

1 COOPERATIVE AGREEMENT NO. C-4-1938 (D15-001)

2 BETWEEN

3 ORANGE COUNTY TRANSPORTATION AUTHORITY

4 AND

5 ORANGE COUNTY FLOOD CONTROL DISTRICT

6 FOR

7 FUNDING THE ADMINISTRATION AND SUPPORT SERVICES RELATED TO THE

8 AIRPORT STORM CHANNEL ACCESS ROAD PROJECT

9 This AGREEMENT, is effective this _____ day of _____, 2015, by and
10 between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,
11 Orange California 92863-1584, a public corporation of the State of California (herein referred to
12 as "AUTHORITY") and the Orange County Flood Control District, a body corporate and politic,
13 300 North Flower Street, Santa Ana, California 92703, (hereinafter referred to as "DISTRICT")
14 each individually known as "Party" and collectively known as the "Parties".

15 **RECITALS:**

16 **WHEREAS**, DISTRICT, in cooperation and partnership with AUTHORITY, is amenable to
17 implementing improvements to the Airport Storm Channel at Inter State-405/State Route-55 (I-
18 405/SR-55) interchange to extend the access road and provide a maintenance turn-around area
19 as shown in Exhibit A (hereinafter referred to as the "PROJECT") which are necessitated by the
20 construction of the I-405/SR-55 Interchange Direct High Occupancy Vehicle (HOV) Connectors
21 and Local Access Improvements (Minimum Operating System 2 & 3) project; and

22 **WHEREAS**, AUTHORITY and DISTRICT desire to enter into a Cooperative Agreement
23 (this AGREEMENT) to define specific terms, conditions, and funding responsibilities toward
24 completion of the project between the AUTHORITY and DISTRICT for administrative and support
25 services for the PROJECT; and

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1 written amendment to this Agreement and issued in accordance with the provisions of this
2 Agreement.

3 C. DISTRICTs failure to insist on any instance(s) of AUTHORITY's performance of
4 any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment
5 of DISTRICT's right to such performance or to future performance of such term(s) or condition(s),
6 and AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to
7 any portion of this Agreement shall not be binding upon DISTRICT except when specifically
8 confirmed in writing by an authorized representative of DISTRICT by way of a written amendment
9 to this Agreement and issued in accordance with the provisions of this Agreement.

10 **ARTICLE 2. SCOPE OF AGREEMENT**

11 This Agreement specifies the roles and responsibilities of the Parties as they pertain to
12 the subjects and projects addressed herein. Both AUTHORITY and DISTRICT agree that each
13 will cooperate and coordinate with the other in all activities covered by this Agreement and any
14 other supplemental agreements that may be required to facilitate the purposes thereof.

15 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

16 AUTHORITY agrees to the following responsibilities for PROJECT:

- 17 A. Comply with all Federal and State third party contracting laws and regulations,
18 including, but not limited to, coordinating the delivery of CEQA documents to
19 DISTRICT.
- 20 B. Upon receipt of an invoice, reimburse DISTRICT within 30 days for estimated
21 costs in an amount of Two Hundred Forty Five Thousand Dollars (\$245,000).
- 22 C. Coordinate with the State of California Department of Transportation hereinafter
23 referred to as "STATE" on DISTRICT and its contractor's behalf, as necessary
24 to implement the PROJECT.

- D. Provide the design, plans, specifications and estimates for the PROJECT and coordinate the acquisition of the necessary permits from State.

ARTICLE 4. RESPONSIBILITIES OF DISTRICT

DISTRICT agrees to the following responsibilities for PROJECT:

- A. Act as the responsible Party for the administrative and support services to complete the development and construction of the PROJECT.
- B. Monitor the activities of staff to ensure completion in compliance with the approved PROJECT schedule, quality, and budget.
- C. Review design plans, specifications and estimate, and prepare construction bid documents for advertisement of the PROJECT.
- D. Obtain all necessary permits for the PROJECT, including encroachment permit from STATE for survey services.
- E. Coordinate development and construction of the PROJECT with the STATE, utilizing the CEQA documents prepared and certified by the STATE.
- F. Collaborate and cooperate with the AUTHORITY staff, its consultants, employees, agents, and contractors during construction of the PROJECT.
- G. Provide support services to include survey, inspection and materials testing.
- H. Submit an invoice to AUTHORITY in an amount of Two Hundred, Forty-Five Thousand Dollars (\$245,000) equal to the DISTRICT's administrative and support services estimated costs for the PROJECT at least 30 days after execution of this Agreement.
- I. Submit final accounting to AUTHORITY within 60 days after completion of services under this Agreement with supporting information. If the final cost is less than \$245,000, DISTRICT shall refund AUTHORITY the difference within 30 days of AUTHORITY's receipt of DISTRICT's final accounting.

1 acts, omissions or willful misconduct of AUTHORITY'S, its officers, directors, employees or
2 agents in connection with or arising out of the performance of this Agreement.

3 B. To the fullest extent permitted by law, DISTRICT shall defend (at DISTRICT's sole
4 cost and expense with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect,
5 and hold harmless AUTHORITY, its officers, directors, employees, and agents (collectively the
6 "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands,
7 losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties,
8 and expenses including legal costs and attorney fees (collectively "Claims"), including but not
9 limited to Claims arising from injuries to or death of persons (DISTRICT's employees included),
10 for damage to property, including property owned by AUTHORITY, or from any violation of any
11 federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or
12 willful misconduct of DISTRICT, its officers, directors, employees or agents in connection with or
13 arising out of the performance of this Agreement.

14 C. The indemnification and defense obligations of this Agreement shall survive its
15 expiration or termination.

16 **ARTICLE 8. ADDITIONAL PROVISIONS**

17 The AUTHORITY and DISTRICT agree to the following mutual responsibilities:

18 A. Term of Agreement: This Agreement shall be effective as of the date first written
19 above and shall be in full force and effect through December 31, 2015 or when all permits are
20 issued by STATE, whichever comes later, unless otherwise extended in writing by both Parties'
21 authorized representatives.

22 B. Termination: In the event either Party defaults in the performance of their
23 obligations under this Agreement or breaches any of the provisions of this Agreement, the non-
24 defaulting Party shall have the option to terminate this Agreement upon thirty (30) days' prior
25 written notice to the other Party. If the Agreement is terminated, DISTRICT may retain from the

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1 \$245,000 its costs incurred up to the date of termination under this Agreement. Any remaining
2 balance held by DISTRICT for the PROJECT shall be returned to AUTHORITY, provided under
3 no circumstances would DISTRICT incur additional cost, liability, or claims.

4 C. Termination for Convenience: Prior to DISTRICT's award of a contract for the
5 construction of the PROJECT, either Party may terminate this Agreement for its convenience by
6 providing thirty (30) days' prior written notice of its intent to terminate for convenience to the other
7 Party. If this Agreement is terminated by AUTHORITY, DISTRICT shall retain from the
8 \$245,000 its costs for administration, and support services under this Agreement incurred up to
9 the date of termination.

10 D. Legal Authority: AUTHORITY and DISTRICT are authorized to execute this
11 Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties hereto
12 are formally bound to the provisions of this Agreement.

13 E. Severability: If any term, provision, covenant or condition of this Agreement is
14 held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent
15 jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term,
16 provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest
17 extent permitted by law.

18 F. Counterparts of Agreement: This Agreement may be executed and delivered in
19 any number of counterparts, each of which, when executed and delivered shall be deemed an
20 original and all of which together shall constitute the same agreement. Facsimile signature will be
21 permitted.

22 G. Force Majeure: Either Party shall be excused from performing its obligations
23 under this Agreement during the time and to the extent that it is prevented from performing by an
24 unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood;
25 acts of God; commandeering of material, products, plants or facilities by the federal, state or local

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1 government; national fuel shortage; or a material act or omission by the other Party; when
2 satisfactory evidence of such cause is presented to the other Party, and provided further that
3 such nonperformance is unforeseeable, beyond the control and is not due to the fault or
4 negligence of the Party not performing.

5 H. Assignment: Neither this Agreement, nor any of the Parties rights, obligations,
6 duties, or authority hereunder may be assigned in whole or in part by either Party without the prior
7 written consent of the other Party in its sole and absolute discretion. Any such attempt of
8 assignment shall be deemed void and of no force and effect. Consent to one assignment shall
9 not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to
10 such subsequent assignment. The Parties agree that under no circumstances DISTRICT
11 awarding a contractor(s) to perform any of the PROJECT work prescribed under this Agreement,
12 would be considered an assignment, nor require AUTHORITY's consent or approval.

13 I. Governing Law: The laws of the State of California and applicable local and
14 federal laws, regulations and guidelines shall govern this Agreement.

15 J. Litigation fees: Should litigation arise out of this Agreement for the performance
16 thereof, each Party shall bear its own attorney fees.

17 K. Notices: Any notices, requests, or demands made between the Parties pursuant
18 to this Agreement are to be directed as follows:

To DISTRICT:

Orange County Flood Control District

300 North Flower Street
Santa Ana, CA 92703Attention: Mr. Shane L. Silsby
Director of OC Public Works
Tel: (714) 834-2395
Email: shane.silsby@ocpw.ocgov.com**To AUTHORITY:**

Orange County Transportation Authority

550 South Main Street
P. O. Box 14184
Orange, CA 92863-1584Attention: Marjorie Morris-Threats
Senior Contract Administrator
Tel: (714) 560-5633
E-mail: mthreats@octa.net

This Agreement shall be made effective upon execution by both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement No. C-4-1938 (D15-001) to be executed on the date first written above.

ORANGE COUNTY FLOOD CONTROL DISTRICT


ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Chairman, Board of Supervisors
County of Orange, California

By: _____
Meena Katakia.
Department Manager, Capital Projects

APPROVAL AS TO FORM

APPROVED AS TO FORM:

By:  _____
Office of the County Counsel
County of Orange, California

By:  _____
James M. Donich
General Counsel

Date 4-1-15 _____

Dated _____

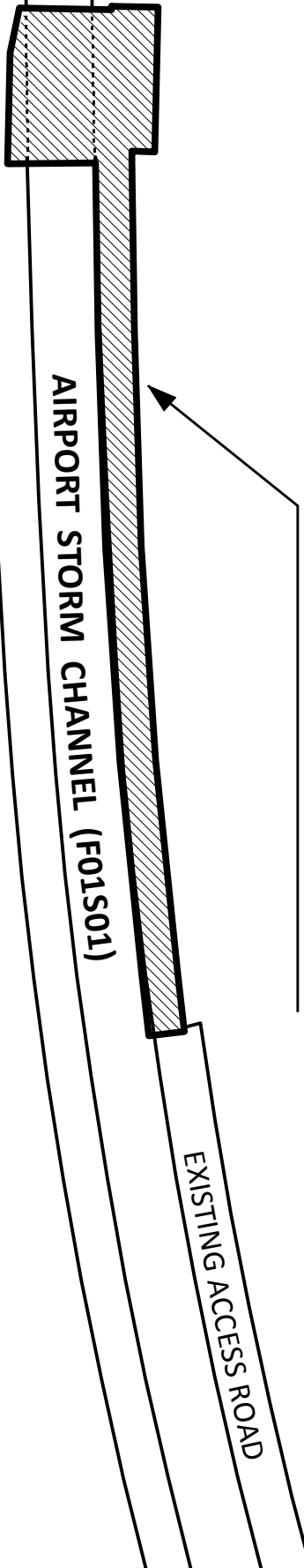
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD PER G.C. Sec 25103, Resolution 79-1534

Attest:

By: _____
Robin Stieler
Interim Clerk of the Board
County of Orange, California

PROJECT

ACCESS ROAD EXTENSION and
TURN-AROUND AREA



AIRPORT STORM CHANNEL (F01S01)

EXISTING ACCESS ROAD

I-405 NB TRANSITION RAMP

I-405 NB OFF-RAMP

HOV TRANSITION RAMP TO NB I-405

HOV TRANSITION RAMP TO NB SR-55

I-405 SAN DIEGO FREEWAY

OC PUBLIC WORKS

EXHIBIT A

AGREEMENT D15-001