

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

NOVEMBER 28, 2011

TITLE

COOPERATIVE AGREEMENT WITH OCTA FOR PRELIMINARY ENGINEERING FOR THE SANTA ANA - GARDEN GROVE FIXED GUIDEWAY PROJECT (PROJECT 126766)

Francisco Galvan
CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1st Reading
- Ordinance on 2nd Reading
- Implementing Resolution
- Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

1. Authorize the City Manager and Clerk of the Council to execute the attached cooperative agreement with the Orange County Transportation Authority (OCTA), in an amount not to exceed \$5,541,700 for preliminary engineering, subject to nonsubstantive changes approved by the City Manager and City Attorney.
2. Approve an appropriation adjustment to correctly allocate Federal Transit Administration (FTA) Section 5307 transit funds in the amount of \$4,433,360 budgeted in the Select Street Construction Revenue Fund for Federal Grants-Direct (accounting unit 05917002-52000) to the Measure M Street Construction Revenue Fund for Other Grants (accounting unit 03217002-52040) and the appropriation of the same \$4,433,360 from the Select Street Construction Expense Fund (accounting unit 05917660-66220) to the OCTA Transitway Project – MOS3 Expense Fund (03217661-66220).

DISCUSSION

The Cities of Santa Ana and Garden Grove are working collaboratively with OCTA on the Santa Ana and Garden Grove Fixed Guideway Project. On May 12, 2008, the OCTA Board allocated \$5.9 million in Step 2 funding to Santa Ana for planning and development of the fixed guideway project. Shortly thereafter, the City and OCTA entered into a cooperative agreement to define their respective roles and responsibilities for project delivery. This effort is nearing conclusion. An environmental impact report/environmental assessment is being prepared which includes studies of no-build alternatives and two streetcar alternatives. Staff plans to release the document for public review in January 2012, and to bring the issue to the City Council in spring of 2012 for selection of a preferred alternative.

On November 22, 2010, the OCTA Board allocated an additional \$5,541,700 to Santa Ana for Fixed Guideway Preliminary Engineering (PE) and Pre-PE activities. The funding split included 80 percent FTA Section 5307 funds (\$4,433,360), 10 percent M2 Project S funds (\$554,170), and a 10 percent local city match (\$554,170). On March 7, 2011, the City Council authorized

staff to execute a second cooperative agreement with OCTA clarifying the roles of the two agencies needed to meet the federal New Starts Program guidelines and requirements for project development activities. The appropriation adjustment is required because the FTA Section 5307 funds were previously budgeted incorrectly.

Prior to advancing the project into preliminary engineering, OCTA staff requested the Board's approval to establish a formal federal grant recipient relationship between FTA, OCTA, and the Cities of Santa Ana and Garden Grove to expedite local project delivery in the context of the federal New Starts process.

On September 26, 2011, the OCTA Board determined that OCTA should be identified as the federal grantee and that the cities should be grantee subrecipients for purposes of applying to the FTA New Starts funding program for the fixed guideway project. The OCTA is a proven entity to FTA in terms of delivering complex capital projects with the use of federal funds and is, therefore, in a better position than the cities to attract FTA capital funding for the project. In its role as federal grantee, OCTA would contribute its technical expertise for (1) project delivery, and, (2) compliance with the FTA oversight process. This not only reduces the administrative burden for the City, but helps to gain FTA's confidence that the project will be managed well.

The proposed new cooperative agreement defines the roles and responsibilities related to funding and project delivery between OCTA and Santa Ana for the preliminary engineering phase of the Santa Ana and Garden Grove Fixed Guideway project. The new agreement establishes that OCTA will serve as the FTA grantee for the project and that Santa Ana will serve as the subgrantee. Consistent with the previous agreement, Santa Ana will act on behalf of its partner city, Garden Grove, for purposes of project administration. Garden Grove will continue to be an active participant in the project development and community outreach processes.

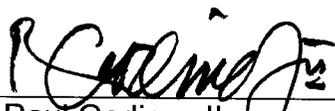
ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

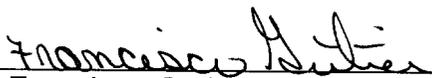
FISCAL IMPACT

The new cooperative agreement doesn't change the previously approved funding allocation of \$5,541,700 for this project. Funds for the local match of 10 percent for PE in the amount of \$554,170 to be paid in increments of \$277,085 in FY 11/12 and FY 12/13 are available in Measure M Street Construction (accounting unit 03217662-66220, project 126766).

APPROVED AS TO FUNDS AND ACCOUNTS:



Raul Godinez II
Executive Director
Public Works Agency



Francisco Gutierrez
Executive Director
Finance & Management Services Agency

RG/DB

Exhibit: 1. Agreement

1 and the Preliminary Engineering Phase (as defined in Project "S" application, received by the
2 AUTHORITY dated October 8, 2010) for the Santa Ana and Garden Grove Fixed Guideway
3 Corridor; (hereinafter referred to as "PROJECT"); and

4 **WHEREAS**, AUTHORITY and CITY entered into Cooperative Agreement C-1-2447 on May
5 20, 2011 to define the roles and responsibilities related to funding between the AUTHORITY and
6 CITY for the PROJECT; and

7 **WHEREAS**, on September 26, 2011, the AUTHORITY'S Board of Directors approved that
8 the AUTHORITY will serve as the Federal Transit Administration Grantee for the PROJECT and that
9 the CITY will serve as the sub-recipient; and

10 **WHEREAS**, AUTHORITY and the CITY desire to amend and restate and enter into an
11 amended and restated Cooperative Agreement that supersedes Cooperative Agreement C-1-2447
12 to define the roles and responsibilities related to funding between the AUTHORITY and CITY for the
13 PROJECT; and

14 **WHEREAS**, the CITY is acting on behalf of itself as well as its partner, the City of Garden
15 Grove, as the local agency lead for the PROJECT; and

16 **WHEREAS**, the AUTHORITY and the CITY agree that the terms and conditions of this
17 Agreement only apply to the project development and Preliminary Engineering as that term is
18 defined by the Federal Transit Administration and that if the Santa Ana/Garden Grove Fixed-
19 Guideway Project moves beyond the Preliminary Engineering PHASE, the AUTHORITY and the
20 CITY will be required to enter into additional agreements addressing, at a minimum, the roles and
21 responsibilities of the AUTHORITY and the CITY during design and construction of the Santa
22 Ana/Garden Grove Fixed-Guideway Project and the roles and responsibilities of the AUTHORITY
23 and the CITY relative to the operations and maintenance of the Santa Ana/Garden Grove Fixed-
24 Guideway Project after completion of construction; and

1 **WHEREAS**, the CITY has agreed to provide non federal funding in the amount of Five
2 Hundred Fifty Four Thousand One Hundred Seventy Dollars (\$554,170) or (10%) as the required
3 local match for the PROJECT; and

4 **WHEREAS**, the AUTHORITY is the designated grant recipient for Federal Transit
5 Administration (FTA) Section 5307 funds and will reimburse CITY for eligible expenditures,
6 contingent upon funds being approved by FTA; and

7 **WHEREAS**, AUTHORITY and CITY agree CITY must fulfill M2 eligibility requirements prior
8 to release of M2 funds; and

9 **WHEREAS**, CITY and AUTHORITY agree that the total full funding for the PROJECT
10 including project development activities and Preliminary Engineering shall be Five Million Five
11 Hundred Forty One Thousand Seven Hundred Dollars (\$5,541,700) in accordance with **EXHIBIT A**
12 **"FUNDING PLAN"**, attached hereto and incorporated by reference; and

13 **WHEREAS**, under the direction of the AUTHORITY, the CITY agrees to be responsible for
14 project development and Preliminary Engineering Phases of said PROJECT; and

15 **WHEREAS**, CITY and AUTHORITY are mutually desirous of advancing PROJECT and will
16 work cooperatively to identify potential funding sources to continue that effort; and

17 **WHEREAS**, CITY agrees to fulfill M2 Comprehensive Transportation Funding Program
18 Guidelines and FTA funding compliance and reporting requirements; and

19 **WHEREAS**, CITY and AUTHORITY agree if reimbursement procedures differ between M2
20 Comprehensive Transportation Funding Program and FTA reimbursement procedures, FTA
21 reimbursement procedures shall take precedence; and

22 **WHEREAS**, this Cooperative Agreement defines the specific terms, conditions, and funding
23 responsibilities between AUTHORITY and CITY for completion of the PROJECT; and

24 **WHEREAS**, AUTHORITY's Board of Directors approved this Cooperative Agreement on

25 _____

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

3 **ARTICLE 1. COMPLETE AGREEMENT**

4 A. This Agreement, including any attachments incorporated herein and made applicable
5 by reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of
6 this agreement between AUTHORITY and CITY and it supersedes all prior representations,
7 understandings, and communications. The invalidity in whole or in part of any term or condition of
8 this Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement. The
9 above referenced Recitals are true and correct and are incorporated by reference herein.

10 B. AUTHORITY'S failure to insist on any instance(s) of CITY's performance of any
11 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
12 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s),
13 and CITY's obligation in respect thereto shall continue in full force and effect. Changes to any
14 portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed
15 in writing by an authorized representative of AUTHORITY by way of a written amendment to this
16 Agreement and issued in accordance with the provisions of this Agreement.

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

24 **ARTICLE 2. SCOPE OF AGREEMENT**

25 This Agreement specifies the roles and responsibilities of the PARTIES as they pertain to the
26 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate

1 and coordinate with the other in all activities covered by this Agreement and any other supplemental
2 agreements that may be required to facilitate purposes thereof.

3 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

4 AUTHORITY agrees to the following responsibilities for PROJECT:

5 A. AUTHORITY shall formally request on behalf of the CITY that the Southern California
6 Association of Governments (SCAG) amend the Federal Transportation Improvement Program (FTIP)
7 to provide FTA funding to the PROJECT, whereby AUTHORITY's performance under this Agreement is
8 contingent upon SCAG and FTA approval.

9 B. AUTHORITY will perform oversight of the M2 and federal funds in compliance with M2
10 eligibility guidelines, Comprehensive Transportation Funding Program Guidelines and Federal Transit
11 Administration (FTA) funding requirements.

12 C. AUTHORITY shall remit to CITY within 30 days of receipt of an acceptable invoice, in
13 accordance with **ARTICLE 5 REQUEST FOR REIMBURSEMENT** and **EXHIBIT A "FUNDING**
14 **PLAN"**, reimbursement for development activities and preliminary engineering up to ninety (90%)
15 percent of eligible M2 and Section 5307 PROJECT costs. Such PROJECT costs shall not exceed the
16 sum of Four Million Nine Hundred Eighty Seven Thousand Five Hundred Thirty Dollars (\$4,987,530)
17 and are subject to authorization through the AUTHORITY's annual budget process. AUTHORITY will
18 not be obligated to pay for any amount beyond what has been identified in this Article.

19 D. AUTHORITY shall process any required Federal Transportation Improvement Program
20 amendments and FTA grant agreements.

21 E. AUTHORITY shall review final drafts of, and the Chief Executive Officer of the
22 AUTHORITY or his designee shall approve, PROJECT documents that CITY prepares, or causes to be
23 prepared, related to the PROJECT, and provide comments and/or approval within 10 working days of
24 receipt of such documents.

25 F. AUTHORITY shall undertake the following activities:

26 a. Execute the annual FTA certifications and assurances.

- b. Execute the annual FTA Compliance Self-Certification;
- c. Notify beneficiaries of protection under Title VI;
- d. Maintain a Title VI complaint procedure;
- e. Provide meaningful access to limited-English persons (LEP), low-income and minority persons.

ARTICLE 4. RESPONSIBILITIES OF CITY

CITY agrees to the following responsibilities for PROJECT:

A. CITY shall act as the lead agency for development activities and Preliminary Engineering (PE) for the PROJECT.

B. Under the supervision, direction and approval of the AUTHORITY, CITY shall be responsible for completing all PROJECT development activities as defined by FTA in **EXHIBIT F "NEW STARTS PROJECT PLANNING AND DEVELOPMENT CHECKLIST OF PROJECT SPONSOR SUBMITTALS TO FTA TO ENTER PRELIMINARY ENGINEERING (PE)"** or **EXHIBIT G "SMALL STARTS/VERY SMALL STARTS REPORTING CHECKLIST"**, attached hereto and incorporated by reference. Preliminary Engineering/Project Development checklist requirements vary depending upon if the Santa Ana/Garden Grove Fixed-Guideway Project is eligible for New or Small Starts. A comparison of new starts and small starts evaluation and rating is included in **EXHIBIT H "SIDE-BY-SIDE OF REQUIRED INFORMATION FOR NEW STARTS/SMALL STARTS EVALUATION AND RATING"**. CITY and the AUTHORITY are responsible for meeting the appropriate requirements once the appropriate federal funding program is identified pending confirmation of Santa Ana/Garden Grove Fixed-Guideway Project's capital cost.

C. CITY shall be responsible for completing the aforementioned development activities prior to AUTHORITY requesting entry into Preliminary Engineering from FTA. In the event FTA does not approve entry into PE, AUTHORITY is not obligated to reimburse CITY for any additional PROJECT costs, beyond Preliminary Engineering.

1 D. Upon FTA approval to enter into PE, under the direction of the AUTHORITY, CITY
 2 shall be responsible for completing activities defined by FTA in **EXHIBIT I “NEW STARTS**
 3 **PROJECT PLANNING AND DEVELOPMENT CHECKLIST OF PROJECT SPONSOR**
 4 **SUBMITTALS TO FTA TO ENTER FINAL DESIGN (FD)”**, attached hereto and incorporated by
 5 reference, before requesting entry into Final Design (FD).

6 E. Preliminary Engineering is defined by the Federal Transit Administration as
 7 completion of 30-50% of the design drawings and specifications. At the conclusion of PE, as required
 8 by the Federal Transit Administration, under the direction of the AUTHORITY, CITY shall complete all
 9 documentation including, but not limited to documentation that defines any required right-of-way
 10 acquisition, utility relocation, third party agreements and the preparation of final construction plans
 11 (including construction management plans), detailed specifications, construction cost estimates, and bid
 12 documents. Under the direction of the AUTHORITY, CITY shall prepare the PROJECT’s final financial
 13 plan. CITY shall collect and analyze data needed to prepare the Before and After Study. Specifically,
 14 the PE package shall include, but is not limited to:

- 15 1. Final Environmental Documentation
- 16 2. Vehicle fleet procurement strategy
- 17 3. 30% design completion including:
 - 18 a. Complete alignment drawings
 - 19 b. Complete station location drawings
 - 20 c. 30% systems drawings including location of traction power substations
 - 21 d. Major utility relocation mitigation plan
 - 22 e. Real Estate parcel definition, Operations and Maintenance Facility

23 F. CITY shall conduct all procurement related activities for the PROJECT pursuant to
 24 CITY’s procurement policies and procedures and FTA requirements. If there is a conflict between
 25 the CITY’s procedures and the FTA procedures, the FTA procedures control.

26 G. CITY shall submit to AUTHORITY for review, comment and approval by the Chief

1 Executive Officer of the AUTHORITY or his designee all final documents relative to the procurement
2 process including, but not limited to, the Request For Proposals (RFP) and resulting agreement
3 between the CITY and the selected entity, or entities, that shall pertain to the PROJECT. At best one
4 AUTHORITY representative or representatives will serve on all procurement selection panels.

5 /

6 H. CITY shall meet with AUTHORITY on a regular basis, not less than once a month, to
7 review PROJECT status and discuss any PROJECT issues.

8 I. In preparation for the required FTA Risk Assessment, CITY shall actively participate in a
9 one-day workshop with the AUTHORITY to conduct a Preliminary Project Risk Assessment.

10 J. CITY shall be responsible for submitting quarterly reports as specified in **EXHIBIT E**
11 **"FTA 5307 QUARTERLY REPORT FORM"**, attached hereto and incorporated by reference, for the
12 PROJECT due on April 15, August 15, October 15 and January 15 of each year.

13 K. CITY shall be responsible for accepting and complying with all applicable FTA statutory,
14 regulatory and administrative requirements including, but not limited to, the sub-recipient monitoring
15 process **EXHIBIT J "OCTA PASS THROUGH GRANTEE ANNUAL FTA COMPLIANCE SELF**
16 **CERTIFICATION"** performed by the AUTHORITY and/or the AUTHORITY's designee; and to comply
17 with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative
18 Agreements to State and Local Governments," 49 C.F.R. Part 18. The CITY acknowledges that any
19 violation of a Federal requirement applicable to the CITY or this PROJECT may result in penalties
20 imposed by the FTA. The CITY agrees that failure to comply with any of the above-referenced
21 requirements may result in the withholding of funds by the AUTHORITY or the termination of this
22 AGREEMENT.

23 L. CITY shall comply with all FTA third party procurement and contracting laws and
24 regulations and include **EXHIBIT B "REQUIRED FEDERAL CLAUSES"**, attached hereto and
25 incorporated by reference, in all third party contracts.

26 M. CITY agrees that M2 funding is subject to CITY meeting M2 eligibility requirements.

1 N. CITY shall be responsible for completing the PROJECT in accordance with **EXHIBIT A**
2 **"FUNDING PLAN"**, timely use of funds requirements, FTA guidelines, and any and all other
3 requirements of the federal, state, or local agency requirements for FTA Section 5307 Funding and M2
4 Funding programs.

5 O. CITY shall be responsible for immediately notifying the AUTHORITY in writing of any
6 changes to the PROJECT schedule that would jeopardize funding of the PROJECT.

7 P. CITY agrees that the overall budget for this PROJECT is a not-to-exceed amount of Five
8 Million Five Hundred Forty One Thousand Seven Hundred Dollars (\$5,541,700) and CITY shall be the
9 responsible for any cost overruns.

10 Q. CITY shall contribute at least 10% of PROJECT costs as the required local
11 contribution of matching funds (other than Federal Funds), as specified in **EXHIBIT A "FUNDING**
12 **PLAN"**, toward the actual costs of PROJECT.

13 R. CITY shall maintain or acquire sufficient legal, technical, and managerial capacity to
14 plan, manage, and complete the PROJECT, to comply with the terms of this Agreement, the
15 approved PROJECT budget, and all applicable Federal laws, executive orders, regulations,
16 directives, and published policies governing the PROJECT.

17 S. CITY shall complete the Preliminary Engineering Phase of the PROJECT as set forth
18 in this AGREEMENT in a proper and timely manner.

19 **ARTICLE 5. IT IS MUTUALLY UNDERSTOOD AND AGREED**

20 All parties agree to the following mutual responsibilities regarding PROJECT:

21 A. The AUTHORITY shall review, provide input to, and approve all PROJECT
22 documents that are submitted to FTA.

23 B. AUTHORITY representative shall be an integral and on-going part of PROJECT
24 reviews. CITY acknowledges that the AUTHORITY has final approval authority.

25 C. The above on-going responsibilities entitle AUTHORITY, and any of their designated
26 consultants, the opportunity to: attend monthly coordination meetings, have final draft PROJECT

1 materials sent to them in a timely manner so as to be able to provide meaningful input, and have
2 iterative review and comment opportunity as warranted by the process.

3 **ARTICLE 6. DELEGATED AUTHORITY**

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

7 **ARTICLE 7. AUDIT AND INSPECTION**

8 A. AUTHORITY and CITY shall maintain a complete set of records in accordance with
9 generally accepted accounting principles. Upon reasonable notice, AUTHORITY and CITY shall
10 permit each PARTY's authorized representatives to inspect and audit all work, materials, payroll,
11 books, accounts, and other data and records of the other PARTY for a period of four (4) years after
12 final payment, or until any on-going audit is completed. For purposes of audit, the date of
13 completion of this Agreement shall be the date of the AUTHORITY's final notice of project
14 completion. Each PARTY shall have the right to reproduce any such books, records, and accounts
15 of the other PARTY relative to PROJECT. The above provision with respect to audits shall extend to
16 and/or be included in contracts with CITY's contractors and subcontractors.

17 B. Upon request, the CITY agrees to permit the AUTHORITY, the U.S. Secretary of
18 Transportation, the Comptroller General of the United States, or their authorized representatives, to
19 inspect all PROJECT work, materials, payrolls, and other data, and to audit the books, records, and
20 accounts of the Recipient and its sub recipients pertaining to the PROJECT.

21 **ARTICLE 8. INDEMNIFICATION**

22 A. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
23 employees and agents from and against any and all claims (including attorney's fees and reasonable
24 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,
25 worker's compensation subrogation claims, damage to or loss of use of property alleged to be
26

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

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

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

11 **ARTICLE 9. REQUEST FOR REIMBURSEMENT**

12 A. CITY shall prepare and submit to AUTHORITY an invoice every 30 days as specified
13 in **EXHIBIT C, "INVOICE TEMPLATE"** and supporting documentation as specified in **EXHIBIT D,**
14 **"FTA FUNDING REIMBURSEMENT – REQUIRED SUPPORTING DOCUMENTS"** of this
15 Agreement, both of which are attached hereto and incorporated by reference. CITY's invoice shall
16 include allowable PROJECT costs incurred and paid for by CITY. The invoice submitted by CITY
17 shall be signed by an authorized agent who can duly certify the accuracy of the included information.
18 Advance payments by AUTHORITY are not allowed.

19 B. The invoice shall be submitted on CITY's letterhead.

20 C. The invoice shall be submitted by CITY and in duplicate to AUTHORITY's Accounts
21 Payable Office. Each invoice shall include the following information:

- 22 1. Agreement Number C-1-3099;
- 23 2. Support documentation for all expenses invoiced.
- 24 3. Adequate detail describing all work completed by phase as identified in
25 **EXHIBIT A, "FUNDING PLAN."**
- 26 4. Such other information as requested by AUTHORITY.

1 D. Eligible PROJECT costs are described in the Federal Grant and in the FTA
2 guidelines.

3 E. CITY shall consult with AUTHORITY's Project Manager for questions regarding non-
4 reimbursable expenses.

5 F. Total payments shall not exceed the Funding Amount specified in **ARTICLE 2**
6 **RESPONSIBILITIES OF AUTHORITY**, Paragraph C, above. No invoice shall be processed by
7 AUTHORITY after the Federal Grant termination date.

8 G. If any FTA Section 5307 funded amounts paid to CITY are disallowed or not
9 reimbursed by the FTA for any City violation of said FTA Section 5307, CITY shall remit to
10 AUTHORITY the disallowed or non-reimbursed amount(s) within 30 days from receipt of
11 AUTHORITY's notice. All payments made by AUTHORITY hereunder are subject to the audit
12 provisions contained herein and within the Federal Grant.

13 **ARTICLE 10. AVAILABILITY OF FUNDS**

14 This Agreement will allow AUTHORITY to reimburse the CITY with Federal Funds from the
15 Federal Grant to CITY. The Federal Funds are subject to the terms and conditions of this
16 Agreement, the Federal Grant, and the applicable requirements of AUTHORITY and the FTA. This
17 Agreement neither implies nor obligates any funding commitment by AUTHORITY as specified in
18 **EXHIBIT A, "FUNDING PLAN"**. All funds are contingent upon federal appropriation, the FTA's
19 approval of a grant application, and for Preliminary Engineering funds, FTA's approval for the
20 PROJECT to enter into Preliminary Engineering. If a Letter of No Prejudice is issued by the FTA,
21 CITY shall assume all the risk of spending the Local Match early on in the PROJECT.

22 **ARTICLE 11. REPORTING**

23 A. Types of Reports: The CITY agrees to submit to the AUTHORITY any reports that the
24 AUTHORITY is required to submit to FTA as required by FTA's administrative regulations for grants
25 and cooperative agreements and any other reports the Federal Government may require.
26

1 B. Format Requirements for Reports: The CITY agrees that all reports and other
2 documents or information intended for public availability developed in the course of the PROJECT
3 and required to be submitted to FTA must be prepared and submitted in electronic and or
4 typewritten hard copy formats as FTA may require.

5 C. Timing of Submittal of Reports: The CITY agrees that it will submit reports to the
6 AUTHORITY in accordance with a schedule agreed to by the CITY and AUTHORITY. However, the
7 CITY agrees that quarterly report information must be submitted to the AUTHORITY within fifteen
8 (15) days after the end of the calendar quarter for which the information in the report is being
9 submitted.

10 **ARTICLE 12. ADDITIONAL PROVISIONS**

11 All parties agree to the following mutual responsibilities regarding PROJECT:

12 A. Term of Agreement: This Agreement shall continue in full force and effect through
13 October 31, 2014. This Agreement may only be extended upon mutual agreement by both parties.

14 B. Termination: Either party may initiate proceedings to terminate this Agreement by
15 giving thirty (30) days written notice; however, this Agreement shall not be terminated without mutual
16 agreement of both parties.

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

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

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

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

To CITY:	To AUTHORITY:
City of Santa Ana	Orange County Transportation Authority
P.O. Box 1988 Santa Ana, CA 92702	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Raul Godinez Executive Director, Public Works	Attention: Meena Katakia Manager, Capital Projects cc: Kelly Hart, Project Manager
Tel: (714) 647-5690	Tel: (714) 560-5694; Fax: (714) 560-5792
Email: rgodinez@santa-ana.org	Email: mkatakia@octa.net

G. Headings: The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not part of and not intended to govern, limit or aid in the construction or interpretation of any terms or provision thereof.

H. Successors and Assigns: The provisions of this Agreement shall bind and inure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.

I. 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.

J. 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

1 and all of which together shall constitute the same agreement. Facsimile signatures will be
2 permitted.

3 K. 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 L. 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 M. Governing Law: The laws of the State of California and applicable local and federal
12 laws, regulations, and guidelines shall govern this Agreement.

13 N. Litigation Fees: Should litigation arise out of this Agreement for the performance thereof,
14 each party shall be responsible for its own costs and expenses, including attorney's fees.

15 O. Force Majeure: Either party shall be excused from performing its obligations under this
16 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
17 cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God;
18 commandeering of material, products, plants or facilities by the federal, state or local government;
19 national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of
20 such cause is presented to the other party, and provided further that such nonperformance is
21 unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.
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This Agreement shall be effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement No. C-1-3099 to be executed on the date first above written.

CITY OF SANTA ANA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Paul Walters
Interim City Manager

By: _____
Will Kempton
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
Maria D. Huizar
Clerk of the Council

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

APPROVED AS TO FORM:

APPROVAL RECOMMENDED:

By: _____
Joe Straka
City Attorney

By: _____
Jim Beil, P.E.
Executive Director, Capital Programs

Dated: _____

Dated: _____

Required Attachments:

- 1. EXHIBIT A "FUNDING PLAN"
- 2. EXHIBIT B "REQUIRED FEDERAL CLAUSES"
- 3. EXHIBIT C, "INVOICE TEMPLATE"

- 1 4. EXHIBIT D, "FTA FUNDING REIMBURSEMENT – REQUIRED SUPPORTING DOCUMENTS"
- 2 5. EXHIBIT E "FTA 5307 QUARTERLY REPORT FORM"
- 3 6. EXHIBIT F "NEW STARTS PROJECT PLANNING AND DEVELOPMENT CHECKLIST OF PROJECT SPONSOR SUBMITTALS TO FTA TO ENTER PRELIMINARY ENGINEERING (PE)"
- 4 7. EXHIBIT G "SMALL STARTS/VERY SMALL STARTS REPORTING CHECKLIST"
- 5 8. EXHIBIT H "SIDE-BY-SIDE OF REQUIRED INFORMATION FOR NEW STARTS/SMALL STARTS EVALUATION AND RATING"
- 6 9. EXHIBIT I "NEW STARTS PROJECT PLANNING AND DEVELOPMENT CHECKLIST OF PROJECT SPONSOR SUBMITTALS TO FTA TO ENTER FINAL DESIGN (FD)"
- 7 10. EXHIBIT J "OCTA PASS THROUGH GRANTEE ANNUAL FTA COMPLIANCE SELF CERTIFICATION"
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