

COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE CITY OF COSTA MESA FOR FUNDING AND MAINTENANCE OF THE HAMILTON AVENUE/VICTORIA STREET BRIDGE OVER THE SANTA ANA RIVER AND GREENVILLE BANNING CHANNEL

This Cooperative Agreement is made and entered into this _____ day of _____ 2021 (“**Agreement**”), by and between the **COUNTY OF ORANGE** (“**County**”), a political subdivision of the State of California, and the **CITY OF COSTA MESA** (“**City**”), a municipal corporation in the State of California. The County and City shall sometimes be referred to separately as a “**Party**” or collectively as the “**Parties**”.

RECITALS

- A. County and City desire to perform maintenance on the Hamilton Avenue/Victoria Street Bridge over the Santa Ana River and Greenville Banning Channel (Bridge Number 55C0103) (the “**Project**”), as more fully described herein.
- B. The Project is within the municipal jurisdictions of the County and the City. Project location and extents are depicted in Attachment A.
- C. Pursuant to State and local guideline, County prepared and distributed a Draft Mitigated Negative Declaration and Initial Study IP 11-444 for the County-Wide Long-Term Routine Maintenance Permitting Program, and said IP 11-444 was subsequently certified by the Orange County Board of Supervisors as final, complete and adequate to satisfy the statutory requirements of the California Environmental Quality Act of 1970 (CEQA).
- D. The maintenance activities include repairing unsound concrete on bridge deck and concrete barrier rail, sealing bridge deck, replacing joint seals, repairing damaged bridge abutment backwall, replacing approach sidewalks, and repairing corroded bridge pier walls.
- E. The extent of the bridge pier walls damage due to corrosion is unknown. The need for future seismic retrofitting can only be economically determined during the repair, when the damage reinforcing steel is exposed. Seismic retrofit, if necessary, will be covered under a separate agreement.
- F. The County is coordinating with the City to prepare the Engineering Plans, Specifications, and Estimate (PS&E) for the Project to perform the maintenance work as described in Section D.
- G. City confirms that, pursuant to Government Code Sections 65400-65404, the Project conforms to the City’s General Plan.
- H. The Parties wish to specify their respective roles and responsibilities for funding obligations and execution of the Project

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual covenants and conditions contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the PARTIES agree as follows:

1. County and City Project Funding Obligations. County will be responsible for one hundred percent (100%) funding of the Project using County's Senate Bill 1 (SB1) funds, excluding costs for engineering design review, inspection, oversight, engineering, financial coordination, City permits and any other Project-related administration performed by City ("City's Administration Costs"). City will be responsible for the City's Administration Costs.
2. County Highways Declaration. In accordance with Streets & Highways Code sections 1700-1704, County shall pass a resolution declaring the City's roadways within the Project to be a County highway for maintenance purposes only. Upon receipt of County's resolution, City shall consent by resolution to said County highway status. Upon County filing a Notice of Completion and City's acceptance of work, City's roadways shall no longer be designated a County highway. County and its contractor, subcontractors and agents shall not be required to obtain an encroachment permit from the City or other City permit or pay any City fee for any purpose covered by this Agreement.
3. Project Delivery. County will deliver the Project utilizing County's Job Order Contract.
4. Project Management and Inspection. County shall manage the contract/work order and shall perform all field inspection for the Project. City shall have access to the Project at all times during field work for the purpose of inspection. City shall inspect work within City's jurisdiction daily. Should City deem any remedial work to be necessary, the City shall notify the County in writing thereof within three (3) business days of inspection, specifically describing the needed corrections and proposed remedial work.
5. Change Orders. County shall process any contract change orders ("CCOs") that are necessary for completing of the Project. City shall approve CCOs related to City's portion within three (3) business days of receipt from County. If City does not respond to a CCO within three (3) business days of receipt, then the CCO is deemed approved. County shall be responsible for funding one hundred percent (100%) of the costs associated with any CCOs. However, should City request additional work beyond the scope included in the approved PS&E, and the additional work results in a CCO, City shall be responsible for funding one hundred percent (100%) of costs associated with the City-initiated CCO.
6. Project Acceptance. Prior to the County filing a Notice of Completion, the City Engineer shall review and provide written approval of all Project work in accordance with the approved PS&E, work order, and CCOs (together **Contract Documents**) for the Project. The City Engineer's written approval shall only be withheld for work not completed in accordance with CONTRACT DOCUMENTS for the Project, which uncompleted work shall be proactively identified and remediated during the City's regular inspections in accordance with Agreement Article 4 – Project Management and Inspection. County shall furnish the City with one set of record drawings for the completed Project and a copy of the

filed Notice of Completion, at which point, the City shall assume ownership of the completed Project within City right-of-way.

7. Term of Agreement. This Agreement shall become effective upon the City Council and Board of Supervisors approval and shall continue in effect until the filing of the Notice of Completion.
8. Insurance. County shall require its contractor to identify the City as an additional insured with insurance coverage satisfactory to the Parties.
9. Indemnification & Hold Harmless.
 - 9.1. City agrees to indemnify, defend, with counsel approved by County in writing, save and hold County and each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses, of every type and description arising out of any act or omission of City, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this Agreement.
 - 9.2. County agrees to indemnify, defend, with counsel approved by City in writing, save and hold City and each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses, of every type and description arising out of any act or omission of County, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this Agreement. County shall require its contractor on the Project to indemnify the City to the same extent contractor is required to indemnify County in connection with the Project.
10. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. No assignment of either Party's interest in this Agreement shall be made without the written consent of the other Party.
11. Entirety & Amendments. This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties.
12. Severability. If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.
13. Notices. Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

CITY OF COSTA MESA
Public Services
77 Fair Drive
Costa Mesa, CA 92626
Attn: City Engineer
Fax:714-754-5633

COUNTY OF ORANGE
OC Public Works
601 North Ross Street
Santa Ana, CA 92703
Attn: Director/Chief Engineer, OC Engineering
Fax: 714-667-7531

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the foregoing, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business hours, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this Agreement, addressed in any other fashion shall be deemed not given.

14. Governing Law Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.
15. Litigation Fees. Should litigation arise out of this Agreement, each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorneys' fees.
16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
17. Termination. At any time prior to the County issuing the Notice to Proceed to County's Job Order Contractor to perform the work, City or County may terminate this agreement, without cause, by 30 days' prior written notice to other Party.

After the issuance of the Notice to Proceed, this Agreement may be terminated only in the event County or City defaults in the performance of any of their obligations under this Agreement or materially breaches any of the provisions of this Agreement. City and County shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. In the event City or County cures such default within the thirty (30) day period, City and County's election to terminate shall be deemed revoked.

18. Consent to Breach Not Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Mayor and attested by its Clerk, and County has caused this Agreement to be executed by the Chairman of the Board of Supervisors and attested by its Clerk, on the dates written opposite their signatures, all thereunto duly authorized by the City Council and the Board of Supervisors, respectively.

CITY OF COSTA MESA,
a municipal corporation

Date: _____

By: _____
John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

By: _____
Kimberly Hall Barlow, City Attorney

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

Date: _____

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

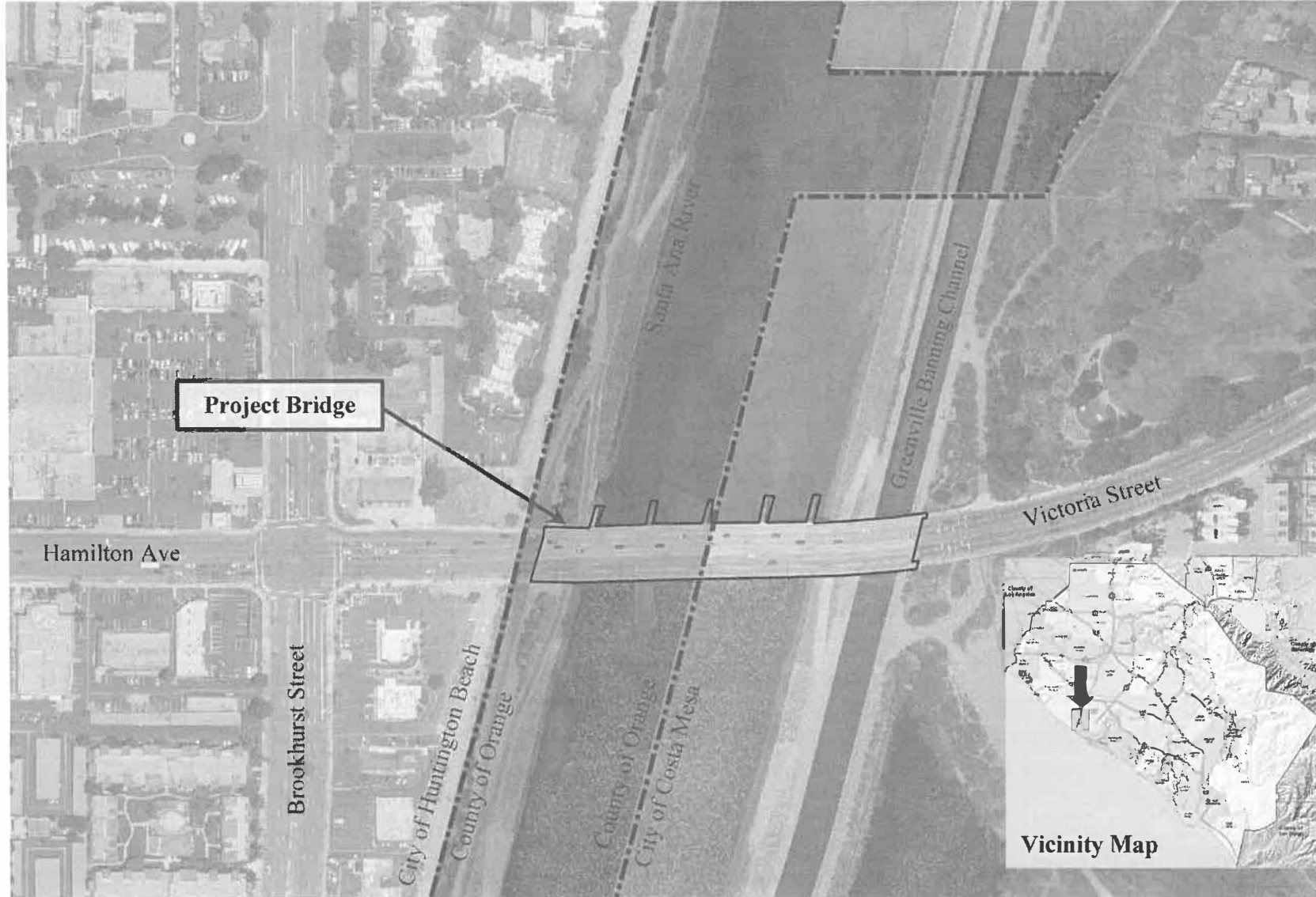
SIGNED AND CERTIFIED THAT A COPY OF
THIS AGREEMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD PER G.C.
Sec 25103, Reso 79-1535

ATTEST:

APPROVED AS TO FORM:
County Counsel

Robin Stieler
Clerk of the Board
County of Orange, California

By:  8/11/2021
Deputy 



Project Location

Hamilton Ave. / Victoria St. Bridge over the Santa Ana River & Greenville Banning Channel