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Agreement MA-080-25010939

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U: PWA(L)
M: Orriz(DZ)

COOPERATIVE AGREEMENT BETWEEN ORANGE COUNTY FLOOD CONTROL DISTRICT AND CITY OF SANTA ANA FOR FUNDING, CONSTRUCTION, AND MAINTENANCE OF THE SANTA ANA GARDENS CHANNEL (F02) BIKEWAY (PHASES 1, 2, 3, AND 4) PROJECT

This Cooperative Agreement ("AGREEMENT") is made and entered into this _____ day of _____ 2026, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic ("DISTRICT"), and the CITY OF SANTA ANA ("CITY"), a municipal corporation in the State of California. The DISTRICT and CITY shall sometimes be referred to separately as a "PARTY" and collectively as the "PARTIES".

RECITALS

- A. On September 25, 2012, DISTRICT and CITY entered into a cooperative agreement, D12-015, for the CITY to construct bikeway and trail improvements within or adjacent to the DISTRICT right-of-way within the CITY boundaries.
- B. Not all of the proposed bikeway and trail improvements were constructed according to D12-015, and now the DISTRICT desires to construct Class I and III bike trail improvements along the Santa Ana Gardens Channel ("F02") between McFadden Avenue and West First Street, where Phase 1 ("PHASE 1 PROJECT") is considered the section between McFadden Avenue and Monta Vista Avenue (Exhibit 1) and Phases 2, 3, and 4 ("PHASES 2-4 PROJECT") are the sections between Monta Vista Avenue and West First Street (Exhibit 2). PHASE 1 PROJECT and PHASES 2-4 PROJECT are collectively referred to as PROJECTS.
- C. On October 19, 2018, the DISTRICT completed the construction for PHASE 1 PROJECT.
- D. In November 2018, DISTRICT submitted a grant application for the Bicycle Corridor Improvement Program (BCIP) grant funds program for the PHASES 2-4 PROJECT.
- E. In February 2019, the BCIP grant funds were awarded to the DISTRICT.
- F. On October 15, 2019, CITY adopted Resolution 2019-092, allowing the CITY Manager or the Executive Director of the Parks, Recreational and Community Services Agency, or his/her designee to enter into a cooperative agreement with the DISTRICT to delineate ownership, operations and maintenance responsibilities for the PROJECTS once complete.
- G. DISTRICT has prepared the Plans, Specifications, and Estimate (PS&E) for the PROJECTS, and the CITY has reviewed the PS&E during the development stage.

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- H. The CITY supports the PROJECTS and the DISTRICT has agreed to obtain CITY's approvals of the PS&E prior to contracting for any work contemplated by the PS&E, in accordance with California Public Contract Code sections 21020, et seq.
- I. The CITY desires to cooperate with the DISTRICT in implementing the PROJECTS and desires to assume post-construction maintenance responsibility for the PROJECTS upon completion.
- J. In March 2021, the CITY approved the PHASES 2-4 PROJECT PS&E and agreed to maintain the bike trail improvements constructed as part of the PHASES 2-4 PROJECT.
- K. On March 27, 2024, DISTRICT completed installing bike trail improvements along the Santa Ana Gardens Channel ("F02") between Monta Vista Avenue and West First Street as part of the PHASE 2 PROJECT.
- L. On April 23, 2024, CITY provided a letter to accept the maintenance responsibility for the PROJECTS.
- M. For purposes of this AGREEMENT, the PROJECTS encompass the PS&E, construction, and post-construction phases. The construction phase commenced with the issuance of a Notice to Proceed to the DISTRICT's Construction Contractor ("CONTRACTOR") and ended with construction close-out when the DISTRICT completed the construction of the PROJECTS and filed the Notices of Completion ("NOC"). The Parties agree that post-construction maintenance responsibility for the PROJECTS commenced upon the filing of the NOC and that such post-construction maintenance responsibility is an obligation of the CITY under this Agreement.
- N. The NOC for PHASE 1 PROJECT was filed on December 31, 2018, which shall be considered the effective start date of the CITY's maintenance obligations for the PHASE 1 PROJECT.
- O. The NOC for PHASES 2-4 PROJECT was filed on March 27, 2024, which shall be considered the effective start date of the CITY's maintenance obligations for the PHASES 2-4 PROJECT.
- P. The PARTIES agree that the PROJECTS are now entirely constructed and the CITY has assumed responsibility for post-construction maintenance of the bikeway and trail improvements, and the DISTRICT shall continue to operate and maintain the channel for drainage and flood control purposes.

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- Q. PARTIES now desire to formalize the post-construction maintenance responsibility as it relates to the completed PROJECTS.

AGREEMENT

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

1. DISTRICT and CITY PROJECTS Funding Obligations

- a. DISTRICT shall fund one hundred percent (100%) of the Design and Construction of the PROJECTS.
- b. CITY shall fund one hundred percent (100%) of the post-construction maintenance of the completed PROJECTS.

2. Construction Phase Obligations

- a. Project Engineer. DISTRICT served as Project Engineer to perform all tasks necessary to prepare the Project plans, specifications, and estimates ("PS&E") in accordance with criteria set forth in the current editions of the DISTRICT's Standard Plans and Design Manual, County of Orange Standard Plans and CITY Standard Plans, and to advertise, award and administer the construction of PROJECTS and to execute and deliver all documents required in connection with the construction of PROJECTS including as-built plans. DISTRICT complied with and shall continue to comply with all applicable laws, including but not limited to the provisions of the Public Contract Code specific to the DISTRICT. Furthermore, the DISTRICT coordinated with the CITY when dealing with the community to ensure that community concerns were addressed in a manner acceptable to the PARTIES.
- b. Project Contractor. DISTRICT performed all administrative work required to execute the construction contract with the contractor selected to carry out the work required by the PROJECTS (the "DISTRICT's CONTRACTOR"). CONTRACTOR performed all work as required by, and in strict accordance with, the construction contract documents, which consisted of installing a Class I and III bike path, fencing, landscaping, irrigation, and other miscellaneous items.
- c. General Plan Conformance. CITY determined that the PROJECTS conformed with the CITY's General Plan.

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- d. Right-of-Way Acquisition. The DISTRICT identified all right-of-way requirements for the PROJECTS.
- e. Utility Relocation. The DISTRICT identified all conflicting utilities and issued utility relocation request letters within the areas affected by the PROJECTS.
- f. Project Plans, Insurance & Warrants.

The DISTRICT's designee ("Engineer") submitted the PS&E for the PROJECTS to CITY for review and concurrence prior to construction. The CITY promptly reviewed the plans and special provisions for work within the CITY portions and either concurred with or provided comments on said plans and special provisions within fifteen (15) business days of receipt of the PS&E from DISTRICT. Any comments from CITY not provided to DISTRICT in a timely manner, as set forth above, prior to the commencement of construction of the PROJECTS have been waived.

The DISTRICT's CONTRACTOR identified the CITY as an additional insured with insurance sufficiently broad to the satisfaction of the CITY. A copy of the insurance provided by DISTRICT's CONTRACTOR is attached hereto as Exhibit 3.

- g. Construction Contract. Following acceptance of the final PROJECTS PS&E by the CITY, the DISTRICT performed all administrative work required to secure a contractor (DISTRICT'S CONTRACTOR) in conformance with all applicable laws, including but not limited to the Public Contract Code, to construct the PROJECTS.
- h. Project Inspection. The DISTRICT held the primary inspection responsibility for conformance with the approved PS&E. The DISTRICT required its CONTRACTOR to obtain any and all necessary encroachment permits from the CITY. The DISTRICT invited the CITY to attend the pre-construction meeting prior to the start of the construction activity. The DISTRICT held the pre-construction conference at the PROJECTS site. The CITY inspected regularly and communicated verbally with the County's Project Manager and Inspector. Further, the DISTRICT invited and included the CITY in all progress/scheduling meetings conducted on the PROJECTS. All communications to the CONTRACTOR were communicated through the DISTRICT unless immediate action was necessary to remedy any safety-related concerns.
- i. Contract Change Orders (CCOs). The DISTRICT processed all CCOs necessary for the construction of the PROJECTS. The DISTRICT was held financially responsible for the CCOs that are included in the approved PROJECTS PS&E. The CITY, however, is financially responsible for any CCOs initiated by the CITY for features beyond or not contemplated by the DISTRICT/CITY approved PROJECTS PS&E, or which are generated by changes necessitated by erroneous

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information provided by CITY. The CITY provided a PROJECTS liaison ("CITY Engineer") during construction and coordinated CCO approvals. If CCOs were required to address CITY's request for additional work items outside the approved PROJECTS PS&E, the CITY reviewed and concurred with such CCOs.

- j. Project Acceptance. The CITY Engineer or designee reviewed and provided written approval of all work performed for the PROJECTS, provided the DISTRICT Engineer and County Construction Management Team assigned to the PROJECTS supplied sufficient documentation, and assured the CITY Engineer or designee that all improvements were constructed in accordance with the approved PS&E.

3. Post-Construction Phase Obligations

- a. CITY Obligation. Upon the CITY Engineer or designee's written approval and the DISTRICT's acceptance of the PROJECTS and/or DISTRICT's issuance of the Notice of Completion, the CITY shall assume maintenance responsibility of the bikeway and trail improvement portions of the PROJECTS.

For the purposes of this agreement, the PROJECTS shall be defined as encompassing the following authorized improvements, unless otherwise agreed to by the DISTRICT and CITY.:

- Pedestrian/bikeways constructed of decomposed granite, asphalt and/or concrete;
- Fencing systems, which include 8'-0" tall "Securifor 4-D" and 4'-8" tall cable railing (MOD) per Caltrans Standard Plan B11-47;
- Signage and striping;
- Site amenities such as benches, trash receptacles, and bike racks;
- Landscaping;
- Irrigation System;
- Lighting System;
- "PROJECTS" did not include any items within the flood control channel and as such, the CITY is not obligated to maintain any items within the flood control channel.

CITY shall be responsible for all routine maintenance and any necessary repair, replacement, or reconstruction of the authorized improvements identified above. Should any such repair, replacement, or reconstruction be necessitated by latent defects in the authorized improvements installed as part of the PROJECTS, it shall only be DISTRICT's responsibility to conduct such repair, replacement, or reconstruction if the matter is identified in writing to the DISTRICT within twelve (12) months of CITY's acceptance of the PROJECTS. Thereafter, any such repair, reconstruction, or replacement shall be CITY's responsibility.

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b. DISTRICT Obligation. The DISTRICT shall continue to operate and maintain the flood control channel for drainage and flood control purposes. DISTRICT shall be responsible for any repair, reconstruction, or replacement of authorized improvements identified in Section 3.a, above, if the authorized improvements are damaged or destroyed in the course of DISTRICT's operation and maintenance of the flood control channel, or if latent defects are identified in writing by the CITY within twelve (12) months of CITY's acceptance of the PROJECTS.

4. Miscellaneous Obligations

a. Indemnification & Hold Harmless.

- To the fullest extent permitted by law, the CITY shall defend (at CITY's sole cost and expense with legal counsel reasonably acceptable to DISTRICT), indemnify, and hold harmless DISTRICT and the County of Orange and their elected and appointed officials, officers, employees, agents, contractors and those special districts and agencies for which DISTRICT's Board of Supervisors acts as the governing Board (collectively the "DISTRICT Indemnitees"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, tortious, contractual, condemnation, inverse condemnation, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorneys' fees (collectively, "Claims"), including but not limited to Claims arising from injuries to or death of persons (CITY's officers, directors, employees, contractors, and agents included), for damage to property, including but not limited to DISTRICT facilities and property owned by DISTRICT and/or County of Orange, or from any violation of any federal, state, or local law or ordinance, alleged to be proximately caused by the negligent acts, omissions, or willful misconduct of CITY, its officers, directors, employees, contractors or agents in connection with or arising out of the PROJECTS, or the performance or breach of any term in this AGREEMENT.
- To the fullest extent permitted by law, DISTRICT shall defend (at DISTRICT's sole cost and expense with legal counsel reasonably acceptable to CITY), indemnify, and hold harmless CITY, and its elected and appointed officials, officers, employees, agents, and contractors (collectively and individually the "CITY Indemnitees"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, tortious, contractual, condemnation, inverse condemnation, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorneys' fees (collectively, "Claims"), including but not limited to Claims arising from injuries to or death of persons (DISTRICT's officers, directors, employees, contractors, and agents included), for damage to property, including but not limited to CITY facilities/installations and property owned by CITY, or from any violation of any federal, state, or local law or ordinance, alleged to be proximately

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caused by the negligent acts, omissions, or willful misconduct of DISTRICT, its officers, directors, employees, contractors, or agents in connection with or arising out of the PROJECTS, or the performance or breach of any term in this AGREEMENT.

- The PARTIES' duties and obligations under this paragraph shall survive termination or expiration of this AGREEMENT.
- b. Assignment. This AGREEMENT shall be binding upon and inure to the benefit of the respective 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.
- c. 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 both PARTIES; and no oral understanding or AGREEMENT not incorporated herein shall be binding on either of the PARTIES.
- d. 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 remain in full force and effect.
- e. Notices. Notices or other communications which may be required by or provided for in this AGREEMENT shall be given as follows:

City: City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701
Attention: Alvaro Nuñez, City Manager

County: County of Orange/OC Public Works Department
601 N. Ross Street,
Santa Ana, CA 92701
Attention: Edward Frondoso, District Engineer

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 above, 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, 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.

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- f. Attorney's Fees. In any action or proceeding to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, the PARTIES shall bear their own attorney's fees, costs, and expenses.
- g. 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.
- h. 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 one and the same instrument.
- i. Termination.
- CITY may terminate this AGREEMENT by giving DISTRICT ninety (90) days' written notice. In the event of such termination by CITY, CITY shall remove any improvements resulting from the PROJECTS at the CITY's sole cost and expense and restore any affected area of Santa Ana Gardens Channel ("F02") to its original condition as existed prior to the PROJECTS. This obligation to restore any affected area of F02 to its original condition shall survive the termination of this AGREEMENT.
 - In the event CITY defaults in the performance of any of their obligations under this AGREEMENT or materially breaches any of the provisions of this AGREEMENT, DISTRICT shall have the option to terminate this AGREEMENT upon thirty (30) days' prior written notice to CITY. Upon written notice from the DISTRICT of its election to terminate the AGREEMENT, CITY shall remove any PROJECTS improvements from affected portions of F02 at the CITY's sole cost and expense.
 - DISTRICT may also terminate this AGREEMENT at any time for convenience. Such termination for convenience shall occur no later than forty-eight (48) hours after the DISTRICT provides notice of its election to terminate to the CITY consistent with the Notice provision of this AGREEMENT. Should the DISTRICT terminate this AGREEMENT for convenience, the DISTRICT shall be responsible for removing any PROJECTS improvements from the affected portions of F02 at the DISTRICT's sole cost and expense.
- j. No Waiver. DISTRICT's failure to enforce this AGREEMENT as to one instance of breach shall not constitute a waiver of its ability to enforce this AGREEMENT as to any future breaches or noncompliance.

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- k. Availability of Funds. This AGREEMENT is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the PARTIES to expend or as involving the PARTIES in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

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IN WITNESS WHEREOF, CITY has caused this AGREEMENT to be executed by its Mayor and attested by its Clerk, and DISTRICT 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 SANTA ANA,
a municipal corporation

Date: 2/17/2026

By: [Signature]
Alvaro Nuñez, City Manager

ATTEST:

APPROVED AS TO FORM:

Sonia R. Carvalho, City Attorney

[Signature]
Jennifer L. Hall, City Clerk



By: [Signature]
Kyle Nellesen
Assistant City Attorney

Initial
SC

~~COUNTY OF ORANGE, a political subdivision of the State of California~~ **ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic**

Date: _____

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

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:

By: _____
Robin Stieler
Clerk of the Board of Supervisors
County of Orange, California

Signed by:
By: [Signature]
Stephanie Clark
Deputy County Counsel
County of Orange, California