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AMENDMENT NO. 6 TO
AGREEMENT NO. C-9-0576

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF FULLERTON

FOR

RAYMOND AVENUE AND STATE COLLEGE BOULEVARD

RAILROAD GRADE SEPARATION PROJECTS

THIS AMENDMENT NO. 6, is effective this 21st day of March, 2017, 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 Charter City and a municipal corporation (hereinafter referred to as "CITY"), which are sometimes individually referred to as "Party", and collectively referred to as "Parties".

WITNESSETH:

WHEREAS, by Agreement No. C-9-0576 dated December 31, 2009, as last changed by Amendment No. 5 dated July 26, 2016, 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 (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; and

WHEREAS, AUTHORITY agreed to amend this Agreement to reflect a change in the funding plan for the PROJECTS, for an increase in total funds in the amount of Twenty Three Million, Six Hundred Eight Thousand Dollars (\$23,608,000); and

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1 **WHEREAS**, AUTHORITY shall be responsible for the Renewed Measure M (M2) funding on the
2 PROJECTS; and

3 **WHEREAS**, AUTHORITY has agreed to increase the overall funding for Raymond Avenue
4 Project by Twelve Million, Six Hundred Forty Three Thousand Dollars (\$12,643,000), for a total
5 Agreement value of One Hundred Twenty Four Million, Eight Hundred Thirty Three Thousand Dollars
6 (\$124,833,000); and

7 **WHEREAS**, AUTHORITY has agreed to increase the overall funding for State College Boulevard
8 Project by Ten Million, Nine Hundred Sixty Five Thousand Dollars (\$10,965,000), for a total Agreement
9 value of Ninety Six Million, Nine Hundred Sixty Nine Thousand Dollars (\$96,969,000); and

10 **WHEREAS**, AUTHORITY shall reimburse CITY, in the amount of Seventy Seven Million Ten
11 Thousand Dollars (\$77,010,000), from Public Transportation Modernization, Improvement, and Service
12 Enhancement Account (PTMISEA) funds; Twenty Six Million Three Hundred Fifty Thousand Dollars
13 (\$26,350,000), from M2 funds; Five Million, Two Hundred Sixteen Thousand Dollars (\$5,216,000), from
14 Surplus Property and Rental Income funds; and Three Million, Seven Hundred Twenty Three Thousand
15 Dollars (\$3,723,000), from Transit System Safety, Security and Disaster Response Account (TSSSDRA)
16 funds; for a total of One Hundred Twelve Million, Two Hundred Ninety Nine Thousand Dollars
17 (\$112,299,000) less the amounts of Twenty Five Million, One Hundred Seventy Two Thousand Dollars
18 (\$25,172,000) from PTMISEA funds and Fifteen Million, Seven Hundred Twenty Three Thousand Dollars
19 (\$15,723,000) from M2 funds, for OCTA's related expenses; resulting in a total net reimbursable amount
20 of Seventy One Million, Four Hundred Four Thousand Dollars (\$71,404,000), for environmental, final
21 design, right-of-way acquisition, utilities, and construction of Raymond Avenue, as shown in Exhibit C;
22 and;

23 **WHEREAS**, AUTHORITY shall reimburse CITY, in the amount of Eleven Million, Two Hundred
24 Forty Three Thousand Dollars (\$11,243,000), from M2 funds; and One Million, Nine Hundred Eight Five
25 Thousand Dollars (\$1,985,000), from TSSSDRA funds; for a total of Thirteen Million, Two Hundred
26 Twenty Eight Thousand Dollars (\$13,228,000) less the amount Five Million, Eight Hundred Fifty One

1 Thousand Dollars (\$5,851,000), for OCTA's project related expenses, resulting in a total net reimbursable
2 amount of Seven Million, Three Hundred Seventy Seven Thousand Dollars (\$7,377,000), for
3 environmental, design, right-of-way acquisition, utilities, and construction of State College Boulevard, as
4 shown in Exhibit D; and

5 **WHEREAS**, AUTHORITY and CITY agree that a portion of the budget increase for State College
6 Boulevard includes an amount of One Million, Five Hundred Twenty One Thousand Dollars (\$1,521,000)
7 of CITY's past funding contribution that was provided during the design phase of the project; and

8 **WHEREAS**, the AUTHORITY's Board of Directors authorized this Amendment No. 6 on
9 November 14, 2016; and

10 **WHEREAS**, the CITY's City Council approved this Amendment No. 6 on February 7, 2017.

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

13 1. Amend **ARTICLE 2. RESPONSIBILITIES OF AUTHORITY**, page 3 of 14, paragraph D,
14 as last changed by Amendment No. 4 dated August 1, 2014, to delete in its entirety and in lieu thereof
15 insert:

16 "D. AUTHORITY shall remit to CITY within thirty (30) days of receipt of an acceptable invoice,
17 reimbursement for environmental, design, right-of-way acquisition, utilities, and construction of eligible
18 M2, PTMISEA, and TSSSDRA project costs in accordance with funding schedule shown in Exhibit C for
19 Raymond Avenue and Exhibit D for State College Boulevard. Funds will be released on a periodic basis
20 based on the project needs as requested by CITY and approved by AUTHORITY. Such project costs
21 shall not exceed Seventy One Million, Four Hundred Four Thousand Dollars (\$71,404,000) for Raymond
22 Avenue and Seven Million, Three Hundred Seventy Seven Thousand Dollars (\$7,377,000) for State
23 College Boulevard."

24 2. Amend **ARTICLE 3. RESPONSIBILITY OF CITY**, page 4 of 14 Paragraph H, as last
25 changed by Amendment No. 4 dated August 1, 2014, to delete in its entirety, and in lieu thereof, insert:

26 /

1 "H. CITY agrees that the budget for Raymond Avenue is a not-to-exceed amount of One
2 Hundred Twenty Four Million, Eight Hundred Thirty Three Thousand Dollars (\$124,833,000) and the
3 budget for State College Boulevard is a not-to-exceed amount of Ninety Six Million, Nine Hundred Sixty
4 Nine Thousand Dollars (\$96,969,000), for a total overall budget of Two Hundred Twenty One Million,
5 Eight Hundred Two Thousand Dollars (\$221,802,000)."

6 3. Amend **ARTICLE 4. PAYMENT**, page 8 of 14, paragraph A, as last changed by
7 Amendment No. 4 dated August 1, 2014, to delete in its entirety, and in lieu thereof, insert:

8 "A. Funds will be released on a periodic basis based on the project needs as requested by
9 the CITY and approved by AUTHORITY. Such PROJECTS costs shall not exceed the sum of Seventy
10 One Million, Four Hundred Four Thousand Dollars (\$71,404,000) of M2, PTMISEA, TSSSDRA, and
11 Surplus Property and Rental Income funds for Raymond Avenue and Seven Million, Three Hundred
12 Seventy Seven Thousand Dollars (\$7,377,000) of M2 and TSSSDRA funds for State College Boulevard.
13 Any costs in excess of the amounts specified herein shall not be incurred without approval and a written
14 amendment to this Agreement from AUTHORITY. CITY shall submit final invoices no later than ninety
15 (90) days after final acceptance of PROJECTS. Invoices for all work performed shall be submitted by
16 CITY and in duplicate to AUTHORITY's Account Payable Office. Each invoice shall include the following
17 information:

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

23 4. Amend "Funding Schedule, Raymond Avenue, Exhibit C – Amendment No. 4", as last
24 changed by Amendment No. 4 dated August 1, 2014, to delete in its entirety and, in lieu thereof, insert
25 the attached "Revised Funding Schedule, Raymond Avenue, Exhibit C – Amendment No. 6".
26 /

last changed by Amendment No. 4 dated August 1, 2014, to delete in its entirety and, in lieu thereof, insert the attached "Revised Funding Schedule, State College Boulevard, Exhibit D – Amendment No. 6".

6. Amend **ARTICLE 9. MAXIMUM OBLIGATION**, page 13 of 14, as last changed by Amendment No. 4 dated August 1, 2014, to delete in its entirety and, in lieu thereof, insert:

"AUTHORITY's maximum obligation for all costs under this Agreement shall not exceed Seventy One Million, Four Hundred Four Thousand Dollars (\$71,404,000) for Raymond Avenue and Seven Million, Three Hundred Seventy Seven Thousand Dollars (\$7,377,000) for State College Boulevard, unless such maximum obligation is modified by an amendment to this Agreement."

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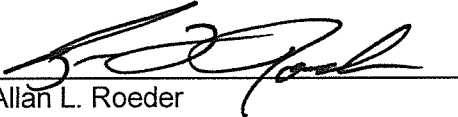
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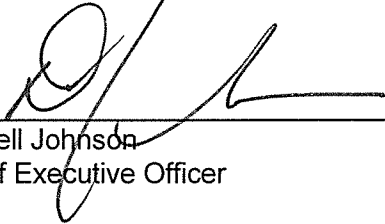
The balance of Agreement No. C-9-0576 remains unchanged.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 6 to Agreement No. C-9-0576 to be executed on the date first above written.

CITY OF FULLERTON

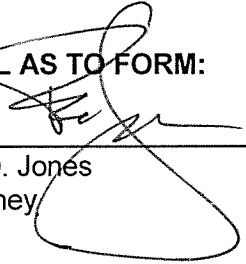
ORANGE COUNTY TRANSPORTATION AUTHORITY

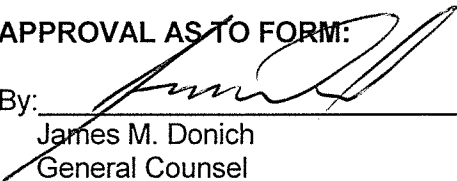
By: 
Allan L. Roeder
Interim City Manager

By: 
Darrell Johnson
Chief Executive Officer

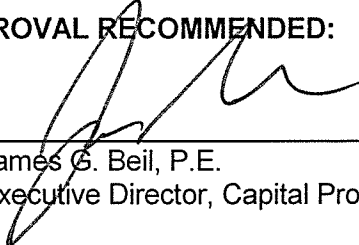
APPROVAL AS TO FORM:

APPROVAL AS TO FORM:

By: 
Richard D. Jones
City Attorney

By: 
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. 6

Exhibit D – Revised Funding Schedule for State College Boulevard, Amendment No. 6

AMENDMENT NO. 6 TO
AGREEMENT NO. C-9-0576
EXHIBIT C

REVISED FUNDING SCHEDULE
Raymond Avenue

Funding Source	Fiscal Year (FY) Funding Available	Funding Amount	Phase	Direct Funding Recipient	OCTA's Project Expenses
Public Transportation Modernization, and Service Enhancement Account (PTMISEA) ^{1,4}	FY 2011-12 and FY 2012-13	\$77,010,000	Design, ROW, Utilities, Construction, Project Management and Support	OCTA is the direct recipient	\$25,172,000 -OCTA will withhold this amount from City
Renewed Measure M (M2) (OCTA) ^{2,4}	FY 2010-11, FY 2011-12, and FY2012-13	\$26,350,000	Environmental, Design, ROW, Utilities, Construction, Project Management and Support	OCTA is the direct recipient	\$15,723,000 -OCTA will withhold this amount from City
Surplus Property and Rental Income	FY 2016-17	\$5,216,000	Construction, Project Management, and Support	OCTA is the direct recipient	
BNSF Reimbursement ³	FY 2016-17	\$700,000	Project Management and Support	City is the direct recipient	\$700,000 -OCTA will invoice this amount from City
Metropolitan Water District (MWD) Reimbursement	FY 2014-15	\$1,800,000	Construction, Project Management and Support	City is the direct recipient	
Trade Corridor Improvement Fund (TCIF)	FY 2013-14	\$10,034,000	Construction, Project Management and Support	City is the direct recipient	
Transit System Safety, Security & Disaster Response Account (TSSSDRA) ⁴	FY 2012-13 and FY 2013-14	\$3,723,000	Construction, Project Management and Support	OCTA is the direct recipient	
Total		\$124,833,000			\$41,595,000

Notes:

- OCTA is the direct recipient of the PTNMISEA funds, in the amount of 77,010,000. Of this amount, \$25,172,000 will be withheld and used by OCTA, to cover for right-of-way related expenditures including, but not limited to, acquisition, relocation, support, and legal costs.
- OCTA is the direct recipient of the M2 funds, in the amount of \$26,350,000. Of this amount, \$4,401,000 will be withheld and used by OCTA, to cover for project, project support, public outreach, program management consultant costs and \$11,322,000 will be withheld and used by OCTA, to cover for right-of-way related expenditures including, but not limited to, acquisition, relocation, support, and legal costs, for a total amount of \$15,723,000 of M2 funds.
- Per Construction and Maintenance Agreement, BNSF will reimburse City for their contribution cost share, in the amount of \$700,000, at project completion. OCTA will invoice City for the full amount when fund is received from BNSF.
- Advance amount of \$8,500,000 comes from portion of the PTMISEA, TSSSDRA, and M2 funds for construction.

AMENDMENT NO. 6 TO
AGREEMENT NO. C-9-0576
EXHIBIT D

REVISED FUNDING SCHEDULE
State College Boulevard

Funding Source	Fiscal Year (FY) Funding Available	Funding Amount	Phase	Direct Funding Recipient	OCTA's Project Expenses
Trade Corridor Improvement Fund (TCIF)	FY 2012-13	\$32,057,000	Construction, Project Management and Support	City is the direct recipient	
Demonstration Safe, Accountable, Flexible, efficient Transportation Equity Act – A Legacy for Users (DEMO-SAFTEEA-LU) ¹	FY 2010-11 and FY 2012-13	\$13,290,000	ROW and Construction	City is the direct recipient	\$11,518,000 -OCTA will invoice this amount from City
Local (CITY)	FY 2010-11	\$6,458,000	Environmental, Design, ROW and Utilities	City is the direct recipient	
Regional Surface Transportation Program (RSTP)/ Congestion Mitigation and Air Quality (CMAQ) ²	FY 2010-11 and FY 2012-13	\$27,376,000	ROW and Construction and Project Management	City is the direct recipient	\$13,938,000 -OCTA will invoice this amount from City
Renewed Measure M (M2) (OCTA) ^{3,5}	FY 2012-13 and 2016-17	\$11,243,000	Design, ROW, Utilities, Construction, and Project Management	OCTA is the direct recipient	\$5,851,000 -OCTA will withhold this amount from City
BNSF Railway Reimbursement ⁴	FY 2016-17	\$1,100,000	Construction, Project Management and Support	City is the direct recipient	\$1,100,000 -OCTA will invoice this amount from City
Orange County Sanitation District (OCSD) Reimbursement	FY 2014-15	\$3,460,000	Design, Construction, Project Management and Support	City is the direct recipient	
Transit System Safety, Security & Disaster Response Account (TSSSDRA) ⁵	FY 2012-13 and FY 2013-14	\$1,985,000	Construction, Project Management and Support	OCTA is the direct recipient	
Total		\$96,969,000			\$32,407,000

**AMENDMENT NO. 6 TO
AGREEMENT NO. C-9-0576
EXHIBIT D**

Notes:

1. Subject to federal appropriations. City is the direct recipient of the federal DEMO-SAFETEA-LU funds, in the total amount of \$13,290,000. OCTA will invoice City, in the amount of \$11,518,000, for all right-of-way related expenditures not covered by funds received directly by OCTA including, but not limited to, acquisition, relocation assistance, support, and legal costs.
2. Subject to federal appropriations. City is the direct recipient of the federal RSTP and CMAQ funds, in the total amount of \$27,376,000. OCTA will invoice City, in the amount of \$13,938,000, for all right-of-way related expenditures not covered by funds received directly by OCTA including, but not limited to, acquisition, relocation assistance, support, and legal costs.
3. OCTA is the direct recipient of the M2 funds, in the amount of \$11,243,000. Of this amount, \$3,322,000 will be withheld and used by OCTA, to cover for project management, project support, public outreach, and program management consultant costs and \$2,529,000 will be withheld and used by OCTA, to cover costs related to right-of-way expenditures not covered by funds received directly by OCTA including, but not limited to, acquisition, relocation assistance, support, and legal costs, for a total amount of \$5,851,000 of M2 funds.
4. Per Construction and Maintenance Agreement, BNSF will reimburse City for their contribution cost share of \$1,100,000, at project completion. OCTA will invoice City for the full amount when fund is received from BNSF.
5. Advance amount of \$1,500,000 comes from M2 and TSSSDRA funds for construction.