

## **COOPERATIVE AGREEMENT**

THIS COOPERATIVE AGREEMENT (“**AGREEMENT**”), ENTERED INTO EFFECTIVE ON \_\_\_\_\_ 2017, is by and between the Foothill/Eastern Transportation Corridor Agency, a joint powers authority (referred to herein as “**F/ETCA**”), and the County of Orange, a political subdivision of the State of California (referred to herein as “**COUNTY**”), each individually known as “**PARTY**” and collectively known as the “**PARTIES**.”

### **RECITALS**

**WHEREAS**, for the purpose of this AGREEMENT, the “**PROJECT**” consists of an overcrossing bridge structure at Oso Parkway and mainline roadway between the southern terminus of the State Route 241 (SR 241) toll road and the northern terminus of the future Los Patrones Parkway;

**WHEREAS**, Los Patrones Parkway and the Los Patrones Parkway ramps, including a northbound ramp connecting Los Patrones Parkway to Oso Parkway and a southbound ramp connecting Oso Parkway to Los Patrones Parkway are being constructed by others and are not covered by this AGREEMENT;

**WHEREAS**, the COUNTY and F/ETCA previously entered into a Cooperative Agreement D15-033 (Exhibit C), dated February 9, 2016, that defined the PARTIES’ respective rights and obligations with respect to preparation and adoption of the CEQA compliance documents for the PROJECT, and preparation of Plans, Specifications and Estimate (“**PS&E**”) for the PROJECT;

**WHEREAS**, the COUNTY, as the California Environmental Quality Act (CEQA) Lead Agency, determined as appropriate, prepared and approved Addendum IP 15-252 to the Ranch Plan Final Program Environmental Impact Report (EIR) No. 589 and Final EIR No. 584 and the COUNTY prepared and filed a Notice of Determination for the PROJECT on June 14, 2016;

**WHEREAS**, F/ETCA has prepared a project report in Caltrans format and the report has been deemed complete and signed by the COUNTY and Caltrans on June 10, 2016;

**WHEREAS**, F/ETCA is currently preparing the PROJECT PS&E which the COUNTY is a participant under the terms of Cooperative Agreement D15-033 (Exhibit C), dated February 9, 2016;

**WHEREAS**, the COUNTY is to accept the PROJECT right-of-way south of Oso Parkway, including the Los Patrones Parkway ramps, in accordance with the Agreement for Grant of Fee Credits (Agreement No. D14-034) entered into on June 24, 2014 between the COUNTY and Rancho Mission Viejo, LLC; and

**WHEREAS**, the purpose of this AGREEMENT is to define the PARTIES' respective rights and obligations with respect to **ADVERTISE, AWARD AND ADMINISTER (AAA)** the PROJECT.

**NOW, THEREFORE**, it is mutually understood and agreed by COUNTY and F/ETCA as follows:

### **AGREEMENT**

#### **COMPLETE AGREEMENT**

1. This AGREEMENT, including any attachments incorporated herein and made applicable by reference and the recitals above, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this AGREEMENT between COUNTY and F/ETCA and it supersedes all prior representations, understandings, and communications with respect to the subject matter hereof. The invalidity in whole or in part of any term or condition of this AGREEMENT shall not affect the validity of other term(s) or conditions(s) of this AGREEMENT. The above referenced Recitals are true and correct and are incorporated by reference herein.

#### **SCOPE OF AGREEMENT**

2. This AGREEMENT specifies the roles and responsibilities of the PARTIES as they pertain to the subjects and PROJECT addressed herein. Both COUNTY and F/ETCA agree that each will cooperate and coordinate with the other in all activities covered by this AGREEMENT and any other supplemental agreements that may be required to facilitate the purposes thereof.

#### **SPONSORSHIP & FUNDING**

3. F/ETCA is the sponsor for the PROJECT in this AGREEMENT.
4. F/ETCA is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the PROJECT plus COUNTY AAA services in accordance with this AGREEMENT.
5. COUNTY does not have any financial obligations towards funding the construction of the PROJECT.

**PARTIES AGREE**

6. COUNTY shall AAA the PROJECT in accordance with the PS&E developed by the F/ETCA and reviewed and concurred by staff of the COUNTY and Caltrans via Cooperative Agreement D15-033 (Exhibit C) executed by COUNTY Board of Supervisors on February 9, 2016.
7. COUNTY shall complete the AAA of the PROJECT at a cost not exceeding \$4,000,000, without prior written approval of the F/ETCA. **Amendment 6**
8. ~~COUNTY shall transfer, at no cost, to the F/ETCA the PROJECT right-of-way south of Oso Parkway that is not presently within existing Caltrans right-of-way, including the Los Patrones Parkway ramps, as shown on the map attached hereto as Exhibit A. The COUNTY shall convey the property free and clear of all liens and encumbrances except for those approved by F/ETCA. Subsequently, F/ETCA shall convey the property to Caltrans and that conveyance shall occur prior to the PROJECT opening for public use. COUNTY and F /ETCA agree that it is in the public's best interest to open the PROJECT to public use, and COUNTY hereby consents to such opening at the time designated by F/ETCA notwithstanding any other provision of the AGREEMENT.~~ **Amendment 2**
9. F/ETCA shall ~~prepare~~, at no cost to the COUNTY, ~~all required PROJECT right-of-way documentation related to the conveyances needed between COUNTY and F/ETCA, and F/ETCA and Caltrans prepare and deliver to COUNTY final as-built drawings of the PROJECT improvements on the COUNTY Right-of-Way.~~ **Amendment 6**
10. Neither COUNTY nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of (i) anything done or omitted to be done by the F/ETCA under or in connection with any work, authority or jurisdiction delegated to the F/ETCA under this Agreement, or (ii) any legal or administrative action taken by a third party arising from the November 10, 2016 State Route 241 Foothill South and Tesoro Extensions Settlement Agreement or the March 10, 2016 Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources. It is also understood that to the extent permitted by law, F/ETCA shall defend, indemnify, protect with counsel approved in writing by COUNTY, and hold harmless COUNTY and all of its officers, directors, employees, and agents (collectively the “COUNTY INDEMNIFIED PARTIES”), from and against any and all liabilities, actions, suits, claims, demands, losses, costs (including delay costs), judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively “CLAIMS”): (i) arising from the advertisement, award, and commencement of construction of the PROJECT pursuant to this AGREEMENT; or (ii); including but not limited to CLAIMS arising from injuries to or death of persons (F/ETCA’s employees included), for damage to property, including property owned by COUNTY, or from any violation of any federal, state, or local law or ordinance,

caused by the negligent acts, omissions or willful misconduct of F/ETCA, its officers, directors, employees or agents in connection with or arising out of the F/ETCA's performance of its obligations under this AGREEMENT. Notwithstanding the language above in this section, F/ETCA shall not be required to defend, indemnify, protect, or hold harmless the COUNTY or the COUNTY INDEMNIFIED PARTIES~~except~~ to the extent that such CLAIMS ~~result~~arise from COUNTY's or COUNTY INDEMNIFIED PARTIES' own gross negligence or willful misconduct.

**Amendment 1**

F/ETCA's obligations pursuant to this Section 10 shall not extend to liabilities that the COUNTY may incur from and with respect to COUNTY's ownership of the County Right-of-Way, including operation and maintenance of the County Right-of-Way, which shall be COUNTY's sole and exclusive responsibility.

**Amendment 6**

11. Neither F/ETCA nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the COUNTY under or in connection with any work, authority or jurisdiction delegated to the COUNTY under this Agreement, unless the damage or liability arose out of a legal or administrative action taken by a third party arising from the November 10, 2016 State Route 241 Foothill South and Tesoro Extensions Settlement Agreement or the March 10, 2016 Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources. It is also understood that to the extent permitted by law, COUNTY shall defend, indemnify, protect with counsel approved in writing by F/ETCA, and hold harmless F/ETCA and all of its officers, directors, employees, and agents (collectively the "F/ETCA 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 (COUNTY's employees included), for damage to property, including property owned by F/ETCA, or from any violation of any federal, state, or local law or ordinance, caused by the negligent acts, omissions or willful misconduct of COUNTY, its officers, directors, employees or agents in connection with or arising out of the COUNTY's performance of its obligations under this AGREEMENT. Notwithstanding the language above in this section, COUNTY shall not be required to defend, indemnify, protect, or hold harmless the F/ETCA or F/ETCA INDEMNIFIED PARTIES to the extent that such CLAIMS either (i) except to the extent that such CLAIMS resultarise from the F/ETCA's or the F/ETCA INDEMNIFIED PARTIES' own gross negligence or willful misconduct, (ii) arise from the advertisement, award, and commencement of construction of the PROJECT pursuant to this AGREEMENT, unless the CLAIMS arise from the COUNTY or COUNTY INDEMNIFIED PARTIES' own gross negligence or willful misconduct; or (iii) arise from any legal or administrative action taken by a third party arising from the November 10, 2016 State Route 241 Foothill South and Tesoro

Extensions Settlement Agreement or the March 10, 2016 Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources.

**Amendment 1**

For the avoidance of doubt, COUNTY's obligations pursuant to this Section extend to any CLAIMS made against F/ETCA arising from or with respect to COUNTY's control, operation and maintenance of the County Right-of-Way.

**Amendment 6**

**RESPONSIBILITIES OF F/ETCA DURING “ADVERTISE and AWARD” PHASE**

12. F/ETCA shall provide COUNTY with 100% PS&E in both print and electronic formats. COUNTY to provide F/ETCA with the total number of PS&E copies required at a later date before the end of the phase.
13. F/ETCA staff shall request F/ETCA Board approval for funding of total PROJECT cost, as shown in Exhibit B, using engineers estimate and subsequently, at the sole discretion of the F/ETCA, provide COUNTY with Notice to Proceed with AAA.
14. Upon COUNTY request, F/ETCA shall provide timely responses to bidder questions generated via Bidsync and/or ARC Planwell.
15. F/ETCA shall provide COUNTY with 100% Conformed PS&E in both print and electronic formats. COUNTY to provide F/ETCA with the total number of PS&E copies required at a later date.
16. F/ETCA shall prepare and provide COUNTY with a Right-of-Way Certification and Utility Certification packets. Certification packet content requirements will be provided by COUNTY at a later date before the end of the phase.

**RESPONSIBILITIES OF COUNTY DURING “ADVERTISE and AWARD” PHASE**

17. Upon COUNTY Execution of this AGREEMENT, COUNTY shall begin all work necessary to ready the PROJECT to be advertised. Costs incurred by the COUNTY to prepare for advertisement will be paid from funds in the holding account established in Section 41.
18. Once PROJECT funding has been approved and NTP has been provided by F/ETCA, per Section 13, COUNTY shall request Board of Supervisors approval to advertise the PROJECT.
19. COUNTY shall advertise the PROJECT per the requirements of the latest OC Public Works Design and Construction Procurement Policy Manual (DCPM) and the California Public Contract Code (PCC). The PROJECT shall be advertised and awarded via the Design-Bid-

Build project delivery method, unless otherwise mutually agreed so, in writing, by both PARTIES.

20. COUNTY shall, with F/ETCA approval, develop additional minimum experience requirements to supplement Section 6.1 "Prequalification Criteria" of the DCPM for contractor selection.
21. COUNTY shall, with F/ETCA approval, develop construction bid package. The construction bid package shall provide that F/ETCA and Caltrans will be named as intended third party PROJECT beneficiaries in the construction contract as the ultimate operator and owner of the facility, respectively.
22. In recognition that PROJECT construction work will be funded by F/ETCA but will not be directly paid for by F/ETCA, for the purpose of protecting stop payment notice claimants and the interests of F/ETCA relative to the successful completion of the PROJECT, COUNTY shall require the contractor to furnish both a payment and performance bond, issued by a California admitted surety naming COUNTY as obligee and F/ETCA as an additional obligee, with both bonds complying with the requirements of applicable laws and in the form provided in the contract documents included in the bid package. COUNTY shall defend, indemnify, and hold harmless F/ETCA and all its officers and employees from all claims by stop payment notice claimants related to the construction of the PROJECT under the payment bond.
23. COUNTY shall include in the terms and conditions of the construction contract in the construction bid package a requirement that the contractor maintain all insurance appropriate for the construction of a project of the size and scope of the PROJECT. Liability insurance and other appropriate policies shall contain an endorsement naming the F/ETCA, the State of California and their respective officers, agents, and employees as additional insureds. COUNTY shall require the contractor to provide evidence of coverage acceptable to F/ETCA by the time specified in the construction bid package.
24. If the low bid is within the F/ETCA's approved engineer's estimate, or if COUNTY has obtained F/ETCA's approval of a low bid that exceeds the approved engineer's estimate, then COUNTY shall award construction contract per standard Design-Bid-Build low bid procedures.
25. If the low bid exceeds the F/ETCA's approved engineer's estimate, F/ETCA shall have the right to direct COUNTY to reject all bids.
26. COUNTY shall recommend Board of Supervisors approval for award of construction contract to F/ETCA approved apparent lowest bidder.

#### **RESPONSIBILITIES OF F/ETCA DURING "ADMINISTER" PHASE**

27. F/ETCA shall provide design support upon request from the COUNTY.
28. F/ETCA shall provide construction support (i.e., specialized inspection & testing) and COUNTY staff augmentation services upon request from the COUNTY.
29. F/ETCA shall provide construction inspection for tolling facilities.
- ~~30. F/ETCA shall prepare right-of-way documentation for the PROJECT right-of-way south of Oso Parkway, including the Los Patrones ramps, that is not presently within existing Caltrans right-of-way. This shall include:~~
  - ~~a. Post Construction Monument Presentation/File Post Construction Record of Survey with COUNTY.~~
  - ~~b. Preparation of the Caltrans Final Right of Way Record Map and coordination with Caltrans for review and approval.~~
  - ~~c. Adverse Title Clearance Deed Documents and coordination with Adverse Title Owners for clearance and removals from title. As provided in Section 8, COUNTY shall obtain the property free and clear of all liens and encumbrances, except for those liens and encumbrances approved by F/ETCA, prior to COUNTY's acceptance of dedication from Rancho Mission Viejo, LLC.~~
  - ~~d. Facilitate recording the conveyance to F/ETCA from the COUNTY.~~
31. F/ETCA shall prepare and obtain utility agreements with affected utility owners including:
  - a. Review and process invoicing and payments for utility relocation work.
  - b. Obtain final drawings and as-builts from utility owners and confirm that all items of work have been completed.
  - c. Ensure all easement and property rights have been properly conveyed to utility owners as necessary.
  - d. Prepare the Utility Section of the Right-of-Way Certification.
  - e. Condition utility owners, who will complete their own relocation work, to commit to utility work windows within the PROJECT contract documents.

Amendment 6

#### **RESPONSIBILITIES OF COUNTY DURING "ADMINISTER" PHASE**

32. COUNTY or contractor shall obtain all encroachment permits required to complete the PROJECT.

33. COUNTY shall perform Construction Engineering Management (CEM) services including, but not limited to:
- a. Development of PROJECT schedule with monthly updates for review and approval of F/ETCA.
  - b. Schedule, attend and document PROJECT status meetings on a weekly basis with F/ETCA, Caltrans and contractor.
  - c. Implement Quality Assurance/Quality Control program.
  - d. Provide inspection services (F/ETCA staff augmentation may be required).
  - e. Perform materials testing (F/ETCA staff augmentation may be required).
  - f. Provide surveying services.
  - g. Coordinate with Caltrans Resident Engineer and inspectors.
  - h. Prepare and close-out final PROJECT punch list items. COUNTY and F/ETCA to participate in preparation of the final PROJECT punch list with all items on the list to be identified within 30 days following completion of the final PROJECT walk through.
  - i. Maintain an up-to-date set of as-built drawings reflecting the actual as-built condition and ensure that the contractor maintains a daily up-to-date set of as-built drawings for verification purposes. Deliver a complete set of verified as-built drawings to F/ETCA within 180 days following PROJECT completion. The submittal must also include any requested contract records, including land survey documents. Sign the completed record drawings.
  - j. Provide documentation demonstrating compliance with the PROJECT Mitigation Monitoring Program, permits and other approvals.
  - k. Participate in PROJECT acceptance and turn-over to Caltrans including attending and resolving Caltrans Safety Committee meeting issues.
34. COUNTY shall implement all the commitments and conditions set forth in the PROJECT environmental documentation, environmental permits, approvals and applicable agreements. If work on the PROJECT stops for any reason, COUNTY will continue to implement all of the applicable commitments and conditions that are in effect in order to keep the PROJECT in environmental compliance until work resumes. The COUNTY shall be responsible to implement said environmental commitments and conditions through the end of the construction phase. F/ETCA shall be responsible for the implementation of all other continued environmental commitments and conditions beyond the end of the construction phase (e.g., multi-year on-site and/or off-site mitigation requirements).



35. COUNTY shall, with F/ETCA approval, develop, review and approve monthly contractor progress payments. If necessary, COUNTY shall correct progress payment discrepancies with the contractor.
36. COUNTY shall compile contractor progress payment requests and upon approval from F/ETCA make payment to the contractor from funds in the holding account established in Section 42.
37. COUNTY shall administer contract change orders. COUNTY will prepare independent cost estimates with respect to any potential change orders. F/ETCA shall have the right to review proposed change orders and to participate in any change order negotiations and/or dispute resolution proceedings with respect to claims or entitlements to additional payment relating to the PROJECT. F/ETCA shall have the exclusive right to settle in good faith the amount payable to the contractor with respect to any claim that is F/ETCA's cost responsibility. Following approval from F/ETCA, COUNTY shall process change orders within 20 working days.
38. COUNTY shall supply to F/ETCA all right-of-way documentation prepared as part of the Los Patrones Parkway right-of-way dedication from Rancho Mission Viejo, LLC to the COUNTY that is pertinent to the PROJECT, including the Los Patrones ramps.

### **COMPENSATION**

39. COUNTY shall invoice F/ETCA for COUNTY's actual costs incurred as part of the PROJECT AAA, including overhead and burden, on a monthly basis, in arrears, for COUNTY's costs incurred during the immediately preceding month. Invoices submitted by COUNTY shall itemize such costs, including an accounting and description of staff and consultant time spent on the PROJECT, and shall include back-up documentation as reasonably requested by F/ETCA. Following F/ETCA approval, invoice will be paid from funds in the holding account established in Section 42. For payment of construction contractor see Section 36.
40. F/ETCA's maximum obligation to COUNTY for AAA services under this AGREEMENT shall not exceed ~~\$4,000,000~~ \$4,541,000 unless such maximum obligation is increased by amendment to this AGREEMENT. COUNTY shall not, however, be required to perform any services related to PROJECT for which there are no funds on deposit to cover cost for services. If COUNTY anticipates incurring charges which exceed ~~\$4,000,000~~ \$4,541,000 COUNTY shall provide F/ETCA with justification for the need to exceed the established maximum and PARTIES shall meet and confer to negotiate additional funds for continuation of COUNTY AAA services.

<p><b><u>Maximum obligation increased</u></b></p> <p><u>Amendment 3: \$4,320,000</u></p> <p><u>Amendment 4: \$4,352,000</u></p> <p><u>Amendment 5: \$4,541,000</u></p>
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41. Upon COUNTY Execution of this AGREEMENT, F/ETCA shall make an Initial Deposit of \$40,000 to a COUNTY holding account for Advertise and Award services.
42. Upon COUNTY construction contract award of PROJECT, F/ETCA shall deposit into a COUNTY holding account 25% of Total Project Cost as shown in Exhibit B, also known as Installment No. 1. Subsequent Installment payments (2 thru 4) shall be triggered and made by F/ETCA when the account is depleted below \$1,000,000. The holding account is only to be drawn down to cover construction contractor progress payments and monthly COUNTY invoices for AAA services associated with the PROJECT. All progress payments and COUNTY invoices must be approved by F/ETCA for payment prior to release of funds from the holding account. Upon completion of the PROJECT or termination of this Agreement, County shall return any funds remaining in the account to F/ETCA within 60 days.
43. Within 120 days after filing a notice of completion of construction of the PROJECT and the resolution of all claims, COUNTY will provide to F/ETCA a final accounting report for the PROJECT for review and approval by F/ETCA. Said report shall be accompanied by a certification signed by COUNTY's OC Public Works Accounting Manager, or designee, that all expenditures applicable to the PROJECT have been made and that all copies of invoices and warrants are on file with COUNTY.

#### **PARTIES**

44. Each PARTY shall ensure that personnel participating in the PROJECT are appropriately qualified or licensed to perform the tasks assigned to them.
45. Each PARTY shall review and provide written comments to all PROJECT submittals within 10 working days and resubmittals within 10 calendar days of the date of transmittal for timely processing of the PROJECT documents.

#### **MISCELLANEOUS**

46. This AGREEMENT shall terminate upon the earlier to occur of (A) satisfaction of the following conditions: (i) completion of the PROJECT, (ii) the PARTIES completion of all scope, cost, and schedule commitments included in this AGREEMENT, and (iii) the PARTIES' execution of a cooperative agreement closure statement verifying the completion of the PROJECT and all scope, cost and schedule commitments included in this AGREEMENT; or (B) upon notice of termination from the non-breaching PARTY in the event the other PARTY breaches any provision of this AGREEMENT and such breach is not cured within thirty (30) days after written notice from the non-breaching PARTY specifying such breach in reasonable detail. A PARTY may submit a written request to execute a cooperative agreement closure statement to the other PARTY at any time. Within 30 days of such request

the other PARTY shall either sign such closure statement or provide the requesting PARTY with a written response indicating the items that need to be completed. Upon termination of this Agreement all rights and obligations of the respective PARTIES hereunder shall cease, provided however that notwithstanding any contrary provision hereof, all of the rights and obligations of the PARTIES under Section 10, Section 11, Section 42 and Section 56 hereof shall survive expiration or termination of the AGREEMENT and remain in full force and effect.

47. Any amendments to this AGREEMENT must be approved in writing by both PARTIES to this AGREEMENT.
48. Any notices, requests and demands made between the PARTIES pursuant to this AGREEMENT shall be in writing and (i) delivered personally, or (ii) sent by certified mail, return receipt requested, or (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by telefacsimile communication or e-mail followed by a mailed copy or with receipt confirmed by telephone, to the below addresses (or to such other address as may from time to time be specified in writing by such PARTY) and shall be deemed delivered when actually received or when delivery is refused:

<b>Amendment 6</b>
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If to F/ETCA:	Foothill/Eastern Transportation Corridor Agency 125 Pacifica, Ste. 100, Irvine, CA 92618 Attn: <del>Michael A. Kraman, CEO</del> <u>David Speirs, Chief Engineer and Environmental Planning Officer</u> Phone: <del>949-754-3413</del> <u>949-754-3488</u> Fax: <del>949-754-3491</del> Email: <u>dspeirs@thetollroad.com</u>
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If to COUNTY:	County of Orange / OC Public Works 300 N. Flower Street, 8 <sup>th</sup> Floor Attn: <del>Khalid Bazmi, Assistant Public Works Director</del> <u>Kevin Onuma, County Engineer</u> Phone: <del>714-667-3213</del> <u>714-647-3939</u> Fax: <del>714-667-7520</del> Email: <u>Kevin.Onuma@ocpw.ocgov.com</u>
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49. Neither PARTY shall have the right to assign this AGREEMENT without the express written approval of the other PARTY. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their permitted successors, assigns and legal representatives.
50. It is not intended by any of the provisions of this AGREEMENT to create any third party beneficiary hereunder. The duties, obligations and responsibilities of the PARTIES with respect to such third parties shall remain as imposed by law. This AGREEMENT shall not be

construed to create a contractual relationship of any kind between a PARTY and the employees, contractors or consultants of the other PARTY.

51. The invalidity or unenforceability of any portion or provision hereof shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this AGREEMENT and the balance hereof shall be construed and enforced as if this AGREEMENT did not contain such invalid or unenforceable portion or provision.
52. Each PARTY represents and warrants that the execution, delivery and performance of this AGREEMENT have been duly authorized by all necessary action of such PARTY's governing board, and the person executing this AGREEMENT on behalf of such PARTY has been duly authorized and empowered to do so on behalf of such PARTY.
53. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this AGREEMENT.
54. This AGREEMENT may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.
55. 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 wrongful 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.
56. After acceptance of the PROJECT, if F/ETCA or Caltrans notifies COUNTY of any warranty work required under the construction contract, upon such notification, COUNTY agrees to cooperate with F/ETCA and Caltrans if necessary to require the contractor to promptly repair such work.

**IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT to be executed on the date first above written.

**COUNTY OF ORANGE, a political  
subdivision of the State of California**

**FOOTHILL/EASTERN  
TRANSPORTATION CORRIDOR  
AGENCY**

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Chair of the Board of Supervisors  
County of Orange, California

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Michael A. Kraman  
Chief Executive Officer

**APPROVED AS TO FORM:**  
Office of the County Counsel

**ATTEST:**

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Deputy County Counsel  
County of Orange, California

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Martha M. Ochoa  
Clerk of the Board

**SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS BEEN  
DELIVERED TO THE CHAIR OF THE  
BOARD OF SUPERVISORS PER GC §  
25103, RESO. 79-1535**

**APPROVED AS TO FORM AND  
PROCEDURE:**

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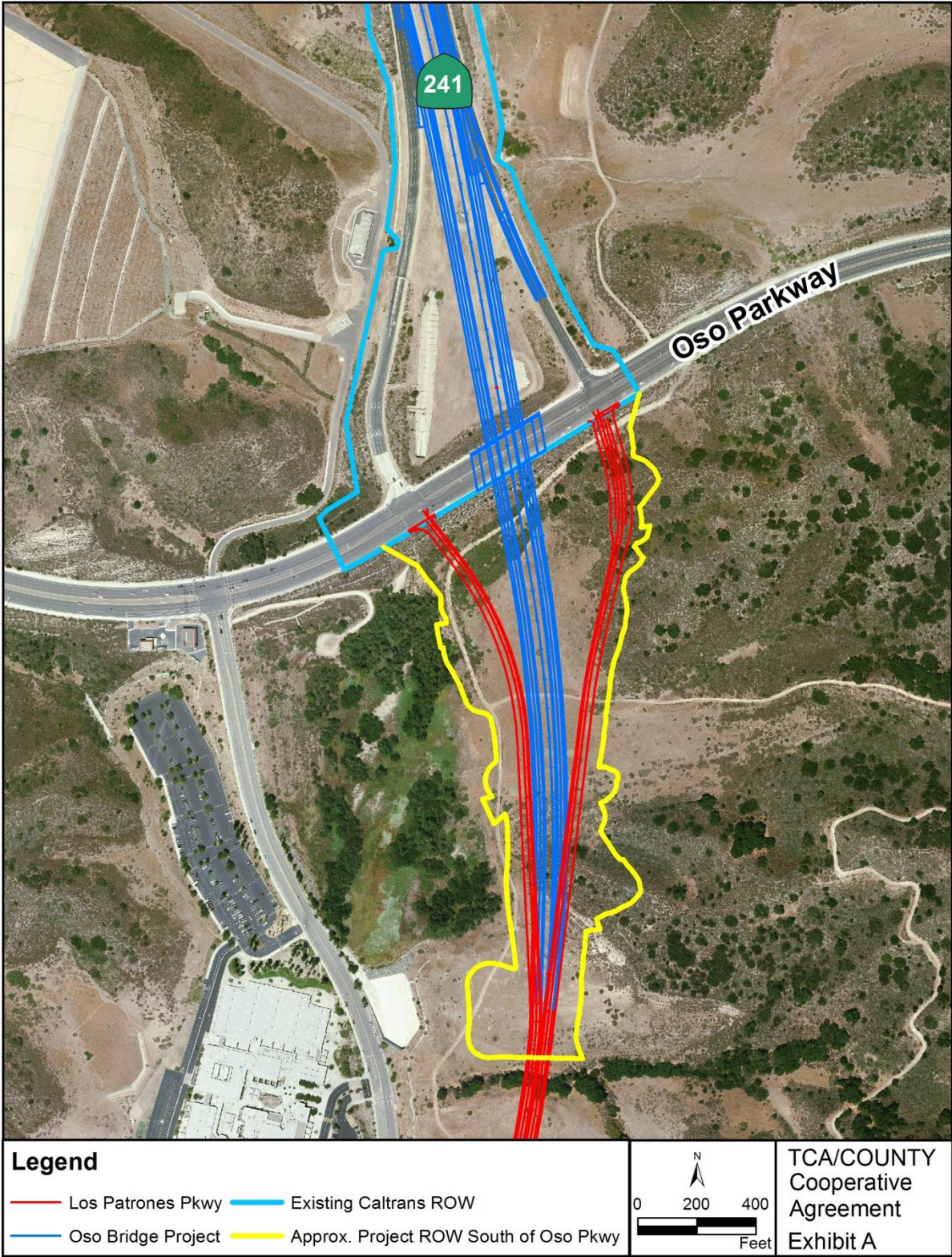
E. George Joseph  
General Counsel

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Robin Stieler  
Clerk of the Board of Supervisors  
County of Orange, California



**EXHIBIT A**



**EXHIBIT B**

**OCPW Cost Estimate  
for  
AAA of Oso Parkway Bridge on SR-241**

<b>Item</b>	<b>Description</b>	<b>% of</b>	<b>Cost</b>
1	Construction Estimate		\$22,822,146.00
	Construction Contingency	15.00% of (1)	\$3,423,322.00
	<i>Subtotal 1</i>		
2	Construction Costs		\$26,245,468.00
3	Advertise & Award	0.15% of (2)	\$39,369.00
	<b><i>Say (Initial Deposit) &gt;&gt;&gt;</i></b>		<b><i>\$40,000.00</i></b>
4	Administer	15.00% of (2)	\$3,936,821.00
	<i>Subtotal 2</i>		
	<i>(County Costs):</i>		<i>\$3,976,190.00</i>
	<b><i>Say &gt;&gt;&gt;</i></b>		<b><i>\$4,000,000.00</i></b>
5	Total Project Cost	(2 + 4)	\$30,182,289.00
	<i>F/ETCA Installment 1</i>	25% of (5)	<i>\$7,545,572.25</i>
	<i>F/ETCA Installment 2</i>	25% of (5)	<i>\$7,545,572.25</i>
	<i>F/ETCA Installment 3</i>	25% of (5)	<i>\$7,545,572.25</i>
	<i>F/ETCA Installment 4</i>	25% of (5)	<i>\$7,545,572.25</i>

**Notes:**

1. Due to the nature of the Design-Bid-Build low-bid construction delivery method, AAA Cost Estimate is subject to change.
2. F/ETCA shall fund the total PROJECT cost which includes: low bid construction cost, 15% construction contingency and \$4 million for AAA services.
3. After COUNTY construction contract award, F/ETCA shall make 4 equal Installment Payments of 25% of Total Project Cost and shall replenish account whenever funds are depleted below \$1 million.

**EXHIBIT C**

**Cooperative Agreement D15-033**