

**RESOLUTION NO. 2018-003**

**A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF AN INTEREST IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF A PORTION OF ASSESSOR PARCEL NO. 142-342-14.**

**WHEREAS**, the Orange County Transportation Authority (the “Authority”) is undertaking the Interstate 405 (“I-405”) Improvement Project between State Route 73 and Interstate 605, a right-of-way for freeway purposes and all public uses appurtenant thereto (the “Project”); and

**WHEREAS**, the Project is intended to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding general purpose and express lanes and making improvements to freeway entrances, exits and bridges; and

**WHEREAS**, the Project requires the acquisition of property interests from public and private parties; and

**WHEREAS**, the Project will be a transportation improvement project serving the public interests; and

**WHEREAS**, subsection (a) of the California Public Utilities Code section 130220.5, authorizes the Authority to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

**WHEREAS**, on May 11, 2015, the Authority’s Board of Directors authorized the Authority to acquire property interests for the Project; and

**WHEREAS**, a portion of the real property located at 7677 Center Avenue, in the City of Huntington Beach, California (the “Subject Property”) is required for the Project. The specific portion of the Subject Property required for the Project includes one temporary construction easement, as legally described and depicted in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property Interest”); and

**WHEREAS**, the Authority communicated an offer of compensation to the owner or owners of record for the acquisition of the Property Interest; and

**WHEREAS**, in accordance with section 1245.235 of the California Code of Civil Procedure on December 7, 2017, the Authority mailed a Notice of Hearing on the Intent of the Authority to Adopt a Resolution of Necessity for acquisition by eminent domain of the Property Interest. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the Subject Property; and

**WHEREAS**, the Authority provided written notice to the City of Huntington Beach as required by subsection (c) of California Public Utilities Code section 130220.5; and

**WHEREAS**, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Authority's Board of Directors at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

**WHEREAS**, pursuant to section 1245.235 of the California Code of Civil Procedure, the Authority scheduled a hearing for January 22, 2018 at 9:00 am at 550 South Main Street, Orange, California and gave to each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear at said hearing and to be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, said hearing has been held by the Authority's Board of Directors and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on those matters specified in the Authority's notice of intention to conduct a hearing on whether or not to adopt a Resolution of Necessity and referred to in section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, the Authority may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

**NOW, THEREFORE, BE IT RESOLVED**, by at least a two-thirds vote of the Authority's Board of Directors under Code of Civil Procedure sections 1240.030 and 1245.230, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Compliance with California Code of Civil Procedure. There has been compliance by the Authority with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

Section 3. Public Use. The public use for which the interests in the property are to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Authority to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

Section 4. Necessity.

(a) The proposed Project is necessary to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding general purpose and express lanes and making improvements to freeway entrances, exits and bridges; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of the Property Interest.

Section 5. Description of Property Interest. The property interest sought to be acquired is more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by reference.

Section 6. Findings. The Authority hereby finds, determines and declares each of the following:

(a) The public interest and necessity require the proposed Project;

(b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The Property Interest sought to be acquired is necessary for the proposed Project; and

(d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the real property to be acquired is already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the real property, or any portion thereof, is already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the real property, or any portion thereof, is already devoted.

Section 8. Authority to Exercise Eminent Domain. The Authority is hereby authorized and empowered to acquire one temporary construction easement in the real property

described and depicted in Exhibit "A", hereto, including the improvements thereon, if any, by eminent domain for the proposed Project.

Section 9.     Further Activities.     The Authority's legal counsel ("Counsel") is hereby authorized and empowered to acquire the Property Interest in the name of and on behalf of the Authority by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be permitted and required by law, and to make such security deposits as may be required by law and/or order of court, to permit the Authority to take possession of the Property Interest at the earliest possible time.

Section 10.     Effective Date.     This Resolution of Necessity shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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LISA A. BARTLETT, CHAIR  
ORANGE COUNTY  
TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

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JAMES M. DONICH  
GENERAL COUNSEL

ATTEST:

I, Laurena Weinert, Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2018-003, by the following votes:

AYES:

NOES:

ABSENT:

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LAURENA WEINERT  
CLERK OF THE BOARD

# EXHIBIT “A”

**TEMPORARY CONSTRUCTION EASEMENT  
ATTACHMENT TO LEGAL DESCRIPTION**

**Assessor Parcel No.: 142-342-14**

**Caltrans Parcel No.: 103109-1**

The Orange County Transportation Authority seeks to acquire a temporary construction easement within and upon the real property described in Exhibit "A1" and depicted in Exhibit "A2" attached hereto, subject to the rights and limitations described herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the I-405 Improvement Project. The TCE shall be for a period of sixty (60) months, a portion of which shall be exclusive (subject to the limitations set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of twenty-four (24) consecutive months within the sixty (60) month TCE period (hereinafter the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the limitations set forth below. OCTA's use and occupancy of the TCE during the remaining thirty-six (36) months of the TCE period will be non-exclusive.

**Rights and Restrictions of Use and Occupancy of TCE:**

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days written notice as to when the Construction Period will commence.
- At the commencement of Construction Period, OCTA may place a temporary fence around the TCE area, provided, however, reasonable pedestrian and vehicular access to the remaining property outside of the TCE area shall be maintained.
- OCTA shall only access the TCE area from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any improvements so removed will either be replaced in kind or included in the compensation paid by OCTA. The landscaping and chain link fencing within the TCE area will be included in the compensation paid by OCTA.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials including, without limitation, any temporary fence, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted to restore it to a condition that is as functionally equivalent as is practicable to its condition prior to commencement of the construction activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

# PSOMAS

## EXHIBIT 'A1'

### LEGAL DESCRIPTION

Caltrans Parcel No. 103109-1

Temporary Construction Easement

APN 142-342-14

That portion of Lot 6 situate in the City of Huntington Beach, County of Orange, State of California, as shown as Exhibit "B" of that certain Lot Line Adjustment LL 83-3, recorded February 14, 1984 as Document No. 84-064130, Official Records of said County, described as follows:

**Beginning** at the most easterly corner of said Lot; thence along the southeasterly line of said Lot South 40°33'21" West 10.00 feet to a point thereon; thence leaving last said line North 49°26'39" West 145.90 feet to a point on the northerly line of said Lot, last said point being the beginning of a non-tangent curve concave southwesterly having a radius of 110.00 feet, to which point a radial line bears North 15°56'09" East; thence southeasterly along the northeasterly line of said Lot the following two (2) courses:

- 1) along said curve 47.27 feet through a central angle of 24°37'12"
- 2) South 49°26'39" East 100.08 feet to the **Point of Beginning**.

Containing 1309 square feet.

See Exhibit 'A2' attached hereto and made apart hereof.

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837.



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Prepared under the direction of

Brian E. Bullock

Brian E. Bullock, PLS 5260

10-8-15

Date



# EXHIBIT A2

