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**COOPERATIVE AGREEMENT NO. C-5-2592**  
**BETWEEN**  
**ORANGE COUNTY TRANSPORTATION AUTHORITY**  
**AND**  
**CITY OF COSTA MESA**  
**AND**  
**CITY OF SANTA ANA**

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**THIS AGREEMENT (“AGREEMENT”)**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, 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 (hereinafter referred to as “AUTHORITY”) and the City of Costa Mesa (hereinafter referred to as “COSTA MESA”) and the City of Santa Ana, (hereinafter referred to as “SANTA ANA”).

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**RECITALS:**

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**WHEREAS**, AUTHORITY, in cooperation with the California Department of Transportation (hereinafter referred to as “CALTRANS”), pursuant to Streets and Highways Code Sections 114 and 130, mutually agreed to cooperate in the development of improvements to Interstate 405 and State Route 55 consisting of adding a High-Occupancy Vehicle (HOV) direct connector from the southbound State Route 55 to northbound Interstate 405, and the reverse movement (referred to herein as “TRANSITWAY PROJECT” or “MOS-3”); and

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**WHEREAS**, AUTHORITY at the request of COSTA MESA included constructing a series of local access improvements, (hereinafter referred to as “CITY OF COSTA MESA IMPROVEMENTS” or “MOS-2”), along Interstate 405 in the same area of the MOS-3. The MOS-2 improvements include 1) an off ramp braid at Bristol Street, 2) a new off ramp at Avenue of the Arts and 3) a new on ramp at Anton Avenue; and

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**WHEREAS**, on February 28, 1994, COSTA MESA and AUTHORITY entered into Agreement No. C-93-626, combining the MOS-2 and MOS-3 into a single project (hereinafter referred to as “MOS-2 and 3 PROJECT”). The construction of the MOS-2 and 3 PROJECT provided minimal

1 landscaping and COSTA MESA and SANTA ANA along with effected businesses have expressed  
2 serious concern with regards to the appearance of the I-405/Bristol Street and SR-55/MacArthur  
3 Boulevard interchanges; and

4 **WHEREAS**, AUTHORITY has agreed to provide funding in the not to exceed amount of One  
5 Million, Three Hundred Forty-Three Thousand Dollars (\$1,343,000.00), for completion of  
6 landscaping (hereinafter referred to as "LANDSCAPING PROJECT") based on conceptual design  
7 and cost estimates provided by CALTRANS. The AUTHORITY, COSTA MESA and SANTA ANA  
8 have reviewed the conceptual plan and the project estimate and are satisfied with the  
9 LANDSCAPING PROJECT being proposed; and

10 **WHEREAS**, all elements of the LANDSCAPING PROJECT including design, construction,  
11 construction management and administration shall be performed by COSTA MESA, SANTA ANA or  
12 their respective representative(s) in the not to exceed amount of \$1,343,000.00 and shall be  
13 independent of the present MOS-2 and 3 PROJECT elements including budget and schedule.  
14 COSTA MESA and SANTA ANA agree that should the cost of the landscaping exceed  
15 \$1,343,000.00 at any time after execution of this Agreement, COSTA MESA and SANTA ANA shall  
16 fund all additional project costs or may choose to reduce the scope to remain within the budget.

17 **NOW, THEREFORE**, it is mutually agreed by AUTHORITY, COSTA MESA and SANTA ANA  
18 as follows:

19 **ARTICLE 1. COMPLETE AGREEMENT**

20 This Agreement, including all exhibits and documents incorporated herein and made  
21 applicable by reference, constitutes the complete and exclusive statement of the term(s) and  
22 condition(s) of the agreement between AUTHORITY, COSTA MESA and SANTA ANA and it  
23 supersedes all prior representations, understandings and communications. The invalidity in whole  
24 or part of any term or condition of this Agreement shall not affect the validity of other term(s) or  
25 condition(s).

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1                   **ARTICLE 2. RESPONSIBILITIES OF AUTHORITY**

2                   AUTHORITY agrees to the following responsibilities for the LANDSCAPING PROJECT:

3                   A.        AUTHORITY shall fund the LANDSCAPING PROJECT based on actual costs  
4 including but not limited to full design, construction, construction management and administration in  
5 a not-to-exceed amount of One Million, Three Hundred Forty-Three Thousand Dollars  
6 (\$1,343,000.00). AUTHORITY will not be obligated for any additional costs beyond this amount.

7                   B.        Allocation of the funding to COSTA MESA and SANTA ANA shall be based on the  
8 cost estimate provided at conceptual design provided by CALTRANS. Cost sharing shall be as  
9 follows; COSTA MESA shall be at forty percent for a not-to-exceed amount of Five Hundred, Thirty-  
10 Seven Thousand, Two Hundred Dollars, (\$537,200). Cost sharing for SANTA ANA shall be at sixty  
11 percent, or a not-to-exceed amount of Eight Hundred and Five Thousand, Eight Hundred Dollars  
12 (\$808,800.00).

13                   **ARTICLE 3. RESPONSIBILITIES OF COSTA MESA**

14                   COSTA MESA agrees to the following responsibilities for the LANDSCAPING PROJECT:

15                   A.        COSTA MESA shall take full responsibility of the LANDSCAPING PROJECT at I-  
16 405/Bristol Street Interchange. COSTA MESA shall oversee and perform complete project  
17 management of the LANDSCAPING PROJECT at I-405/Bristol Street Interchange, including but not  
18 limited to all necessary staff services, design, construction, and construction management with no  
19 assistance from the AUTHORITY. It is COSTA MESA's responsibility to provide all necessary staff  
20 and services for completion of the LANDSCAPING PROJECT at I-405/Bristol Street Interchange.

21                   B.        With the exception of plant establishment at completion of the LANDSCAPING  
22 PROJECT, COSTA MESA shall perform all related work within eighteen months of execution of this  
23 Agreement. Failure to meet this project duration may result in AUTHORITY withdrawing funding of  
24 the PROJECT or reserving the right to withhold future COSTA MESA Measure M turnback funds  
25 equal to amount of the city's share which is \$537, 200.00.

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1 C. COSTA MESA shall apply due diligence to manage and supervise the  
2 LANDSCAPING PROJECT design efforts in order to minimize any and all “throw-away” costs  
3 associated with the original landscaping improvements to be implemented at the said interchange as  
4 part of the MOS-2 and 3 PROJECT.

5 **ARTICLE 4. RESPONSIBILITIES OF SANTA ANA**

6 SANTA ANA agrees to the following responsibilities for the LANDSCAPING PROJECT:

7 A. SANTA ANA shall take full responsibility of the LANDSCAPING PROJECT at SR-  
8 55/MacArthur Boulevard Interchange. SANTA ANA shall oversee and perform complete project  
9 management of the LANDSCAPING PROJECT at SR-55/MacArthur Boulevard, including but not  
10 limited to all necessary staff services, design, construction, and construction management with no  
11 assistance from the AUTHORITY. It is SANTA ANA’s responsibility to provide all necessary staff  
12 and services for completion of the LANDSCAPING PROJECT at SR-55/MacArthur Boulevard  
13 Interchange.

14 B. With the exception of plant establishment at completion of the LANDSCAPING  
15 PROJECT, SANTA ANA shall perform all related work within eighteen months of execution of this  
16 Agreement. Failure to meet this project duration may result in AUTHORITY withdrawing financing  
17 for the PROJECT or reserving the right to withhold future SANTA ANA Measure M turnback funds  
18 equal to city’s share which is \$805,800.00.

19 C. SANTA ANA shall apply due diligence to manage and supervise the LANDSCAPING  
20 PROJECT design efforts in order to minimize any and all “throw-away” costs associated with the  
21 original landscaping improvements to be implemented at the said interchange as part of the MOS-2  
22 and 3 PROJECT.

23 **ARTICLE 5. FUNDING AND INVOICING COSTA MESA**

24 A. COSTA MESA shall submit an invoice to AUTHORITY for the not-to-exceed amount  
25 of \$537,200.00, no later than 30 calendar days after execution of this Agreement.

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1 B. COSTA MESA shall within five (5) calendar days of receipt of payment from  
2 AUTHORITY deposit the entire amount in an interest bearing account of which the interest accrued  
3 shall be due to AUTHORITY upon completion of the LANDSCAPING PROJECT. COSTA MESA  
4 shall submit a monthly bank statement to AUTHORITY showing the interest accrued. All interest  
5 shall be paid to AUTHORITY within 90 calendar days after PROJECT completion.

6 C. On the 10th day of each month, COSTA MESA shall submit to AUTHORITY, a  
7 monthly expenditure report which details all expenditures related to I-405 Bristol Street Interchange  
8 of the LANDSCAPING PROJECT.

9 D. Within 90 calendar days of PROJECT completion, COSTA MESA shall return to the  
10 AUTHORITY all remaining project funding.

11 **ARTICLE 6. FUNDING AND INVOICING SANTA ANA**

12 A. SANTA ANA shall submit an invoice to AUTHORITY for the not-to-exceed amount of  
13 \$805,800.00, no later than 30 calendar days after execution of this Agreement.

14 B. SANTA ANA shall within five (5) calendar days of receipt of payment from  
15 AUTHORITY deposit the entire amount in an interest bearing account of which the interest accrued  
16 shall be due AUTHORITY upon completion of the LANDSCAPING PROJECT. SANTA ANA shall  
17 submit a monthly bank statement to AUTHORITY showing the interest accrued. All interest shall be  
18 paid to AUTHORITY within 90 calendar days after PROJECT completion.

19 C. SANTA ANA shall be held accountable for project costs and are to provide  
20 AUTHORITY a detailed monthly expenditure report pertaining to its responsibilities with respect to  
21 the SR-55/MacArthur Boulevard Interchange of the LANDSCAPING PROJECT for the entire project  
22 duration. This report shall submitted to AUTHORITY by the 10<sup>th</sup> day of each month.

23 D. Within 90 calendar days of PROJECT completion, SANTA ANA shall return to the  
24 AUTHORITY all remaining project funding.

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**ARTICLE 7. MUTUAL RESPONSIBILITIES**

The AUTHORITY, COSTA MESA and SANTA ANA agree to the following mutual responsibilities:

A. That the LANDSCAPING PROJECT shall proceed in accordance with the schedule and budget defined in the Measure M Strategic Plan for Freeway Projects, as adopted by the AUTHORITY.

B. That if funding or partial funding becomes available to COSTA MESA and SANTA ANA through other applicable funding sources for which the LANDSCAPING PROJECT is eligible, these funds shall be used to offset the AUTHORITY's contribution. All AUTHORITY funds which may have been distributed shall be returned to AUTHORITY within 30 calendar days of receipt of other such funds.

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

**To COSTA MESA:**

**To AUTHORITY:**

City of Costa Mesa

Orange County Transportation Authority

P.O. Box 1200, 77 Fair Drive

550 South Main Street

Costa Mesa, CA 92628-1200

P.O. Box 14184

Orange CA 92863-1584

Attention: Peter Naghavi

Attention: Kathleen E. Perez, Section Manager

Transportation Services

Section Manger, Capital Projects

714-754-5182, 714-754-5028 fax

714-560-5660, 714-560-5792 fax

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**To SANTA ANA:**

City of Santa Ana

20 Civic Center Plaza

P.O. Box 1988

Santa Ana, CA 92702

Attention: David Biondolillo, Sr. Transportation Analyst

714-647-5603, 714-647-5823 fax

D. All changes to this Agreement shall be done by written mutual consent of the parties to this Agreement.

E. AUTHORITY, COSTA MESA and SANTA ANA shall comply with all applicable federal, state, and local laws, statutes, ordinances and regulations of any governmental authority having jurisdiction of the LANDSCAPING PROJECT in the performance of this Agreement.

F. After receipt of reasonable notice and during regular business hours, COSTA MESA and SANTA ANA agree to provide AUTHORITY or agent thereof, access to books, records, payroll documents and facilities as necessary to examine, audit and inspect all accounting books, records, work data, documents and activities directly related hereto. COSTA MESA and SANTA ANA shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible during performance hereunder and for a period of four (4) years from the date of project funding by AUTHORITY to COSTA MESA and SANTA ANA.

**ARTICLE 8. TERM OF THE AGREEMENT**

This Agreement shall commence upon execution of this Agreement by all parties and shall continue in full force and effect for eighteen months unless earlier terminated or extended as provided in this Agreement.

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**ARTICLE 9. INDEMNIFICATION**

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2 A. The AUTHORITY shall indemnify, defend and hold harmless COSTA MESA and  
3 SANTA ANA, their respective officials, officers, directors, employees, volunteer representatives,  
4 subcontractors or suppliers, member agencies and agents from and against any and all claims  
5 (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or  
6 damages, bodily injuries, including death, damage to or loss of use of property, caused by negligent  
7 acts omissions or willful misconduct by AUTHORITY, its officers, directors, employees, agents,  
8 subcontractors or suppliers in connection with or arising out of the performance of this Agreement  
9 that are asserted or claimed against COSTA MESA and SANTA ANA, their respective officers,  
10 directors, employees, agents, member agencies, subcontractors or suppliers.

11 B. COSTA MESA shall indemnify, defend and hold harmless AUTHORITY, its officers,  
12 directors, employees, subcontractors or suppliers, and agents from and against any and all claims,  
13 actions, damages, liabilities and expenses (including attorney's fees and reasonable expenses for  
14 litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss  
15 of use of property, caused by negligent acts omissions or willful misconduct by COSTA MESA and  
16 its officials, officers, directors, employees, agents, representatives, subcontractors or suppliers in  
17 connection with or arising out of the performance of this Agreement that are asserted or claimed  
18 against AUTHORITY, its officers, directors, employees, agents, member agencies, subcontractors or  
19 suppliers.

20 C. SANTA ANA shall indemnify, defend and hold harmless AUTHORITY, its officers,  
21 directors, employees, subcontractors or suppliers, and agents from and against any and all claims,  
22 actions, damages, liabilities and expenses (including attorney's fees and reasonable expenses for  
23 litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss  
24 of use of property, caused by negligent acts omissions or willful misconduct by SANTA ANA, and its  
25 officials, officers, directors, employees, agents, representatives, subcontractors or suppliers in  
26 connection with or arising out of the performance of this Agreement that are asserted or claimed

1 against AUTHORITY, its officers, directors, employees, agents, member agencies, subcontractors or  
2 suppliers.

3 **ARTICLE 10. FORCE MAJUERE**

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

11 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the  
12 date first written above.

13 **COSTA MESA**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

14 By: \_\_\_\_\_  
15 Mayor, City of Costa Mesa

By: \_\_\_\_\_  
Arthur T. Leahy  
Chief Executive Officer

16 ATTEST:

APPROVED AS TO FORM:

17 By: \_\_\_\_\_  
18 Clerk of the Council

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

21 **APPROVED AS TO FORM:**

22 City Attorney  
23 By: \_\_\_\_\_

APPROVED:

24 By: \_\_\_\_\_  
25 Stanley G. Phernambucq, Executive Director  
26 Construction and Engineering

**SANTA ANA**

By: \_\_\_\_\_ Date: \_\_\_\_\_

DAVID N. REAM  
City Manager

**ATTEST:**

By: \_\_\_\_\_

PATRICIA E. HEALY  
Clerk of the Council

**APPROVED AS TO FORM:**

JOSEPH W. FLETCHER  
City Attorney

By: \_\_\_\_\_

Benjamin Kaufman  
Chief Assistant City Attorney

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