

1 COOPERATIVE AGREEMENT NO. C-6-1126

2 BETWEEN

3 ORANGE COUNTY TRANSPORTATION AUTHORITY

4 AND

5 CITY OF SEAL BEACH

6 FOR

7 I-405 IMPROVEMENT PROJECT

8 THIS COOPERATIVE AGREEMENT (Agreement), is effective this 29th day of
9 JULY, 20 16, by and between the Orange County Transportation Authority, 550 South
10 Main Street, P.O. Box 14184, Orange California 92863-1584, a public entity (herein referred to as
11 "AUTHORITY") and the City of Seal Beach, 211 Eighth Street, Seal Beach, California 90740, a municipal
12 corporation duly organized and existing under the constitution and laws of the State of California (herein
13 referred to as "CITY") each individually known as "Party" and collectively known as the "Parties".

14 RECITALS:

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

19 WHEREAS, the improvements are generally defined as adding one general-purpose lane from
20 Euclid Street to I-605, plus adding an additional median lane which will be combined with the existing
21 HOV lane and operated as dual express lanes in each direction of I-405 from SR-73 to I-605, replacing
22 and/or widening structures, and other additional geometric and interchange improvements, including
23 improvements to CITY-owned and operated streets, and traffic facilities hereinafter referred to as CITY
24 FACILITIES potentially impacted by this project, all of which are hereinafter referred to as "PROJECT".
25 AUTHORITY will use a design-build method of delivery for the procurement, design, and construction
26 of PROJECT and shall prepare contract documents (CONTRACT DOCUMENTS) to procure a design-

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

2 **WHEREAS**, this Cooperative Agreement defines the specific terms, conditions, and funding
3 responsibilities between the AUTHORITY and CITY regarding the CONTRACT DOCUMENTS, and
4 the design and 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 for 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

26 **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
- CITY police services

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 the TMP. In the event impacts are identified which affect CITY streets, the costs of these elements will be developed, and AUTHORITY shall amend this Agreement to account for such costs:

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

WHEREAS, notwithstanding Article 7, Maximum Obligation, it is the intent of this Agreement that the CITY shall not be obligated to provide CITY SERVICES once the maximum obligation amount has been expended, unless the Parties agree to an amendment of the maximum obligation amount; and

WHEREAS, CITY is the petitioner and AUTHORITY is named as a Respondent in litigation captioned *City of Seal Beach v. State of California Department of Transportation, Orange County Transportation Authority, et al.*, Orange County Superior Court case number 30-2015-00799223-CU-WM-CXC (LAWSUIT), which challenges the validity of the approval process and the California Environmental Quality Act (CEQA) compliance for the PROJECT. AUTHORITY is also a respondent in a similar legal action filed by the City of Long Beach. Either lawsuit, or both of them, could result in judgments or settlements that could delay the PROJECT or alter elements of the PROJECT; and

WHEREAS, CITY's City Council approved this Agreement on the 27th day of JUNE, 2016; and

WHEREAS, AUTHORITY's Board of Directors authorized this Agreement on the 9th day of MAY, 2016.

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

2 **ARTICLE 1. COMPLETE AGREEMENT**

3 A. This Agreement, including any attachments incorporated herein and made applicable by
4 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this
5 Agreement between AUTHORITY and CITY and it supersedes all prior representations, understandings,
6 and communications. The invalidity in whole or in part of any term or condition of this Agreement shall
7 not affect the validity of other term(s) or condition(s) of this Agreement. The above referenced Recitals
8 are true and correct and incorporated by reference herein.

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

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

23 D. The Parties agree that the execution of this Agreement during the pendency of the
24 LAWSUIT is a matter of administrative cooperation. Nothing in this Agreement is intended by either
25 Party to constitute any waiver or dismissal of any claim, demand or defense that either Party may have
26 as against any other Party in the LAWSUIT, including any demand CITY or any other Party may make

1 against AUTHORITY, the PROJECT, or CALTRANS in the course of the LAWSUIT. Further, nothing
2 in this Agreement constitutes CITY's approval of, or consent to, any element of the PROJECT or
3 preliminary PROJECT plans. CITY does not, by executing this Agreement or by cooperating with
4 AUTHORITY, concede that AUTHORITY has the legal right to move forward with the work hereunder
5 prior to a final judgment in the LAWSUIT and AUTHORITY's compliance with such judgment, if
6 required. AUTHORITY proceeds with the PROJECT at its own risk.

7 **ARTICLE 2. SCOPE OF AGREEMENT**

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

12 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

13 AUTHORITY agrees to the following responsibilities for PROJECT:

14 A. To be the sponsor and funding agency to manage and administer the contract for
15 PROJECT, which includes preliminary engineering, right of way acquisition, and preparation of
16 CONTRACT DOCUMENTS to be used in the advertisement of a design-build RFP and for the selection
17 of a CONTRACTOR to perform full design-build activities, and other related services, including
18 improvements to CITY FACILITIES which are necessary as part of PROJECT.

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

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

23 D. To coordinate with CITY during the development of the CONTRACT DOCUMENTS, and
24 afford the CITY the opportunity to review, and comment on the CONTRACT DOCUMENTS, in regards
25 to CITY FACILITIES, prior to the release of the RFP for PROJECT, and in accordance with the terms of
26 this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

6 Q. To coordinate with CALTRANS and CITY for preparation and execution of Maintenance
7 Agreements.

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

14 S. To require CONTRACTOR to submit to CITY for review and approval, including but not
15 limited to, plans, specifications, and other pertinent engineering plans, and reports, for CITY FACILITIES
16 prior to construction thereof. During construction, CITY may provide construction oversight inspection
17 services. Such reviews and approvals, and construction oversight inspection services (CITY SERVICES)
18 shall be in accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this
19 Agreement.

20 T. To require CONTRACTOR to prepare a TMP, and submit to CITY for review, comment,
21 and acceptance, in regards to construction related impacts to CITY. The TMP will address construction-
22 related impacts to existing CITY street traffic, and will include normal traffic handling requirements during
23 PROJECT construction including staging, lane closures, re-striping, detours, and signalization, and will
24 specify requirements for communicating with the public and local agencies during construction.
25 Modifications to streets, intersections, signals, etc., required to address traffic impacts during construction
26 will be borne as a PROJECT cost. Such review and acceptance of TMP (CITY SERVICES) shall be in

1 accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this Agreement.

2 U. To obtain a written acceptance of TMP from CITY.

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

9 W. To monitor and ensure CONTRACTOR compliance with the TMP.

10 X. To work collaboratively with CITY, upon acceptance of TMP. In the event it is determined
11 that there are impacts to CITY streets, AUTHORITY shall prepare an established and approved visual
12 pavement study to evaluate the pre-detour conditions, and forecasted impacts to the CITY street
13 pavement used for signed, long-term freeway detours, and alternate route detours based on the period
14 of construction within the CITY limits. As the result of the study, and as agreed to by Parties, AUTHORITY
15 will reimburse CITY the exact amount of the agreed-to mitigation costs for the reduction of pavement life
16 for the detour routes, via an amendment to this Agreement. The dollar amount of pavement mitigation
17 (CITY SERVICES) shall be a one-time, lump sum maximum reimbursement amount, and no further
18 payment will be made toward the mitigation costs described herein.

19 Y. To require CONTRACTOR to repair street pavements sidewalks, curbs, driveways,
20 gutters and other CITY FACILITIES that receive damage as a result of construction. CONTRACTOR will
21 be required to adhere to CITY's requirements for removal and replacement of pavement in accordance
22 with the CONTRACT DOCUMENTS and this Agreement.

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

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

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

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

7 DD. To develop a record of survey, final maps, and all necessary title transfers relative to
8 PROJECT.

9 EE. To reimburse CITY for combined costs identified as "CITY SERVICES", and in
10 accordance with attached SCHEDULE A, "REIMBURSEMENT SCHEDULE FOR COMBINED CITY
11 SERVICES."

12 FF. To reimburse CITY for actual costs, within 30 days of an acceptable invoice, which is
13 complete, properly prepared and complies with the requirements of ARTICLE 5, REQUEST FOR
14 REIMBURSEMENT, below.

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

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

19 II. To cause all contractors and vendors who perform work or provide supplies for CITY
20 FACILITIES to name the CITY, its officers, agents, and employees, as an additional insured on policies
21 which the AUTHORITY is an additional insured and, prior to the commencement of work, provide
22 certificates of insurance to CITY showing the CITY as an additional insured.

23 **ARTICLE 4. RESPONSIBILITIES OF CITY**

24 CITY agrees to the following responsibilities for PROJECT:

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

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

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

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

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

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

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

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

23 I. To cooperate with AUTHORITY and use its best efforts to cause the rearrangement or
24 relocation of all municipal and public utility facilities, in accordance with applicable State or local franchises
25 or laws, that may be determined by AUTHORITY and CITY to be within CITY's jurisdiction and pose a
26 conflict with the PROJECT. CITY hereby agrees to exercise and invoke its rights under any applicable

1 State or local franchises or laws, or any prior rights or superior rights the CITY may have to effectuate
2 such rearrangement or relocation at the expense of the affected public utility as necessary to allow
3 completion of PROJECT. CITY shall cooperate with AUTHORITY and provide all appropriate and
4 necessary support to achieve this result. In the event the public utility fails to make the rearrangement
5 or relocation or fails to agree to make the rearrangement or relocation in a timely manner, CITY shall
6 assign to AUTHORITY its rights to rearrange or relocate said public utility under State law, or the
7 pertinent agreement or recorded instrument that CITY has with the public utility. CITY shall cooperate
8 with the AUTHORITY, provide assistance to the AUTHORITY as needed, and join with the
9 AUTHORITY as a party in the prosecution or defense of the CITY's and the AUTHORITY's rights
10 under the laws of the State of California to cause such rearrangements or relocations. Wherever
11 possible, any rearrangement or relocation of a public utility shall be made to an area covered by State
12 or local franchises or laws. All conditions of this clause shall be subject to utility agreements which
13 are separate from and outside of this Agreement.

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

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

25 L. In the event CITY requests additional CITY FACILITY improvements to be incorporated
26 into PROJECT after release of the RFP, CITY shall be solely responsible for all costs and expenses

1 related thereto, including: 1) the costs incurred to incorporate the improvements into the PROJECT's
2 scope of work; 2) additional design, construction and oversight costs arising from or associated with
3 the improvements, including change orders related thereto; 3) additional operations and maintenance
4 costs arising from or associated with the improvements, including change orders related thereto; and
5 4) costs associated with any impact on the design and construction schedule associated with the
6 improvements, including any associated PROJECT delay costs and damages. This is not intended
7 to eliminate mitigations for required PROJECT changes identified during construction.
8 AUTHORITY, at its sole discretion, may agree to incorporate such CITY FACILITY improvements,
9 via an amendment to this Agreement, identifying the CITY FACILITY improvements, estimated costs,
10 and funding sources from CITY for these improvements.

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

16 **ARTICLE 5. REQUEST FOR REIMBURSEMENT**

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

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

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

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

25 1. Agreement Number C- 6-1126

26 2. The total of PROJECT expenditures shall specify the percent and amount of funds

1 to be reimbursed, and include support documentation for all expenses invoiced. In the event there are
2 impacts to CITY street pavements, the one-time, lump sum amount for reimbursement of pavement
3 mitigation, will be exclude from this requirement.

4 3. Adequate detail describing all work completed. In the event there is pavement
5 mitigation, this detailed description will not be required.

6 4. Such other information as requested by AUTHORITY.

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

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

11 **ARTICLE 6. DELEGATED AUTHORITY**

12 The actions required to be taken by CITY in the implementation of this Agreement are delegated
13 to its CITY Public Works Director, or designee, and the actions required to be taken by AUTHORITY in
14 the implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or
15 designee.

16 **ARTICLE 7. MAXIMUM OBLIGATION**

17 Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CITY
18 mutually agree that AUTHORITY's maximum cumulative payment obligation hereunder shall be One
19 Hundred Twenty Thousand Six Hundred Dollars (\$120,600) unless agreed to and amended by both
20 Parties. In the event it is determined that pavement mitigation is required, AUTHORITY's maximum
21 cumulative obligation for pavement mitigation shall be addressed in a future amendment to this
22 Agreement

23 **ARTICLE 8. AUDIT AND INSPECTION**

24 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
25 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
26 representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and

1 other data and records of CITY for a period of four (4) years after final payment, or until any on-going
2 audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of
3 AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this Agreement.
4 AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above
5 provision with respect to audits shall extend to and/or be included in contracts with CITY's contractor or
6 consultant.

7 **ARTICLE 9. INDEMNIFICATION**

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

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

1 connection with or arising out of the performance of this Agreement.

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

4 **ARTICLE 10. ADDITIONAL PROVISIONS**

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

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

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

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

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

26 F. Counterparts of Agreement: This Agreement may be executed and delivered in any

1 number of counterparts, each of which, when executed and delivered shall be deemed an original and all
2 of which together shall constitute the same agreement. Facsimile signatures will be permitted.

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

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

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

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

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

22 /

23 /

24 /

25 /

26 /

To CITY	To AUTHORITY
City of Seal Beach	Orange County Transportation Authority
Public Works Department	550 South Main Street
211 Eighth Street	P.O. Box 14184
Seal Beach, CA 90740	Orange, CA 92863-1584
Attention: Jim Basham	Attention: Ms. Reem Hashem
Interim Director of Public Works	Principal Contract Administrator
Tel: (562) 431-2527, ext. 1313	Tel: (714) 560-5446
Email: jbasham@sealbeachca.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-6-1126 to be executed on the date first above written.

CITY OF SEAL BEACH

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: Sandra Massa-Lavitt
Sandra Massa-Lavitt
Mayor

By: Darrell Johnson
Darrell Johnson
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: Robin Roberts
Robin Roberts
City Clerk

By: James Donich
James Donich
General Counsel

APPROVAL RECOMMENDED:

APPROVAL RECOMMENDED:

By: Jim Basham
Jim Basham
Interim Public Works Director

By: Jim Bell, P.E.
Jim Bell, P.E.
Executive Director, Capital Programs

APPROVED AS TO FORM

By: Craig Steele
Craig Steele
City Attorney

Dated: 6/30/16

Dated: 7/29/16

Attachment:

Schedule A - Reimbursement Schedule for Combined City Services

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P.V.

SCHEDULE A**REIMBURSEMENT SCHEDULE FOR COMBINED CITY SERVICES****CITY OF SEAL 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.	\$79,900
2	Traffic engineering	\$15,600
3	Police Services (including overtime costs)	\$25,100
4	Pavement Mitigation (if applicable)	TBD (2)
	TOTAL MAXIMUM REIMBURSEMENT	\$120,600

(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) In the event it is determined that pavement mitigation is required, 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.