

COOPERATIVE AGREEMENT BETWEEN ORANGE COUNTY FLOOD CONTROL DISTRICT AND CITY OF HUNTINGTON BEACH FOR FUNDING, CONSTRUCTION, AND MAINTENANCE OF THE EAST GARDEN GROVE-WINTERSBURG CHANNEL (C05) BRIDGES AT WARNER AVENUE, SPRINGDALE STREET AND EDWARDS STREET IMPROVEMENTS PROJECT

This Cooperative Agreement (“Agreement”) is made and entered into this _____ day of _____ 2023 (“Agreement”), by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT (“DISTRICT”), a body corporate and politic, and the CITY OF HUNTINGTON BEACH (“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. In April 2023, the DISTRICT completed flood control improvements along a certain segment of DISTRICT’s regional flood facility commonly referred to as East Garden Grove-Wintersburg Channel, Facility Number C05 (“CHANNEL”). The completed improvements included CHANNEL widening from upstream of Warner Avenue to 1,200 feet downstream of Goldenwest Street to increase the channel capacity and fortify the levees, as shown on Exhibit A, which is attached to and made part of this Agreement.
- B. The DISTRICT has proactively programmed a series of flood control improvement projects from Pacific Coast Highway to the San Diego Freeway, Interstate 405, that are integral with the United States Army Corps of Engineers’ Westminster Watershed Flood Risk Management Project which seeks to remove the surrounding Huntington Beach area out of the existing floodplain.
- C. The completed CHANNEL improvements excluded the three (3) CITY-owned and maintained bridge crossings at Warner Avenue, Springdale Street and Edwards Street (“BRIDGES”), as additional coordination and technical studies with the City were needed for flood control improvements to these BRIDGES.
- D. The DISTRICT identified that the BRIDGES do not meet Federal Emergency Management Agency freeboard requirements and therefore require flood walls. The proposed Project that is the subject of this Agreement consists of installing flood walls on both the upstream and downstream ends of the BRIDGES and replacing the superstructures to be compatible with the recently constructed CHANNEL improvements to provide 1% annual chance of exceedance flood protection.
- E. The BRIDGES are structurally in good condition according to Caltrans Bridge Inspection Reports and technical studies performed by DISTRICT’s Project Engineer. As such, the proposed Project is addressing only the hydraulic deficiencies.

- F. DISTRICT has prepared the Plans, Specifications, and Estimate (PS&E) for the Project and the CITY has proactively reviewed the PS&E during the development stage. The PS&E is substantially complete.
- G. The CITY supports the Project and the DISTRICT shall obtain approval of the PS&E prior to any work proposed to be made in accordance with California Public Contract Code 21020.
- H. The CITY desires to cooperate with the DISTRICT in implementing the Project and maintaining ownership and maintenance of the BRIDGES upon Project completion.
- I. The CITY has determined that the Project conforms to the City's General Plan.
- J. For the purpose of this Agreement, the Project shall encompass the construction phase and post-construction phase. The construction phase shall begin with issuance of a Notice to Proceed to the DISTRICT's Contractor and end with Project close-out when the DISTRICT completes construction of the Project and files a Notice of Completion (NOC). The post-construction of the Project shall be the responsibility of the CITY after the filing of the NOC.
- K. The PARTIES desire to outline their respective responsibilities with respect to the implementation of the Project and after the Project is completed.

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. Construction Phase Obligations

- a. Project Engineer. DISTRICT is hereby designated as Project Engineer ("ENGINEER") and shall be responsible for any approvals, permissions, or notices required pursuant to the construction contract documents. Construction contract documents include, but are not limited to, Project plans, specifications, and estimates ("PS&E"). The DISTRICT shall be responsible for executing and delivering all documents required in connection with the construction of Project including as-built plans and drawings ("as-builts").
- b. Project Contractor. Upon written approval by the City of the final Project PS&E, the DISTRICT shall perform all administrative work required for negotiating and executing the construction contract with the DISTRICT's Contractor

(“CONTRACTOR”). CONTRACTOR shall perform all work as required by, and in strict accordance with, the construction contract documents, which consists of removing the existing decks and barriers and replacing them with voided precast girder units with a polyester overlay and new sidewalk and barrier that connects to the flood walls at the Edwards Street Bridge, Springdale Street Bridge and Warner Avenue Bridge. The DISTRICT shall require CONTRACTOR to identify the CITY as an additional insured on CONTRACTOR’s required insurance policy(ies) with coverage to the satisfaction of the CITY.

- c. Project Construction. The DISTRICT shall be responsible for funding one hundred percent (100%) of the construction of all Project-related funding obligations to construct the Project in accordance with the construction contract documents.
- d. Project Inspection. The DISTRICT shall have primary inspection responsibility to ensure the constructed Project and all components thereof conform to the approved PS&E. The DISTRICT shall require the CONTRACTOR to obtain any and all necessary permits for the Project, including encroachment permits from the CITY. The DISTRICT will invite the CITY to attend the pre-construction meeting prior to the start of the construction activity. The DISTRICT will hold the pre-construction conference at the Project site or nearby field office. The DISTRICT will notify the CITY no less than fourteen calendar days prior to the start of construction. The CITY shall provide a Project liaison (“CITY ENGINEER”) during construction to coordinate with DISTRICT representatives. As required by the CITY encroachment permits, CITY shall regularly inspect the PROJECT within their jurisdiction and communicate with the DISTRICT’s Project Manager and DISTRICT’s Construction Inspector. Furthermore, the CITY will be invited to and included in all construction progress/scheduling meetings conducted for the Project. Should the CITY deem any remedial work to be necessary, consistent with the construction contract documents, at the conclusion of construction for the Project or any component thereof the CITY shall notify the DISTRICT and specifically describe the needed corrections and the proposed remedial work. All communications with the CONTRACTOR shall be through the DISTRICT, unless immediate action is necessary to address safety related concerns.
- e. Construction Contingencies. The DISTRICT shall review and approve any usage of CONTRACTOR or DISTRICT contingencies necessary for construction of the Project and in accordance with the construction contract documents. However, should CITY request additional work beyond that approved by the PARTIES in the PS&E, and the additional work results in contingency usage, CITY shall be responsible for funding one hundred percent (100%) of costs associated with the CITY-initiated contingency usage for work in excess of that approved in the PS&E.

- f. Project Acceptance. Prior to the DISTRICT's acceptance of Project improvements and filing of a Notice of Completion, the CITY ENGINEER shall review and provide written approval of all Project work. The CITY ENGINEER's written approval shall only be withheld for work not completed in accordance with the construction contract documents for the Project. The DISTRICT shall furnish the CITY with an electronic copy of record drawings for the completed Project and an electronic copy of the filed Notice of Completion.
- g. Warranties. DISTRICT shall require CONTRACTOR to provide and assign all warranties, maintenance manuals, and material safety data sheets for the Project. Once received, the DISTRICT shall forward the received warranties, maintenance manuals, and material safety data sheets to the CITY prior to filing NOC.

2. Post-Construction Phase Obligations

- a. Notice of Completion. When the DISTRICT completes the Project and issues a copy of the Notice of Completion to the CITY, the CITY's post-construction funding obligations shall begin, at which point the CITY shall assume ownership of the completed Project within CITY permitted easements and right-of-way.
- b. Post-Construction Maintenance. Upon CITY ENGINEER's written approval and DISTRICT'S acceptance of the Project, CITY shall assume ownership, and operation and maintenance obligations for all Project improvements within CITY permitted easements and right-of-way.

3. Miscellaneous Obligations

- a. Indemnification & Hold Harmless. The Parties shall indemnify, defend with counsel approved in writing, save and hold each of their 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 to which they may be subjected arising out of any act or omission of, their employees, representatives, agents and independent contractors in connection with the implementation of the actions described 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 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 the 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 be given effect to the fullest extent possible.
- e. Notices. Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

CITY: City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attention: Tom Herbel, City Engineer
Email: Tom.Herbel@surfcity-hb.org

DISTRICT: Orange County Flood Control District
OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attention: Kevin Onuma, Chief Engineer
Email: Kevin.Onuma@ocpw.ocgov.com

All notices shall be in writing and deemed effective when delivered via email, 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 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.

- 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 a single instrument.
- i. Termination. In the event DISTRICT 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 DISTRICT shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. In the event CITY or DISTRICT cures such default within the thirty (30) day notice period, CITY and DISTRICT's election to terminate shall be deemed revoked and of no further force and effect as to that particular default. Any Party's failure to enforce this Agreement as to one instance of breach shall not constitute a waiver of any Party's ability to enforce this Agreement as to any future breaches or noncompliance.
- a. 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.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement the day and year first above written.

CITY OF HUNTINGTON BEACH,
a municipal corporation

Date: _____

By: _____
Tony Strickland, Mayor

ATTEST:

APPROVED AS TO FORM:

Robin Estanislau, City Clerk

By: _____
Michael E. Gates, City Attorney

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

By: _____
Deputy County Counsel
County of Orange, California