

ATTACHMENT 3

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CA *R Hashem*

COOPERATIVE AGREEMENT NO. C-5-3612

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF COSTA MESA

FOR

I-405 IMPROVEMENT PROJECT

THIS COOPERATIVE AGREEMENT (Agreement), is effective this 10th day of May, 2016, 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 City of Costa Mesa, 77 Fair Drive, Costa Mesa, California 92628, a municipal corporation duly organized and existing under the constitution and laws of the State of California (herein referred to as "CITY") each individually known as "Party" and collectively known as the "Parties".

RECITALS:

WHEREAS, AUTHORITY, in cooperation and partnership with the California Department of Transportation, herein referred to as "CALTRANS", is proposing to reduce congestion and improve lane continuity through the Interstate 405 (I-405) corridor with improvements to mainline and interchanges on I-405 between State Route 73 (SR-73) and Interstate 605 (I-605).

WHEREAS, the improvements are generally defined as adding one general-purpose lane from Euclid Street to I-605, plus adding an additional median lane which will be combined with the existing HOV lane and operated as dual express lanes in each direction of I-405 from State Route (SR)-73 to Interstate 605 (I-605), replacing and/or widening structures, and other additional geometric and interchange improvements, including improvements to CITY-owned and operated streets, and traffic facilities hereinafter referred to as CITY FACILITIES potentially impacted by this project, all of which are hereinafter referred to as "PROJECT". AUTHORITY will use a design-build method of delivery for

1 build team (herein referred to as "CONTRACTOR"; and

2 **WHEREAS**, this Agreement defines the specific terms, conditions, and funding responsibilities
3 between the AUTHORITY and CITY regarding the CONTRACT DOCUMENTS, and the design and
4 construction of PROJECT in regards to CITY FACILITIES; and

5 **WHEREAS**, AUTHORITY is the sponsor and the primary funding agency for PROJECT; and

6 **WHEREAS**, CITY-owned and operated utilities will be subject to an utility agreement(s) and
7 separate from, and outside of this Agreement; and

8 **WHEREAS**, PROJECT is located within and adjacent to the CALTRANS right-of-way in the Cities
9 of Costa Mesa, Fountain Valley, Huntington Beach, Westminster, Garden Grove, Seal Beach, Los
10 Alamitos, and County of Orange; and

11 **WHEREAS**, AUTHORITY has contracted with Parsons Transportation Group, Inc., as the
12 Program Management Consultant (PMC) for this PROJECT, to assist with the administration and
13 oversight of the procurement, and design and construction phases of PROJECT; and

14 **WHEREAS**, AUTHORITY has contracted with Jacobs Project Management Co., as the
15 Construction Management Consultant (CMC) for this PROJECT, to assist with the administration and
16 oversight of the procurement, and construction phases of PROJECT; and

17 **WHEREAS**, AUTHORITY agrees to acquire right-of-way necessary for the PROJECT; and

18 **WHEREAS**, AUTHORITY shall ensure CONTRACTOR's compliance with all applicable
19 requirements contained in this Agreement; and

20 **WHEREAS**, CITY FACILITIES will potentially be impacted by PROJECT, and AUTHORITY
21 desires to collaborate with CITY during the development of the CONTRACT DOCUMENTS for the
22 selection of a CONTRACTOR, and during the design and construction of PROJECT; and

23 **WHEREAS**, AUTHORITY will provide contract administration for all phases of PROJECT work
24 on CITY FACILITIES, and work within CITY right-of-way, while adhering to State, Federal, and CITY
25 standards and requirements, as applicable; and

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1 **WHEREAS**, AUTHORITY will reimburse CITY for actual costs for CITY SERVICES, as related to
 2 improvements to CITY FACILITIES, and defined as:

- 3 • Review and approval of plans, specifications, and other pertinent engineering plans,
 4 and reports, and for oversight construction inspection services
- 5 • Review and acceptance of Transportation Management Plan (TMP)
- 6 • Traffic engineering, and oversight detour inspections
- 7 • CITY police services; and

8 **WHEREAS**, the costs for the following elements of CITY SERVICES cannot be quantified
 9 and priced at this time, as they will be developed by the CONTRACTOR upon CITY acceptance of TMP.
 10 Once the costs of these elements are developed, AUTHORITY shall amend this Agreement to account
 11 for such costs: set forth herein

12 • Costs for mitigation for reduction of pavement life related to impacts to CITY
 13 streets along the signed, long-term detours, and alternate detour routes required by CONTRACTOR;
 14 and

15 **WHEREAS**, CITY's City Council approved this Agreement on the 19th day of
 16 April, 2016; and

17 **WHEREAS**, AUTHORITY's Board of Directors authorized this Agreement on the 14th day of
 18 March, 2016.

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

20 **ARTICLE 1. COMPLETE AGREEMENT**

21 A. This Agreement, including any attachments incorporated herein and made applicable by
 22 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this
 23 Agreement between AUTHORITY and CITY and it supersedes all prior representations, understandings,
 24 and communications between the Parties relating to the subject matter of this Agreement. The invalidity
 25 in whole or in part of any term or condition of this Agreement shall not affect the validity of other term(s)

26 /

1 or condition(s) of this Agreement. The above referenced Recitals are true and correct and incorporated
2 by reference herein.

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

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

17 **ARTICLE 2. SCOPE OF AGREEMENT**

18 This Agreement specifies the roles and responsibilities of the Parties as they pertain to the
19 subjects and projects addressed herein. AUTHORITY and CITY agree that each will cooperate and
20 coordinate with the other in all activities covered by this Agreement and any amendments to this
21 Agreement.

22 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

23 AUTHORITY agrees to the following responsibilities for PROJECT:

24 A. To be the sponsor and funding agency to manage and administer the contract for
25 PROJECT, which includes preliminary engineering, right-of-way acquisition, and preparation of
26 CONTRACT DOCUMENTS to be used in the advertisement of a design-build RFP and for the selection

1 of a CONTRACTOR to perform full design-build activities, and other related services, including
2 improvements to CITY FACILITIES which are necessary as part of PROJECT.

3 B. To perform right-of-way acquisition and right-of-way certification for PROJECT, and
4 specifically for CITY FACILITIES, if necessary.

5 C. To include within the CONTRACT DOCUMENTS, in regards to CITY FACILITIES, design
6 criteria which meets acceptable CITY standards in existence at the time the design-build RFP is released.

7 D. To coordinate with CITY during the development of the CONTRACT DOCUMENTS as
8 they relate to CITY FACILITIES, and afford the CITY the opportunity to review, and comment on the
9 CONTRACT DOCUMENTS prior to the release of the RFP for PROJECT, and in accordance with the
10 terms of this Agreement.

11 E. To coordinate with CITY regarding review times to be included in CONTRACT
12 DOCUMENTS. The review times will be applicable to the design and construction of PROJECT in
13 regards to CITY FACILITIES. AUTHORITY will hold Joint Resolution Meetings (JRT) with CITY to resolve
14 CITY comments and obtain approvals, if applicable.

15 F. To coordinate the procurement, and design and construction of PROJECT with the CITY,
16 and hold regular technical and partnering meetings to brief the CITY on the status of PROJECT, solicit
17 input, and provide a forum to discuss and resolve PROJECT issues which impact the CITY.

18 G. To respond cooperatively and within a reasonable time to requests for information and
19 documents by CITY.

20 H. To comply with all requirements of the Final Environmental Impact Report/Environmental
21 Impact Statement (FEIR/FEIS) for the PROJECT, including but not limited to the preparation and
22 processing of any and all supplemental environmental documents, including those required for CITY
23 FACILITY improvements for PROJECT.

24 I. If AUTHORITY encounters hazardous, archeological, paleontological, cultural, or other
25 protected materials and/or species within any existing or future CITY-owned right-of-way for the CITY
26 FACILITIES, AUTHORITY shall notify the CITY and responsible control agencies of such discovery.

1 J. The costs for any remediation or protection for Article 3, Paragraph I, shall be covered as
2 a PROJECT cost, provided that AUTHORITY may seek reimbursement from other third parties which
3 may be jointly or severally liable for such removal or protection.

4 K. To protect in place, rearrange or relocate after CITY consultation and concurrence, CITY-
5 owned public utility facilities found to be in conflict with PROJECT. All conditions of this clause shall be
6 subject to utility agreements which are separate from, and outside of, this Agreement.

7 L. To secure and comply with any and all other governmental and/or regulatory approvals,
8 permits and/or clearances required for the design and construction of CITY FACILITIES included in
9 PROJECT.

10 M. In the event CITY requests additional improvements, they shall be evaluated and
11 processed in accordance with Article 4, Paragraph L, of this Agreement.

12 N. To implement a Quality Management Plan during all phases of PROJECT.

13 O. To monitor all PROJECT activities to ensure compliance with the approved PROJECT
14 schedule, quality and budget goals of PROJECT.

15 P. To obtain concurrence for permanent easements, if required, for CITY FACILITIES.

16 Q. To facilitate discussion between CITY, local agencies, and others regarding resolution of
17 ownership, operation, and maintenance of CITY FACILITIES.

18 R. To coordinate with CALTRANS and CITY for preparation and execution of Maintenance
19 Agreements.

20 S. To convey ownership of any property acquired by AUTHORITY for PROJECT, and which
21 is necessary for CITY FACILITIES upon completion of the CITY FACILITIES, and title to such right-of-
22 way having been acquired by AUTHORITY. Conveyance of such property to the CITY shall be completed
23 through an executed Property Transfer Agreement with AUTHORITY. AUTHORITY shall convey such
24 property in a condition acceptable to the CITY and in accordance with CALTRANS' Right of Way Manual.

25 T. To require CONTRACTOR to submit to CITY for review and approval, including but not
26 limited to, plans, specifications, and other pertinent engineering plans, and reports, for CITY FACILITIES

1 prior to construction thereof. During construction, CITY may provide construction oversight inspection
2 services. Such reviews and approvals, and construction oversight inspection services (CITY SERVICES)
3 shall be in accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this
4 Agreement.

5 U. To require CONTRACTOR to prepare a TMP, and submit to CITY for review and
6 acceptance, in regards to construction related impacts to CITY. The TMP will address construction-
7 related impacts to existing CITY street traffic, and will include normal traffic handling requirements during
8 PROJECT construction including staging, lane closures, re-striping, detours, and signalization, and will
9 specify requirements for communicating with the public and local agencies during construction.
10 Modifications to streets, intersections, signals, etc., required to address traffic impacts during construction
11 will be borne as a PROJECT cost. Such review and acceptance of TMP (CITY SERVICES) shall be in
12 accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this Agreement.

13 V. To obtain a written acceptance of TMP from CITY.

14 W. To reimburse the CITY for its actual costs for oversight detour inspections, traffic
15 engineering services (including staff overhead and third party traffic signal maintenance service costs
16 contracted out by CITY), and police services (including overtime costs). Ongoing deployment of police
17 services related to PROJECT traffic management will require prior approval by AUTHORITY. Such
18 traffic engineering, oversight detour inspections, and police services (CITY SERVICES) shall be in
19 accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this Agreement.

20 X. To monitor and ensure CONTRACTOR compliance with the TMP.

21 Y. To work collaboratively with CITY, upon acceptance of TMP, to prepare an established
22 and approved visual pavement study to evaluate the pre-detour conditions, and forecasted impacts to the
23 CITY street pavement used for signed, long-term freeway detours, and alternate route detours based on
24 the period of construction within the CITY limits. As the result of the study, and as agreed to by Parties,
25 AUTHORITY will reimburse CITY the exact amount of the agreed-to mitigation costs for the reduction of
26 pavement life for the detour routes, via an amendment to this Agreement. The dollar amount of pavement

mitigation (CITY SERVICES) shall be a one-time, lump sum maximum reimbursement amount, and no further payment will be made toward the mitigation costs described herein.

Z. To require CONTRACTOR to repair any and all damage to CITY street pavements that occurs for any reason during the period of construction, in accordance with CITY standards and requirements for removal and replacement of pavement and in accordance with the CONTRACT DOCUMENTS and this Agreement. Street repairs shall be completed and approved prior to CITY approval and acceptance of construction completion of CITY.

AA. To require CONTRACTOR to obtain a no fee encroachment permit from CITY prior to commencing construction of PROJECT. Provided all conditions of such permit have been fulfilled, the permits shall authorize CONTRACTOR to commence work within CITY right-of-way, or areas which affect CITY FACILITIES.

BB. To monitor and ensure CONTRACTOR compliance with CITY's permit.

CC. To implement a Public Awareness Campaign during PROJECT that advises CITY, local businesses, residents, elected officials, motorists, and media, of construction status, street detours, and ramp and freeway closures, if and where applicable.

DD. To provide PROJECT closeout activities, including walk-through, punch list, final payment accounting, and furnish approved "As-builts" to CITY for CITY FACILITIES.

EE. To develop, for CITY, a record of survey, final maps, and all necessary title transfers for CITY relative to PROJECT.

FF. To obtain CITY written approval and acceptance at construction completion of CITY FACILITIES.

GG. To reimburse CITY for combined costs identified as "CITY SERVICES", and in accordance with the attached SCHEDULE A, "REIMBURSEMENT SCHEDULE FOR COMBINED CITY SERVICES."

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1 HH. To reimburse CITY for actual costs, within 30 days from receipt of each invoice that is
2 prepared and submitted in compliance with the requirements of ARTICLE 5, REQUEST FOR
3 REIMBURSEMENT, below.

4 II. AUTHORITY's reimbursement for CITY SERVICES will not exceed the combined
5 maximum amount shown on SCHEDULE A.

6 JJ. To perform all work associated with the PROJECT at no cost to the CITY, unless
7 specifically provided otherwise herein or in any amendment to this Agreement.

8 KK. To cause all contractors and vendors who perform work or provide supplies for CITY
9 FACILITIES to name the CITY as an additional insured on policies which the AUTHORITY is an additional
10 insured and, prior to the commencement of work, provide certificates of insurance to CITY showing the
11 CITY as an additional insured.

12 **ARTICLE 4. RESPONSIBILITIES OF CITY**

13 CITY agrees to the following responsibilities for PROJECT:

14 A. To collaborate and cooperate with AUTHORITY during the development of the
15 CONTRACT DOCUMENTS for the RFP, and during the design and construction of PROJECT.

16 B. To provide CITY SERVICES for PROJECT as agreed by CITY and AUTHORITY.

17 C. To review, and provide comment on, in a timely manner, and in accordance with the
18 CONTRACT DOCUMENTS and this Agreement, all plans and other submittals related to PROJECT, and
19 approve and/or concur with AUTHORITY or CONTRACTOR's submittals when CITY determines such
20 submittals comply with CITY's standards and criteria to facilitate AUTHORITY's delivery of PROJECT.

21 D. To make available to AUTHORITY all necessary CITY regulations, policies, procedures,
22 manuals, standard plans, and specifications required for the construction of PROJECT when requested
23 by AUTHORITY.

24 E. To attend and participate in the PROJECT's regular technical and partnering meetings for
25 AUTHORITY to brief CITY on the status of PROJECT, and to provide a forum to discuss and to resolve
26 CITY's concerns and issues.

1 F. Upon award of a design-build contract by AUTHORITY, to make reasonable efforts and
2 devote reasonable resources for the issuance of encroachment permits, and other necessary permits, if
3 applicable, to CONTRACTOR at no fee, and upon CONTRACTOR's compliance with permit
4 requirements, to not cause delay to PROJECT's construction schedule. Such permits shall authorize
5 CONTRACTOR to commence work within CITY right-of-way, or areas which affect CITY FACILITIES.

6 G. To make necessary efforts to coordinate and cooperate with AUTHORITY, its agents, and
7 contractors, to meet or exceed design-build schedule criteria as identified by AUTHORITY.

8 H. To waive any moratorium on the excavation or trenching work on CITY streets that were
9 recently resurfaced where such excavation or trenching are necessary for PROJECT. CONTRACTOR
10 will be required to adhere to CITY's requirements for the removal and replacement of pavement in
11 accordance with the CONTRACT DOCUMENTS and this Agreement.

12 I. To cooperate with AUTHORITY and use its best efforts to cause the rearrangement or
13 relocation of all municipal and public utility facilities, in accordance with applicable State or local franchises
14 or laws, that may be determined by AUTHORITY and CITY to be within CITY's jurisdiction and pose a
15 conflict with the PROJECT. CITY hereby agrees to exercise and invoke its rights under any applicable
16 State or local franchises or laws, or any prior rights or superior rights the CITY may have to effectuate
17 such rearrangement or relocation at the expense of the affected public utility as necessary to allow
18 completion of PROJECT. CITY shall cooperate with AUTHORITY and provide all appropriate and
19 necessary support to achieve this result. In the event the public utility fails to make the rearrangement
20 or relocation or fails to agree to make the rearrangement or relocation in a timely manner, CITY shall
21 assign to AUTHORITY its rights to rearrange or relocate said public utility under State law, or the
22 pertinent agreement or recorded instrument that the CITY has with the public utility entity. CITY shall
23 cooperate with AUTHORITY, provide assistance to the AUTHORITY as needed, and join with the
24 AUTHORITY as a party in the prosecution or defense of the CITY's and the AUTHORITY's rights
25 under the laws of the State of California to cause such rearrangements or relocations. Wherever
26 possible, any rearrangement or relocation of a public utility shall be made to an area covered by a

1 State or local franchises or laws. All conditions of this clause shall be subject to utility agreements
2 which are separate from and outside of this Agreement.

3 J. To agree to take ownership of property acquired by AUTHORITY for PROJECT, and
4 which is necessary for CITY FACILITIES upon completion of the CITY FACILITIES, and title to such right-
5 of-way having been acquired by AUTHORITY. Conveyance of such property to the CITY shall be
6 completed through an executed Property Transfer Agreement with AUTHORITY. AUTHORITY shall
7 convey such property in a condition acceptable to CITY and in accordance with CALTRANS Right of Way
8 Manual.

9 K. To accept operation and maintenance of the CITY FACILITIES, or portion thereof, upon
10 their acceptance by AUTHORITY, and based upon the AUTHORITY's written certification that the
11 AUTHORITY has complied with all terms of the Agreement. The acceptance of the CITY FACILITIES
12 and written certification shall not unreasonably be withheld. CITY acknowledges that CITY FACILITIES
13 may be completed at different times and accepted in different stages of PROJECT.

14 L. In the event CITY requests additional CITY FACILITY improvements to be incorporated
15 into PROJECT after release of the RFP, CITY shall be solely responsible for all costs and expenses
16 related thereto, including: 1) the costs incurred to incorporate the improvements into the PROJECT's
17 scope of work; 2) additional design, construction and oversight costs arising from or associated with
18 the improvements, including change orders related thereto; 3) additional operations and maintenance
19 costs arising from or associated with the improvements, including change orders related thereto; and
20 4) costs associated with any impact on the design and construction schedule associated with the
21 improvements, including any associated PROJECT delay costs and damages. This is not intended
22 to eliminate mitigations for required PROJECT changes identified during construction.
23 AUTHORITY, at its sole discretion, may agree to incorporate such CITY FACILITY improvements,
24 via an amendment to this Agreement, identifying the CITY FACILITY improvements, estimated costs,
25 and funding sources from CITY for these improvements.

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1 M. To submit monthly invoices to AUTHORITY for work completed and actual costs incurred
2 by CITY for CITY SERVICES, pursuant to ARTICLE 5. REQUEST FOR REIMBURSEMENT. CITY shall
3 submit final invoice no later than ninety (90) days after final acceptance of PROJECT. Any costs in
4 excess of the amounts specified herein shall not be incurred without a written amendment to this
5 Agreement.

6 **ARTICLE 5. REQUEST FOR REIMBURSEMENT**

7 In order for CITY to be reimbursed for incurred costs relative to PROJECT, CITY agrees:

8 A. To prepare and submit to AUTHORITY a monthly invoice with supporting
9 documentation. CITY's invoice shall include allowable PROJECT costs incurred and paid for by CITY.
10 The invoice submitted by CITY shall be signed by an authorized agent who can duly certify the
11 accuracy of the included information.

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

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

- 15 1. Agreement Number C- 5-3612
- 16 2. The total of PROJECT expenditures shall specify the percent and amount of funds
17 to be reimbursed, and include support documentation for all expenses invoiced excluding the one-
18 time, lump sum amount for reimbursement of pavement mitigation.
- 19 3. Adequate detail describing all work completed excluding pavement mitigation.
- 20 4. Such other information as requested by AUTHORITY.

21 D. To consult with AUTHORITY's Project Manager for questions regarding non-reimbursable
22 expenses.

23 E. That total payments shall not exceed the maximum obligation specified in ARTICLE 7.
24 MAXIMUM OBLIGATION.

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ARTICLE 6. DELEGATED AUTHORITY

The actions required to be taken by CITY in the implementation of this Agreement are delegated to its CITY Public Works Director, 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 or designee.

ARTICLE 7. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CITY mutually agree that AUTHORITY's maximum cumulative payment obligation hereunder shall be Three Hundred Forty Four Thousand, Nine Hundred Dollars (\$344,900.00) excluding street pavement obligation for pavement mitigation, unless agreed to and amended by both Parties. AUTHORITY's maximum cumulative obligation for pavement mitigation shall be addressed in a future amendment to this Agreement.

ARTICLE 8. 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, relating to this Agreement, 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 or consultant, excluding contracts with legal counsel.

ARTICLE 9. INDEMNIFICATION

A. To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and expense with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect, and hold harmless AUTHORITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from

1 and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration
2 awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and
3 attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of
4 persons (CITY's employees included), Claims for damage to property, including property owned by
5 AUTHORITY, or from any alleged violation of any federal, state, or local law or ordinance, alleged to be
6 caused by the negligent acts, omissions or willful misconduct of CITY, its officers, directors, employees
7 or agents in connection with or arising out of the performance of this
8 Agreement.

9 B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole
10 cost and expense with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold
11 harmless CITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from
12 and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration
13 awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and
14 attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of
15 persons (AUTHORITY's employees included) and Claims for damage to property, including property
16 owned by CITY, alleged to be caused by the negligent acts, omissions or willful misconduct of
17 AUTHORITY, CONTRACTOR, their officers, directors, employees or agents arising out of the
18 performance of this Agreement and/ or arising out of the condition of the CITY FACILITIES on which the
19 PROJECT is being constructed, or from any alleged violation of any federal, state, or local law or
20 ordinance, or from any breach of this Agreement, by AUTHORITY, CONTRACTOR, their officers,
21 directors, employees or agents.

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

24 **ARTICLE 10. ADDITIONAL PROVISIONS**

25 A. Term of Agreement: The term of this Agreement shall be in full force and effect through
26 April 30, 2023.

1 B. Termination: In the event either Party defaults in the performance of its obligations under
2 this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall provide
3 written notice to the defaulting Party to cure such default within 30 days of such default. If the default
4 cannot be cured within such time, as determined by the non-defaulting Party, then the defaulting Party
5 shall have such additional time as provided in the written notice or such time as the Parties may otherwise
6 agree in writing. In any event, the non-defaulting Party shall promptly take such actions as are reasonably
7 necessary to cure the default. If the default or breach is material and not cured within the time provided
8 herein, either Party has the option, in addition to any other remedies available at law, to terminate this
9 Agreement upon thirty (30) days' prior written notice to the other Party.

10 C. Compliance with All Laws: AUTHORITY and CITY shall comply with all applicable federal,
11 state, and local laws, statutes, ordinances and regulations of any governmental authority having
12 jurisdiction over the PROJECT.

13 D. Legal Authority: AUTHORITY and CITY hereto warrant that the persons executing this
14 Agreement are authorized to execute this Agreement on behalf of the Parties and that by so executing
15 this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

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

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

23 G. Force Majeure: Either Party shall be excused from performing its obligations under this
24 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
25 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;
26 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.

H. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Absent any consent, any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

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

J. Litigation fees: In the event that either Party to this Agreement shall commence any legal or equitable action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable costs and attorney's fees as determined by the court.

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

To CITY	To AUTHORITY
City of Costa Mesa	Orange County Transportation Authority
Public Works Department	550 South Main Street
77 Fair Drive	P.O. Box 14184
Costa Mesa, CA 92628	Orange, CA 92863-1584
Attention: Ernesto Munoz	Attention: Ms. Reem Hashem
Public Works Director	Principal Contract Administrator
Tel: (714) 754-5343	Tel: (714) 560-5446
Email: Ernesto.Munoz@costamesaca.gov	Email: rhashem@octa.net

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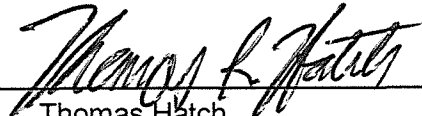
This Agreement shall be made effective upon execution by both Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-5-3612 to be executed on the date first above written.

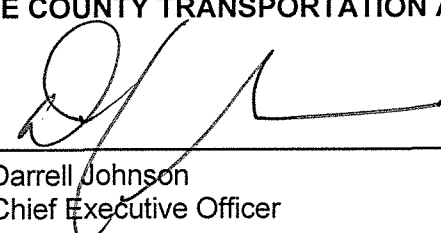
CITY OF COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By:


Thomas Hatch
Chief Executive Officer

By:


Darrell Johnson
Chief Executive Officer

ATTEST:

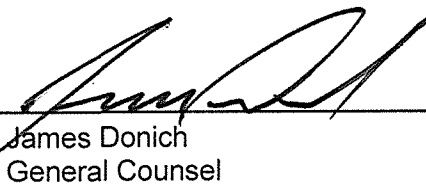
APPROVED AS TO FORM:

By:


Brenda Green
City Clerk



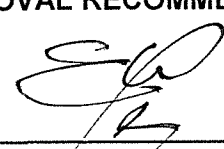
By:


James Donich
General Counsel

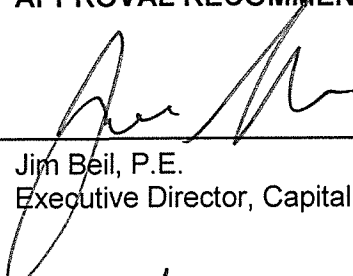
APPROVAL RECOMMENDED

APPROVAL RECOMMENDED:

By:

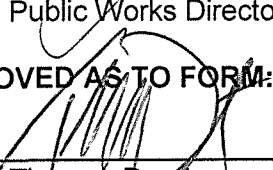

Ernesto Munoz
Public Works Director

By:


Jim Beil, P.E.
Executive Director, Capital Programs

APPROVED AS TO FORM:

By:


Thomas Duarte
City Attorney

Dated:

5/6/16

Dated:

04/21/16

Attachment:

Schedule A – Maximum Reimbursement for Combined City Services

SCHEDULE A

**REIMBURSEMENT SCHEDULE FOR COMBINED CITY SERVICES
CITY OF COSTA MESA**

<i>Item No.</i>	<i>Reimbursement Description</i>	<i>Maximum Reimbursement Amount(1)</i>
1	Review and approval of plans, specifications, plans, and other pertinent engineering plans and reports, Traffic Management Plan (TMP) review and concurrence, and construction oversight inspection services related to CITY FACILITIES.	\$202,500
2	Traffic engineering and detour inspection	\$78,700
3	Police services (including overtime costs)	\$63,700
4	Pavement Mitigation	TBD (2)
	TOTAL MAXIMUM REIMBURSEMENT	\$344,900

(1) Schedule A shows estimated reimbursement amounts for each CITY SERVICES item of work. During the term of this Agreement. The CITY may redistribute funds among items of work as needed; however, the total combined amount for CITY SERVICES shall not exceed the Total Maximum Reimbursement amount shown herein.

(2) This amount will be determined after CONTRACTOR is hired by AUTHORITY, and shall be reimbursed as a one-time, lump sum amount upon execution of an amendment to this Agreement.

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Related W/H Req.	-----By	-----Authorised Date	-----Value
	00000004559	03/11/16	344900.00

Item Costing Details:			
Equipment Reference	Project/Work Order	Account Code	%
		0017FK1010I29084	100.00