

COOPERATIVE AGREEMENT NO. C-9-0385

BETWEEN THE

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF COSTA MESA

FOR

(STATE ROUTE 55) /NEWPORT BOULEVARD PROJECT STUDY REPORT/

PROJECT DEVELOPMENT SUPPORT

THIS COOPERATIVE AGREEMENT is effective this \_\_\_\_day of \_\_\_\_\_ 2010, 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"), and the City of Costa Mesa, 77 Fair Drive, Costa Mesa, CA 92626, a municipal corporation duly organized and existing under the constitution and laws of the State of California (hereinafter referred to as "CITY").

RECITALS:

WHEREAS, AUTHORITY and CITY desire to enter into a Cooperative Agreement to conduct a Project Study Report/Project Development Support ("STUDY") to refine the alternatives developed during the Costa Mesa Freeway (State Route 55) Access Study, and to initiate more detailed analyses for improvements on State Route 55 south of 19<sup>th</sup> Street to Industrial Way in Costa Mesa; and

WHEREAS, AUTHORITY agrees to act as lead agency for management, administration, coordination, and oversight of said STUDY; and

WHEREAS, AUTHORITY agrees to provide Regional Surface Transportation Program ("RSTP") funds in an amount not-to-exceed \$1,000,000 for STUDY; and

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1           **WHEREAS**, CITY agrees to provide local match funds to AUTHORITY in the amount of  
2 11.47 percent of the total cost to prepare STUDY, in an amount not-to-exceed \$129,600; and

3           **WHEREAS**, AUTHORITY's Board of Directors (Board) directed that the impacts of STUDY  
4 proposed transportation alternatives on local businesses and commercial properties be evaluated by  
5 CITY, with AUTHORITY input, in a Business Impact Assessment ("BIA"); and

6           **WHEREAS**, AUTHORITY and CITY desire to herein specify their respective roles and  
7 responsibilities for completion of STUDY, and

8           **WHEREAS**, AUTHORITY's Board of Directors approved this Agreement on \_\_\_\_\_.

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

11           **ARTICLE 1. COMPLETE AGREEMENT**

12           A. This Agreement, including all exhibits and documents incorporated herein and made  
13 applicable by reference, constitute the complete and exclusive statement of the term(s) and  
14 condition(s) of this Agreement between AUTHORITY and CITY and supersedes all prior  
15 representations, understandings and communications. The invalidity in whole or part of any term or  
16 condition of this Agreement shall not affect the validity of other terms and conditions of this  
17 Agreement. The above-referenced Recitals are true and correct and are incorporated by reference  
18 herein.

19           B. AUTHORITY'S failure to insist on any instances of CITY's performance of any terms  
20 or conditions of this Agreement shall not be construed as a waiver or relinquishment of  
21 AUTHORITY's right to such performance or to future performance of such terms or conditions, and  
22 CITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of  
23 this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing  
24 by an authorized representative of AUTHORITY by way of a written amendment to this Agreement  
25 and issued in accordance with the provisions of this Agreement.

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1                   **ARTICLE 2. SCOPE OF AGREEMENT**

2                   This Agreement specifies the roles and responsibilities of the Parties as they pertain to the  
3 funding and completion of STUDY. Both AUTHORITY and CITY agree that each will cooperate and  
4 coordinate with the other in all activities covered by this Agreement and any other supplemental  
5 agreements that may be required to facilitate purposes thereof.

6                   **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

7                   AUTHORITY agrees to the following additional responsibilities for the STUDY:

8                   A.       To program one million dollars (\$1,000,000.00) and administer Regional Surface  
9 Transportation Program (RSTP) funding for STUDY.

10                  B.       To act as lead agency for management, administration, coordination, and oversight of  
11 STUDY.

12                  C.       To delegate Task Lead status and responsibility for project management, with  
13 respect to all STUDY related public outreach activities to CITY, subject to AUTHORITY'S ultimate  
14 oversight, review, and approval.

15                  D.       To delegate Task Lead status and responsibility for project management, with respect  
16 to development of BIA to CITY, subject to AUTHORITY'S ultimate oversight, review, and approval.

17                  E.       On the tasks delegated to the CITY, AUTHORITY will cooperate in providing required  
18 information for the conduct of BIA analysis including traffic volume projections and constructability  
19 concept reviews for all alternatives at a level of detail commensurate with the STUDY.

20                  F.       To work with CITY, the California Department of Transportation (Caltrans), the Cities  
21 of Newport Beach and Huntington Beach to develop a separate Memorandum of Understanding that  
22 identifies agency roles and responsibilities for completing STUDY.

23                  G.       To obtain RSTP funding through Caltrans' E-76 process, authorization to proceed, for  
24 this phase of STUDY.

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1           **ARTICLE 4. RESPONSIBILITIES OF CITY**

2           CITY agrees to the following responsibilities for the STUDY:

3           A.     To provide local match funds to AUTHORITY in the amount of 11.47 percent of total  
4 cost to prepare STUDY, in an amount not-to-exceed \$129,600.

5           B.     To review all consultant deliverables and related documents and provide appropriate  
6 comments within ten (10) working days.

7           C.     To accept designation of Task Lead status and responsibility for project management,  
8 with respect to all STUDY related public outreach activities, subject to AUTHORITY'S ultimate  
9 oversight, review, and approval.

10          D.     To accept designation of Task Lead status and responsibility for project management,  
11 with respect to development of BIA, subject to AUTHORITY'S ultimate oversight, review, and  
12 approval.

13          E.     CITY agrees that for tasks where it is accepting Task Lead status, that it will  
14 incorporate and respond to AUTHORITY comments, input, direction, and comments, within a timely  
15 manner.

16          F.     To provide existing as-built plans, utility plans, documents, accident data, traffic data,  
17 and other information pertinent to STUDY, BIA, and Public Outreach Activities, at no cost, to STUDY  
18 consultant team.

19          G.     CITY agrees that because federal RSTP dollars are being utilized to fund this  
20 STUDY, that in the subsequent environmental phase of study, completion of a National  
21 Environmental Policy Act environmental document will be pursued within 10 a year time.

22           **ARTICLE 5. DELEGATED AUTHORITY**

23           The actions required to be taken by CITY in the implementation of this Agreement are  
24 delegated to its City Manager or his designee and the actions required to be taken by AUTHORITY  
25 in the implementation of this Agreement are delegated to its Chief Executive Officer.

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1                   **ARTICLE 6. INDEMNIFICATION**

2           A.       CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,  
3 employees and agents from and against any and all claims (including attorney's fees and reasonable  
4 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,  
5 worker's compensation subrogation claims, damage to or loss of use of property alleged to be  
6 caused by the negligent acts, omissions or willful misconduct by CITY, its officers, directors,  
7 employees or agents in connection with or arising out of the performance of this Agreement.

8           B.       AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,  
9 employees and agents from and against any and all claims (including attorney's fees and reasonable  
10 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,  
11 worker's compensation subrogation claims, damage to or loss of use of property alleged to be  
12 caused by the negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors,  
13 employees or agents in connection with or arising out of the performance of this Agreement.

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

16                   **ARTICLE 7. IT IS MUTALLY UNDERSTOOD AND AGREED:**

17           All parties agree to the following mutual responsibilities:

18           A.       This Agreement shall continue in full force and effect through June 30, 2012, unless  
19 terminated earlier by mutual written consent by both Parties. The term of this Agreement may only  
20 be extended upon mutual written agreement by both Parties.

21           B.       This Agreement shall not be terminated without mutual written consent of both  
22 Parties.

23           C.       This Agreement may be amended in writing at any time by the mutual consent of both  
24 parties. No amendment shall have any force or effect unless executed in writing by both parties.

25           D.       The persons executing this Agreement on behalf of the parties hereto warrant that  
26 they are duly authorized to execute this Agreement on behalf of said Parties and that, by so

1 executing this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

2 E. All notices, hereunder and communications regarding the interpretation of the terms of  
3 this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by  
4 depositing said notices in the U.S. mail, registered, or certified mail and addressed as follows::

5 To CITY:

6 City of Costa Mesa  
7 77 Fair Drive  
8 Costa Mesa, CA 92628  
9  
10 Attention: Julie Folcik  
11 City Clerk  
12 714-754-5225

To AUTHORITY:

Orange County Transportation Authority  
550 South Main Street  
P. O. Box 14184  
Orange, CA 92863-1584  
Attention: Sarah L. Strader,  
Senior Contract Administrator  
(714/560-5633) [sstrader@octa.net](mailto:sstrader@octa.net)

13 F. The headings of all sections of this Agreement are inserted solely for the convenience  
14 of reference and are not part of and not intended to govern, limit, or aid in the construction or  
15 interpretation of any terms or provisions thereof.

16 G. If any term, provision, covenant, or condition of this Agreement is held to be invalid,  
17 void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder  
18 to this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

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

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

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

8 I. Obligations To Comply with Law- Nothing herein shall be deemed nor construed to  
9 authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the  
10 terms, in amounts, or for purposes other than as authorized by local, state or federal law.

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

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

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This Agreement shall be effective upon execution by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-9-0385 to be executed on the date first above written.

**CITY OF COSTA MESA**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Allan Roeder  
City Manager

By: \_\_\_\_\_  
Will Kempton  
Chief Executive Officer

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Julie Folick  
City Clerk

By: \_\_\_\_\_  
Kennard R. Smart, Jr.  
General Counsel

**APPROVED AS TO FORM:**

**APPROVAL:**

By: \_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

By: \_\_\_\_\_  
Kia Mortazavi, Executive Director  
Development

Dated: \_\_\_\_\_

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