

1 **COOPERATIVE AGREEMENT**
2 **FOR PROJECT No. 74-46000**
3 **BY AND BETWEEN**
4 **THE CITY OF FULLERTON**
5 **AND**
6 **THE CITIES OF**
7 **LA PALMA, BUENA PARK, PLACENTIA, ANAHEIM AND YORBA LINDA,**
8 **AND THE COUNTY OF ORANGE**
9 **FOR THE**
10 **ORANGETHORPE AVENUE/ESPERANZA ROAD CORRIDOR PROJECT**
11 **REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROGRAM**
12

13 **THIS COOPERATIVE AGREEMENT**, hereinafter referred to as “AGREEMENT”, is effective
14 the _____ day of _____, 2020, by and between the City of Fullerton, hereinafter
15 referred to as “FULLERTON” and the Cities of La Palma, Buena Park, Placentia, Anaheim and Yorba Linda,
16 and the County of Orange, hereinafter referred to as “AGENCIES” or severally as “AGENCY”. Collectively,
17 FULLERTON and AGENCIES may be referred to as the “PARTIES” or individually as a “PARTY”.

18 **RECITALS**

19 **WHEREAS**, the Measure M2 Regional Traffic Signal Synchronization Program, hereinafter referred
20 to as “RTSSP”, targets over 2,000 signalized intersections across Orange County to maintain traffic signal
21 synchronization, improve traffic flow, and reduce congestion across jurisdictions; and

22 **WHEREAS**, FULLERTON and AGENCIES are committed to implementing multi-jurisdictional
23 signal synchronization to enhance countywide traffic flow and reduce congestion; and

24 **WHEREAS**, the Orange County Transportation Authority, hereinafter referred to as “OCTA”,
25 approved funding for the Orangethorpe Avenue/Esperanza Road Corridor Project, a multi-jurisdictional
26 traffic signal synchronization project hereinafter referred to as “PROJECT”; and

27 **WHEREAS**, FULLERTON and AGENCIES will provide matching funds as required by the OCTA

1 Comprehensive Transportation Funding Programs, hereinafter referred to as “CTFP”; and

2 **WHEREAS**, FULLERTON agrees to act as the lead agency for design, construction and
3 management of PROJECT; and

4 **WHEREAS**, the PROJECT will include approximately fifty-seven (57) traffic signals along
5 Orangethorpe Avenue/Esperanza Road, between Walker Street in the City of La Palma, through the Cities
6 of Buena Park, Fullerton, Placentia, and Anaheim, the County of Orange, and New River Road in the City
7 of Yorba Linda; and

8 **WHEREAS**, the PROJECT Scope of Work includes the procurement, construction and installation
9 of traffic signal controllers and cabinet upgrades, new traffic surveillance cameras, signal system detection
10 and communication upgrades, and speed detection units at selected locations and central system upgrades at
11 the respective Traffic Management Centers; and

12 **WHEREAS**, the PROJECT Scope of Work also includes development, implementation and
13 fine-tuning of coordination signal timing plans for various peak periods, and the ongoing monitoring and
14 maintenance of the coordinated signal system’s operation, including signal timing coordination and system
15 communication/detection upkeep, for two years; and

16 **WHEREAS**, FULLERTON agrees to work with AGENCIES to coordinate the inclusion of other
17 traffic control elements requested by AGENCIES that must be installed at the same time as the construction
18 of the PROJECT that are NOT a part of the PROJECT Scope of Work and that will be the responsibility of
19 AGENCIES and any of those traffic control elements during the course of the PROJECT; and

20 **WHEREAS**, FULLERTON and AGENCIES acknowledge that other RTSSP corridor projects are
21 currently underway or completed which intersect the Orangethorpe Avenue/Esperanza Road Corridor
22 Project, and that these other RTSSP corridor timing operations must be incorporated into the design and
23 completion of this PROJECT; and

24 **WHEREAS**, this AGREEMENT defines the roles, specific terms, conditions and responsibilities
25 between FULLERTON and AGENCIES.

26 **AGREEMENT**

27 **NOW THEREFORE**, it is mutually understood and agreed by FULLERTON and AGENCIES as

1 follows:

2 **ARTICLE 1. COMPLETE AGREEMENT**

3 This AGREEMENT constitutes the complete and exclusive statement of the terms and conditions of
4 the agreement between FULLERTON and AGENCIES concerning the PROJECT and supersedes all prior
5 representations, understandings and communications between the PARTIES. The above-referenced Recitals
6 are true and correct and are incorporated by reference herein.

7 **ARTICLE 2. RESPONSIBILITIES OF FULLERTON**

8 FULLERTON agrees to the following responsibilities:

9 1. FULLERTON shall serve as lead agency for design, construction and construction management
10 of PROJECT and shall provide oversight by establishing PROJECT milestones and overseeing PROJECT
11 development to ensure that all standards and requirements set forth by the AGREEMENT are adhered to.

12 2. AGENCIES shall be provided a copy of all design documents for AGENCIES' approval of work
13 to be performed in AGENCIES' jurisdictions prior to FULLERTON advertising for bids.

14 3. FULLERTON shall be responsible for completing the PROJECT in accordance with the funding
15 guidelines and any and all other applicable federal, state, and OCTA statutes, laws and regulations.

16 4. FULLERTON shall provide staff, consultants, and contractors deemed necessary and appropriate
17 to manage, administer, coordinate, and oversee engineering design and construction management of the
18 PROJECT. FULLERTON shall require all such consultants and contractors to obtain and maintain
19 comprehensive general liability, automobile liability, workers' compensation and employers' liability, and
20 professional liability insurance policies meeting the applicable requirements of the Consultant Contract and
21 Bidders Specifications for the PROJECT and to indemnify, defend and hold each of the AGENCIES and
22 their respective elected officials, officers, employees, agents and volunteers ("Indemnitees") free and
23 harmless, including payment of attorneys' and experts' fees, with respect to any and all claims and liabilities
24 of any kind arising out of each such contractor's acts or omissions in the performance of work on the
25 PROJECT, to the maximum extent permitted by law. FULLERTON shall require all such consultants and
26 contractors to name the Indemnitees as additional insureds on all commercial general and automobile liability
27 policies required by FULLERTON for the PROJECT.

1 5. The budget for the PROJECT, as shown in **EXHIBIT A**, is Four Million, Four Hundred Seventy-
2 Two Thousand, and Eighty-Five Dollars (\$4,472,085). The amount of Three Million, Five Hundred Seventy-
3 Seven Thousand, Six Hundred and Sixty-Eight Dollars (\$3,577,668) is funded by the OCTA Project P/
4 Regional Traffic Signal Synchronization Program. Minimum project matching funds of 20 percent amount
5 to Eight Hundred Ninety-Four Thousand, Four Hundred and Seventeen Dollars (\$894,417).

6 6. FULLERTON'S share of match amounts to Two Hundred Seventy-Seven Thousand, Five
7 Hundred Dollars (\$277,500), including up to \$20,000 of in-kind services. Documentation of FULLERTON'S
8 in-kind services, such as for construction inspection services and system integration support, shall meet
9 OCTA CTFP Guidelines.

10 7. FULLERTON at all times shall maintain coordination with AGENCIES relative to the PROJECT.

11 8. FULLERTON specifically shall coordinate construction activity within AGENCIES and provide
12 a schedule of construction activity within AGENCIES for approval by AGENCIES. In the event of planned
13 street closures, FULLERTON shall provide prior notice to, and receive approval from, the responsible
14 AGENCY prior to the execution of the street closure.

15 9. FULLERTON shall collect all data necessary for the analysis and optimization of traffic signal
16 timing along the PROJECT corridor.

17 10. FULLERTON shall develop new timing plans optimized for traffic signal synchronization,
18 which shall be subject to AGENCIES' review and approval before implementation within AGENCIES.

19 11. FULLERTON shall provide on-site support to implement the timing plans, as necessary. Timing
20 plans are subject to AGENCIES' review and approval.

21 12. FULLERTON shall provide the new timing plans developed for the PROJECT and all relevant
22 data required for the signal timing analysis to AGENCIES, upon request.

23 13. FULLERTON shall require AGENCIES and its officers and employees to be named as
24 additional insureds on the construction contractor's liability insurance policies.

25 **ARTICLE 3. RESPONSIBILITIES OF AGENCIES**

26 AGENCIES agree to the following responsibilities:

27 1. AGENCIES shall remit to FULLERTON within thirty (30) calendar days of receipt of an

acceptable invoice the matching funds as required by OCTA CTFP. AGENCIES' combined minimum 20 percent project match amounts to Eight Hundred Ninety-Four Thousand, Four Hundred and Seventeen Dollars (\$894,417). Details of AGENCIES' minimum match breakdown, based approximately on the number of project traffic signals and construction activity per grant application, is as follows:

- City of La Palma – Seventy-One Thousand and Fifty-Five Dollars (\$71,055), including up to \$8,000 of in-kind services;
- City of Buena Park – One Hundred Eighty-Eight Thousand, Six Hundred and Fifty-Two Dollars (\$188,652), including up to \$10,000 of in-kind services;
- City of Placentia – One Hundred Forty-Nine Thousand, Two Hundred and Fifty Dollars (\$149,250), including up to \$15,000 of in-kind services;
- City of Anaheim – One Hundred Thousand, One Hundred and Forty Dollars (\$100,140), including up to \$12,000 of in-kind services;
- City of Yorba Linda – Sixty-Nine Thousand Dollars (\$69,000), including up to \$10,000 of in-kind services;
- County of Orange – Thirty-Eight Thousand, Eight Hundred and Twenty Dollars (\$38,820), including up to \$5,000 of in-kind services;

Documentation of AGENCIES' in-kind services, such as for construction inspection services and system integration support, shall meet OCTA CTFP Guidelines.

2. At no cost to FULLERTON, AGENCIES shall provide FULLERTON with current intersection, local field master and/or central system timing plans and related data no later than thirty (30) calendar days subsequent to the execution of this AGREEMENT, and updates as they occur within seven (7) business days of the event.

3. At no cost to FULLERTON, AGENCIES shall provide to FULLERTON appropriate documents to utilize in the design and construction of infrastructure required to implement the desired coordinated and synchronized system and operations no later than thirty (30) calendar days subsequent to the execution of this AGREEMENT, and updates as they occur within seven (7) business days of the event.

4. AGENCIES shall waive all costs and fees related to any and all AGENCIES' required

encroachment and inspection permits for the construction phase of the PROJECT.

5. At no cost to FULLERTON, AGENCIES' construction inspectors shall oversee all construction work done in their jurisdiction.

6. At no cost to FULLERTON, each of the AGENCIES shall accept the PROJECT upon completion and maintain all components of the PROJECT located within their respective AGENCIES, for a period of two years.

7. At no cost to FULLERTON, AGENCIES shall be responsible for coordinating the construction and/or installation of traffic control elements and other items within AGENCIES' jurisdiction that are requested by AGENCIES and are NOT a part of the PROJECT Scope of Work but, by necessity, must be built concurrent with the PROJECT.

8. In the event of an unanticipated cost overrun, FULLERTON shall meet with all AGENCIES to resolve the cost overrun. Should the PARTIES be unable to come to a resolution of the cost overrun, the AGREEMENT will terminate.

ARTICLE 4. MUTUAL RESPONSIBILITIES OF THE PARTIES

The PARTIES agree to the following mutual responsibilities:

1. The PARTIES shall cooperate and coordinate their staff, contractors and consultants in providing the services and responsibilities required under this AGREEMENT to the extent practicable with respect to the performance of the PROJECT.

2. The PARTIES agree to work together in good faith, using reasonable efforts to resolve any unforeseen issues and disputes arising out of the performance of this AGREEMENT.

3. This AGREEMENT may only be modified or amended upon written mutual consent of all PARTIES. All modifications, amendments, changes and revisions of this AGREEMENT in whole or in part, and from time to time, shall be binding upon the PARTIES, so long as the same shall be in writing and executed by the PARTIES. No waiver of any term or condition of this AGREEMENT shall be a continuing waiver thereof.

4. Applicable Laws and Regulations: This AGREEMENT shall be governed by all applicable federal, state and local laws and regulations. The PARTIES warrant that in the performance of this AGREEMENT,

each shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated there under. The venue for any legal proceeding shall be the Superior Court of Orange County.

5. Indemnification: Each PARTY agrees to defend, indemnify and hold harmless the other PARTY, their officers, agents, elected officials and employees from all liability, claims, losses and demands, including legal defense costs and reasonable attorneys' fees, whether resulting from court action or otherwise, arising out of the negligent acts or omissions of the defending PARTY, its officers, agents, or employees, in the performance of this AGREEMENT. When negligent acts or omissions of one PARTY are directed by another PARTY, the PARTY directing the negligent acts or omissions shall owe this defense and indemnity obligation to the PARTY following the directions. The provisions of this paragraph shall survive the termination of this AGREEMENT. Notwithstanding, this AGREEMENT shall not be interpreted to create any joint and several liability or any joint powers agreement or joint venture between the PARTIES.

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

7. Any notice sent by first class mail, postage paid, to the address and addressee, shall be deemed to have been received three (3) business days after deposit in the U.S. Mail. The representatives of the PARTIES who are primarily responsible for the administration of this AGREEMENT, and to whom notices, demands and communications shall be given are as follows:

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City of Fullerton – LEAD AGENCY

303 W. Commonwealth Avenue

Fullerton, CA 92832

Attn: Dave Langstaff

Traffic Engineering Analyst

(714) 738-6858

davel@ci.fullerton.ca.us

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City of La Palma

7822 Walker Street

La Palma, CA 90623

Attn: Mike Belknap

Community Services Director

(714) 690-3356

mikeb@cityoflapalma.org

City of Buena Park

6650 Beach Boulevard

Buena Park, CA 90622

Attn: Deepthi Arabolu

Principal Engineer

(714) 562-3696

darabolu@buenapark.com

City of Placentia

401 E. Chapman Avenue

Placentia, CA 92870

Attn: Paul Martin

Transportation Manager

(714) 993-8121

pmartin@placentia.org

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City of Anaheim

201 S. Anaheim Boulevard, Ste 502

Anaheim, CA 92805

Attn: John Thai

Principal Traffic Engineer

(714) 765-5202

jthai@anaheim.net

City of Yorba Linda

4845 Casa Loma Avenue

Yorba Linda, CA 92886

Attn: Tony Wang

Traffic Engineering Manager

(714) 961-7170

twang@yorbalindaca.gov

County of Orange

601 N. Ross Street

Santa Ana, CA 92701

Attn: Rick Diaz

Senior Civil Engineer

(714) 245-4581

rick.diaz@ocpw.ocgov.com

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8. This writing constitutes the entire agreement between the PARTIES with respect to the subject matter hereof, and supersedes all oral or written representations or written agreements that may have been entered into between the PARTIES. No modification or revision shall be of any force or effect, unless the

1 same is in writing and executed by the PARTIES hereto.

2 9. The PARTIES may not assign or transfer its rights or obligations under this Agreement, or any
3 part thereof, without the written consent of each PARTY.

4 10. If any portion of this AGREEMENT is held invalid under any applicable statute or rule of law,
5 then only such portion shall be deemed invalid and the remaining provisions of this AGREEMENT shall
6 remain in full force and effect.

7 11. No waiver or failure to exercise any right, option or privilege under the terms of this
8 AGREEMENT on any occasion shall be construed to be a waiver of any other right, option or privilege on
9 any other occasion.

10 12. The PARTIES do not intend to create rights in, or to grant remedies to, any third party as a
11 beneficiary of this AGREEMENT or of any duty, covenant, obligation or undertaking established herein.

12 13. This AGREEMENT shall continue in full force and effect through December 31, 2024, unless
13 terminated earlier by FULLERTON and upon mutual written agreement by AGENCIES. This
14 AGREEMENT may be terminated by any AGENCY providing the PARTIES with not less than thirty (30)
15 days prior written notice. The terminating AGENCY is fully responsible to pay their respective pro rata share
16 of all costs and expenses incurred prior to delivery of the notice of termination and all costs and damages
17 relating to the termination.

18 14. The term of this AGREEMENT may only be extended upon mutual written agreement by all
19 PARTIES.

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1 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT for Project No. 74-46000
2 to be executed on the date first above written.

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4 **CITY OF FULLERTON**

5
6 By: _____

7 Jennifer Fitzgerald

8 Mayor

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11 **ATTEST:**

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13 By: _____

14 Lucinda Williams

15 City Clerk

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18 **APPROVED AS TO FORM:**

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20 By:  for

21 Richard D. Jones

22 City Attorney

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2 to be executed on the date first above written.
3

4 **CITY OF LA PALMA**

5
6 By: Peter L. Kim

7 Peter L. Kim

8 Mayor
9
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11 **ATTEST:**

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13 By: Kimberly Kenney
14 Kimberly Kenney
15 City Clerk
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18 **APPROVED AS TO FORM:**

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20 By: Ajit Thind

21 Ajit Thind

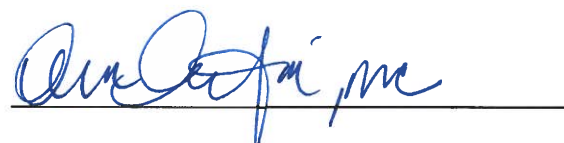
22 City Attorney
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1 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT for Project No. 74-46000
2 to be executed on the date first above written.

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4 **CITY OF BUENA PARK**


5
6 By: 
Fred Smith
8 Mayor

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11 **ATTEST:**

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13 By: 
14 Adria M. Jimenez
15 City Clerk



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17
18 **APPROVED AS TO FORM:**

19
20 By: 
21 Christopher G. Cardinale
22 City Attorney

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1 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT for Project No. 74-46000
2 to be executed on the date first above written.


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4 **CITY OF PLACENTIA**

5
6 By:  _____

7 Damien R. Arrula

8 City Administrator

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11 **ATTEST:**

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13 By:  _____

14 Robert S. McKinnell

15 City Clerk

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17
18 **APPROVED AS TO FORM:**

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20 By:  _____

21 Christian L. Bettenhausen

22 City Attorney

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SIGNED IN COUNTERPART

Cooperative Agreement for Project No. 74-46000

1 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT for Project No. 74-46000
2 to be executed on the date first above written.

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4 **CITY OF ANAHEIM**

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6 By: 

7 Harry Sidhu

8 Mayor

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11 **ATTEST:**

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13 By: 

14 Theresa Bass

15 City Clerk

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18 **APPROVED AS TO FORM:**

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20 By: 

21 Bryn M. Morley

22 Deputy City Attorney

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1 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT for Project No. 74-46000
2 to be executed on the date first above written.
3

4 **CITY OF YORBA LINDA**

5
6 By: Beth Haney
7 Beth Haney
8 Mayor
9

10
11 **ATTEST:**

12
13 By: Marcia Brown
14 Marcia Brown
15 City Clerk
16

17
18 **APPROVED AS TO FORM:**

19
20 By: Todd O. Litfin
21 Todd O. Litfin
22 City Attorney
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1 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT for Project No. 74-46000
2 to be executed on the date first above written.
3

4 **COUNTY OF ORANGE**

5
6 By: _____

 4/3/2020

7 Khalid Bazmi, P.E.

8 Interim Director/ County Engineer

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