**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 _____ day of _____, 20 ____, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange California 92863-1584, a public entity (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); and

**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 SR-73 to 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 the procurement, design, and construction of PROJECT and shall prepare contract documents (CONTRACT DOCUMENTS) to procure a design-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, CITY's City Council approved this Agreement on the _____day of _____, 20____; and

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

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

**ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

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

## ARTICLE 2. SCOPE OF AGREEMENT

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

## ARTICLE 3. RESPONSIBILITIES OF AUTHORITY

AUTHORITY agrees to the following responsibilities for PROJECT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Y. To work collaboratively with CITY, upon acceptance of TMP, to prepare an established and approved visual pavement study to evaluate the pre-detour conditions, and forecasted impacts to the CITY street pavement used for signed, long-term freeway detours, and alternate route detours based on the period of construction within the CITY limits. As the result of the study, and as agreed to by Parties, AUTHORITY will reimburse CITY the exact amount of the agreed-to mitigation costs for the reduction of 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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HH. To reimburse CITY for actual costs, within 30 days from receipt of each invoice that is prepared and submitted in compliance with the requirements of ARTICLE 5, REQUEST FOR REIMBURSEMENT, below.

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

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

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

**ARTICLE 4. RESPONSIBILITIES OF CITY**

CITY agrees to the following responsibilities for PROJECT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 5. REQUEST FOR REIMBURSEMENT**

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

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

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

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

1. Agreement Number C- 5-3612

2. The total of PROJECT expenditures shall specify the percent and amount of funds to be reimbursed, and include support documentation for all expenses invoiced excluding the one-time, lump sum amount for reimbursement of pavement mitigation.

3. Adequate detail describing all work completed excluding pavement mitigation.

4. Such other information as requested by AUTHORITY.

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

E. That total payments shall not exceed the maximum obligation specified in ARTICLE 7. 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

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

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

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

**ARTICLE 10. ADDITIONAL PROVISIONS**

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

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

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

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

E. 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 of 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.

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

G. 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.

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<br>77 Fair Drive<br>Costa Mesa, CA 92628 | 550 South Main Street<br>P.O. Box 14184<br>Orange, CA 92863-1584 |
| Attention: Ernesto Munoz<br>Public Works Director | Attention: Ms. Reem Hashem<br>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**

By: _____
Thomas Hatch
Chief Executive Officer

**ATTEST:**

By: _____
Brenda Green
City Clerk

**APPROVAL RECOMMENDED**

By: _____
Ernesto Munoz
Public Works Director

**APPROVED AS TO FORM:**

By: _____
Thomas Duarte
City Attorney

Dated: _____

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: _____
Darrell Johnson
Chief Executive Officer

**APPROVED AS TO FORM:**

By: _____
James Donich
General Counsel

**APPROVAL RECOMMENDED:**

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

Dated: _____

Attachment:

Schedule A – Maximum Reimbursement for Combined City Services

# SCHEDULE A

## REIMBURSEMENT SCHEDULE FOR COMBINED CITY SERVICES

## CITY OF COSTA MESA

| *Item No.* | *Reimbursement Description* | *Maximum Reimbursement Amount(1)* |
|---|---|---|
| 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.