

**OWNERSHIP, OPERATION AND MAINTENANCE AGREEMENT
BETWEEN THE
CITY OF CHULA VISTA AND
THE COUNTY OF SAN DIEGO
FOR THE WILLOW STREET BRIDGE REPLACEMENT PROJECT**

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2017, (the “Effective Date”) by and between the City of Chula Vista, a California Chartered Municipal Corporation (“City”), and the County of San Diego, a political subdivision of the State of California (“County”), for the purpose of outlining and defining the roles, responsibilities, terms and conditions related to ownership, operation, maintenance and repair and replacement of certain infrastructure that are part of the “Willow Street Bridge Replacement Project” (the “Project”). The City and County may be referred to in this Agreement individually as a “party” and collectively as the “parties”.

RECITALS:

WHEREAS, this Agreement is intended to identify the overall commitment and responsibilities regarding ownership, operations, maintenance, repair and replacement of the traffic signal systems, storm drain systems and components, equestrian trail, landscape and irrigation areas, porous pavement, traffic signs, pavement striping, markings and legends located within the City and County right-of-ways; and

WHEREAS, the City and County recognize the need for upgrading the traffic signal systems at the intersections of Willow Street/Bonita Road and Willow Street/Sweetwater Road through a bridge replacement project; and

WHEREAS, the City is the agency vested with the ownership of and the responsibility for the design, construction, maintenance, and operation of the Willow Street Bridge; and

WHEREAS, the intersection of Willow Street and Bonita Road lies mostly within the jurisdiction of the City, with a portion within the jurisdiction of the County; and

WHEREAS, City jurisdiction shall refer to all areas located within the City right-of-way and County jurisdiction shall refer to all areas located within the County right-of-way.

NOW, THEREFORE, in accordance with the mutual benefits contained in the aforementioned Recitals and in consideration thereof, City and County agree as follows:

Article I - Ownership

The City shall continue to own the upgraded traffic signal system, which includes traffic signal equipment (including without limitation signal standards, indications, controller cabinets, conduits, pull boxes), at the intersection of Willow Street and Bonita Road, mostly located within the City right-of-way, including one traffic signal at the northwest corner and the advance loop detection west of the intersection located within the County right-of-way as shaded and shown on **Exhibit “A”, Sheet 1**, hereinafter referred to as “City TSS”.

The County shall continue to own the upgraded traffic signal system at the intersection of Willow Street and Sweetwater Road, located within the County right-of-way including the 2-inch conduit with 36 count fiber signal interconnect cable from the controller cabinet at Willow Street/Sweetwater to the controller cabinet at Willow Street/Bonita Road and the advance loop detection south of the intersection located within the City right-of-way as shaded and shown on **Exhibit "A", Sheet 2**, hereinafter referred to as "County TSS".

The City shall continue to own the entirety of Willow Street Bridge, its abutments, and riprap protection as shown on **Exhibit "A", Sheets 1 and 2**.

Article II - Operations

The City shall continue to operate the City TSS.

The County shall continue to operate the County TSS.

Article III - Maintenance

The City and County agree to accept the responsibility to maintain the following improvements described as follows. Maintenance of an improvement shall commence upon acceptance of the improvement by the responsible party.

1. The City shall maintain, at City expense:

- a) The City TSS. The City shall assume the associated electrical costs of the City TSS and City shall maintain and be responsible for the timing of the City TSS with concurrence from the County.
- b) The porous pavement along Sweetwater Road (north-south bound) and Sweetwater Road (east-west bound) as shown on **Exhibit "A", Sheet 2**. Refer to City **Drawing No. 12013-02** for storm water best management practice maintenance table. City shall provide County with records of its ongoing maintenance activities on an annual basis.
- c) The riprap installed at the outlet of the double-box culvert located at the southwesterly corner of the Willow Street Bridge as shown on **Exhibit "A", Sheet 1** and the riprap installed at both abutments of Willow Street Bridge as shown on **Exhibit "A", Sheets 1 and 2**.

2. The County shall maintain, at County expense:

- a) The County TSS. The County shall assume the associated electrical costs of the County TSS and County shall maintain and be responsible for the timing of the County TSS with concurrence from the City.

- b) The traffic signs, pavement striping, pavement markings, pavement legends from Sta. 18+70.00 (Willow Street) as shown and shaded on **Exhibit "A", Sheet 2.**
- c) That portion of the storm drainage system and components (including but not limited to the headwall and a portion of the box culvert) as shown and shaded on **Exhibit "A", Sheet 1.**
- d) The bio-filtration units and curb inlet filter inserts on all storm drain system and components within County right-of-way, including but not limited to servicing, cleaning, permitting, and as-needed, and replacing said units and inserts as shown on **Exhibit "A", Sheet 2.** Refer to City **Drawing No. 12013-02** for storm water best management practice maintenance table.
- e) The equestrian trail under-crossing southerly of the northerly Willow Street Bridge abutment that connects to the equestrian trail located westerly of Willow Street Bridge as shown and shaded on **Exhibit "A", Sheet 2.**

For the purposes of this Agreement, the City shall not be required to obtain a permit for routine maintenance work within the County right-of-way, and the County shall not be required to obtain a permit for routine maintenance work within the City right-of-way.

If the above listed improvements are substantially altered from the condition as accepted by the responsible party, as described herein, and as shown on Exhibit "A", the maintenance of the altered improvement shall be coordinated between the City and County, and this Agreement shall be formally amended to describe the maintenance plan upon which the City and County have agreed.

Article IV - Access

- 1. As City has an obligation to maintain and repair the porous pavement, except where damage thereto is caused by County, prior to any repair or replacement of the porous pavement within the County's jurisdiction, the City shall provide the County with 48-hour notice, except in the event that emergency access is necessary, which shall be treated in a manner consistent with paragraph Article V, section 6.
- 2. In the event that such access is not required by an emergency and such access is in conflict with work being or to be performed by County, the City shall notify the County of its need to perform work on the porous pavement. County shall use its best efforts and work with the City to arrange a mutually convenient time for such work.

Article V - Non-Interruption of Use or Operation of Facilities

- 1. Each party agrees and covenants not to permanently interrupt the use or operation of the other party's facilities covered by this Agreement.
- 2. Any temporary interference by one party with the use or operation of the other party's facilities shall be made only with other the party's written consent. Each party specifically agrees, except as provided in Article V, section 6, that during any

temporary interference, it will neither cause any lane of the other party's roadways to be closed for the entire length of such roads, nor to cause the flow of traffic to be reduced to less than one lane, each direction, on such the roads.

3. Each party agrees and covenants to work in good faith with the other party to permit such temporary interference and the party whose facilities are being interfered with shall not unreasonably withhold its consent to such interference.
4. The parties shall coordinate planned outages or interruptions.
5. All work performed by either party or its representatives shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations and in compliance with the most recent edition of the Standard Specifications for Public Works Construction and San Diego Regional Supplement (Greenbook). To the extent that all or a portion of a party's facilities is damaged by the other party, the party causing the damage shall repair and/or replace other party's facilities. The repair and/or replacement shall meet the standards of the facility owner's jurisdiction and be subject to the review and approval of the appropriate representative, generally the City or County Engineer, as the case may be. Each party shall bear its own costs, expenses, and losses.
6. Notwithstanding any contrary provision in Article V, sections 1 through 5, in the event of damage caused by an act of God, War, or other casualty, or damage caused under circumstances where it would be impractical or impossible for one party to notify the other party of the necessity for temporary interference with the other party's facilities, the party creating the temporary interference may, without notice, make emergency repairs to restore its service. The party creating the temporary interference shall, however, take reasonable and prudent measures to protect the facilities of the other party and minimize such interference, and as soon as practically possible, notify the other party of such emergency repairs. If permanent repairs are required after such emergency repairs have been made, reasonable notice shall be given to the other party.

Article VI - Legal Relations and Responsibilities

1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a Party to the Agreement by imposing any standard of care with respect to the operation and maintenance of the City TSS and County TSS and the Storm Drain System and local facilities different from the standard of care imposed by law.
2. County shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers and employees from and against all claims for damages, liability, cost and expense (including without limitation attorneys' fees) arising out of or alleged by third parties to be the result of the negligent acts, errors or omissions or the willful misconduct of County, and County's employees, subcontractors or other persons, agencies or firms for whom County is legally responsible in connection with

the execution of the work covered by this Agreement, except only for those claims, damages, liability, costs and expenses (including without limitations, attorneys' fees) arising from the sole negligence or sole willful misconduct of the City, its officers, or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of County, its employees, agents or officers, or any third party. County's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. County's obligations under this Section shall not be limited by any prior or subsequent declaration by County. County's obligations under this section shall survive the termination of this Agreement.

3. City shall defend, indemnify, protect and hold harmless County, its elected and appointed officers and employees from and against all claims for damages, liability, cost and expense (including without limitation attorneys' fees) arising out of or alleged by third parties to be the result of the negligent acts, errors or omissions or the willful misconduct of City, and City's employees, subcontractors or other persons, agencies or firms for whom City is legally responsible in connection with the execution of the work covered by this Agreement, except only for those claims, damages, liability, costs and expenses (including without limitations, attorneys' fees) arising from the sole negligence or sole willful misconduct of the County, its officers, or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the County, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of City, its employees, agents or officers, or any third party. City's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the County, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. City's obligations under this section shall not be limited by any prior or subsequent declaration by City. City's obligations under this section shall survive the termination of this Agreement.

INSURANCE

County and its contractors shall maintain in force, during the term of this Agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the City, its officers, agents and employees as additional insured in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a Certificate of Insurance/Endorsement in a form satisfactory to the City that shall be delivered to the City with a signed copy of this Agreement.

County maintains a program of self-insurance for its Commercial General Liability exposures. Claims are processed and administered in accordance with the California Government Code. County's utilization of self-insurance shall not in any way limit liabilities assumed under this Agreement. In addition, County shall require and ensure that all contractors retained by the County to perform work on the Project or work on

improvements identified in Article III of this Agreement (“County Contractors”) meet the insurance requirements set forth in Exhibit B.

City and its contractors shall maintain in force, during the term of this Agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the County, its officers, agents and employees as additional insured in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a Certificate of Insurance/Endorsement in a form satisfactory to the County that shall be delivered to the County with a signed copy of this Agreement.

EFFECTIVE DATE

The Agreement shall take effect upon full execution of the Agreement, as of the Effective Date stated on page 1 of the Agreement.

TERMINATION

Either party may terminate this Agreement by providing written notice to the other party. Termination shall become effective 90 days after notice is received, unless a later date is specified in the notice.

MISCELLANEOUS

1. Notices.

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified below.

To City:

City of Chula Vista
City Engineer
276 Fourth Avenue
Chula Vista California 91910

With a copy to:

City of Chula Vista
City Attorney
276 Fourth Avenue
Chula Vista California 91910

To County:

County of San Diego
Director of Public Works
5510 Overland Avenue, Suite 410
San Diego, California 92123

2. Entire Agreement.

This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the Parties relating to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or written with respect to the subject matter contained herein.

3. Capacity of Parties.

Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this Agreement; that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

4. Governing Law/Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, which shall also be deemed to be the sole and proper venue for any action or proceeding relating to this Agreement.

5. Modification.

No amendment, modification, waiver, or discharge of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Parties hereto, and then shall be valid only in the specific instance and for the purpose for which given.

6. Counterparts.

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which, when taken together shall constitute but one instrument.

7. Severability.

In the event that any provision of this Agreement shall for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement or such other appropriate action as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein.

8. Headings.

The captions and headings in this Agreement are for convenience only and shall not define or limit the provisions hereof.

9. Waiver.

No course of dealing or failure or delay, nor the single failure or delay, or the partial exercise of any right, power or privilege, on the part of the Parties shall operate as a waiver of any rights herein contained. The making or the acceptance of a payment by either Party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any such breach.

10. No Additional Beneficiaries.

Despite the fact that the required performance under this Agreement may have an effect upon persons not Parties hereto, the Parties specifically intend no benefit therefrom, and agree that no performance hereunder may be enforced by any person not a Party to this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

CITY OF CHULA VISTA

COUNTY OF SAN DIEGO

BY _____
Mary Casillas Salas, Mayor

BY _____

ATTEST:

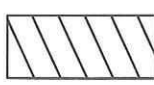
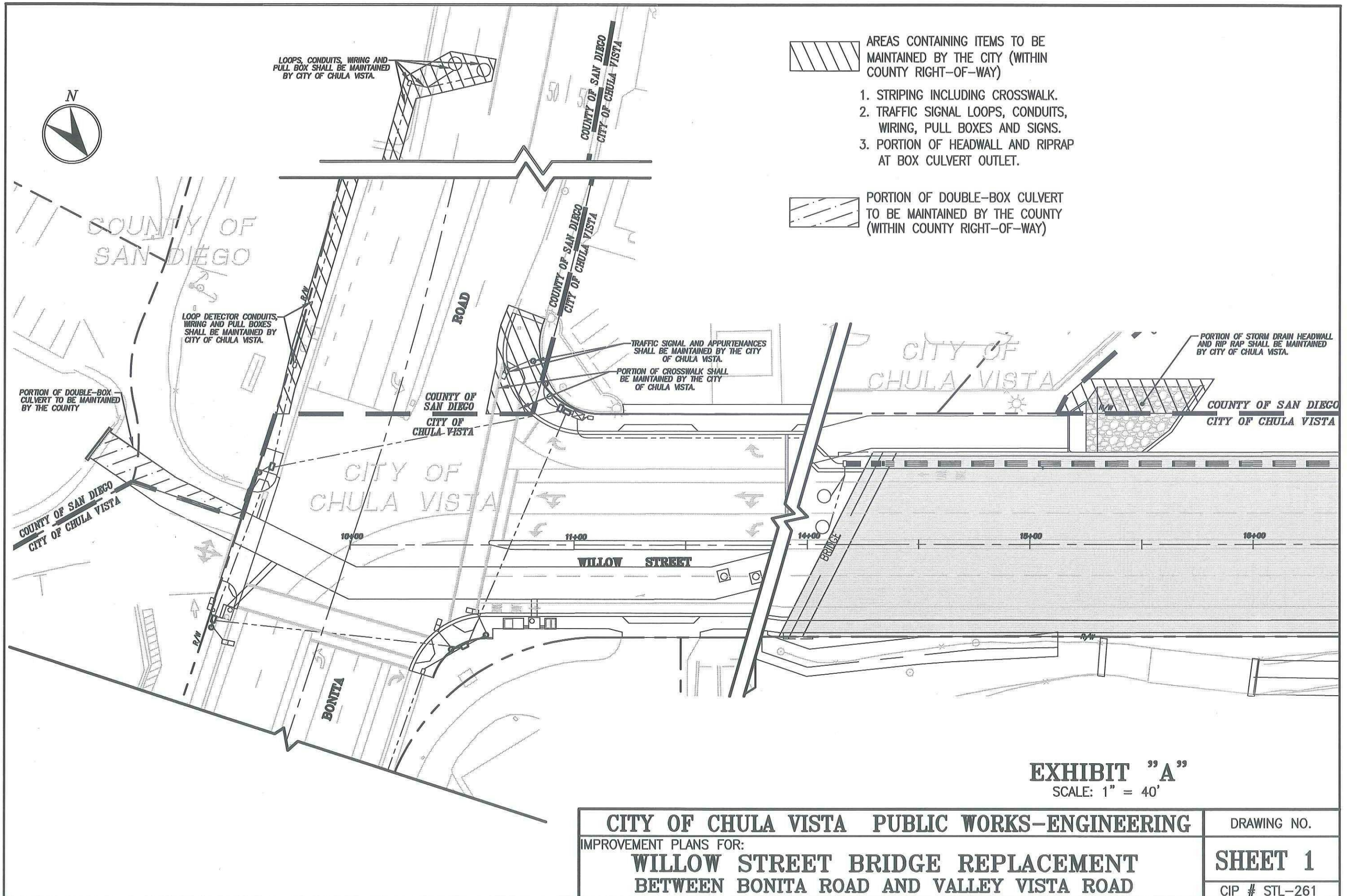
BY _____
Donna Norris, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM AND
LEGALITY
COUNTY COUNSEL

BY _____
Glen R. Googins, City Attorney

BY _____
Deputy



AREAS CONTAINING ITEMS TO BE MAINTAINED BY THE CITY (WITHIN COUNTY RIGHT-OF-WAY)

1. STRIPING INCLUDING CROSSWALK.
2. TRAFFIC SIGNAL LOOPS, CONDUITS, WIRING, PULL BOXES AND SIGNS.
3. PORTION OF HEADWALL AND RIPRAP AT BOX CULVERT OUTLET.



PORTION OF DOUBLE-BOX CULVERT TO BE MAINTAINED BY THE COUNTY (WITHIN COUNTY RIGHT-OF-WAY)

EXHIBIT "A"
SCALE: 1" = 40'

CITY OF CHULA VISTA PUBLIC WORKS-ENGINEERING
IMPROVEMENT PLANS FOR:
WILLOW STREET BRIDGE REPLACEMENT
BETWEEN BONITA ROAD AND VALLEY VISTA ROAD

DRAWING NO.
SHEET 1
CIP # STL-261

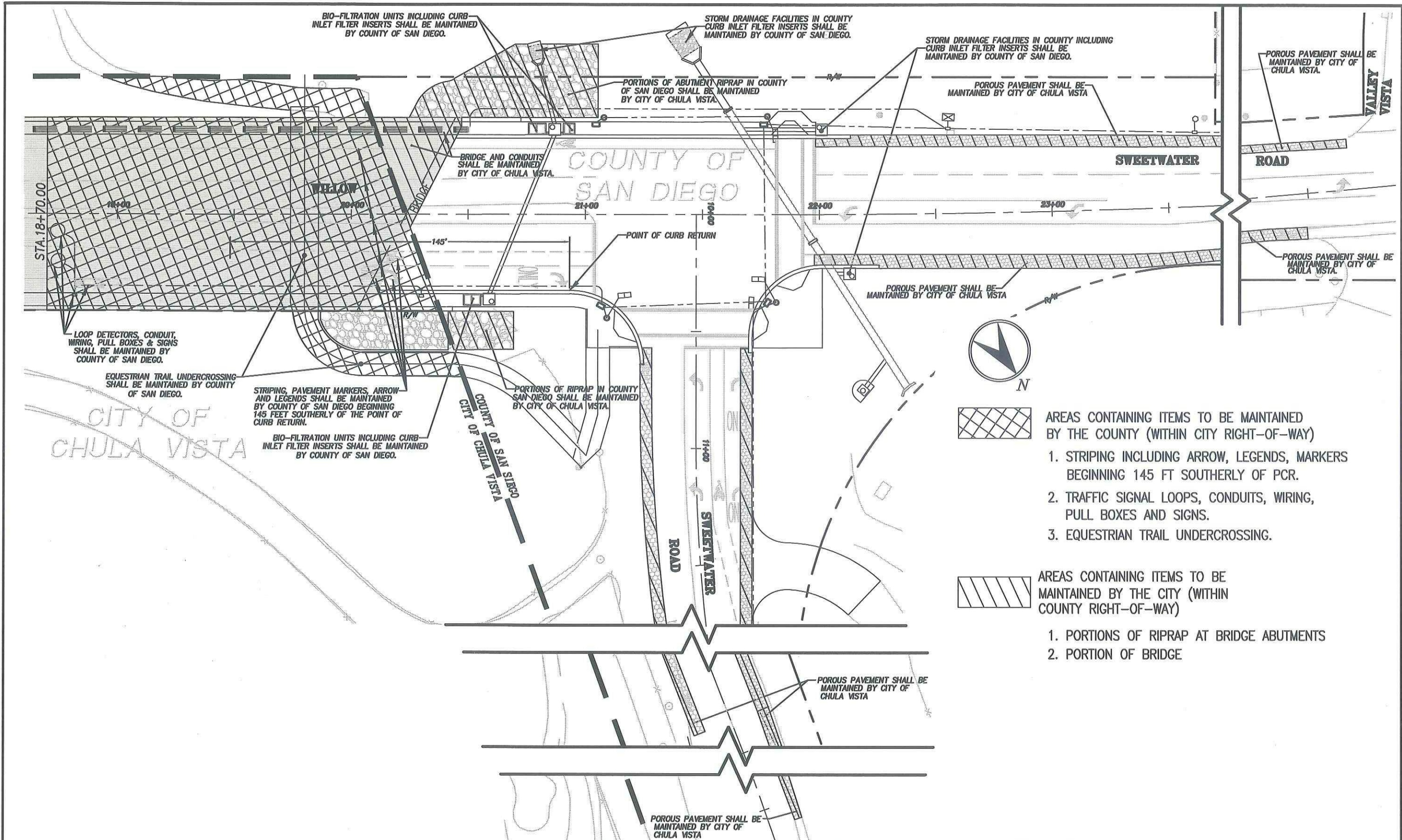

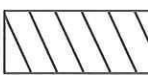


EXHIBIT "A"
SCALE: 1" = 40'

CITY OF CHULA VISTA PUBLIC WORKS-ENGINEERING
IMPROVEMENT PLANS FOR:
**WILLOW STREET BRIDGE REPLACEMENT
BETWEEN BONITA ROAD AND VALLEY VISTA ROAD**

DRAWING NO.
SHEET 2
CIP # STL-261

-  AREAS CONTAINING ITEMS TO BE MAINTAINED BY THE COUNTY (WITHIN CITY RIGHT-OF-WAY)
1. STRIPING INCLUDING ARROW, LEGENDS, MARKERS BEGINNING 145 FT SOUTHERLY OF PCR.
 2. TRAFFIC SIGNAL LOOPS, CONDUITS, WIRING, PULL BOXES AND SIGNS.
 3. EQUESTRIAN TRAIL UNDERCROSSING.
-  AREAS CONTAINING ITEMS TO BE MAINTAINED BY THE CITY (WITHIN COUNTY RIGHT-OF-WAY)
1. PORTIONS OF RIPRAP AT BRIDGE ABUTMENTS
 2. PORTION OF BRIDGE