

1 COOPERATIVE AGREEMENT NO. C-0-2038

2 BETWEEN

3 ORANGE COUNTY TRANSPORTATION AUTHORITY

4 AND

5 CITIES OF FOUNTAIN VALLEY, HUNTINGTON BEACH, AND SANTA ANA

6 FOR

7 MACARTHUR BOULEVARD / TALBERT AVENUE REGIONAL TRAFFIC SIGNAL

8 SYNCHRONIZATION PROGRAM PROJECT

9 THIS COOPERATIVE AGREEMENT (Agreement), is effective this _____ day of
10 _____, 2020 ("Effective Date"), by and between the Orange County Transportation
11 Authority, 550 South Main Street, P.O. Box 14184, Orange California 92863-1584, a public corporation
12 of the State of California (herein referred to as "AUTHORITY") and the cities of Fountain Valley,
13 Huntington Beach, and Santa Ana (hereinafter referred to as "PARTICIPATING AGENCIES") each
14 individually known as "Party" and collectively known as the "Parties".

15 **RECITALS:**

16 **WHEREAS**, the AUTHORITY in cooperation with the PARTICIPATING AGENCIES is working
17 together in coordinating traffic signals across multiple jurisdictional boundaries as a part of the Solutions
18 for Congested Corridors Program (hereinafter, "SCCP") and the Measure M2 Regional Traffic Signal
19 Synchronization Program (hereinafter, "RTSSP" or "Project P") to enhance countywide traffic flow and
20 reduce congestion; and

21 **WHEREAS**, the AUTHORITY has competed in the competitive 2018 SCCP Call for Projects
22 (hereinafter, "2018 SCCP CALL") in support of the SCCP and was awarded Senate Bill 1 funds based
23 on the application (hereinafter, "APPLICATION") prepared by the AUTHORITY (hereinafter referred to
24 as the "APPLICANT AGENCY") for implementation of signal synchronization of traffic signals along
25 MacArthur Boulevard / Talbert Avenue between the intersections of Gothard Street in the City of
26 Huntington Beach and MacArthur Place in the City of Santa Ana (hereinafter, "PROJECT"); and

**COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP**

1 **WHEREAS**, the PARTICIPATING AGENCIES have elected to designate the AUTHORITY and
2 the AUTHORITY agrees to act as the implementing agency to carry out PROJECT; and

3 **WHEREAS**, the PROJECT will include approximately twenty-six (26) traffic signalized
4 intersections; and

5 **WHEREAS**, the PROJECT will include Intelligent Transportation System (ITS) elements
6 identified in the APPLICATION including certain hardware and software upgrades to intersection and
7 central control systems including Advanced Transportation Controller units (ATC), telematics and
8 interconnect systems, Advanced Transportation Management Systems (ATMS), Roadside Units
9 (RSU), and other associated systems (hereinafter collectively referred to as "ITS ELEMENTS"), will
10 be constructed and/or installed and implemented as part of the PROJECT; and

11 **WHEREAS**, the AUTHORITY agrees to work with PARTICIPATING AGENCIES to coordinate
12 the inclusion of other ITS elements (hereinafter, "OTHER ELEMENTS") that should be installed at the
13 same time as the construction of the PROJECT and are not part of this Agreement; and

14 **WHEREAS**, all costs associated with the inclusion of these OTHER ELEMENTS, if any, are
15 the sole responsibility of the Party owning each and any of those OTHER ELEMENTS during the
16 project; and

17 **WHEREAS**, AUTHORITY and each respective Party acknowledge and understand that in-
18 house resources (staff) from Party will provide various services for PROJECT; and

19 **WHEREAS**, AUTHORITY and each respective Party acknowledge and understand that
20 PROJECT costs for various types of additional work required by each respective Party, by its staff, or
21 by policy, may not have been included in the original application and therefore costs to contractors or
22 consultants to comply with staff requirements are not included in the PROJECT allocation; and

23 **WHEREAS**, AUTHORITY and Parties agree that these costs will be paid by PROJECT; and

24 **WHEREAS**, Parties and each respective Party acknowledge and understand that the costs for
25 the additional work may be reversed by AUTHORITY's Audit; and

26 /

**COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP**

1 **WHEREAS**, based on AUTHORITY's Board of Directors approved PROJECT ALLOCATION, the
2 AUTHORITY agrees to implement the PROJECT; and

3 **WHEREAS**, the PARTICIPATING AGENCIES agree to provide PROJECT funding in a cash
4 match of One Hundred Forty-Eight Thousand, Seventy-Six Dollars (\$148,076), as shown in Attachment
5 A, or equivalent to at least twenty percent (20%) of PROJECT cost; and

6 **WHEREAS**, the AUTHORITY and the PARTICIPATING AGENCIES desire to enter into this
7 Agreement to implement the PROJECT in support of SCCP and Project P; and

8 **WHEREAS**, this Agreement defines the specific terms, conditions, and funding responsibilities
9 between the AUTHORITY and the PARTICIPATING AGENCIES for the implementation of the
10 PROJECT; and

11 **WHEREAS**, the AUTHORITY'S Board of Directors authorized funding for the PROJECT on
12 January 27, 2020; and

13 **WHEREAS**, the City of Fountain Valley's City Council approved this Agreement on the ____
14 day of _____, 2020.

15 **WHEREAS**, the City of Huntington Beach's City Council approved this Agreement on the ____
16 day of _____, 2020.

17 **WHEREAS**, the City of Santa Ana's City Council approved this Agreement on the ____ day of
18 _____, 2020.

19 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and the
20 PARTICIPATING AGENCIES as follows:

21 **ARTICLE 1. COMPLETE AGREEMENT**

22 A. This Agreement, including any attachments incorporated herein and made applicable by
23 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this
24 Agreement between AUTHORITY and PARTICIPATING AGENCIES and it supersedes all prior
25 representations, understandings, and communications. The invalidity in whole or in part of any term or
26 /

1 condition of this Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement.

2 The above referenced Recitals are true and correct and are incorporated by reference herein.

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

10 C. PARTICIPATING AGENCIES' failure to insist on any instance(s) of AUTHORITY's
11 performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or
12 relinquishment of PARTICIPATING AGENCIES' right to such performance or to future performance of
13 such term(s) or condition(s), and AUTHORITY's obligation in respect thereto shall continue in full force
14 and effect. Changes to any portion of this Agreement shall not be binding upon PARTICIPATING
15 AGENCIES except when specifically confirmed in writing by an authorized representative of
16 PARTICIPATING AGENCIES by way of a written amendment to this Agreement and issued in
17 accordance with the provisions of this Agreement.

18 **ARTICLE 2. SCOPE OF AGREEMENT**

19 This Agreement specifies the roles and responsibilities of the Parties as they pertain to the
20 subjects and projects addressed herein. Both AUTHORITY and PARTICIPATING AGENCIES agree
21 that each will cooperate and coordinate with the other in all activities covered by this Agreement and any
22 other supplemental agreements that may be required to facilitate purposes thereof.

23 /

24 /

25 /

26 /

ARTICLE 3. RESPONSIBILITIES OF AUTHORITY

AUTHORITY agrees to the following responsibilities for funding of the PROJECT:

A. AUTHORITY shall implement the PROJECT based on the intent of the usage in the APPLICATION prepared by the APPLICANT AGENCY in accordance with the policies and procedures contained in the SCCP and Comprehensive Transportation Funding Program (CTFP) Guidelines.

B. AUTHORITY shall provide oversight to maintain inter-jurisdictional traffic signal operational integrity between PROJECT and other similar type projects not older than three (3) years.

C. AUTHORITY will act as the LEAD AGENCY and provide and file all documentation necessary to comply with California Environmental Quality Act (CEQA) regulations for PROJECT.

D. AUTHORITY shall perform web-based public outreach activities for the project to communicate major project milestones and results.

E. AUTHORITY shall provide formats, templates, and guidance in reporting requirements as described in the SCCP and CTFP Guidelines.

F. AUTHORITY, or agents of AUTHORITY, under this Agreement and upon closeout of PROJECT, may perform a technical and/or field review to ensure that the guidelines, policies, and procedures were followed. Such a review may be performed one hundred and eighty (180) days after the PROJECT three-year grant period is complete. If the technical and or field review determines that any of the activities performed are ineligible for SCCP funding, PARTICIPATING AGENCIES must reimburse and return the amount of funding used to perform the ineligible activity to AUTHORITY.

G. AUTHORITY shall invoice the PARTICIPATING AGENCIES as identified in Attachment A for the dollar cash match at the end of the Primary Implementation phase or at a mutually agreed upon time to facilitate any respective Party funding timeframes.

H. AUTHORITY shall request updates for the PROJECT as part of semi-annual review process, including documentation of in-kind match conforming to Attachment A and will include the PROJECT in the list of active projects in OC Fund Tracker until completion of the three-year grant period. Documents to be provided include, but are not limited to, payroll records, contracts, and purchase orders.

ARTICLE 4. RESPONSIBILITIES OF THE AUTHORITY AS PROJECT LEAD AGENCY

The AUTHORITY as the LEAD AGENCY agrees to the following responsibilities for the implementation of the PROJECT:

A. AUTHORITY shall act as the LEAD AGENCY for the work necessary to manage, procure, and complete the PROJECT as identified in APPLICATION.

B. To coordinate outreach with PARTICIPATING AGENCIES for PROJECT.

C. To collect all data necessary to provide new optimized timing plans including, but not limited to, manual or video all movement counts at each PROJECT signalized intersection, and a mutually agreed upon number and location of twenty-four (24) hour / seven (7) day automated machine traffic counts with vehicle classification.

D. To develop and implement new timing plans optimized for signal synchronization.

E. To provide updated timing plans for all control systems and all relevant data used to develop said plans to PARTICIPATING AGENCIES.

F. To prepare a "Before and After Study" for PROJECT as described in the Measure M2 Eligibility Guidelines adopted by the AUTHORITY. The "Before and After Study" for the project is considered the equivalent of the required Project Final Report (Measure M2 Ordinance No. 3, Section B.III.9) for PROJECT. The AUTHORITY shall provide the "Before and After Study" to the PARTICIPATING AGENCIES in draft and final formats for review and comment. Party comments shall be noted in the final study. If specified in APPLICATION, AUTHORITY shall provide a "Before and After Study" video of a representative portion of PROJECT at up to two (2) public meetings.

ARTICLE 5. RESPONSIBILITIES OF THE PARTICIPATING AGENCIES

PARTICIPATING AGENCIES agree to the following responsibilities for implementation and funding of PROJECT:

A. Provide a technical representative to meet and participate as a member of the PROJECT's Traffic Forum.

/

**COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP**

1 B. To authorize the AUTHORITY to manage, procure, and implement all aspects of
2 PROJECT.

3 C. To participate and support PROJECT implementation within the timeframe outlined in
4 APPLICATION and consistent with the SCCP and CTFP Guidelines adopted by AUTHORITY.

5 D. To provide AUTHORITY all current intersection as-built drawings, all current
6 intersections controller assembly plans as provided by the manufacturer and modified by Party since
7 original installation, local field master, local controller, and ATMS timing plans and other ITS related
8 data upon request.

9 E. To provide the local cash match for PROJECT in accordance with Attachment A.
10 Failure to provide local cash match may result in the loss of future participation for competitive funding
11 opportunities.

12 F. PARTICIPATING AGENCIES that have included a dollar match as identified in
13 Attachment A shall provide payment for the dollar match to AUTHORITY within thirty (30) calendar
14 days of receipt of an invoice.

15 G. To waive all fees associated with any local agency permits that may be required of the
16 consultant, sub consultants, and/or service or equipment providers in the performance of the PROJECT.

17 H. PARTICIPATING AGENCIES shall provide updates on PROJECT to AUTHORITY as
18 part of semi-annual review process until completion of the three-year PROJECT grant period. Documents
19 to be provided include, but are not limited to, payroll records, contracts, and purchase orders.

20 I. The project is partially funded by Senate Bill 1 (SB-1) and PARTICIPATING AGENCIES
21 agree to comply with all applicable SB-1 Accountability Guidelines, SCCP State requirements.

22 **ARTICLE 6. DELEGATED AUTHORITY**

23 The actions required to be taken by PARTICIPATING AGENCIES in the implementation of this
24 Agreement are delegated to their respective City Manager, or designee, and the actions required to be
25 taken by AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief
26 Executive Officer or designee.

ARTICLE 7. AUDIT AND INSPECTION

AUTHORITY and PARTICIPATING AGENCIES shall maintain a complete set of records in accordance with generally accepted accounting principles. Upon reasonable notice, PARTICIPATING AGENCIES shall permit the authorized representatives of AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and other data and records of PARTICIPATING AGENCIES for a period of five (5) years after final payment, final closeout, or until any on-going audit is completed, whichever is later. For purposes of audit, the date of completion of this Agreement shall be the date of AUTHORITY's payment of consultant's final billing (so noted on the paid invoice) under this Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above provision with respect to audits shall extend to and/or be included in contracts with PARTICIPATING AGENCIES' contractor.

ARTICLE 8. INDEMNIFICATION

A. To the fullest extent permitted by law, PARTICIPATING AGENCIES shall defend (at PARTICIPATING AGENCIES' sole cost and expense with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect, and hold harmless AUTHORITY, and its officers, directors, employees, and agents (collectively the "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 (PARTICIPATING AGENCIES' employees 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 PARTICIPATING AGENCIES, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole cost and expense with legal counsel reasonably acceptable to PARTICIPATING AGENCIES), indemnify, protect, and hold harmless PARTICIPATING AGENCIES, including their officers, directors, employees,

**COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP**

1 and agents (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits,
2 claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders,
3 penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not
4 limited to Claims arising from injuries to or death of persons (AUTHORITY's employees included), for
5 damage to property, including property owned by PARTICIPATING AGENCIES, or from any violation of
6 any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or
7 willful misconduct of AUTHORITY, its officers, directors, employees or agents in connection with or arising
8 out of the performance of this Agreement.

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

11 **ARTICLE 9. ADDITIONAL PROVISIONS**

12 A. Term of Agreement: This Agreement shall be in full force and effect through June 30,
13 2025.

14 B. Amendment: This Agreement may be extended or amended in writing at any time by the
15 mutual consent of all Parties and AUTHORITY. No amendment shall have any force or effect unless
16 executed in writing by all Parties and AUTHORITY.

17 C. Termination: In the event any Party defaults in the performance of their respective
18 obligations under this Agreement or breaches any of the provisions of this Agreement, a non-defaulting
19 Party(s) shall have the option to terminate this Agreement upon thirty (30) calendar days prior written
20 notice to the Party in default.

21 D. Termination for Convenience: Either Party may terminate this Agreement for its
22 convenience by providing thirty (30) calendar days prior written notice of its intent to terminate for
23 convenience to the other Party.

24 E. Compliance: AUTHORITY and PARTICIPATING AGENCIES shall comply with all
25 applicable federal, state, and local laws, statues, ordinances and regulations of any governmental
26 authority having jurisdiction over the PROJECT.

COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP

1 F. Legal Authority: AUTHORITY and PARTICIPATING AGENCIES hereto consent that they
2 are authorized to execute this Agreement on behalf of said Parties and that, by so executing this
3 Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

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

8 H. Counterparts of Agreement: This Agreement may be executed and delivered in any
9 number of counterparts, each of which, when executed and delivered shall be deemed an original and all
10 of which together shall constitute the same agreement. Facsimile signatures shall be permitted.

11 I. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations, duties, or
12 authority hereunder may be assigned in whole or in part by either Party without the prior written consent
13 of the other Party in its sole and absolute discretion. Any such attempt of assignment shall not be deemed
14 void and of no force and effect. Consent to one assignment shall be deemed consent to any subsequent
15 assignment, nor the waiver of any right to consent to such subsequent assignment.

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

18 K. Litigation fees: Should litigation arise out of this Agreement for the performance thereof,
19 the court shall award costs and expenses, including attorney's fees, to the prevailing Party.

20 L. Notices: Any notices, requests, or demands made between the Parties pursuant to this
21 Agreement are to be directed as follows:

22 /

23 /

24 /

25 /

26 /

**COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP**

To FOUNTAIN VALLEY:	To AUTHORITY:
City of Fountain Valley	Orange County Transportation Authority
10200 Slater Avenue	550 South Main Street
Fountain Valley, CA 92708	P. O. Box 14184
	Orange, CA 92863-1584
Attention: Temo Galvez	Attention: Venita Anderson
Deputy Public Works Director / City Engineer	Senior Contract Administrator
Tel: (714) 593-4517	Tel: (714) 560-5427
Email: temo.galvez@fountainvalley.org	E-mail: vanderson@octa.net
To SANTA ANA:	To HUNTINGTON BEACH:
City of Santa Ana	City of Huntington Beach
20 Civic Center Plaza	2000 Main Street
M-43	Huntington Beach, CA 92648
Santa Ana, CA 92702	
Attention: Cesar Rodriguez	Attention: William Janusz
Senior Civil Engineer	Principal Civil Engineer
Tel: (714) 647-5626	Tel: (714) 374-1628
Email: Crodriguez@santa-ana.org	Email: wjanusz@surfcity-hb.org

M. Force Majeure: Either 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 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.

**COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement No. C-0-2038 to be executed on the date of the last signature below.

CITY OF FOUNTAIN VALLEY

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Cheryl Brothers
Mayor

By: _____
Meena Katakia
Manager, Capital Projects

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

By: _____
Rick Miller
City Clerk

By: _____
James M. Donich
General Counsel

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Colin Burns
City Attorney

Date: _____

COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement No. C-0-2038 to be
2 executed on the date of the last signature below.

3 **CITY OF HUNTINGTON BEACH**

4 By: _____
5 Lyn Semeta
6 Mayor

7 Date: _____

8 **ATTEST:**

9
10 By: _____
11 Robin Estanislau
12 City Clerk

13 Date: _____

14 **APPROVED AS TO FORM**

15
16 By: _____
17 Michael E. Gates *mw*
18 City Attorney

19 Date: _____

COOPERATIVE AGREEMENT NO. C-0-2038
MACARTHUR BOULEVARD / TALBERT AVENUE – RTSSP

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement No. C-0-2038 to be
2 executed on the date of the last signature below.

3 **CITY OF SANTA ANA**

4 By: _____

5 Kristine Ridge
6 City Manager

6 Date: _____

7
8 **ATTEST:**

9
10 By: _____

11 Daisy Gomez
12 Clerk of the Council

12 Date: _____

13
14 **APPROVED AS TO FORM**

15
16 By: _____

17 Sonia R. Carvalho
18 City Attorney

18 Date: _____

COOPERATIVE AGREEMENT NO. C-9-2038
MACARTHUR BOULEVARD / TALBERT AVENUE - RTSSP
ATTACHMENT A

DETAILED LOCAL MATCH COMMITMENT

AGENCY	TOTAL CASH MATCH*	
	Primary Implementation	Operations & Maintenance
City of Fountain Valley	\$ 64,398.00	\$ 3,840.00
	\$ 68,238.00	
City of Huntington Beach	\$ 1,440.00	\$ 960.00
	\$ 2,400.00	
City of Santa Ana	\$ 69,758.00	\$ 7,680.00
	\$ 77,438.00	
TOTAL	\$ 135,596.00	\$ 12,480.00
	\$ 148,076.00	

* No in-kind match allowed on this project.