**COOPERATIVE AGREEMENT NO. C- 6-0808**

**BETWEEN**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY OF COSTA MESA**

**FOR**

**CITY-INITIATED TRANSIT EXTENSIONS TO METROLINK**

**THIS AGREEMENT** is made and entered into this _____day of _____ 2006, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), acting on behalf of the Orange County Local Transportation Authority, and the City of Costa Mesa, 77 Fair Drive, Costa Mesa, CA, 92628, a municipal corporation (hereinafter referred to as "CITY").

**RECITALS:**

**WHEREAS**, AUTHORITY considers its railroad lines linking Los Angeles and San Diego Counties and the Inland Empire to be the core of Orange County's future rail transit system; and

**WHEREAS**, CITY and AUTHORITY wish to work as partners to develop a community-based transit vision that increases use of Metrolink by Costa Mesa residents, visitors, and/or employees; and

**WHEREAS,** the funds allocated through this program must comply with the 1990 Measure M ordinance which states in part that the intent is to provide matching funds to encourage development of extensions to major activity centers and to provide access between the primary rail system and employment centers; and

**WHEREAS**, CITY is encouraged to enter into written agreements with other cities to collaborate in some or all facets of a planning and needs assessment to support this vision; and

**WHEREAS**, Measure M funds have been designated for cities to study ways to accomplish this; and

**WHEREAS,** CITY will develop a proposed Project Concept (further defined hereunder) which will factor in, among other elements, community interests and desires; and

**WHEREAS**, the AUTHORITY's Board of Directors on February 27, 2006, allocated Measure M funds to a program designed to enable cities that wish to develop a local transit vision including defined enhancements and transit extensions to Metrolink that work best with their local community's short and long-term priorities (hereinafter referred to as "GO LOCAL Step 1"); and

**WHEREAS**, CITY has completed the GO LOCAL Step 1 Project Concept form, and AUTHORITY has found such concept acceptable; and

**WHEREAS**, CITY, upon AUTHORITY's execution of this Agreement, will pursue the Project Concept; and

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

**ARTICLE 1. COMPLETE AGREEMENT**

This Agreement, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the agreement between AUTHORITY and CITY concerning the GO LOCAL Step 1 work and supersedes all prior representations, understandings and communications between the parties. The invalidity in whole or part of any term or condition of this Agreement shall not affect the validity of the other terms or conditions.

**ARTICLE 2. SCOPE**

A. This Agreement specifies the procedures that AUTHORITY and CITY will follow in connection with the GO LOCAL Step 1 work to be performed by CITY. CITY agrees to provide all services identified in Project Concept, identified herein as Exhibit A to this Agreement. Both AUTHORITY and CITY agree that each will cooperate and coordinate with the other in all activities

covered by this Agreement and any other supplemental agreements.

B. Either Party's failure to insist upon the other Party's performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of such Party's right to such performance or to future performance of such terms or conditions and the other Party's obligation in respect to performance shall continue in full force and effect.

C. Changes to any portion of this Agreement shall not be binding upon either Party unless confirmed in writing by an authorized representative of both Parties by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

**ARTICLE 3. RESPONSIBILITES OF AUTHORITY**

AUTHORITY agrees to the following responsibilities for the GO LOCAL Step 1 work:

A. Payment- AUTHORITY shall pay CITY the amount identified in Article 5. PAYMENT, for the GO LOCAL Step 1 work within 30 days of receipt of acceptable invoice. Funds will not be distributed to CITY if AUTHORITY has not accepted CITY's Project Concept. CITY may resubmit an amended Project Concept for review by AUTHORITY. AUTHORITY has the sole and exclusive right to accept or reject any Project Concept.

B. Should CITY not complete the services identified in Exhibit A, or does not meet the terms and conditions of this Agreement, the CITY will return to AUTHORITY all monies funded to the CITY within sixty (60) days of AUTHORITY's written demand.

C. Additional Funding- Funding beyond what has been identified in Article 5. PAYMENT, shall be pursuant to a competitive process for projects initiated by AUTHORITY at a date to be determined. AUTHORITY does not guarantee that CITY will be selected to advance to the any future step in the GO LOCAL process.

**ARTICLE 4. RESPONSIBILITIES OF CITY**

CITY agrees to the following responsibilities for GO LOCAL Step 1 work:

A. Lead Agency- CITY will act as the lead agency for the GO LOCAL Step 1 work. However, CITY may designate pursuant to a written partnership letter of agreement that another city

participating in the GO LOCAL program is serving as lead agency for a joint Project Concept. AUTHORITY shall be provided a copy of this letter within ten (10) days after the agreement has been executed.

B. Third Party Partnerships- CITY is encouraged to collaborate with and enter into written agreements with adjacent cities to advance the project consistent with the Project Concept. CITY shall deliver to AUTHORITY a copy of each executed agreement within ten (10) days of execution.

C. Project Reporting- Within six months from the receipt of funds, CITY shall submit to AUTHORITY a progress report similar to that detailed in Exhibit B, entitled "GO LOCAL Initial Progress Report," attached to and, by this reference, incorporated in and made part of this Agreement. CITY shall be required to produce a final written report (Final Report) of its findings, recommendations, and next steps according to a mutually agreed upon date, but no later than the Completion Date (as defined below). The Final Report will include the elements described in Exhibit C, entitled "GO LOCAL Project Concept Final Report Outline." Exhibit C is attached to and, by this reference, incorporated in and made part of this Agreement.

D. Use Of Funding- CITY shall use funding provided by AUTHORITY exclusively for the services identified in Exhibit A. All funding released to CITY shall be spent in accordance with Local Transportation Ordinance Number 2: The Revised Orange County Traffic Improvement and Growth Management Ordinance. If CITY fails to develop and/or pursue the Project Concept in accordance with said Ordinance, or the CITY uses the Funds to support or facilitate acquisition of property through eminent domain or as matching funds to implement land development, all monies funded to the CITY shall be returned to AUTHORITY within sixty (60) days of AUTHORITY's written demand. AUTHORITY shall have sole discretion in determining whether the Project Concept has been developed and/or pursued in accordance with said Ordinance. AUTHORITY may terminate this Agreement, in whole or part, if the AUTHORITY determines in its sole discretion that CITY has utilized funds in a manner leading to use of eminent domain powers. Upon AUTHORITY's determination and written request, CITY shall return all monies in accordance with this Article.

E. Third Party Work- CITY shall deliver to AUTHORITY a copy of each executed agreement and scope of work for services to be performed by third parties in fulfillment of the Project Concept within thirty (30) days after the agreement has been executed.

F. Conduct- CITY shall conduct all of its activities in association with GO LOCAL Step 1 in a good and competent and professional manner and in compliance with all applicable federal, state and local rules and regulations.

G. Modeling—CITY shall utilize existing AUTHORITY modeling results to ensure that project results are compatible with AUTHORITY planning efforts. AUTHORITY shall make modeling available.

**ARTICLE 5. PAYMENT**

A. For CITY's full and complete performance of its obligations under this Agreement and subject to the maximum cumulative payment obligation provisions set forth in this Agreement, AUTHORITY shall pay CITY the not to exceed lump sum amount of One Hundred Thousand Dollars ($100,000.00) within thirty (30) days after execution of this Agreement and upon receipt of acceptable invoice.

B. As a supplement to the Final Report, CITY shall submit to AUTHORITY a Project Expenditures Certification, as detailed in Exhibit D, which is attached to this Agreement, and incorporated by reference, for work performed under this Agreement. The Certification shall include, but not be limited to, period of performance, actual expenses; classification, hours and rates of in-house personnel, vendors, contractors, for work performed exclusively for the GO LOCAL Step 1 phase. Additionally, CITY may be required to submit this information to the AUTHORITY at any time during the performance of this Agreement. CITY will be required to submit to AUTHORITY all information requested within thirty (30) days from AUTHORITY's request.

**ARTICLE 6. MAXIMUM OBLIGATION**

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CITY agree that AUTHORITY's maximum cumulative payment obligation hereunder (including CITY's

direct and indirect costs) shall be One Hundred Thousand Dollars ($100,000.00) which shall include all amounts payable incurred solely for the purposes of the GO LOCAL Step 1 work.

**ARTICLE 7. AUDIT AND INSPECTION**

CITY shall maintain a complete set of records in accordance with generally accepted accounting principles and in accordance with Local Transportation Ordinance Number 2: The Revised Traffic Improvement and Growth Management Ordinance. The original records shall be maintained within the CITY limits. Upon reasonable notice, CITY shall permit the authorized representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts and other data and records of CITY for a period of not less than four (4) years after final payment, or until any on-going audit is completed whichever is longer. For purposes of audit, the date of completion of this Agreement shall be the date of AUTHORITY's payment for CITY's final billing (so noted on the invoice) under this Agreement. AUTHORITY shall also have the right to reproduce any documents related to this Agreement by whatever means necessary.

**ARTICLE 8. INDEMNIFICATION**

Each Party shall indemnify, defend and hold harmless the other Party, 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, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by the indemnifying Party, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

**ARTICLE 9. ADDITIONAL PROVISIONS:**

The AUTHORITY and CITY agree to the following mutual responsibilities:

A. Term of Agreement- This Agreement shall continue in full force and effect through December 31, 2007 ("Completion Date"), unless terminated by mutual written consent by both Parties. The term of this Agreement may only be extended upon mutual written agreement by both Parties.

B. Termination - AUTHORITY may terminate this Agreement for its convenience any time, in whole or part, by giving CITY written notice thereof.

C. Modifications- This Agreement may be amended in writing at any time by the mutual consent of both Parties. No amendment shall have any force or effect unless executed in writing by both AUTHORITY and CITY.

D. Legal Authority- AUTHORITY and CITY hereto warrant that they are duly 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.

E. Notices- Any notices, requests or demands made between the parties pursuant to this Agreement are to be directed as followed:

| To CITY: | To AUTHORITY: |
|---|---|
| City of Costa Mesa | Orange County Transportation Authority |
| 77 Fair Drive | 550 South Main Street |
| | P. O. Box 14184 |
| Costa Mesa, CA 92628 | Orange, CA 92863-1584 |
| ATTENTION: Peter Naghavi | Attention: Kathleen Murphy-Perez, |
| Transportation Services Manager | Section Manager, Capital Projects |
| (714/754-5182); pnaghavi@costa-mesa.ca.us | (714/560-5743); kperez@octa.net |
| | c: Paul Taylor, Executive Director, |
| | Development Division |

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 to 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 a Party's 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. 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. Obligations Comply with Law- Nothing herein shall be deemed nor construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under terms, in amounts, or for purposes other than as authorized by local, State or Federal law.

K. Governing Law- The laws of the State of California and applicable Federal, State, local laws, regulations and guidelines shall govern hereunder.

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This Agreement shall be made effective upon execution by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-6-0808 to be executed on the date first above written.

**CITY OF COSTA MESA**

By: _____
Allan Roeder
City Manager

**ATTEST:**

By: _____
Julie Folcik
City Clerk

**APPROVED AS TO FORM:**

By: _____
Kimberly Hall Barlow
City Attorney

Dated: _____

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: _____
Arthur T. Leahy
Chief Executive Officer

**APPROVED AS TO FORM:**

By: _____
Kennard R. Smart, Jr.
General Counsel

**APPROVAL RECOMMENDED:**

By: _____
Paul Taylor, Executive Director
Development Division

Dated: _____

# GO LOCAL

## *STEP ONE PROJECT CONCEPT*

To qualify for funds your city project must focus on assessing ways to provide transit connections to Metrolink. Complete the Project Concept, and return with a signed Cooperative Agreement.

### A. Study Type

Project Concept assessments can cover or study any of the following topics. Please review the descriptions below and indicate the type of analysis you expect to perform by placing an (x) next to one (or more) of the following:

_____**Needs Assessments**
What are the transit needs? Identify populations, congestion areas, etc.

_____**Coordinating Transit *and* Land Use**
How can a transit project support your city's land use planning policies/projects and vice versa?

_____**Route Planning**
Existing data has identified activity centers, populations or congestion hot spots which warrant transit service. What are possible routes and types of transit?

_____**Public policy /public support**
Does the community support transit as evidenced by land use designations and the commitment of local stakeholders?

_____**Project Concepts**
Does the city have one or more general transit concepts which it would like to explore more fully in a detailed technical analysis?

_____**Make your own case**
Is there a concept that addresses a need in your city that you would like the Board of Directors to consider? Is this need consistent with the Measure M requirements that funds be spent on transit-related purposes to extend the reach of Metrolink?

### B. Project Overview

Please include a 250 to 300 word overview of your Project Concept.

### C. Partners

Please attach any letters of agreements which identify other jurisdictions participating in this Project Concept and your respective roles (See Checklist on Website).

# GO LOCAL

## *INITIAL PROGRESS REPORT*

**City/Date:** _____ **Prepared By**_____

## A. Project Overview Progress Report

Please include a 200-300 word description of progress to date. *To the extent possible*, you should describe what you are working on, your methodology, key staff and/or stakeholders, and any preliminary results.

## B. Project Resources

Please indicate all that apply:

- We've been utilizing consultants
  (Name(s):_____
- We've been doing some or all of the work in-house
- We have partnerships with:
  *(Include if not listed in Exhibit A)*

## C. Financial Report

Percentage of funding committed _____ expended_____

We foresee obstacles to completing the Project Concept scope with the funds available.

No____ Yes____

If yes, please explain in an attachment.

**Return to:** **Jeanne Spinner LaMar, Manager, Local Initiative**
**550 South Main Street**
**P.O. Box 14184**
**Orange, CA 92863-1584**

GO LOCAL

# *PROJECT CONCEPT*
# *FINAL REPORT OUTLINE*

At the conclusion of Project Concept work, all cities will submit a Final Report within _____days utilizing the outline below. Sections Five and Six below will constitute your proposal for the next phase of work.

1. **Summary of Project** **(1 page)**

2. **Study Questions** **(1 page)**

3. **Methodology Used** **(1 page)**

4. **Results** **(3-5 pages)**
   *Report against the Evaluation Criteria, i.e. financial considerations, community factors, transportation benefit.*

5. **Findings** **(4-5 pages)**
   *Your analysis of the results*

6. **Next Steps** **(5-7 pages)**
   *Identify:*
   - *what you wish to do next,*
   - *the methods you would use,*
   - *the staff, resources, and time you would need;*
   - *what you would expect to determine, and*
   - *the budget, your agency contribution, any partnerships and their contributions.*

**Return to:** **Jeanne Spinner LaMar, Manager, Local Initiative**
**550 South Main Street**
**P.O. Box 14184**
**Orange, CA 92863-1584**

GO LOCAL

# *PROJECT CONCEPT*
# Project Expenditures Certification

**SAMPLE**

| Consultant | Contract Number | Cost *Column A* | In-house Labor | Total hours charged to project x fully burdened hourly rate | *Cost Column B* | *TOTAL add A & B* |
|---|---|---|---|---|---|---|
| ABC | 001 | **25,000** | Sr. Planner | 500 hours x $85/hr | **42,500** | |
| XYZ | 002 | **30,000** | Admin Asst. | 100 x $25/hr | **2,500** | |
| | | | | | | |
| | | | | | | |
| | | **55,000** | | | **45,000** | **100,000** |

I hereby certify that the above is a true and correct statement of the work performed and costs incurred on the Project Concept.

_____ _____
Date Signed

_____
Title

**Return to:** **Jeanne Spinner LaMar, Manager, Local Initiative**
**550 South Main Street**
**P.O. Box 14184**
**Orange, CA 92863-1584**



Revised 8/01/2006