROVED:

ATTEST:

By 
Stanley G. Phernambucq
Director,
Transportation Systems Development
Date 23 Jan 05

By 
Julie Folcik
Deputy City Clerk