

1 COOPERATIVE AGREEMENT NO. C-9-0655

2 BETWEEN

3 ORANGE COUNTY TRANSPORTATION AUTHORITY

4 AND

5 CITY OF LOS ALAMITOS

6 THIS AGREEMENT, is effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
7 and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box  
8 14184, Orange California 92863-1584, a public corporation of the State of California (herein  
9 referred to as "AUTHORITY") and the City of Los Alamitos, 3191 Katella Avenue, Los  
10 Alamitos, California 90720, a municipal corporation, duly organized and existing under the  
11 constitution and laws of the State of California (herein referred to as "CITY").

12 RECITALS:

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

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

23 WHEREAS, AUTHORITY has engaged Parsons Transportation Group Inc. and TRC  
24 Solutions Inc. (herein referred to as "CONSULTANT") to prepare the plans, specifications,  
25 and estimate (PS&E) for PROJECT. The final PS&E will be submitted to STATE who will  
26 /

1 advertise, award, and administer the construction contract for PROJECT. The  
2 AUTHORITY, the primary funding agency for PROJECT,  
3 will continue to manage PROJECT through completion and will require STATE to comply  
4 with all applicable requirements contained in this Agreement.

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

8 **WHEREAS**, the CITY's City Council approved this Agreement on the \_\_\_\_ day of  
9 \_\_\_\_\_, 20\_\_\_\_.

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

12 **ARTICLE 1. COMPLETE AGREEMENT**

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

20 B. AUTHORITY'S failure to insist on any instance(s) of CITY's performance of any  
21 term(s) or condition(s) of this Agreement shall not be construed as a waiver or  
22 relinquishment of AUTHORITY's right to such performance or to future performance of such  
23 term(s) or condition(s), and CITY's obligation in respect thereto shall continue in full force  
24 and effect. Changes to any portion of this Agreement shall not be binding upon  
25 AUTHORITY except when specifically confirmed in writing by an authorized representative

26 /

1 of AUTHORITY by way of a written amendment to this Agreement and issued in accordance  
2 with the provisions of this Agreement.

3 C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any  
4 term(s) or condition(s) of this Agreement shall not be construed as a waiver or  
5 relinquishment of CITY's right to such performance or to future performance of such  
6 term(s) or condition(s), and AUTHORITY's  
7 obligation in respect thereto shall continue in full force and effect. Changes to any portion  
8 of this Agreement shall not be binding upon CITY except when specifically confirmed in  
9 writing by an authorized representative of CITY by way of a written amendment to this  
10 Agreement and issued in accordance with the provisions of this Agreement.

11 **ARTICLE 2. SCOPE OF AGREEMENT**

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

17 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

18 AUTHORITY agrees to the following responsibilities for PROJECT:

- 19 A. To provide staff to manage final engineering design and oversee STATE's  
20 construction of PROJECT.
- 21 B. To oversee right of way acquisition and certification for PROJECT performed  
22 by STATE.
- 23 C. To monitor all PROJECT activities to ensure that the approved PROJECT  
24 schedule, quality, and budget goals are met.
- 25 D. To prepare a Transportation Management Plan (TMP) for CITY review that  
26 addresses construction-related impacts to existing CITY street traffic. The TMP will include

1 normal traffic handling requirements during PROJECT construction including staging, lane  
2 closures, re-striping, detours, and signalization, and will specify requirements for  
3 communicating with the public and local agencies during construction. AUTHORITY will  
4 coordinate with city for special event traffic handling. AUTHORITY will  
5 adhere to and will require STATE to adhere to the approved TMP.

6 E. To reimburse CITY for actual costs, within 30 days of receipt of an  
7 acceptable invoice, for providing traffic engineering services (including staff overhead and  
8 third party traffic signal maintenance service costs contracted out by CITY) and any  
9 modifications to streets, intersections,  
10 signals, etc. required to address traffic impacts during construction.

11 F. To reimburse CITY for actual costs, within 30 days of receipt of an  
12 acceptable invoice for providing police services for traffic management, as requested by the  
13 Project Resident Engineer.

14 G. CITY will be reimbursed for traffic engineering and police services in an  
15 amount not to exceed SIXTY TWO THOUSAND DOLLARS (\$62,000). This cost will not be  
16 exceeded without the prior written amendment to this Agreement, which approval shall not  
17 be unreasonably withheld or delayed, it being understood that this amount is an estimate  
18 based on the as-needed and sporadic nature of the services and is subject to update.

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

22 **ARTICLE 4. RESPONSIBILITIES OF CITY**

23 CITY agrees to the following responsibilities for PROJECT:

24 A. To collaborate and cooperate with AUTHORITY and STATE staff,  
25 CONSULTANT, and contractors during design and construction of PROJECT.

26 /

1           B. To review and concur with the Transportation Management Plan (TMP)  
 2 prepared by AUTHORITY that addresses construction-related impacts to existing CITY  
 3 street traffic. The TMP will include normal traffic handling requirements during PROJECT  
 4 construction including staging, lane closures, re-striping, detours, and signalization, and will  
 5 specify requirements for communicating with the public and local agencies during  
 6 construction. Concurrence of TMP prepared by AUTHORITY will not be unreasonably  
 7 withheld. To make reasonable efforts to issue no fee construction permits for work done  
 8 within CITY jurisdiction within thirty (30) days from request and not cause delay to  
 9 PROJECT's construction schedule.

10           C. To submit monthly invoices to AUTHORITY for actual costs incurred by CITY  
 11 for traffic engineering, traffic signal maintenance, and police services and any modifications  
 12 to city streets, intersections, signals, etc. to address traffic or other impacts during  
 13 PROJECT's construction. Any costs in excess of the amounts specified herein shall not be  
 14 incurred without a written amendment to this Agreement. CITY shall submit final invoice  
 15 no later than ninety (90) days after final acceptance of PROJECT. Invoices for all work  
 16 performed shall be submitted by CITY on a monthly basis and in duplicate to AUTHORITY's  
 17 Accounts Payable department. Each CITY invoice shall include the following information:

- 18           a. Agreement Number C-9-0655;
- 19           b. The time period covered by the invoice;
- 20           c. Progress Report which includes a detailed description of the progress  
 21 of PROJECT;
- 22           d. Total invoice amount; and
- 23           e. Such other information as requested by AUTHORITY.

24           **ARTICLE 5. DELEGATED AUTHORITY**

25           The actions required to be taken by CITY in the implementation of this Agreement  
 26 are delegated to its City Manager, or designee, and the actions required to be taken by

1 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief  
 2 Executive Officer.

3 **ARTICLE 6. AUDIT AND INSPECTION**

4 AUTHORITY and CITY shall maintain a complete set of records in accordance with  
 5 generally accepted accounting principles. Upon reasonable notice, AUTHORITY shall  
 6 permit the authorized representatives of the CITY to inspect and audit all work, materials,  
 7 payroll, books, accounts, and other data and records of AUTHORITY for a period of four (4)  
 8 years after final payment, or until any on-going audit is completed. For purposes of audit,  
 9 the date of completion of this Agreement shall be the date of AUTHORITY's payment of  
 10 CITY's final billing (so noted on the invoice) under this Agreement. CITY shall have the right  
 11 to reproduce any such books, records, and accounts. The above provision with respect to  
 12 audits shall extend to and/or be included in contracts with CITY's contractor.

13 **ARTICLE 7. INDEMNIFICATION**

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

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

1 of the performance of this Agreement.

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

4 **ARTICLE 8. ADDITIONAL PROVISIONS**

5 AUTHORITY and CITY agree to the following mutual responsibilities:

6 A. Term of Agreement: This Agreement shall continue in full force and effect  
7 through final acceptance of PROJECT by AUTHORITY, or until December 31, 2017  
8 whichever is later. This Agreement may be extended at the mutual consent of both parties.

9 B. Termination: This agreement is null and void if PROJECT is not awarded.  
10 However, AUTHORITY agrees to reimburse CITY for any costs incurred up to the official  
11 date of notification to CITY that PROJECT will not be awarded.

12 C. AUTHORITY and CITY shall comply with all applicable federal, state, and  
13 local laws, statues, ordinances and regulations of any governmental authority having  
14 jurisdiction over the PROJECT.

15 D. Legal Authority: AUTHORITY and CITY hereto consent that they are  
16 authorized to execute this Agreement on behalf of said parties and that, by so executing this  
17 agreement, the parties hereto are formally bound to the provisions of this Agreement.

18 E. Severability: If any term, provision, covenant or condition of this Agreement is  
19 held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent  
20 jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term,  
21 provision, covenant or condition of this Agreement shall be valid and enforceable to the  
22 fullest extent permitted by law.

23 F. Counterparts of Agreement: This Agreement may be executed and delivered  
24 in any number of counterparts, each of which, when executed and delivered shall be  
25 deemed an original and all of which together shall constitute the same agreement.  
26 Facsimile signatures will be permitted.

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

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

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

19           J.    Governing Law: The laws of the State of California and applicable local and  
20 federal laws, regulations and guidelines shall govern this Agreement.

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

24           L.    Notices: Any notices, requests, or demands made between the parties  
25 pursuant to this Agreement are to be directed as follows:

26 /

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

To CITY:	To AUTHORITY:
City of Los Alamitos	Orange County Transportation Authority
3191 Katella Avenue Los Alamitos, CA 90720	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Dave Hunt  City Engineer  562-431-3538	Attention: Ms. Reem Hashem  Principal Contract Administrator  714-560-5446  Email: rhashem@octa.net

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-9-0655 to be executed on the date first written above.

**CITY OF LOS ALAMITOS**

**ORANGE COUNTY TRANSPORTATION**

**AUTHORITY**

By: \_\_\_\_\_  
Marilynn Poe  
Mayor

By: \_\_\_\_\_  
Meena Katakia  
Manager, Capital Projects

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Adria Jimenez  
City Clerk

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Sandra Levin  
City Attorney

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

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