

1                   **MEMORANDUM OF UNDERSTANDING NO. C-0-1306**

2                                   **BY AND BETWEEN**

3                   **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4                                   **AND**

5                   **CALIFORNIA DEPARTMENT OF TRANSPORTATION**

6                                   **AND**

7                                   **CITY OF COSTA MESA**

8                                   **AND**

9                                   **CITY OF NEWPORT BEACH**

10                                  **AND**

11                                  **CITY OF HUNTINGTON BEACH**

12                   **PROJECT STUDY REPORT/PROJECT DEVELOPMENT SUPPORT FOR STATE ROUTE 55**

13                                  **EXTENSION FROM 19<sup>TH</sup> STREET TO INDUSTRIAL WAY**

14                   **THIS MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as "MOU") is entered by  
15 and between the Orange County Transportation Authority, (hereinafter referred to as "AUTHORITY"),  
16 the City of Costa Mesa, the City of Newport Beach, the City of Huntington Beach, and California  
17 Department of Transportation, (Caltrans) hereinafter referred to as the "AGENCIES" or "AGENCY".

18                   **WHEREAS**, AUTHORITY as the County Transportation Commission (CTC) and Regional  
19 Transportation Planning Agency (RTPA) for Orange County is responsible for the development of  
20 projects and strategies that will help relieve traffic congestion and increase mobility within Orange  
21 County;

22                   **WHEREAS**, the AUTHORITY in association with the City of Costa Mesa previously completed  
23 the State Route 55 Access Study that included an assessment of potential transportation improvement  
24 alternatives, along and adjacent to the Costa Mesa Freeway (SR-55)/Newport Boulevard Corridor (from  
25 the terminus of SR- 55 to Industrial Way), within the City of Costa Mesa;

1           **WHEREAS**, pursuant to its approved Fiscal Year 2009-2010 budget, the AUTHORITY will  
2 engage in procurement, initiation, and development of a Project Study Report/Project Development  
3 Support (PSR/PDS) for SR-55/Newport Boulevard from 19<sup>th</sup> Street to Industrial Way, to further refine  
4 alternative improvement strategies identified in the SR-55 Access Study for ultimate CALTRANS  
5 review and approval;

6           **WHEREAS**, CALTRANS and the Cities of Costa Mesa, Newport Beach, and Huntington Beach  
7 have a shared interest with the AUTHORITY in the further development and refinement of  
8 transportation improvement strategies identified for the SR-55/Newport Boulevard Corridor;

9           **WHEREAS**, the PSR/PDS will include refinement of the SR-55 Access Study, the  
10 AUTHORITY's Board of Directors (BOD) approved reduced set of alternative strategies—including  
11 Alternative 1 - No-Build/Baseline Condition; Alternative 3 - Transportation System Management (TSM)  
12 Improvements; Alternative 5 - Partially grade separated intersections at 19<sup>th</sup> and 17<sup>th</sup> Street; and  
13 Alternative 7 - Cut/Cover tunnel expressway between 19<sup>th</sup> Street and Industrial Way; and.

14           **WHEREAS**, the AUTHORITY and the City of Costa Mesa have entered into a separate  
15 Cooperative Agreement (No. C-9-0385) for the funding of the SR-55 PSR/PDS which will allow up to  
16 \$1,000,000 in Regional Surface Transportation (RSTP) funds, plus an 11.47% city funded local match  
17 to be expended on the PSR/PDS. Expenditures for the PSR/PDS will commence upon the  
18 AUTHORITY's issuance of a Notice to Proceed (NTP).

19           **WHEREAS**, AUTHORITY and AGENCIES desire to enter into this MOU to demonstrate their  
20 commitment to improving transportation opportunities for Orange County and to develop and implement  
21 the SR-55 Expansion PSR/PDS project.

22           **NOW, THEREFORE**, the parties enter into the following Memorandum of Understanding with  
23 respect to the matters set forth herein:

24           1. The AUTHORITY will manage and facilitate completion of the PSR/PDS (all transportation  
25 related) components of the project. The City of Costa Mesa, based upon BOD direction, will manage  
26 and facilitate a public outreach and business impact assessment to ascertain the potential community

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1 and economic impacts associated with implementation of the various improvement alternatives.

2 2. AUTHORITY shall assist in building consensus among the AGENCIES with respect to the  
3 required services for the PSR/PDS.

4 3. AUTHORITY and AGENCIES agree to work closely together throughout the PSR/PDS process  
5 to provide technical input, applicable planning/utility data, constructive and agency appropriate  
6 feedback with respect to all documents, products and deliverables developed and associated with the  
7 PSR/PDS.

8 4. AUTHORITY and AGENCIES agree to review and provide comment on all documents,  
9 products, and deliverables associated with the PSR/PDS, within in a timely fashion, and agree to abide  
10 by the project review timeline as will be established by the project schedule.

11 5. The AUTHORITY and AGENCIES agrees to cooperate and coordinate with all other parties,  
12 their staff, contractors, consultants, vendors, in providing the services and responsibilities required  
13 under this MOU to the extent practicable with respect to the performance of the PSR/PDS.

14 6. The AUTHORITY and AGENCIES agree to work together in good faith, using reasonable efforts  
15 to resolve any unforeseen issues and disputes arising out of the performance of this MOU.

16 7. The AUTHORITY and AGENCIES shall designate a lead person for liaison among the  
17 AGENCIES.

18 8. Caltrans, as the agency with ultimate signature authority, agrees to provide sufficient oversight,  
19 review, and input with respect to this work effort including all products, documents, and deliverables.

20 9. The signatories agree in good faith to provide the resources necessary to implement the  
21 provisions of the MOU. Nothing in this MOU shall be construed, however, as obligating the signatories  
22 to expend funds, or for the future payment of money.

23 10. AUTHORITY and AGENCIES agree to defend, indemnify and hold harmless the other parties,  
24 their Officers, agents, elected officials, and employees, from all liability, claims, losses and demands,  
25 including defense costs and reasonable attorneys' fees, whether resulting from court action or  
26 otherwise, arising out of the acts or omissions of the defending party, its officers, agents, or employees,

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1 in the performance of the MOU. When acts or omissions of one party are directed by another party, the  
2 party directing the acts or omission shall owe this defense and indemnity obligation to the AGENCY  
3 following the directions. The provisions of this paragraph shall survive termination of this MOU.

4 11. This MOU shall be governed by all applicable federal, state, and local laws. The parties  
5 warrant that in the performance of this MOU, each shall comply with all applicable federal, state and  
6 local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated there  
7 under.

8 12. This MOU may only be modified or amended upon written mutual consent of all parties. All  
9 modifications, amendments, changes and revisions of this MOU in whole or part, and from time to time,  
10 shall be binding upon the parties, so long as the same shall be in writing and executed by the  
11 AGENCIES.

12 13. This MOU, including all exhibits and documents incorporated herein and made applicable by  
13 reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of the  
14 agreement between the parties and it supersedes all prior representations, understandings and  
15 communications. The invalidity in whole or part of any term or condition of this MOU shall not affect the  
16 validity of the other term(s) or condition(s).

17 14. Any Party may withdraw from this MOU upon 30 days written notice to the other.

18 15. Each party shall be excused from performing its obligations under this MOU during the time  
19 and to the extent that it is prevented from performing by an unforeseeable cause beyond its control,  
20 including but not limited to: any incident of fire, flood; acts of God; commandeering of material,  
21 produces, plants or facilities by federal, state or local government; national fuel shortage; or a material  
22 act or omission by any other party; when satisfactory evidence of such cause is presented to the other  
23 parties, and provided further such nonperformance is unforeseeable, beyond the control and is not due  
24 to the fault or negligence of the party not performing.

25 16. Any notice sent by first class mail, postage paid, to the address and addressee, shall be  
26 deemed to have been given when in the ordinary course it would be delivered. The representatives of

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1 the parties who are primarily responsible for the administration of this MOU, and to whom notices,  
2 demands and communications shall be given are as detailed in Attachment A. If there are any changes  
3 in the names and/or addresses listed in Attachment A, the party desiring to make such changes shall  
4 give a written notice to the other respective parties within five (5) days of such change.

5 17. This MOU shall continue in full force and effect through June 30, 2012 unless terminated  
6 earlier by AUTHORITY. The parties may elect to extend the term of this MOU. The term of the MOU  
7 may only be extended upon mutual written agreement by all parties.

8 **IN WITNESS WHEREOF**, the parties hereto have caused this MOU No. 0-1306 to be executed on  
9 the date first above written.

10 **CITY OF COSTA MESA**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

11 By \_\_\_\_\_  
12 Allan Roeder  
13 City Manager

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

14 **ATTEST:**

**APPROVED AS TO FORM:**

15 By \_\_\_\_\_  
16 Julie Folick  
17 City Clerk

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

18 **APPROVED S TO FORM:**

**APPROVED:**

19 By \_\_\_\_\_  
20 Kimberly Hall Barlow  
21 City Attorney

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

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**CALIFORNIA DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_  
Cindy Quon  
District 12, District Director

APPROVED AS TO FORM:

By \_\_\_\_\_  
Glenn Mueller  
General Counsel

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**CITY OF HUNTINGTON BEACH**

By \_\_\_\_\_  
Fred Wilson  
City Administrator

**ATTEST:**

By \_\_\_\_\_  
Joan L. Flynn  
City Clerk

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Jennifer McGrath  
City Attorney

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**CITY OF NEWPORT BEACH**

By \_\_\_\_\_  
Dave Kiff  
City Manager

ATTEST:

By \_\_\_\_\_  
Leilani I. Brown  
City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
David Hunt  
City Attorney