

THIS AMENDMENT NO. 8, is effective this _____ day of _____, 2019 (“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 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”.

WHEREAS, by Agreement No. C-9-0576 dated December 31, 2009, as last changed by Amendment No. 7 dated _____, 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 agreed to amend this Agreement to reflect a change in the funding plan for the Raymond Avenue, for an increase in total funds in the amount of One Million, Four Hundred and Eighty-Four Thousand Dollars (\$1,484,000); and

1 **WHEREAS**, AUTHORITY has agreed to increase the overall funding for Raymond Avenue
2 Project by One Million, Four Hundred and Eighty-Four Thousand Dollars (\$1,484,000), for a total
3 Agreement value of One Hundred Twenty-Six Million, Three Hundred and Seventeen Thousand Dollars
4 (\$126,317,000); and

5 **WHEREAS**, AUTHORITY shall reimburse CITY, in the amount of Seventy-Seven Million, Five
6 Hundred Forty-Eight Thousand Dollars (\$77,548,000), from Public Transportation Modernization,
7 Improvement, and Service Enhancement Account (PTMISEA) funds; Twenty-Three Million, Two
8 Hundred Fifty Thousand Dollars (\$23,250,000); Five Million, Two Hundred Sixteen Thousand Dollars
9 (\$5,216,000), from Surplus Property and Rental Income funds; Seven Million, Four Hundred Three
10 Thousand Dollars (\$7,403,000), from Transit System Safety, Security and Disaster Response Account
11 (TSSSDRA) funds; for a total of One Hundred Thirteen Million, Four Hundred Seventeen Thousand
12 Dollars (\$113,417,000) less the amounts of Twenty-Five Million, One Hundred Seventy-Two Thousand
13 Dollars (\$25,172,000) from PTMISEA funds and Nine Million, Four Hundred Forty-Five Thousand Dollars
14 (\$9,445,000), from Renewed Measure (M2) funds, for OCTA's related expenses; resulting in a total net
15 reimbursable amount of Seventy-Eight Million, Eight Hundred Thousand Dollars (\$78,800,000), for
16 environmental, design, right-of-way, utilities, construction, and project management and support of
17 Raymond Avenue, as shown in Exhibit C; and

18 **WHEREAS**, the increased cost for the Raymond Avenue Project is attributed to the construction
19 capital and construction support related impacts; and

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

22 **WHEREAS**, the costs for the State College Boulevard Project remains unchanged at Ninety-Nine
23 Million, Six Hundred Thirty-One Thousand Dollars (\$99,631,000); and

24 **WHEREAS**, the AUTHORITY's Board of Directors authorized this Amendment No. 8 on June 8,
25 2019; and

26 **WHEREAS**, the CITY's City Council approved this Amendment No. 8 on _____, 2019.

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

3 1. Amend **ARTICLE 2. RESPONSIBILITIES OF AUTHORITY**, page 3 of 14, paragraph D,
4 as last changed by Amendment No. 7 dated _____, to delete in its entirety and in lieu
5 thereof insert:

6 "D. AUTHORITY shall remit to CITY within thirty (30) days of receipt of an acceptable invoice,
7 reimbursement for environmental, design, right-of-way acquisition, utilities, and construction of eligible
8 M2, PTMISEA, and TSSSDRA project costs in accordance with funding schedule shown in Exhibit C for
9 Raymond Avenue and Exhibit D for State College Boulevard. Funds will be released on a periodic basis
10 based on the project needs as requested by CITY and approved by AUTHORITY. Such project costs
11 shall not exceed Seventy-Eight Million, Eight Hundred Thousand Dollars (\$78,800,000) for Raymond
12 Avenue and Nine Million, One Hundred Twenty Thousand Dollars (\$9,120,000) for State College
13 Boulevard."

14 2. Amend **ARTICLE 3. RESPONSIBILITY OF CITY**, page 4 of 14 Paragraph H, as last
15 changed by Amendment No. 7 dated _____, to delete in its entirety, and in lieu thereof, insert:

16 "H. CITY agrees that the budget for Raymond Avenue is a not-to-exceed amount of One
17 Hundred Twenty-Six Million, Three Hundred Seventeen Thousand Dollars (\$126,317,000) and the
18 budget for State College Boulevard is a not-to-exceed amount of Ninety-Nine Million, Six Hundred Thirty
19 One Thousand Dollars (\$99,631,000), for a total overall budget of Two Hundred Twenty-Five Million,
20 Nine Hundred Forty-Eight Thousand Dollars (\$225,948,000)."

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

23 "A. Funds will be released on a periodic basis based on the project needs as requested by
24 the CITY and approved by AUTHORITY. Such PROJECTS costs shall not exceed the sum of Seventy-
25 Eight Million, Eight Hundred Thousand Dollars (\$78,800,000) of M2, PTMISEA, TSSSDRA, and Surplus
26 Property and Rental Income funds for Raymond Avenue and Nine Million, One Hundred Twenty

Thousand Dollars (\$9,120,000) 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."

4. Amend "Funding Schedule, Raymond Avenue, Exhibit C – Amendment No. 7", as last changed by Amendment No. 7 dated _____, to delete in its entirety and, in lieu thereof, insert the attached "Revised Funding Schedule, Raymond Avenue, Exhibit C – Amendment No. 8".

5. Amend "Funding Schedule, State College Boulevard, Exhibit D – Amendment No. 7", as last changed by Amendment No. 7 dated _____, to delete in its entirety and, in lieu thereof, insert the attached "Revised Funding Schedule, State College Boulevard, Exhibit D – Amendment No. 8".

6. Amend **ARTICLE 9. MAXIMUM OBLIGATION**, page 13 of 14, as last changed by Amendment No. 7 dated _____, 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, Eight Hundred Thousand Dollars (\$78,800,000) for Raymond Avenue and Nine Million, One Hundred Twenty Thousand Dollars (\$9,120,000) for State College Boulevard, unless such maximum obligation is modified by an amendment to this Agreement."

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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. 8 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: _____
Ken Domer
City Manager

By: _____
Darrell E. Johnson
Chief Executive Officer

Date: _____

Date: _____

APPROVAL AS TO FORM:

APPROVAL AS TO FORM:

By: _____
Richard D. Jones
City Attorney

By: _____
James M. Donich
General Counsel

Date: _____

Date: _____

APPROVAL RECOMMENDED:

By: _____
James G. Beil, P.E.
Executive Director, Capital Programs

Date: _____

Attachments:

Exhibit C – Revised Funding Schedule for Raymond Avenue, Amendment No. 8

Exhibit D – Revised Funding Schedule for State College Boulevard, Amendment No. 8

**AMENDMENT NO. 8 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	\$77,548,000	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 FY 2012-13	\$23,250,000	Environmental, Design, ROW, Utilities, Construction, Project Management and Support	OCTA is the direct recipient	\$9,445,000 -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 and FY 2018-19	\$10,400,000	Construction, Project Management and Support	City is the direct recipient	
Transit System Safety, Security & Disaster Response Account (TSSSDRA) ⁴	FY 2012-13, FY 2013-14, and FY 2018-19	\$7,403,000	Construction, Project Management and Support	OCTA is the direct recipient	
Total		\$126,317,000			\$35,317,000

Notes:

1. OCTA is the direct recipient of the PTMISEA funds, in the amount of \$77,548,000. 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.
2. OCTA is the direct recipient of the M2 funds, in the amount of \$23,250,000. 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 \$5,044,000 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 \$9,445,000 of M2 funds.
3. Per Construction and Maintenance Agreement, BNSF Railway 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.
4. Advance amount of \$8,500,000 comes from portion of the PTMISEA, TSSSDRA, and M2 funds for construction.

**AMENDMENT NO. 8 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	\$32,800,000	Construction and Project Management	City is the direct recipient	
Demonstration Safe, Accountable, Flexible, efficient Transportation Equity Act – A Legacy for Users (DEMO-SAFETEA-LU) ¹	FY 2010-11 and FY 2012-13	\$12,381,000	ROW	City is the direct recipient	\$12,381,000 -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	\$13,815,000	Construction and Project Management	City is the direct recipient	
New Surface Transportation Block Grant (STBG) ⁶	FY 2018-19	\$14,457,000	ROW, Construction, and Project Management	City is the direct recipient	\$12,674,000 -OCTA will invoice this amount from City
Renewed Measure M (M2) (OCTA) ^{3,5}	FY 2012-13 and FY 2017-18	\$13,153,000	Design, ROW, Utilities, Construction, and Project Management	OCTA is the direct recipient	\$6,018,000 -OCTA will withhold this amount from City
BNSF Railway Reimbursement ⁴	FY 2017-18	\$1,100,000	Construction and Project Management	City is the direct recipient	\$1,100,000 -OCTA will invoice this amount from City
Orange County Sanitation District (OCSD) Reimbursement	FY 2014-15	\$3,482,000	Design, Construction, and Project Management	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 and Project Management	OCTA is the direct recipient	
Total		\$99,631,000			\$32,173,000

**AMENDMENT NO. 8 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 \$12,381,000. OCTA will invoice City, in the amount of \$12,381,000, 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 \$13,815,000 for costs related to construction expenditures.
3. OCTA is the direct recipient of the M2 funds, in the amount of \$13,153,000. 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 \$2,696,000 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 \$6,018,000 of M2 funds.
4. Per Construction and Maintenance Agreement, BNSF Railway 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.
6. Advance amount of \$12,674,000 comes from M2 funds for right-of-way. City to reimburse this amount back to OCTA when invoiced by OCTA for costs related to right-of-way expenditures.