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**AMENDMENT NO. 7 TO
AGREEMENT NO. C-9-0576
BETWEEN
ORANGE COUNTY TRANSPORTATION AUTHORITY
AND
CITY OF FULLERTON
FOR
STATE COLLEGE BOULEVARD
RAILROAD GRADE SEPARATION PROJECTS**

THIS AMENDMENT NO. 7, is effective this _____ day of _____, 2018, 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. 6 dated March 21, 2017, 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 has agreed to amend this Agreement to reflect a change in the funding plan for State College Boulevard Project; and

WHEREAS, AUTHORITY shall reimburse CITY, in the amount of Eleven Million, Two Hundred Forty Three Thousand Dollars (\$11,243,000), from M2 funds; and One Million, Nine Hundred Eight Five

Thousand Dollars (\$1,985,000), from TSSSDRA funds; for a total of Thirteen Million, Two Hundred Twenty Eight Thousand Dollars (\$13,228,000) less the amount Three Million, Three Hundred Fifty One Thousand Dollars (\$3,351,000), for OCTA's project related expenses, resulting in a total net reimbursable amount of Nine Million, Eight Hundred Seventy Seven Thousand Dollars (\$9,877,000), for environmental, design, right-of-way acquisition, utilities, and construction of State College Boulevard, as shown in Exhibit D; and

WHEREAS, AUTHORITY and City agree to extend the term of the Agreement to December 31, 2019 to allow for continued work on the project until completion.

WHEREAS, the CITY's City Council approved this Amendment No. 7 on the ____ day of _____, 2018.

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

1. Amend **ARTICLE 2. RESPONSIBILITIES OF AUTHORITY**, page 3 of 14, paragraph D, as last changed by Amendment No. 6 dated March 21, 2017, to delete in its entirety and in lieu thereof insert:

"D. AUTHORITY shall remit to CITY within thirty (30) days of receipt of an acceptable invoice, reimbursement for environmental, design, right-of-way acquisition, utilities, and construction of eligible M2, PTMISEA, and TSSSDRA project costs in accordance with funding schedule shown in Exhibit C for Raymond Avenue and Exhibit D for State College Boulevard. Funds will be released on a periodic basis based on the project needs as requested by CITY and approved by AUTHORITY. Such project costs shall not exceed Seventy One Million, Four Hundred Four Thousand Dollars (\$71,404,000) for Raymond Avenue and Nine Million, Eight Hundred Seventy Seven Thousand Dollars (\$9,877,000) for State College Boulevard."

2. Amend **ARTICLE 4. PAYMENT**, page 8 of 14, paragraph A, as last changed by Amendment No. 6 dated March 21, 2017, to delete in its entirety, and in lieu thereof, insert:

"A. Funds will be released on a periodic basis based on the project needs as requested by

the CITY and approved by AUTHORITY. Such PROJECTS costs shall not exceed the sum of Seventy One Million, Four Hundred Four Thousand Dollars (\$71,404,000) of M2, PTMISEA, TSSSDRA, and Surplus Property and Rental Income funds for Raymond Avenue and Nine Million, Eight Hundred Seventy Seven Thousand Dollars (\$9,877,000) of M2 and TSSSDRA funds for State College Boulevard. Any costs in excess of the amounts specified herein shall not be incurred without approval and a written amendment to this Agreement from AUTHORITY. CITY shall submit final invoices no later than ninety (90) days after final acceptance of PROJECTS. Invoices for all work performed shall be submitted by CITY and in duplicate to AUTHORITY's Account Payable Office. Each invoice shall include the following information:

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

3. Amend "Funding Schedule, State College Boulevard, Exhibit D – Amendment No. 7", as last changed by Amendment No. 6 dated March 21, 2017, to delete in its entirety and, in lieu thereof, insert the attached "Revised Funding Schedule, State College Boulevard, Exhibit D – Amendment No. 7".

4. Amend **ARTICLE 9. MAXIMUM OBLIGATION**, page 13 of 14, as last changed by Amendment No. 6 dated March 21, 2017, 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 Nine Million, Eight Hundred Seventy Seven Thousand Dollars (\$9,877,000) for State College Boulevard, unless such maximum obligation is modified by an amendment to this Agreement."

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

4 **IN WITNESS WHEREOF**, the parties hereto have caused this Amendment No. 7 to Agreement
5 No. C-9-0576 to be executed on the date first above written.

6 **CITY OF FULLERTON**

ORANGE COUNTY TRANSPORTATION AUTHORITY

7
8 By: _____
9 Ken Domer
City Manager

By: _____
Meena Katakia
Manager, Capital Projects

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11 **APPROVAL AS TO FORM:**

APPROVAL AS TO FORM:

12
13 By: _____
14 Richard D. Jones
City Attorney

By: _____
James M. Donich
General Counsel

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16 **Attachment:**

17 Exhibit D – Revised Funding Schedule for State College Boulevard, Amendment No. 7
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**AMENDMENT NO. 7 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 2017-18	\$11,243,000	Design, ROW, Utilities, Construction, and Project Management	OCTA is the direct recipient	\$3,351,000 -OCTA will withhold this amount from City
BNSF Railway Reimbursement ⁴	FY 2017-18	\$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			\$29,907,000

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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, \$1,822,000 will be withheld and used by OCTA, to cover for project management, project support, public outreach, and program management consultant costs and \$1,529,000 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 \$3,351,000 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.