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COOPERATIVE AGREEMENT NO. C-9-0815

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF LONG BEACH

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6 **THIS AGREEMENT**, is effective this 13th day of September, 2010, by and
7 between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,
8 Orange California 92863-1584, a public corporation of the State of California (herein referred to as
9 "AUTHORITY") and the City of Long Beach, 333 West Ocean Boulevard, Long Beach, California
10 90802, a municipal corporation duly organized and existing under the constitution and laws of the
11 State of California (herein referred to as "CITY").

RECITALS:

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13 **WHEREAS**, the AUTHORITY, in cooperation and partnership with the California Department
14 of Transportation (herein referred to as "STATE") is proposing to implement capacity and operational
15 improvements on the San Diego Freeway (I-405) that will link High Occupancy Vehicle (HOV) lanes
16 with those on the Garden Grove Freeway (SR-22) and San Gabriel River Freeway (I-605) to create
17 a seamless HOV connection amongst the three freeways (herein referred to as "PROJECT"); and

18 **WHEREAS**, the PROJECT will add direct HOV bridge connectors, add an additional HOV
19 lane on I-405 between SR-22 and I-605, extend HOV lanes on SR-22 to I-405, extend HOV lanes on
20 I-605 to I-405, demolish and reconstruct over-crossings, reconstruct on-ramps and off-ramps, and
21 other improvements; and

22 **WHEREAS**, the CITY has reviewed and concurs with the Transportation Management Plan
23 (TMP), prepared by the AUTHORITY and approved by the STATE, that addresses construction-
24 related impacts to existing CITY street traffic. The TMP includes normal traffic handling
25 requirements during PROJECT construction including staging, lane closures, re-striping, detours,
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1 and signalization, and specifies requirements for communicating with the public and local agencies
2 during construction; and

3 **WHEREAS**, the CITY has reviewed the Environmental Documentation for the PROJECT and
4 concurs that the PROJECT will provide public benefit and that the process followed and the findings
5 of the Environmental Documentation are acceptable to the CITY; and

6 **WHEREAS**, this Cooperative Agreement defines the specific terms, conditions, and funding
7 responsibilities between the AUTHORITY and CITY for completion of final design and construction
8 for PROJECT.

9 **WHEREAS**, the AUTHORITY's Board of Directors approved this Agreement on
10 the 23rd day of November, 2009; and

11 **WHEREAS**, the CITY's City Council approved this Agreement on the 3rd day of
12 November, 2009.

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

15 **ARTICLE 1. COMPLETE AGREEMENT**

16 This Agreement, including any attachments incorporated herein and made applicable by
17 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this
18 agreement between AUTHORITY and CITY and it supersedes all prior representations,
19 understandings, and communications. The invalidity in whole or in part of any term or condition of this
20 Agreement shall not affect the validity of other terms or conditions.

21 **ARTICLE 2. SCOPE OF AGREEMENT**

22 This Agreement specifies the roles and responsibilities of the PARTIES as they pertain to the
23 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate
24 and coordinate with the other in all activities covered by this Agreement and any other supplemental
25 agreements that may be required to facilitate purposes thereof.

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1 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

2 AUTHORITY agrees to the following responsibilities for PROJECT:

3 A. To provide staff to manage and oversee final engineering design and assist with
4 construction management of the STATE's administration of construction of PROJECT.

5 B. To perform right of way acquisition and certification for PROJECT performed by
6 AUTHORITY.

7 C. To monitor all PROJECT activities to ensure that the approved PROJECT schedule,
8 quality, and budget goals are met.

9 D. To prepare a Transportation Management Plan (TMP) for CITY review that
10 addresses construction-related impacts to existing CITY street traffic. The TMP includes normal
11 traffic handling requirements during PROJECT construction including staging, lane closures, re-
12 striping, detours, and signalization, and will specify requirements for communicating with the public
13 and local agencies during construction. AUTHORITY will adhere to and will require STATE to
14 adhere to the approved TMP. During construction, if it is agreed by the AUTHORITY and the CITY
15 that measures contained in the TMP are inadequate for traffic handling requirements, revisions to
16 these measures may be incorporated into the PROJECT and these measures will not be reasonably
17 withheld.

18 E. To reimburse CITY for actual costs, within 30 days of an acceptable invoice,
19 for providing police services for traffic management, as requested by the Project Resident Engineer,
20 for PROJECT. Ongoing police services related to traffic management will require prior approval by
21 the Project Resident Engineer.

22 F. To reimburse CITY for actual costs, within 30 days of receipt of an acceptable
23 invoice, for providing traffic engineering services (including staff overhead and third party traffic
24 signal maintenance service costs contracted out by CITY, so long as these contracted costs are
25 deemed Federally Eligible for reimbursement) and any modifications to streets, intersections,

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1 signals, etc. required to address traffic impacts during construction.

2 G. CITY will be reimbursed for police and other support services, as described in
3 Article 2, Sections E and F, in an amount not to exceed THREE HUNDRED SIXTY THOUSAND
4 DOLLARS (\$360,000). This cost will not be exceeded without the prior written amendment to this
5 Agreement, which approval shall not be unreasonably withheld, it being understood that this amount
6 is an estimate based on the as-needed and sporadic nature of the services and is subject to update.

7 H. To pay CITY a total amount of TWO HUNDRED FIFTY THOUSAND DOLLARS
8 (\$250,000) as mitigation for CITY street pavements that are determined to need repair due to the
9 long-term signed freeway detours from PROJECT on CITY streets. AUTHORITY will not be
10 obligated to pay for any additional costs beyond this amount for any deterioration of CITY streets
11 due to PROJECT.

12 I. To pay CITY a total amount of NINE HUNDRED THOUSAND DOLLARS
13 (\$900,000) as mitigation for CITY to construct various CITY facilities, listed in Attachment A - City
14 Mitigation Measures, to improve traffic handling capabilities on streets impacted by proposed
15 PROJECT detour routes. AUTHORITY will not be obligated to pay for any additional costs for any
16 operation or maintenance of these facilities.

17 J. To implement a Public Awareness Campaign (PAC) during PROJECT construction
18 that advises CITY, local businesses, residents, elected officials, motorists, and media, of
19 construction status, street detours, and ramp and freeway closures.

20 **ARTICLE 4. RESPONSIBILITIES OF CITY**

21 CITY agrees to the following responsibilities for PROJECT:

22 A. To collaborate and cooperate with AUTHORITY and STATE staff, and
23 design consultants, and contractors during design and construction of PROJECT.

24 B. To design, construct, operate and maintain the list of facilities in Attachment A and
25 other CITY traffic handling facilities in a manner that will reduce the impacts of traffic during
26 construction of the PROJECT. The facilities in Attachment A will be constructed by the CITY and it

1 is the intent of the City to have these facilities operational before the first detour route is
2 implemented as part of the PROJECT, which is expected to be the closure of the North I-405/West
3 SR-22 connector bridge, scheduled to begin 55 calendar days after approval of the Construction
4 Contract, and will remain in operation for the duration of the PROJECT.

5 C. To issue no fee permits for work done by STATE contractor within CITY jurisdiction
6 within thirty (30) days from request and not cause delay to PROJECT's construction schedule.

7 D. To relocate, protect and construct utilities within City limits required to construct the
8 facilities in Attachment A.

9 E. Upon completion and acceptance of work done by STATE contractor within CITY
10 jurisdiction, the improvements will be turned over to CITY. CITY will not withhold its acceptance of
11 work due to any unreasonable requirements.

12 F. To submit monthly invoices to AUTHORITY for actual costs incurred by CITY for
13 police and other support services, as described in Article 2, Sections E and F. These costs will be
14 reimbursed via the STATE and are therefore subject to Federal contract guidelines. Any costs in
15 excess of the amounts specified herein shall not be incurred without a written amendment to this
16 Agreement. CITY shall submit final invoice no later than ninety (90) days after final acceptance of
17 PROJECT. Invoices for all work performed shall be submitted by CITY and in duplicate to
18 AUTHORITY's Accounts Payable Office. Each invoice shall include the following information:

- 19 a. Agreement Number C-9-0815;
- 20 b. The time period covered by the invoice and the work for which payment is
21 being requested;
- 22 c. Progress Report which includes a detailed description of the progress of
23 PROJECT;
- 24 d. Total invoice amount, staff name and hourly rate, if appropriate, and support
25 documentation for all expenses invoiced; and
- 26 e. Such other information as requested by AUTHORITY.

ARTICLE 5. DELEGATED AUTHORITY

The actions required to be taken by CITY in the implementation of this Agreement are delegated to its City Traffic Manager, or designee, and the actions required to be taken by AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer.

ARTICLE 6. AUDIT AND INSPECTION

AUTHORITY and CITY shall maintain a complete set of records in accordance with generally accepted accounting principles. 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 four (4) years after final payment, or until any on-going audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above provision with respect to audits shall extend to and/or be included in contracts with CITY's contractor.

ARTICLE 7. INDEMNIFICATION

A. CITY shall indemnify, defend and hold harmless 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, including death, worker's compensation subrogation claims, damage to or loss of use of property alleged to be caused by the negligent acts, omissions or willful misconduct by CITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

B. 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, including death, worker's compensation subrogation claims, damage to or loss of use of property alleged to be

1 caused by the negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors,
2 employees or agents in connection with or arising out of the performance of this Agreement.

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

5 **ARTICLE 8. ADDITIONAL PROVISIONS**

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

7 A. Term of Agreement: This Agreement shall continue in full force and effect through
8 final acceptance of PROJECT by AUTHORITY, or until December 31, 2014 whichever is later. This
9 Agreement may be extended at the mutual consent of both parties.

10 B. Termination: This agreement is null and void if PROJECT is not funded. Once
11 PROJECT is funded AUTHORITY agrees to pay CITY \$600,000 as up-front payment for
12 construction of various CITY facilities, as described in Article 2, Section I, and listed in Attachment A
13 – City Mitigation Measures. The remaining \$300,000 for the CITY facilities will be paid upon receipt
14 of a request by the CITY to the AUTHORITY for these funds, to be made once the CITY has spent
15 the \$600,000 up-front payment.

16 C. The \$250,000 amount for CITY street pavements, as described in Article 2, Section
17 H, shall be paid upon completion of the closure of the north I-405/west SR-22 connector.

18 D. AUTHORITY and CITY shall comply with all applicable federal, state, and local laws, statutes,
19 ordinances and regulations of any governmental authority having jurisdiction over the
20 PROJECT.

21 E. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to
22 execute this Agreement on behalf of said parties and that, by so executing this agreement, the
23 parties hereto are formally bound to the provisions of this Agreement.

24 F. Severability: If any term, provision, covenant or condition of this Agreement is held to
25 be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
26 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or

1 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

2 G. Counterparts of Agreement: This Agreement may be executed and delivered in any
3 number of counterparts, each of which, when executed and delivered shall be deemed an original
4 and all of which together shall constitute the same agreement. Facsimile signatures will be
5 permitted.

6 H. Force Majeure: Either Party shall be excused from performing its obligations under this
7 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
8 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;
9 commandeering of material, products, plants or facilities by the federal, state or local government;
10 national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of
11 such cause is presented to the other Party, and provided further that such nonperformance is
12 unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

13 I. Assignment: Neither this Agreement, nor any of the Parties rights, obligations, duties, or
14 authority hereunder may be assigned in whole or in part by either Party without the prior written consent
15 of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed
16 void and of no force and effect. Consent to one assignment shall not be deemed consent to any
17 subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

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

21 K. Governing Law: The laws of the State of California and applicable local and federal
22 laws, regulations and guidelines shall govern this Agreement.

23 L. Litigation fees: Should litigation arise out of this Agreement for the performance thereof,
24 the court shall award costs and expenses, including attorney's fees, to the prevailing party.

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1 M. Notices: Any notices, requests, or demands made between the parties pursuant to
2 this Agreement are to be directed as follows:

To CITY:	To AUTHORITY:
City of Long Beach	Orange County Transportation Authority
333 West Ocean Blvd Long Beach, CA 90802	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Dave Roseman City Traffic Engineer 562-570-6665	Attention: Ms. Reem Hashem Principal Contract Administrator 714-560-5446 Email: rhashem@octa.net

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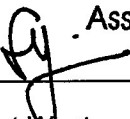
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This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-9-0815 to be executed on the date first written above.

CITY OF LONG BEACH

ORANGE COUNTY TRANSPORTATION AUTHORITY

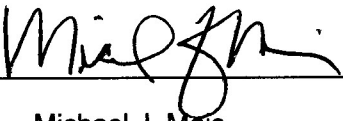
By:  Assistant City Manager
~~EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.~~
Pat West
City Manager

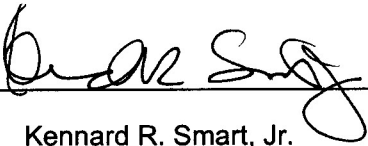
By: 
Will Kempton
Chief Executive Officer

APPROVED AS TO FORM:

APPROVED AS TO FORM:

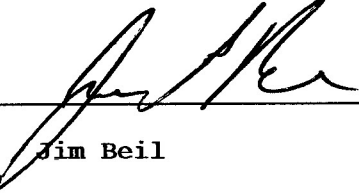
Robert E. Shannon, City Attorney

By: 
Michael J. Mais
Assistant City Attorney

By: 
Kennard R. Smart, Jr.
General Counsel

Dated: 8/13/10

APPROVAL RECOMMENDED:

By: 
Jim Beil
Executive Director, Capital Programs

Dated: 9-2-10

ATTACHMENT A

City Mitigation Measures

**CITY OF LONG BEACH
WEST COUNTY CONNECTORS PROJECT**

1. Element 1: Studebaker Road. Traffic Mitigations. OCTA agrees to provide funding for new signal interconnect, traffic signal detection, traffic signal controllers, connection to existing ITS systems and operational improvements on Studebaker Road. between Los Arcos Street. and the State Route 22 west on ramp (ten signals), and from Loynes Drive to 2nd Street (two signals).
Cost is \$600,000.
2. Element 2: East 2nd Street traffic mitigations. OCTA agrees to provide funding for an additional lane at west 2nd Street and north Studebaker Road, and provide advance loops for system detection east of the intersection for traffic going from east on 2nd Street to north on Studebaker Road.
Cost is \$100,000
3. Element 3: Palo Verde Avenue. traffic mitigations. OCTA agrees to provide funding for signal interconnect, traffic signal detection, traffic signal controllers, connection to existing ITS systems and operational improvements from the northbound Interstate 405 off ramp at Palo Verde Avenue to the intersection of Palo Verde Avenue and Stearns Street (three signals), and expand the Long Beach adaptive control system to include traffic signals along Palo Verde Avenue from Willow Street to Stearns Street.
Cost: is \$200,000

Total Cost \$900,000.