

ATTACHMENT 2

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

This Cooperative Agreement is made entered into this _____ day of _____, _____ (“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 as “Party” or collectively as “Parties”.

RECITALS

- A. County and City desire to perform maintenance on the Adams Avenue Bridge over the Santa Ana River and Greenville Banning Channel (Bridge Number 55C0344) (“Project”).
- B. The Project is within the municipal jurisdiction of the County and the City. The location and boundaries of the Project are more fully described and depicted in Attachment A, which is attached hereto and incorporated herein by this reference.
- C. The Orange County Flood Control District obtained property ownership in 1958 for Parcel No. 302.2 and 400.6, 1959 for Parcel No. 305, 1960 for Parcel No. 406.1, and 1974 for Parcel No. 306, 409 as part of the Santa Ana River Channel.
- D. These parcels were also included in Ordinance No. 62-7 which approved the annexation of unincorporated Orange County to the City of Costa Mesa in 1962.
- E. The County historically has owned and maintained the Adams Avenue Bridge and agrees to continue to operate, own and maintain this bridge over the Santa Ana River including bridge widening in 1977. Currently, the County Road Index only includes 0.06 miles (approximately 317 linear feet) with a total bridge length of 540 linear feet.
- D. The County desires to adopt the remaining length of the Adams Avenue Bridge as a County Highway, which currently lies within a city for the purposes of construction, maintenance, improvement, and repair, in accordance with Streets and Highways Code 1700-1703.
- D. The County is coordinating with the City to prepare the Engineering Plans, Specifications and Estimate (“PS&E”) for the Project to perform maintenance activities including repairing damaged handrail and replacement of joint seals.
- E. The Parties wish to specify their respective roles and responsibilities for funding obligations and execution of the Project.

AGREEMENT

In consideration of the foregoing and the mutual promises set forth below, the Parties agree as follows:

1. Funding obligations

1.1. County will be responsible for one hundred percent (100%) of the funding for the Project.

1.2. County shall use available funding, including but not limited to County's Senate Bill 1 (SB1) funds or Road funds.

2. County Highways Declaration

2.1. Pursuant to California Streets & Highways Code Sections 1700 – 1703, the County shall adopt a resolution designating the City's Roadways within the Project area as County highways for the purposes of construction and/or maintenance.

2.2. Following receipt of County's resolution, the City shall adopt a resolution consenting to the County highway designation.

3. Project Responsibilities

3.1. County shall serve as the lead agency for the Project and shall be responsible for managing and administering the construction contract, overseeing the work, and ensuring compliance with applicable laws, standards, and this Agreement.

3.2. County shall coordinate all construction activities and be responsible for contractor supervision, contract compliance, and overall Project execution.

3.3. City shall have access to the Project for purpose of inspection. City shall inspect work within City's jurisdiction. Should City deem any remedial work to be necessary, City shall notify County in writing within three (3) business days of inspection ("Remedial Work Notice"). Notification shall specifically describe the needed corrections and proposed remedial work. If the remedial work requested by the City is outside the Project's plans or beyond the scope from the approved PS&E, then the City shall be responsible for one hundred percent (100%) of the cost of that work.

3.4. County shall respond to City's Remedial Work Notice within five (5) business days of receipt ("County Response"). If County believes the requested remedial work is not necessary, County Response shall explain in detail why the remedial work is not required/necessary. Parties shall work collaboratively to come to an acceptable solution for both Parties.

3.5. County shall process any contract change orders ("CCOs") that are necessary for completing the Project. County shall provide notice to City of any CCO's within the City's jurisdiction prior to moving forward with the CCOs work. County shall be

responsible for funding one hundred percent (100%) of the costs associated with any County requested CCOs.

3.6 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 shall be deemed approved by the City.

4. City Permits and Fees

For work performed under this Agreement, the County, its contractors, subcontractors, and agents shall not be required to obtain a City encroachment permit or any other City permit, nor shall they be required to pay any city fees.

5. Project Acceptance

5.1 Prior to 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 the Contract Documents for the Project. Uncompleted work shall be proactively identified and remediated during the City's inspections in accordance with Paragraph 3.3 above.

5.2 County shall furnish the City with one set of record drawings for the completed Project and a copy of the filed Notice of Completion.

6. Term of Agreement

This Agreement shall become effective upon the approval of both the City Council and the County Board of Supervisors and shall continue in effect until the filing of the Notice of Completion or terminated by either Party as allowed in this Agreement in Paragraph 7.

7. Termination

7.1 At any time prior to the County issuing the Notice to Proceed to County's Contractor to perform the work, either Party may terminate this Agreement without cause by thirty (30) days' prior written notice to the other Party.

7.2 After the issuance of the Notice to Proceed, this Agreement may be terminated only in the event that County or City defaults in the performance of their obligations under this Agreement or materially breaches any of the provisions of this Agreement. In the event of a default, either Party may terminate this Agreement with thirty (30) days' prior written notice to the other Party. However, in the event that the defaulting Party cures such default within the thirty (30) day period to the satisfaction of the non-defaulting Party, then the request to terminate shall be deemed revoked.

7.3 City acknowledges and agrees that the County's ability to perform its obligations under this Agreement is contingent upon the availability of adequate funding, including but not limited to appropriations from federal, state, or local sources. In the event the County determines, in its sole discretion, that sufficient funding is no longer available to carry out the Project, the County may terminate this Agreement by providing City with written notice of termination at least thirty (30) days in advance.

7.4 Upon the termination of the Agreement, neither Party shall have any further obligations under this Agreement, except for those obligations that expressly survive termination.

8. Insurance

County shall require its contractor to identify the City as an additional insured with insurance coverage satisfactory to the Parties.

9. Indemnification and Hold Harmless

9.1 City agrees to indemnify, defend (with counsel approved by County), 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), 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.

9.3 The provisions in this entire Section 9 shall survive the termination of this Agreement.

10. Notices

All notices, documents, correspondence and communication concerning this Agreement shall be addressed as set forth in this paragraph. All communication may be sent through the United States mail with postage prepaid, by Federal Express, by United Parcel Service, or by E-Mail to the E-Mail address listed below. All communication shall be deemed served or delivered forty-eight (48) hours after mailing or by acknowledgment of receiving party. Either Party may change the address for Notices by giving the other Party written notice of the new address.

To County:
County of Orange
OC Public Works
601 N. Ross Street
Santa Ana ,CA 92701
ATTN: Melissa Pasa, P.E.
Senior Engineering Manager
(714) 647-3977
Melissa.Pasa@ocpw.ocgov.com

To City:
City of Costa Mesa
Public Works Department
77 Fair Drive
Costa Mesa, CA 92626
ATTN: Derek Wieske, P.E.
Assistant City Engineer
(714) 754-5291
Derek.Wieske@costamesaca.gov

11. Authority

The Parties represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

12. Relationship of Parties/No Third-Party Beneficiaries

The Parties acknowledge and agree that nothing in this Agreement shall be construed to create a partnership, joint venture, agency, employment, or fiduciary relationship between the County and the City. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person, group or entity as a third-party beneficiary.

13. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action or proceeding arising under this Agreement shall be brought and maintained in a court of competent jurisdiction located in Orange County, California. The Parties hereby consent to jurisdiction and venue in such court and expressly waive any objection based on Code of Civil Procedure Section 394 or any similar provision.

14. Severability

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

15. Waiver of Rights

The failure of either Party to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver of any of

that Party's rights or remedies, nor shall it be deemed a waiver of the right to require strict performance of all terms, covenants, and conditions in the future. Any waiver of a right or remedy under this Agreement shall be effective only if made in writing and signed by the Party waiving such right or remedy.

16. Attorneys Fees

In the event of any litigation or dispute arising out of or relating to this Agreement, each Party shall be solely responsible for its own attorneys' fees, court costs, and other legal expenses.

17. Remedies

In addition to any other rights or remedies available at law or in equity, either Party may pursue legal action to remedy any default, recover damages, compel specific performance, obtain injunctive or declaratory relief, or seek any other appropriate remedy.

18. Force Majeure

Either Party shall be excused from performing its obligations under this Agreement to the extent and for the duration that performance is prevented by an unforeseeable cause beyond its reasonable control, including but not limited to, instances of fire, flood, Act of God, commandeering of material, products, plants, or facilities by the federal, state, or local government, any national fuel shortage, or other similar events. Such nonperformance shall not include acts or omissions by the other Party, except as otherwise expressly provided herein. The nonperformance must be unforeseeable, beyond the control of the non-performing Party, and not due to the non-performing Party's fault or negligence.

The Party claiming excuse due to a force majeure event shall promptly provide satisfactory written evidence of the occurrence and its impact on performance to the other Party.

19. Counterparts

This Agreement may be executed and delivered in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

20. Entirety & Amendments

This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein. This Agreement may be amended only by a written instrument agreed to and signed by the Parties.

21. Exhibits

This following Exhibits are attached to this Agreement and incorporated herein by this reference.

Exhibit A -- Location Map

Exhibit B -- County Resolution per Streets & Highways Code §1700-1703

[Signatures Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement the date first written above.

CITY OF COSTA MESA,
A Municipal Corporation

Date: _____

By: _____
Cecilia Gallardo-Daly, Interim City
Manager

Attest:

APPROVED AS TO FORM:
Costa Mesa City Attorney

By: _____
Kim Barlow, City Attorney

Brenda Green, City Clerk

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

Date: _____

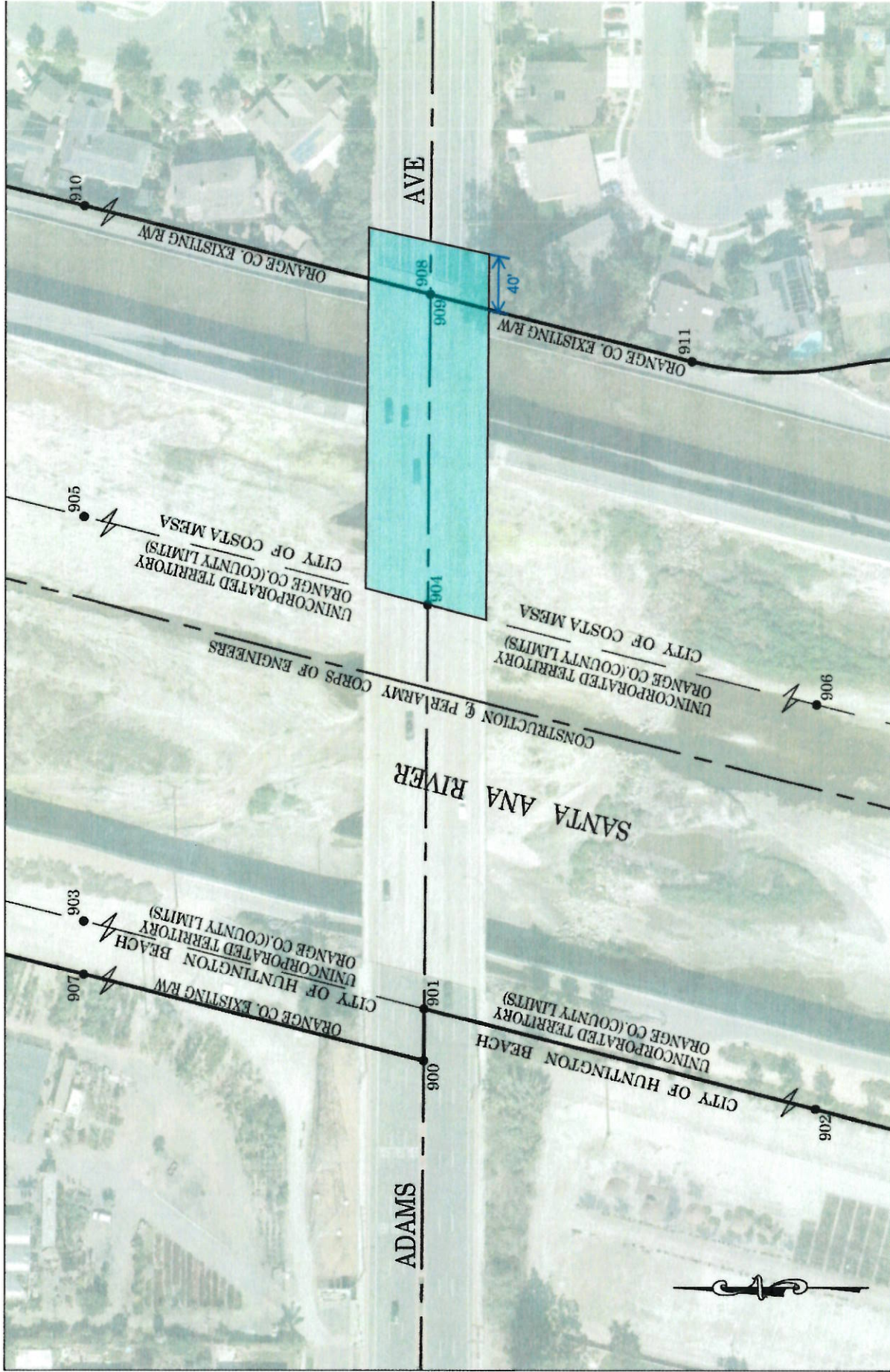
By: _____
Chairman of the Board of Supervisors
County of Orange, California

Attest:

APPROVED AS TO FORM:
Office of the County Counsel
Orange County, California

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

By: _____
Deputy County Counsel



COUNTY OF ORANGE
DEPARTMENT OF
PUBLIC WORKS

ORANGE COUNTY PUBLIC WORKS: CONSTRUCTION

EXHIBIT: LOCATION MAP

SCALE: NTS



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STREETS AND HIGHWAYS CODE - SHC

DIVISION 2. COUNTY HIGHWAYS [900 - 1757] (*Division 2 enacted by Stats. 1935, Ch. 29.*)

CHAPTER 9. Cooperation by Counties [1670 - 1732] (*Chapter 9 enacted by Stats. 1935, Ch. 29.*)

ARTICLE 3. Extension of County Highways Through Cities [1700 - 1706] (*Article 3 enacted by Stats. 1935, Ch. 29.*)

1700. The board of supervisors of any county may, by a resolution adopted by a four-fifths vote of its members, declare any highway in the county lying in whole or in part within a city to be a county highway for one or more of the following purposes: acquisition of rights-of-way, construction, maintenance, improvement, or repair.

(Amended by Stats. 1961, Ch. 730.)

1701. A copy of such resolution shall be forwarded to the governing body of the city within which is included any portion of the highway. Such governing body may consent to the establishment of such included portion as a part of the county highway. Upon the taking effect of an ordinance or resolution containing such consent, such portion of such highway shall become a county highway for one or more of the following purposes: acquisition of rights-of-way, construction, maintenance, improvement, or repair.

(Amended by Stats. 1967, Ch. 1165.)

1702. Thereafter the board of supervisors of the county may acquire rights-of-way for, construct, maintain, improve, or repair such highway in the same manner as other county highways, and may pay for such work out of one or more of the following:

- (a) The county general fund.
- (b) The road fund.
- (c) The proceeds of any county bond issue voted for the purpose of laying out, constructing, maintaining, improving or repairing county highways.
- (d) Any other fund available for such purposes.

(Amended by Stats. 1963, Ch. 485.)

1703. Nothing contained in this article shall limit in any manner the police power of any city with reference to any such street or portion of street improved under the provisions of this article.

(Enacted by Stats. 1935, Ch. 29.)

1704. At any time after all or a portion of a city street becomes a county highway, as provided in this article, and all improvements commenced by the county, or its agents thereon, have been fully completed, the board of supervisors of such county may adopt a resolution declaring that all or any portion of such street is no longer a county highway. Ten days after the filing of such resolution with the clerk of the city within which the street lies, such street, or the portion thereof described in the resolution, shall cease to be a county highway.

(Amended by Stats. 1935, Ch. 140.)

1705. Whenever county bonds are voted or a special tax is levied for paving a county highway, and the natural course of such highway runs into or through any city, the board of supervisors shall pave within such city that portion of the highway which is designated by the chief executive of the city and the county supervisor in whose district such portion is located. Such highway portion shall be constructed to standards equal to those of the highway approaching such city. If such chief executive and such supervisor do not agree as to what street will be thus designated, then the chairman of the commission shall designate the street and his judgment shall be final and conclusive.

(Enacted by Stats. 1935, Ch. 29.)

1706. Whenever a city permits a county to use the city streets and highways for the purpose of constructing and maintaining any highway or boulevard as part of a county system of roads pursuant to Section 1850, the board of supervisors may construct and maintain such bridge or bridges on such highway or boulevard within the city as it deems necessary, and may macadamize, pave, curb, or gutter, such highway or boulevard in such manner as it determines; and the cost or expense thereof shall be paid from the general fund of the county.

(Added by Stats. 1951, Ch. 463.)