

COOPERATIVE AGREEMENT NO. 5-3487 (D15-012)

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

ORANGE COUNTY FLOOD CONTROL DISTRICT

FOR

FUNDING THE CONSTRUCTION OF THE

AIRPORT STORM CHANNEL ACCESS PROJECT

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

RECITALS:

WHEREAS, AUTHORITY and DISTRICT entered into Cooperative Agreement No. C-4-1938 (D15-001) dated May 5, 2015 for funding the administration and support services associated with proposed improvements to the Airport Storm Channel (District Facility No. F01S01) to extend the access road and provide a maintenance turn-around area ("Road") as shown in Exhibit A (hereinafter referred to as the Road), which are necessitated by the construction of the I-405/SR-55 Interchange Direct High Occupancy Vehicle (HOV) Connectors and Local Access Improvements (Minimum Operating System 2 & 3) project; and

WHEREAS, AUTHORITY and DISTRICT desire to enter into a Cooperative Agreement (this AGREEMENT) to define specific terms, conditions, and funding responsibilities between the AUTHORITY and DISTRICT for construction of the Road, when DISTRICT authorizes such construction; and

1 **WHEREAS**, DISTRICT has agreed to being responsible for entering into a contract(s) for the
2 future construction of the Road (i.e. advertising, reviewing, awarding and overseeing any such contract)
3 in accordance with the terms herein, upon receipt of California Environmental Quality Act (California
4 Public Resources Code § 21000 et seq.) ("CEQA") documents prepared and certified by the State of
5 California Department of Transportation hereinafter referred to as "STATE", as the Lead Agency,
6 wherein DISTRICT would be a Responsible Agency under Section 15381 of the CEQA Guidelines; and

7 **WHEREAS**, AUTHORITY has agreed to pay towards the construction of the Road, a total not-
8 to-exceed amount of Two Hundred, Fifty Thousand Dollars (\$250,000) in accordance with the terms
9 herein.

10 **NOW, THEREFORE**, in consideration of the above recitals and the mutual covenants, terms,
11 and conditions contained herein it is agreed by AUTHORITY and DISTRICT as follows:

12 **ARTICLE 1. COMPLETE AGREEMENT**

13 A. This Agreement, including any attachments and documents incorporated herein and
14 made applicable by reference, constitutes the complete and exclusive statement of the term(s) and
15 condition(s) of the Agreement between AUTHORITY and DISTRICT and it supersedes all prior
16 representations, understandings, and communications related to payment for the Road construction.
17 Notwithstanding the foregoing, this Agreement shall in no respect modify, diminish, or change the terms
18 or any obligations of AUTHORITY to DISTRICT, and DISTRICT to AUTHORITY under that certain
19 Cooperative Agreement No. C-4-1938 (D15-001) dated May 5, 2015. The invalidity in whole or in part of
20 any term or condition of this Agreement shall not affect the validity of other term(s) or conditions(s) of
21 this Agreement. The above referenced Recitals are true and correct and are incorporated by reference
22 herein.

23 B. AUTHORITY's failure to insist on any instance(s) of DISTRICT's performance of any
24 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
25 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s), and
26 DISTRICT's obligation in respect thereto shall continue in full force and effect. Changes to any portion

1 of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing
2 by an authorized representative of AUTHORITY by way of a written amendment to this Agreement and
3 issued in accordance with the provisions of this Agreement.

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

11 **ARTICLE 2. SCOPE OF AGREEMENT**

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

16 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

17 AUTHORITY agrees to the following responsibilities:

- 18 A. Comply with all Federal and State third party contracting laws and regulations.
- 19 B. Upon receipt of an invoice, pay DISTRICT within 30 days the estimated cost of Two
20 Hundred Fifty Thousand Dollars (\$250,000), toward funding the proposed Road construction when
21 DISTRICT enters into a construction contract approved by its Board of Supervisors. If construction
22 does not occur and this Agreement terminates, the terms of either Article 9(B) or 9(C), as the case may
23 be, shall determine the amount returned to AUTHORITY.

24 C. Coordinate with the STATE on behalf of DISTRICT and its Contractor [as defined in
25 Article 4(A) below], as necessary to construct the Road.

1 D. Collaborate and cooperate with the DISTRICT and its Contractor throughout the Road
2 construction.

3 **ARTICLE 4. RESPONSIBILITIES OF DISTRICT**

4 DISTRICT agrees to the following responsibilities:

5 A. Act as the responsible PARTY for the construction of the Road, including but not limited
6 to advertising a contract for the work in accordance with the terms of this Agreement, reviewing,
7 awarding, and overseeing the construction contract to a qualified state licensed contractor (hereinafter
8 referred to as the "Contractor") once the CEQA documents prepared and certified by the STATE are
9 forwarded to AUTHORITY and the DISTRICT.

10 B. Monitor the activities of the Contractor to ensure completion in compliance with the
11 approved construction contract, schedule, quality, and budget.

12 C. Ensure the Contractor obtains all permits, including encroachment permit from STATE,
13 and approvals required for Road construction, including coordination with the AUTHORITY and STATE
14 for utilizing the CEQA documents.

15 D. Collaborate and cooperate with the AUTHORITY staff, its consultants, employees,
16 agents, and contractors during Road construction.

17 E. Be responsible for the survey, inspection and materials testing for work by the
18 Contractor, including construction contract change orders.

19 F. Submit an invoice to AUTHORITY in an amount of Two Hundred, Fifty Thousand Dollars
20 (\$250,000), DISTRICT's estimated costs for Road construction, within 30 days after execution of this
21 Agreement.

22 G. Submit final accounting to AUTHORITY within 60 days after completion of construction
23 with supporting information. If the final cost is less than \$250,000, DISTRICT shall refund AUTHORITY
24 the difference within 30 days of AUTHORITY's receipt of DISTRICT'S final accounting.

ARTICLE 5. DELEGATED AUTHORITY

The actions required to be taken by DISTRICT in the implementation of this Agreement are delegated to the Director of the Orange County Public Works Department, or designee, and the actions required to be taken by AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or designee. The Director shall be DISTRICT's authorized representative for all purposes related to the Agreement.

ARTICLE 6. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and DISTRICT mutually agree that AUTHORITY's maximum cumulative payment obligation for Road construction shall be Two Hundred Fifty Thousand Dollars (\$250,000), unless agreed to and amended by both PARTIES.

ARTICLE 7. AUDIT AND INSPECTION

AUTHORITY and DISTRICT shall maintain a complete set of records in accordance with generally accepted accounting principles. Upon reasonable notice, DISTRICT shall permit the authorized representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and other data and records of DISTRICT until any on-going audit is complete or for a period of four (4) years after the PARTIES have satisfied their respective responsibilities under this Agreement, whichever comes first. AUTHORITY shall also have the right to reproduce any such books, records, and accounts. The above provisions with respect to audits shall extend to and/or be included in contracts with DISTRICT'S contractor.

ARTICLE 8. INDEMNIFICATION

A. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole cost and expense with legal counsel reasonably acceptable to DISTRICT), indemnify, protect, and hold harmless DISTRICT and the County of Orange and their elected and appointed officials, officers, employees, agents, contractors and those special districts and agencies which DISTRICT's Board of Supervisors acts as the governing Board (collectively and individually referred to as the "DISTRICT's Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses,

costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (AUTHORITY's employees included), for damage to property, including property owned by DISTRICT, or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful misconduct of AUTHORITY or AUTHORITY's Indemnified Parties [as defined in Article 8(B) below] in connection with or arising out of the performance of this Agreement.

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

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

ARTICLE 9. ADDITIONAL PROVISIONS

The AUTHORITY and DISTRICT agree to the following mutual responsibilities:

A. Term of Agreement: This Agreement shall be effective as of the date first written above and shall be in full force and effect through December 31, 2016, unless otherwise extended in writing by both PARTIES' authorized representatives.

1 B. Termination: In the event either PARTY defaults in the performance of their obligations
2 under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting PARTY
3 shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other
4 PARTY. If termination occurs due to a breach by AUTHORITY, DISTRICT may retain from the
5 \$250,000 payment its costs incurred up to the date of termination. Any remaining balance held by
6 DISTRICT shall be returned to AUTHORITY, provided under no circumstances would DISTRICT incur
7 additional cost, liability, or claims resulting from AUTHORITY's breach.

8 C. Termination for Convenience: Prior to DISTRICT's award of a contract for the
9 construction of the Road, either PARTY may terminate this Agreement for its convenience by providing
10 thirty (30) days' prior written notice of its intent to terminate for convenience to the other PARTY. If this
11 Agreement is terminated by AUTHORITY, DISTRICT shall return payment received under this
12 Agreement to AUTHORITY within ninety (90) days of the date of termination.

13 D. Legal Authority: AUTHORITY and DISTRICT hereto represent and warrant that they
14 are authorized to execute this Agreement on behalf of said PARTIES and that, by so executing this
15 Agreement, the PARTIES hereto are formally bound to the provisions of this Agreement.

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

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

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

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

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

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

J. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, each PARTY shall bear its own attorney fees. K. Notices: Any notices, requests, or demands made between the PARTIES pursuant to this Agreement are to be directed as follows:

To DISTRICT:

Orange County Flood Control District
300 North Flower Street
Santa Ana, CA 92703

Attention: 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 92863-1584
Attention: Marjorie Morris-Threat
Senior Contracts Administrator

Tel: (714) 560-5633
Email: mthreats@octa.net

1 This Agreement shall be made effective upon execution by both PARTIES.

2 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement No. C-5-3487 to be
3 executed on the date first written above.

4 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

5
6 By: _____

7 Meena Katakia

8 Department Manager, Capital Projects
9

10 **APPROVED AS TO FORM:**

11
12 By: _____

13 James M. Donich

14 General Counsel
15

16 Dated _____
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1 SIGNED AND CERTIFIED THAT A COPY OF THIS
2 DOCUMENT HAS BEEN DELIVERED TO THE
3 CHAIR OF THE BOARD PER G.C. Sec 25103,
Resolution 79-1535


4 Attest:

5 _____
6 Robin Stieler
7 Interim Clerk of the Board
8 County of Orange, California

9 **ORANGE COUNTY FLOOD CONTROL DISTRICT**

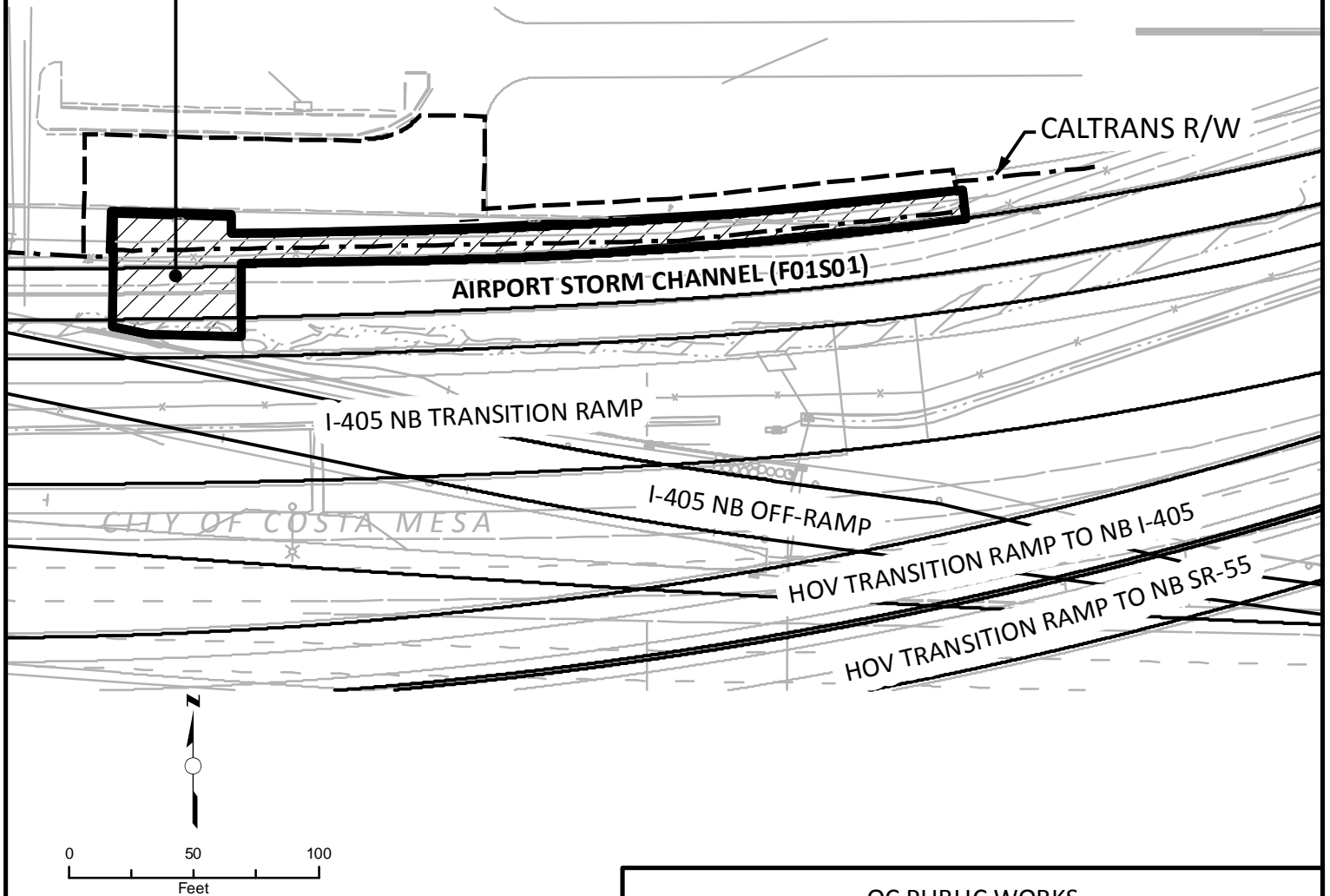
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11
12 By: _____
13 Chairman of the Board of Supervisors
14 County of Orange, California
15

16 **APPROVAL AS TO FORM**
17 **Office of the County Counsel**
18 County of Orange, California

19 By:  _____
20 Deputy

21 Date 7-10-15
22
23
24
25
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ACCESS ROAD EXTENSION AND TURN-AROUND AREA



Legend



OCFCD Easements per O.R. 7790/896,
O.R. 2009-000636232 and
O.R. 2009-000636233

--- CalTrans Right-of-Way

--- Proposed Temporary Construction
Easement

OC PUBLIC WORKS

EXHIBIT A
COOPERATIVE AGREEMENT
NO. C-5-3487 (D15-012)