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COOPERATIVE AGREEMENT NO. C-5-3614

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF HUNTINGTON BEACH

FOR

I-405 IMPROVEMENT PROJECT

THIS COOPERATIVE AGREEMENT (Agreement), is effective this 13th 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 entity (herein referred to as "AUTHORITY") and the City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648, 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 is proposing to use a design-build method of delivery for the procurement, design, and

1 construction of PROJECT and to procure a design-build team herein referred to as "CONTRACTOR",
2 and

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

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

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

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

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

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

18 **WHEREAS**, AUTHORITY agrees to acquire right-of-way, and

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

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

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

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 and
9 priced at this time, as they will be developed by the CONTRACTOR upon CITY acceptance of the TMP
10 Once the costs of these elements are developed, AUTHORITY shall amend this Agreement to account
11 for such costs

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

14 **WHEREAS**, CITY's City Council approved this Agreement on the 18th day of
15 APRIL, 2016, and

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

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

19 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

15 **ARTICLE 2. SCOPE OF AGREEMENT**

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

20 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

21 AUTHORITY agrees to the following responsibilities for PROJECT:

22 A To be the sponsor and funding agency to manage and administer the contract for
23 PROJECT, which includes preliminary engineering, right-of-way acquisition, and preparation of contract
24 documents (CONTRACT DOCUMENTS) to be used in the advertisement of a design-build RFP and for
25 the selection of a CONTRACTOR to perform full design-build activities, and other related services,
26 including improvements to CITY FACILITIES which are necessary as part of PROJECT.

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

3 C To include within the CONTRACT DOCUMENTS, in regards to CITY FACILITIES, design
4 criteria which meets acceptable CITY standards

5 D To coordinate with CITY during the development of the CONTRACT DOCUMENTS, and
6 afford the CITY the opportunity to review, and comment on the CONTRACT DOCUMENTS To the
7 extent a term or condition of the CONTRACT DOCUMENTS may expose the CITY to a cost or liability in
8 relation to the CITY FACILITIES not contemplated by this Agreement, the AUTHORITY shall cooperate
9 in good faith with the CITY to amend this Agreement or the CONTRACT DOCUMENTS, to address such
10 cost or liability

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

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

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1 I The costs for any remediation or protection for Article 3, Paragraph H, shall be covered
2 as 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 J 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 K 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 L 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 M To implement a Quality Management Plan during all phases of PROJECT

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

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

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

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

20 R 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 S 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

within CITY right-of-way, and for CITY-related improvements within CALTRANS right-of-way, 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.

T To reject any submittal that does not comply with the CONTRACT DOCUMENTS, including Quality Control and Quality Validation requirements. If any submittal is rejected, AUTHORITY will notify all recipients, including CITY, to remove all copies from circulation.

U To require resubmittal of any Design Documents and/or Construction Documents, as it deems appropriate at its sole discretion, and redistribute the submittal to CITY.

V To require CONTRACTOR to prepare a TMP, and submit to CITY for review and approval, 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.

W To obtain a written acceptance of TMP from CITY.

X 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.

Y To monitor and ensure CONTRACTOR compliance with the TMP.

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1 Z To work collaboratively with CITY, upon acceptance of TMP, to prepare an established
2 and approved visual pavement study to evaluate the pre- detour conditions, and forecasted impacts to
3 the CITY street pavement used for signed, long-term freeway detours, and alternate route detours based
4 on the period of construction within the CITY limits As the result of the study, and as agreed by to by the
5 Parties, AUTHORITY will reimburse CITY the exact amount of the agreed to mitigation costs for the
6 reduction of pavement life for the detour routes, via an amendment to this Agreement The pavement
7 mitigation (CITY SERVICES) amount will be a lump sum maximum reimbursement, and no additional
8 costs will be paid

9 AA To require CONTRACTOR to repair street pavements that receive damage as a result of
10 construction CONTRACTOR will be required to adhere to CITY's requirements for removal and
11 replacement of pavement in accordance with the CONTRACT DOCUMENTS and this Agreement

12 BB To require CONTRACTOR to obtain a no fee encroachment permit from CITY prior to
13 commencing construction of PROJECT

14 CC To monitor and ensure CONTRACTOR compliance with CITY's permit

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

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

20 FF To develop a record of survey, final maps, and all necessary title transfers for CITY relative
21 to PROJECT

22 GG To reimburse CITY for combined costs identified as "CITY SERVICES", and in
23 accordance with attached SCHEDULE A, "MAXIMUM REIMBURSEMENT FOR COMBINED CITY
24 SERVICES "

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1 HH To reimburse CITY for actual costs, within 30 days of an acceptable invoice, which is
2 complete, properly prepared and complies 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 of insurance wherein AUTHORITY
10 requires AUTHORITY to be named as an additional insured and, prior to the commencement of work,
11 provide certificates of insurance to CITY showing the 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 if or when CITY determines
20 such submittals comply with CITY's standards and criteria to facilitate AUTHORITY's delivery of
21 PROJECT The CITY may reject such submittals, which rejection shall be accompanied by an
22 explanation as to the areas of non-compliance with CITY's standards and criteria

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

26 /

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

4 F Upon award of a design-build contract by AUTHORITY, to make reasonable efforts and
5 devote reasonable resources for the issuance of encroachment permits, and other necessary permits, if
6 applicable, to CONTRACTOR at no fee, and upon CONTRACTOR's compliance with permit
7 requirements, to not cause delay to PROJECT's construction schedule

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

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

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

1 under the laws of the State of California to cause such rearrangements or relocations. Wherever
2 possible, any rearrangement or relocation of a public utility shall be made to an area covered by a
3 State or local franchises or laws. All conditions of this clause shall be subject to utility agreements
4 which are separate from and outside of this Agreement.

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

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

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

FACILITY improvements or work, estimated costs, and funding sources from CITY for these improvements

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-5-3614

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 pavement mitigation lump sum reimbursement

3 Adequate detail describing all work completed, excluding pavement mitigation lump sum reimbursement

4. Such other information as requested by AUTHORITY

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

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1 E That total payments shall not exceed the maximum obligation specified in ARTICLE 7
2 MAXIMUM OBLIGATION

3 **ARTICLE 6. DELEGATED AUTHORITY**

4 The actions required to be taken by CITY in the implementation of this Agreement are delegated
5 to its CITY Public Works Director, or designee, and the actions required to be taken by AUTHORITY in
6 the implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or
7 designee

8 **ARTICLE 7 MAXIMUM OBLIGATION**

9 Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CITY
10 mutually agree that AUTHORITY's maximum cumulative payment obligation hereunder shall be Five
11 Hundred Ninety Six Thousand Two Hundred dollars (\$596,200), excluding mitigation pavement, unless
12 agreed to and amended by both Parties AUTHORITY's maximum cumulative obligation for pavement
13 mitigation shall be addressed in a future amendment to this Agreement

14 **ARTICLE 8. AUDIT AND INSPECTION**

15 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
16 accepted accounting principles Upon reasonable notice, CITY shall permit the authorized
17 representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and
18 other data and records of CITY for a period of four (4) years after final payment, or until any on-going
19 audit is completed For purposes of audit, the date of completion of this Agreement shall be the date of
20 AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this Agreement
21 AUTHORITY shall have the right to reproduce any such books, records, and accounts The above
22 provision with respect to audits shall extend to and/or be included in contracts with CITY's contractor or
23 consultant

24 **ARTICLE 9. INDEMNIFICATION**

25 A To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole
26 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 (CITY's employees included), for damage to property, including property owned by CITY, or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful misconduct of AUTHORITY, 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, 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 (AUTHORITY's employees included), for damage to property, including property owned by AUTHORITY, or from any 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

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

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

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

10 D Legal Authority AUTHORITY and CITY warrant that the persons executing this
11 Agreement on each Party's behalf are authorized to bind such Party to the terms of this Agreement and
12 that by so executing this Agreement, such Party hereto shall be formally bound to the provisions of this
13 Agreement.

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

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

21 G Force Majeure Either Party shall be excused from performing its obligations under this
22 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
23 cause beyond its control, including but not limited to, any incidence of fire, flood, acts of God,
24 commandeering of material, products, plants or facilities by the federal, state or local government, national
25 fuel shortage, or a material act or omission by the other Party, when satisfactory evidence of such cause
26 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 in its sole and absolute discretion. 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 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 Huntington Beach	Orange County Transportation Authority
Public Works Department	550 South Main Street
P O Box 190	P O Box 14184
Huntington Beach, CA 92648	Orange, CA 92863-1584
Attention: Travis Hopkins	Attention: Ms. Reem Hashem
Director of Public Works	Principal Contract Administrator
Tel (714) 374-5348	Tel (714) 560-5446
Email: thopkins@surfcity-hb.org	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-5-3614 to be
executed on the date first above written

CITY OF HUNTINGTON BEACH

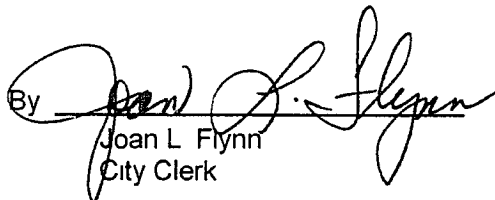
ORANGE COUNTY TRANSPORTATION AUTHORITY

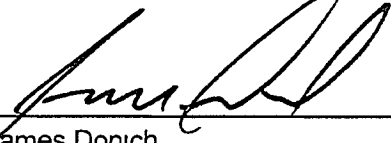
By 
Jim Katapodis
Mayor

By 
Darrell Johnson
Chief Executive Officer

ATTEST:


APPROVED AS TO FORM:


By 
Joan L. Flynn
City Clerk

By 
James Donich
General Counsel

APPROVAL RECOMMENDED:

APPROVAL RECOMMENDED:

By 
Travis Hopkins
Public Works Director

By 
Jim Beil, P E
Executive Director, Capital Programs

APPROVED AS TO FORM:

5/10/16

By 
Michael Gates
City Attorney

Dated 3/23/2016

Dated 4/13/2016

Attachment

Schedule A – Maximum Reimbursement for Combined City Services

SCHEDULE A

**REIMBURSEMENT FOR COMBINED CITY SERVICES
CITY OF HUNTINGTON BEACH**

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	\$350,100
2	Traffic engineering and detour inspection	\$136,000
3	Police services (including overtime costs)	\$110,100
4	Pavement Mitigation	TBD (2)
	TOTAL MAXIMUM REIMBURSEMENT	\$596,200

(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 for items of work as needed, however, the total 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.