

ATTACHMENT 1

COOPERATIVE AGREEMENT NO. C-9-1421

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITIES OF COSTA MESA, IRVINE, AND TUSTIN

FOR

RED HILL AVENUE REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROGRAM PROJECT

THIS COOPERATIVE AGREEMENT (Agreement), is effective this _____ day of _____, 2019 (“Effective Date”), 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 (herein referred to as “AUTHORITY”) and the cities of Costa Mesa, Irvine, and Tustin (hereinafter referred to as “PARTICIPATING AGENCIES”) each individually known as “Party” and collectively known as the “Parties”.

RECITALS:

WHEREAS, the AUTHORITY in cooperation with the PARTICIPATING AGENCIES is working together in coordinating traffic signals across multiple jurisdictional boundaries as a part of the Renewed Measure M (M2) Regional Traffic Signal Synchronization Program (RTSSP or Project P) to enhance countywide traffic flow and reduce congestion; and

WHEREAS, the AUTHORITY has completed the competitive 2019 Call for Projects (hereinafter, “2019 CALL”) in support of Project P and awarded Project P funds based on the application (hereinafter, “APPLICATION”) prepared by the City of Irvine (hereinafter referred to as the “APPLICANT AGENCY”) for implementation of signal synchronization of traffic signals along Red Hill Avenue between the intersections of Bryan Avenue located in the City of Tustin and Bristol Street located in the City of Costa Mesa (hereinafter, “PROJECT”); and

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2 **WHEREAS**, the PARTICIPATING AGENCIES in their approved APPLICATION have elected to
3 designate the AUTHORITY and the AUTHORITY agrees to act as the implementing agency to carry out
4 PROJECT; and

5 **WHEREAS**, the PROJECT will include approximately twenty-eight (28) traffic signalized
6 intersections as identified in the APPLICATION; and

7 **WHEREAS**, the PROJECT will include Intelligent Transportation System (ITS) elements
8 identified in the APPLICATION including certain hardware and software upgrades to intersection and
9 central control systems including Advanced Transportation Controller units (ATC), telematics and
10 interconnect systems, Advanced Transportation Management Systems (ATMS), Roadside Units
11 (RSU), and other associated systems (hereinafter collectively referred to as “ITS ELEMENTS”), will
12 be constructed and/or installed and implemented as part of the PROJECT as identified in the
13 APPLICATION; and

14 **WHEREAS**, the AUTHORITY agrees to work with PARTICIPATING AGENCIES to coordinate
15 the inclusion of other ITS elements (hereinafter OTHER ELEMENTS) that should be installed at the
16 same time as the construction of the PROJECT and are not part of this Agreement; and

17 **WHEREAS**, all costs associated with the inclusion of these OTHER ELEMENTS, if any, are
18 the sole responsibility of the AGENCY owning each and any of those OTHER ELEMENTS during the
19 course of the project; and

20 **WHEREAS**, AUTHORITY and each respective Party acknowledge and understand that
21 in-house resources (staff) from Party will provide various services for PROJECT, and

22 **WHEREAS**, AUTHORITY and each respective Party acknowledge and understand that
23 PROJECT costs for various types of additional work required by each respective Party, by its staff, or
24 by policy, may not have been included in the original application and therefore costs to contractors or
25 consultants to comply with staff requirements are not included in the PROJECT allocation; and

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1 **WHEREAS**, AUTHORITY and Parties agree that these costs will be paid by PROJECT; and

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3 **WHEREAS**, Parties and each respective Party acknowledge and understand that the costs for
4 the additional work may be reversed by AUTHORITY’s Audit; and

5 **WHEREAS**, based on AUTHORITY’s Board of Directors approved PROJECT ALLOCATION and
6 APPLICATION, the AUTHORITY agrees to implement the PROJECT; and

7 **WHEREAS**, the PARTICIPATING AGENCIES per the M2 Ordinance, agree to provide
8 PROJECT funding in a combined cash and in-kind services match of Four Hundred Nineteen Thousand
9 Eighteen Dollars (\$419,018.00), as shown in Attachment A, or equivalent to at least twenty percent (20%)
10 of PROJECT cost; and

11 **WHEREAS**, the AUTHORITY and the PARTICIPATING AGENCIES desire to enter into this
12 Agreement to implement the PROJECT in support of Project P; and

13 **WHEREAS**, this Agreement defines the specific terms, conditions, and funding responsibilities
14 between the AUTHORITY and the PARTICIPATING AGENCIES for the implementation of the
15 PROJECT; and

16 **WHEREAS**, the AUTHORITY’s Board of Directors authorized funding for the PROJECT on
17 June 10, 2019; and

18 **WHEREAS**, the AUTHORITY’s Board of Directors authorized this cooperative agreement on
19 August 12, 2019.

20 **WHEREAS**, the City of Costa Mesa’s City Council approved this Agreement on the ____ day of
21 _____, 20____.

22 **WHEREAS**, the City of Irvine’s City Council approved this Agreement on the ____ day
23 of _____, 20____.

24 **WHEREAS**, the City of Tustin’s City Council approved this Agreement on the ____ day
25 of _____, 20____.

1 G. AUTHORITY shall invoice the PARTICIPATING AGENCIES as identified in
2 APPLICATION and Attachment A for the dollar cash match at the end of the Primary Implementation
3 phase or at a mutually agreed upon time to facilitate any respective AGENCY funding timeframes.

4 H. AUTHORITY shall request updates for the PROJECT as part of semi-annual review
5 process, including documentation of in-kind match conforming to Attachment A and will include the
6 PROJECT in the list of active projects in OC Fund Tracker until completion of the three-year grant period.
7 Documents to be provided include, but are not limited to, payroll records, contracts, and purchase orders.

8 **ARTICLE 4. RESPONSIBILITIES OF THE AUTHORITY AS PROJECT LEAD AGENCY**

9 The AUTHORITY as the LEAD AGENCY agrees to the following responsibilities for the
10 implementation of the PROJECT:

11 A. AUTHORITY shall act as the LEAD AGENCY for the work necessary to manage, procure,
12 and complete the PROJECT as identified in APPLICATION.

13 B. To coordinate outreach with PARTICIPATING AGENCIES for PROJECT.

14 C. To collect all data necessary to provide new optimized timing plans including, but not
15 limited to, manual or video all movement counts at each PROJECT signalized intersection, and a mutually
16 agreed upon number and location of twenty-four (24) hour / seven (7) day automated machine traffic
17 counts with vehicle classification.

18 D. To develop and implement new timing plans optimized for signal synchronization.

19 E. To provide updated timing plans for all control systems and all relevant data used to
20 develop said plans to PARTICIPATING AGENCIES.

21 F. To prepare a “Before and After Study” for PROJECT as described in the Measure M2
22 Eligibility Guidelines adopted by the AUTHORITY. The “Before and After Study” for the project is
23 considered the equivalent of the required Project Final Report (Measure M2 Ordinance No. 3, Section
24 B.III.9) for PROJECT. The AUTHORITY shall provide the “Before and After Study” to the
25 PARTICIPATING AGENCIES in draft and final formats for review and comment.
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1 AGENCY comments shall be noted in the final study. If specified in APPLICATION, AUTHORITY shall
2 provide a “Before and After Study” video of a representative portion of PROJECT at up to two (2) public
3 meetings.

4 **ARTICLE 5. RESPONSIBILITIES OF THE PARTICIPATING AGENCIES**

5 PARTICIPATING AGENCIES agree to the following responsibilities for implementation and
6 funding of PROJECT:

7 A. Provide a technical representative to meet and participate as a member of the
8 PROJECT’s Traffic Forum.

9 B. To authorize the AUTHORITY to manage, procure, and implement all aspects of
10 PROJECT.

11 C. To participate and support PROJECT implementation within the timeframe outlined in
12 APPLICATION and consistent with the CTFP Guidelines adopted by AUTHORITY.

13 D. To provide AUTHORITY all current intersection as-built drawings, all current
14 intersections controller assembly plans as provided by the manufacturer and modified by Party since
15 original installation, local field master, local controller, and ATMS timing plans and other ITS related
16 data upon request.

17 E. To provide the local cash match and/or documentation for the in-kind services match
18 for PROJECT in accordance with Attachment A. Failure to provide local cash match and or evidence
19 of in-kind services match may result in the loss of future participation for competitive funding
20 opportunities.

21 F. PARTICIPATING AGENCIES that have included a dollar match as identified in
22 Attachment A shall provide payment for the dollar match to AUTHORITY within thirty (30) calendar
23 days of receipt of an invoice.

1 G. PARTICIPATING AGENCIES that have included an in-kind services match as identified
2 in Attachment A shall provide documentation of conformance as part of the semi-annual review process
3 or as requested by the AUTHORITY.

4 H. To waive all fees associated with any local agency permits that may be required of the
5 consultant, sub consultants, and/or service or equipment providers in the performance of the PROJECT.

6 I. PARTICIPATING AGENCIES shall provide updates on PROJECT to AUTHORITY as
7 part of semi-annual review process until completion of the three-year PROJECT grant period. Documents
8 to be provided include, but are not limited to, payroll records, contracts, and purchase orders.

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10 J. PARTICIPATING AGENCIES shall, if specified in APPLICATION, continue Ongoing
11 Operations and Maintenance after the three-year grant period is complete and continue until the end of
12 the PROJECT per additional maintenance of effort in APPLICATION.

13 **ARTICLE 6. DELEGATED AUTHORITY**

14 The actions required to be taken by PARTICIPATING AGENCIES in the implementation of this
15 Agreement are delegated to their respective City Manager, or designee, and the actions required to be
16 taken by AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief
17 Executive Officer or designee.

18 **ARTICLE 7. AUDIT AND INSPECTION**

19 AUTHORITY and PARTICIPATING AGENCIES shall maintain a complete set of records in
20 accordance with generally accepted accounting principles. Upon reasonable notice, PARTICIPATING
21 AGENCIES shall permit the authorized representatives of AUTHORITY to inspect and audit all work,
22 materials, payroll, books, accounts, and other data and records of PARTICIPATING AGENCIES for a
23 period of five (5) years after final payment, final closeout, or until any on-going audit is completed,
24 whichever is later. For purposes of audit, the date of completion of this Agreement shall be the date of
25 AUTHORITY's payment of consultant's final billing (so noted on the paid invoice) under this Agreement.

1 AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above
2 provision with respect to audits shall extend to and/or be included in contracts with PARTICIPATING
3 AGENCIES' contractor.

4 **ARTICLE 8. INDEMNIFICATION**

5 A. To the fullest extent permitted by law, PARTICIPATING AGENCIES shall defend
6 (at PARTICIPATING AGENCIES' sole cost and expense with legal counsel reasonably acceptable to
7 AUTHORITY), indemnify, protect, and hold harmless AUTHORITY, and its officers, directors, employees,
8 and agents (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits,
9 claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders,
10 penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not
11 limited to Claims arising from injuries to or death of persons (PARTICIPATING AGENCIES' employees
12 included), for damage to property, including property owned by AUTHORITY, or from any violation of any
13 federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful
14 misconduct of PARTICIPATING AGENCIES, their officers, directors, employees or agents in connection
15 with or arising out of the performance of this Agreement.

16 B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole
17 cost and expense with legal counsel reasonably acceptable to PARTICIPATING AGENCIES), indemnify,
18 protect, and hold harmless PARTICIPATING AGENCIES, including their officers, directors, employees,
19 and agents (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits,
20 claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders,
21 penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not
22 limited to Claims arising from injuries to or death of persons (AUTHORITY's employees included), for
23 damage to property, including property owned by PARTICIPATING AGENCIES, or from any violation of
24 any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or
25 willful misconduct of AUTHORITY, its officers, directors, employees or agents in connection with or arising
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1 out of the performance of this Agreement.

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

4 **ARTICLE 9. ADDITIONAL PROVISIONS**

5 A. Term of Agreement: This Agreement shall be in full force and effect through
6 December 31, 2024.

7 B. Amendment: This Agreement may be extended or amended in writing at any time by the
8 mutual consent of all Parties and AUTHORITY. No amendment shall have any force or effect unless
9 executed in writing by all Parties and AUTHORITY.

10 C. Termination: In the event any Party defaults in the performance of their respective
11 obligations under this Agreement or breaches any of the provisions of this Agreement, a non-defaulting
12 Party(s) shall have the option to terminate this Agreement upon thirty (30) calendar days prior written
13 notice to the Party in default.

14 D. Termination for Convenience: Either Party may terminate this Agreement for its
15 convenience by providing thirty (30) calendar days prior written notice of its intent to terminate for
16 convenience to the other Party.

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

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

23 G. Severability: If any term, provision, covenant or condition of this Agreement is held to be
24 invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
25 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or
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1 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

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

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

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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.

15 L. Notices: Any notices, requests, or demands made between the Parties pursuant to this
16 Agreement are to be directed as follows:

To COSTA MESA:	To AUTHORITY:
City of Costa Mesa	Orange County Transportation Authority
77 Fair Drive Costa Mesa, CA 92626	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Shirjeel Muhammad Senior Engineer Tel: (714) 754-5298 Email: shirjeel.muhammad@costamesaca.gov	Attention: Venita Anderson Senior Contract Administrator Tel: (714) 560-5427 E-mail: vanderson@octa.net

**COOPERATIVE AGREEMENT NO. C-9-1421
RED HILL AVENUE – RTSSP**

To IRVINE:	To TUSTIN:
City of Irvine	City of Tustin
1 Civic Center Plaza Irvine, CA 92606	300 Centennial Way Tustin, CA 92780
Attention: Mark Ha Supervising Transportation Analyst Tel: (949) 724-6186 Email: mha@cityofirvine.org	Attention: Krys Saldivar Public Works Manager – Traffic/Transportation Tel: (714) 573-3172 Email: ksaldivar@tustinca.org

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

This Agreement shall be made effective upon execution by all Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-9-1421 to be executed as of the date of the last signature below.

CITY OF COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Katrina Foley
Mayor

By: _____
Darrell E. Johnson
Chief Executive Officer

Date: _____

Date: _____

ATTEST:

APPROVAL RECOMMENDED:

By: _____
Brenda Green
City Clerk

By: _____
Kia Mortazavi
Executive Director, Planning

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Kimberly Hall Barlow
City Attorney

Date: _____

This Agreement shall be made effective upon execution by all Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-9-1421 to be executed as of the date of the last signature below.

CITY OF IRVINE

By: _____
Christina L Shea
Mayor

Date: _____

ATTEST:

By: _____
Molly M. Perry

1 City Clerk

2 Date: _____

3 **APPROVED AS TO FORM**

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5 By: _____

6 Jeffrey Melching
7 City Attorney

8 Date: _____

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15 This Agreement shall be made effective upon execution by all Parties.

16 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-9-1421 to be
17 executed as of the date of the last signature below.

18 **CITY OF TUSTIN**

19 By: _____

20 Charles E. Puckett
21 Mayor

22 Date: _____

23 **ATTEST:**

24
25 By: _____

1 City Clerk

2 Date: _____

3 **APPROVED AS TO FORM**

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6 By: _____

7 David E. Kendig
8 City Attorney

9 Date: _____

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