

THIS AMENDMENT NO. 9, is effective this _____ day of _____, 2021 (“Effective Date”), by and between the Orange County Transportation Authority, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and the City of Fullerton, a California General Law City and a municipal corporation (hereinafter referred to as “CITY”), which are sometimes individually referred to as “Party”, and collectively referred to as “Parties”.

WHEREAS, by Agreement No. C-9-0576 dated December 31, 2009, as last changed by Amendment No. 8 dated October 8, 2019, AUTHORITY and CITY entered into a cooperative agreement to define the roles and responsibilities related to the funding between the AUTHORITY and CITY for environmental, final design, right-of-way acquisition, and construction administration of the two grade separation projects located at Raymond Avenue and State College Boulevard (hereinafter referred to as "PROJECTS"); and

WHEREAS, AUTHORITY and CITY have agreed to amend the terms of this Agreement to modify the roles and funding responsibilities of the Parties to closeout PROJECTS; and

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1 **WHEREAS**, AUTHORITY agreed to amend this Agreement to reflect a change in the funding
2 plan for PROJECTS, for a decrease in total funds in the amount of One Million, One Hundred Forty-Nine
3 Thousand Dollars (\$1,149,000); and

4 **WHEREAS**, AUTHORITY has agreed to amend this Agreement to reflect a change in the funding
5 plan, to decrease the overall funding for Raymond Avenue Project by Eight Hundred Ninety-Eight
6 Thousand Dollars (\$898,000), for a total Agreement value of One Hundred Twenty-Five Million, Four
7 Hundred Nineteen Thousand Dollars (\$125,419,000); and

8 **WHEREAS**, AUTHORITY has agreed to amend this Agreement to reflect a change in the funding
9 plan, to decrease the overall funding for State College Boulevard Project by Two Hundred Fifty-One
10 Thousand Dollars (\$251,000), for a total Agreement value of Ninety-Nine Million, Three Hundred Eighty
11 Thousand Dollars (\$99,380,000); and

12 **WHEREAS**, AUTHORITY shall reimburse CITY, in the amount of Seventy-Seven Million, Six
13 Hundred Seventy-Nine Thousand Dollars (\$77,679,000), from Public Transportation Modernization,
14 Improvement, and Service Enhancement Account (PTMISEA) funds; Twenty-Two Million, Three
15 Hundred Seventy-Three Thousand Dollars (\$22,373,000), from Renewed Measure M (M2) funds; Five
16 Million, Two Hundred Sixteen Thousand Dollars (\$5,216,000), from Surplus Property and Rental Income
17 funds; Seven Million, Four Hundred Three Thousand Dollars (\$7,403,000), from Transit System Safety,
18 Security and Disaster Response Account (TSSSDRA) funds; for a total of One Hundred Twelve Million,
19 Six Hundred Seventy-One Thousand Dollars (\$112,671,000) less the amounts of Twenty Six Million, One
20 Hundred Fifty-Six Thousand Dollars (\$26,156,000) from PTMISEA funds and Eight Million, Two Hundred
21 Eighty-Four Thousand Dollars (\$8,284,000), from M2 funds, for OCTA's related expenses; resulting in a
22 total net reimbursable amount of Seventy Eight Million, Two Hundred Thirty-One Thousand Dollars
23 (\$78,231,000), for environmental, design, right-of-way, utilities, construction, and project management
24 and support of Raymond Avenue, as shown in Exhibit C; and

25 **WHEREAS**, AUTHORITY shall reimburse CITY, in the amount of Fifteen Million, Four Hundred
26 Sixty Thousand Dollars (\$15,460,000), from M2 funds; and One Million, Nine Hundred Eighty-Five

1 Thousand Dollars (\$1,985,000), from TSSSDRA funds; for a total of Seventeen Million, Four Hundred
2 Forty-Five Thousand Dollars (\$17,445,000) less the amount Seven Million, Eight Thousand, Seven
3 Hundred Eighty-Eight Dollars (\$7,008,788), for OCTA's project related expenses, resulting in a total net
4 reimbursable amount of Ten Million, Four Hundred Thirty-Six Thousand, Two Hundred Twelve Dollars
5 (\$10,436,212), for environmental, design, right-of-way acquisition, utilities, and construction of State
6 College Boulevard, as shown in Exhibit D; and

7 **WHEREAS**, AUTHORITY's Board of Directors authorized the update to the program funding and
8 closeout on July 13, 2020; and

9 **WHEREAS**, the CITY's City Council approved this Amendment No. 9 on _____, 2021.

10 **NOW, THEREFORE**, it is mutually understood and agreed by the AUTHORITY and CITY that
11 Agreement No. C-9-0576 is hereby amended in the following only:

12 1. Amend **ARTICLE 2. RESPONSIBILITIES OF AUTHORITY**, page 3 of 14, paragraph D,
13 as last changed by Amendment No. 8 dated October 8, 2019, to delete in its entirety and in lieu thereof
14 insert:

15 "D. AUTHORITY shall remit to CITY within thirty (30) days of receipt of an acceptable invoice,
16 reimbursement for environmental, design, right-of-way acquisition, utilities, and construction of eligible
17 M2, PTMISEA, TSSSDRA, and Surplus Property and Rental Income project costs in accordance with
18 funding schedule shown in Exhibit C for Raymond Avenue and Exhibit D for State College Boulevard.
19 Funds will be released on a periodic basis based on the project needs as requested by CITY and
20 approved by AUTHORITY. Such project costs shall not exceed Seventy-Eight Million, Two Hundred
21 Thirty-One Thousand Dollars (\$78,231,000) for Raymond Avenue and Ten Million, Four Hundred Thirty-
22 Six Thousand, Two Hundred Twelve Dollars (\$10,436,212) for State College Boulevard."

23 2. Amend **ARTICLE 3. RESPONSIBILITY OF CITY**, page 4 of 14 Paragraph H, as last
24 changed by Amendment No. 8 dated October 8, 2019, to delete in its entirety, and in lieu thereof, insert:

25 "H. CITY agrees that the budget for Raymond Avenue is a not-to-exceed amount of One
26 Hundred Twenty-Five Million, Four Hundred Nineteen Thousand Dollars (\$125,419,000) and the budget

1 for State College Boulevard is a not-to-exceed amount of Ninety-Nine Million, Three Hundred Eighty
2 Thousand Dollars (\$99,380,000), for a total overall budget of Two Hundred Twenty-Four Million, Seven
3 Hundred Ninety-Nine Thousand Dollars (\$224,799,000)."

4 3. Amend **ARTICLE 4. PAYMENT**, page 8 of 14, paragraph A, as last changed by
5 Amendment No. 8 dated October 8, 2019, to delete in its entirety, and in lieu thereof, insert:

6 "A. Funds will be released on a periodic basis based on the project needs as requested by
7 the CITY and approved by AUTHORITY. Such PROJECTS costs shall not exceed the sum of Seventy-
8 Eight Million, Two Hundred Thirty-One Thousand Dollars (\$78,231,000) of M2, PTMISEA, TSSSDRA,
9 and Surplus Property and Rental Income funds for Raymond Avenue and Ten Million, Four Hundred
10 Thirty Six Thousand, Two Hundred Twelve Dollars (\$10,436,212) of M2 and TSSSDRA funds for State
11 College Boulevard. Any costs in excess of the amounts specified herein shall not be incurred without
12 approval and a written amendment to this Agreement from AUTHORITY. CITY shall submit final invoices
13 no later than ninety (90) days after final acceptance of PROJECTS. Invoices for all work performed shall
14 be submitted by CITY and in duplicate to AUTHORITY's Account Payable Office. Each invoice shall
15 include the following information:

- 16 a) Agreement Number C-9-0576:
17 b) The time period covered by the invoice and the work for which payment is being requested;
18 c) Progress Report which includes a detailed description of the progress of PROJECTS;
19 d) Total invoice amount; and
20 e) Such other information as requested by AUTHORITY."

21 4. Amend "Funding Schedule, Raymond Avenue, Exhibit C – Amendment No. 8", as last
22 changed by Amendment No. 8 dated October 8, 2019, to delete in its entirety and, in lieu thereof, insert
23 the attached "Revised Funding Schedule, Raymond Avenue, Exhibit C – Amendment No. 9".

24 5. Amend "Funding Schedule, State College Boulevard, Exhibit D – Amendment No. 8", as
25 last changed by Amendment No. 8 dated October 8, 2019, to delete in its entirety and, in lieu thereof,
26 insert the attached "Revised Funding Schedule, State College Boulevard, Exhibit D – Amendment No. 9".

6. Amend **ARTICLE 9. MAXIMUM OBLIGATION**, page 13 of 14, as last changed by Amendment No. 8 dated October 8, 2019, to delete in its entirety and, in lieu thereof, insert:

"AUTHORITY's maximum obligation for all costs under this Agreement shall not exceed Seventy Eight Million, Two Hundred Thirty-One Thousand Dollars (\$78,231,000) for Raymond Avenue and Ten Million, Four Hundred Thirty Six Thousand, Two Hundred Twelve Dollars (\$10,436,212) for State College Boulevard, unless such maximum obligation is modified by an amendment to this Agreement."

The balance of Agreement No. C-9-0576 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 9 to Agreement No. C-9-0576 to be executed as of the date of the last signature below.

CITY OF FULLERTON

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

By: _____

Steven Danley
Acting City Manager

Darrell E. Johnson
Chief Executive Officer

APPROVAL AS TO FORM:

APPROVED AS TO FORM:

By: _____

By: _____

Richard D. Jones
City Attorney

James M. Donich
General Counsel

APPROVAL RECOMMENDED

By: _____

James G. Beil, P.E.
Executive Director, Capital Programs

Attachments:

Exhibit C – Revised Funding Schedule for Raymond Avenue, Amendment No. 9

Exhibit D – Revised Funding Schedule for State College Boulevard, Amendment No. 9