

H146280

ORIGINAL

11-SD-11/905
EA 11-056321
PM 0.0/1.6, R9.9/R10.7
AGREEMENT 11-8380
Conveyance of floodwater
facilities and easement

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (AGREEMENT) is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the CITY OF SAN DIEGO, a California municipal corporation, referred to herein as "CITY", to be effective on DEC 10 2013, when signed by all the parties and approved by all appropriate legal counsel.

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code sections 104.5, 114, 118 and 130, are authorized to enter into a Cooperative Agreement affecting improvements to State Highways within City of San Diego.
2. STATE intends to construct State Route 11 (SR-11) and eastbound/westbound connectors to and from the existing State Route 905 (SR-905) easterly to Enrico Fermi Drive, referred to hereafter as "PROJECT" (see Exhibit A, attached hereto and made a part of this AGREEMENT).
3. During PROJECT construction, STATE requires control over, and will assume all liability for, portions of existing CITY drainage, sewer and water easements that are over and across the southerly portions of Lots 4, 5, and 9 per Map 11667, recorded December 8, 1986, hereafter referred to collectively as "EASEMENT" (see Exhibit B, attached hereto and made a part of this AGREEMENT).
4. To facilitate STATE's construction of the PROJECT, STATE requests that CITY quitclaim to STATE all its rights, title and interests in the EASEMENT.
5. As part of the PROJECT, STATE intends to construct a detention basin and trunk line, hereafter referred to as the "FLOODWATER FACILITIES". The FLOODWATER FACILITIES will be constructed on property owned by STATE, CITY and on property currently owned by private third party(ies).
6. Upon completion of the PROJECT, STATE intends to convey to CITY, and CITY intends to accept, all rights STATE owns in the FLOODWATER FACILITIES and in the real property on which the FLOODWATER FACILITIES are constructed, excepting therefrom a reservation for a maintenance access easement and drainage easements, all as shown in said Exhibit B. The real property interests planned to be conveyed to the CITY will be both fee and easement interests, depending upon the interest(s) that STATE owns therein. Prior to any such conveyance, CITY shall have the right to inspect

DOCUMENT NO. 308602
 FILED DEC 10 2013
 OFFICE OF THE CITY CLERK
 SAN DIEGO, CALIFORNIA

the FLOODWATER FACILITIES to determine whether the facilities are constructed consistent with STATE plans and specifications. The CITY has accepted and agreed to STATE design methodology outlined in STATE November 26, 2012 letter and reviewed STATE preliminary plans and specifications without comment. The STATE circulated final plans and specification to CITY prior to project being awarded and CITY concurred. If CITY determines the FACILITIES are constructed consistent with contract plans and specifications, CITY will accept title to said FLOODWATER FACILITIES and the rights to the real property on which the facilities are constructed. STATE contends that the conveyance of the FLOODWATER FACILITIES to CITY will provide equivalent utility to CITY for its existing facilities.

SECTION I

STATE AGREES:

1. To accept title to, maintenance and control of, and all liability associated with and for, the EASEMENT during the term of the PROJECT.
2. To acquire any and all other property rights (fee and/or easement) needed to construct and provide for the maintenance of the FLOODWATER FACILITIES.
3. STATE Resident Engineer will coordinate periodic inspections with CITY to ensure FLOODWATER FACILITIES are being constructed consistent with the contract plans and specifications circulated to CITY by STATE.
4. Upon completion of the PROJECT and upon prior written acceptance of the FLOODWATER FACILITIES by CITY, to convey to CITY, by Director's Deed, all of the STATE's interests in the FLOODWATER FACILITIES improvements and its underlying real property interests, whether fee title and/or easement rights, reserving therefrom a maintenance access easement and drainage easements, all as shown on Exhibit B.
5. STATE's point of contact:

Jacqueline Appleton-Deane
California Department of Transportation
4050 Taylor Street, MS 334
San Diego, CA 92110
(619) 491-3080

SECTION II

CITY AGREES:

1. To quitclaim all of CITY's rights in and to EASEMENT to the STATE, for use in the construction of PROJECT, at no cost to STATE.
2. CITY will attend periodic inspections with STATE Resident Engineer to ensure FLOODWATER FACILITIES are being constructed consistent with the contract plans and specifications circulated to CITY by STATE. Upon receipt of written notification from STATE that construction of PROJECT has been completed, CITY will perform a final inspection of the FLOODWATER FACILITIES to determine whether the FLOODWATER FACILITIES have been constructed consistent with the contract plans and specifications circulated to CITY by STATE.
3. Upon CITY's determination that the FLOODWATER FACILITIES have been constructed consistent with the contract plans and specifications circulated to CITY by STATE, CITY shall accept from STATE title to the FLOODWATER FACILITIES and the underlying real property rights on which the FLOODWATER FACILITIES are constructed.
4. Upon STATE's recordation of the conveyance documents to CITY of the FLOODWATER FACILITIES and its underlying real property rights, CITY shall assume all ownership, control, maintenance, and operation of the FLOODWATER FACILITIES, including liability therefor.
5. CITY's point of contact:

Edric Doringo
City of San Diego
1010 Second Avenue, Suite 800
San Diego, CA 92101-4904
(619) 533-3714

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC). No STATE funds are obligated against this AGREEMENT.

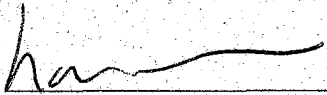
2. All obligations of CITY under the terms of this AGREEMENT are subject to the inspection rights set forth in this AGREEMENT.
3. Nothing in the provision of this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this AGREEMENT or to affect the legal liability(ies) of either party to the AGREEMENT by imposing any standard of care with respect to the maintenance of State Highways different from the standard of care imposed by law.
4. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY and/or its agents specifically concerning CITY's obligation to convey certain property interests to STATE under this AGREEMENT. It is understood and agreed that, CITY, to the extent permitted by law, will defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY and/or its agents specifically concerning CITY's obligation to convey certain property interests to STATE under this AGREEMENT.
5. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by STATE and/or its agents under or in connection with any work, authority or jurisdiction conferred upon STATE under this AGREEMENT. It is understood and agreed that, STATE, to the extent permitted by law, will defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE and/or its agents under this AGREEMENT.
6. This AGREEMENT may be terminated or provisions contained herein may be altered, changed, or amended by mutual written consent of the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
7. Upon CITY's prior acceptance of the FLOODWATER FACILITIES and its underlying property interests, this AGREEMENT, excepting those provisions which relate to an indemnification, ownership, property recapture, operation and maintenance, shall terminate upon STATE's recordation at the San Diego County Recorder's Office of the conveyance documents for the FLOODWATER FACILITIES and its underlying property rights. The AGREEMENT provisions which relate to indemnification, ownership, property recapture, operation and maintenance shall remain in effect until terminated or modified in writing by mutual agreement of the parties.

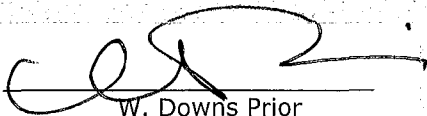
The Parties hereto declare that:

1. Each Party is an authorized legal entity under California state law.
2. Each Party has the authority to enter into this AGREEMENT. Specifically, CITY is acting under the authority granted in City of San Diego Resolution No. **308602**; when executed, this AGREEMENT will be filed with the City Clerk as Document No. **R-308602 - 3**
3. The individuals signing this AGREEMENT have the authority to do so on behalf of their respective agencies.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

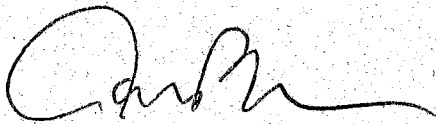
**CITY OF SAN DIEGO, a California
municipal corporation**

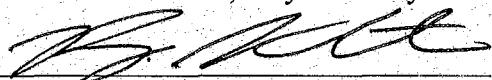
By: 
LAURIE BERMAN
District Director

By:  1/16/14
W. Downs Prior
Principal Contract Specialist
Public Works Contracting

Approved as to form and procedure:

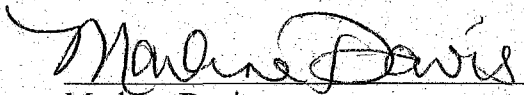

Approved as to form and legality:

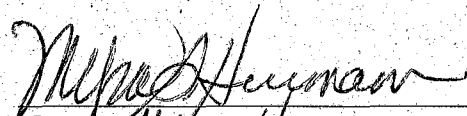

GLENN B. MUELLER
Assistant Chief Counsel
Department of Transportation

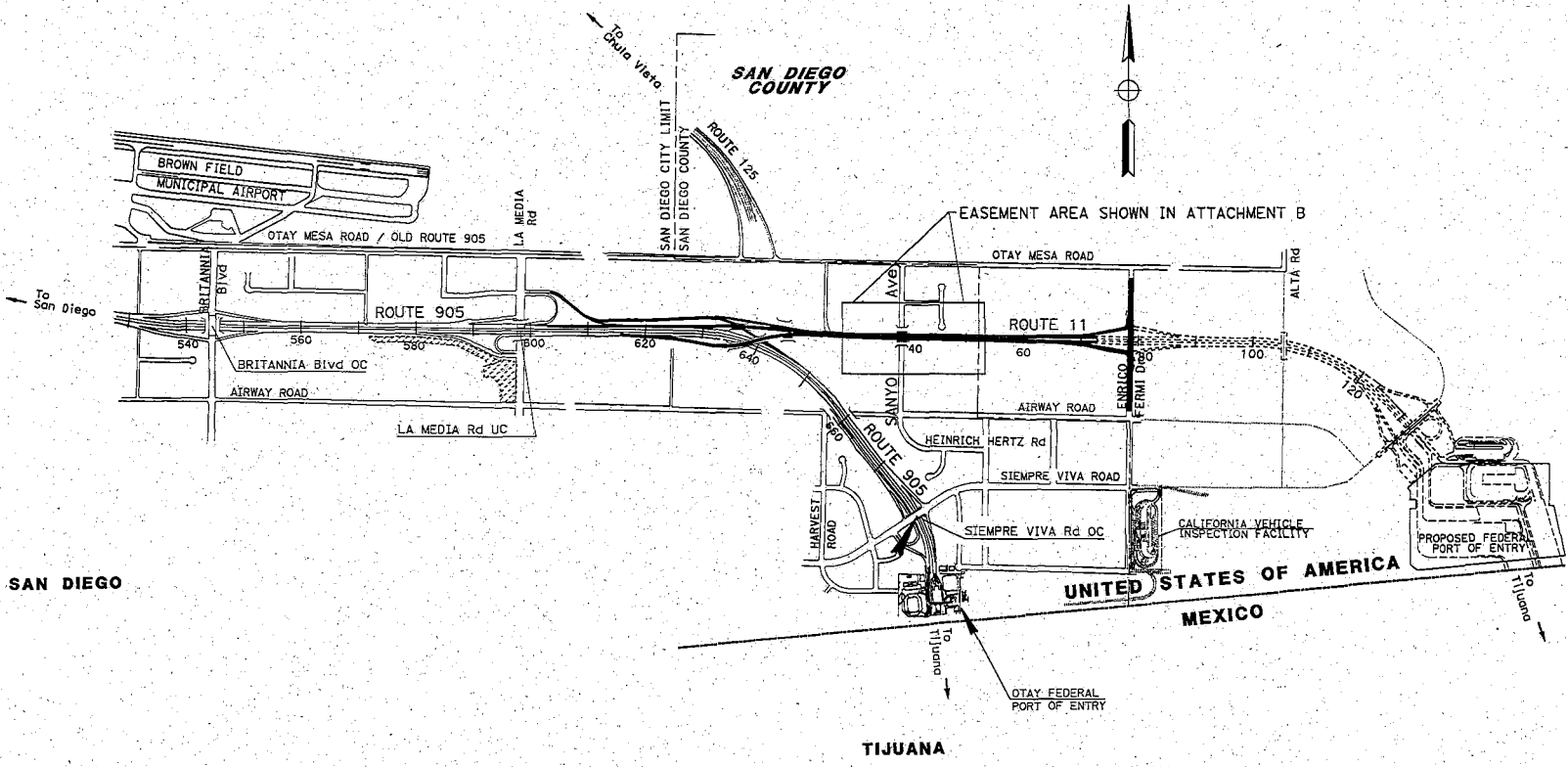
JAN I. GOLDSMITH, City Attorney
By: 
~~Debra J. Bevier~~ Ryan Kohot
Deputy City Attorney

Certified as to funds:

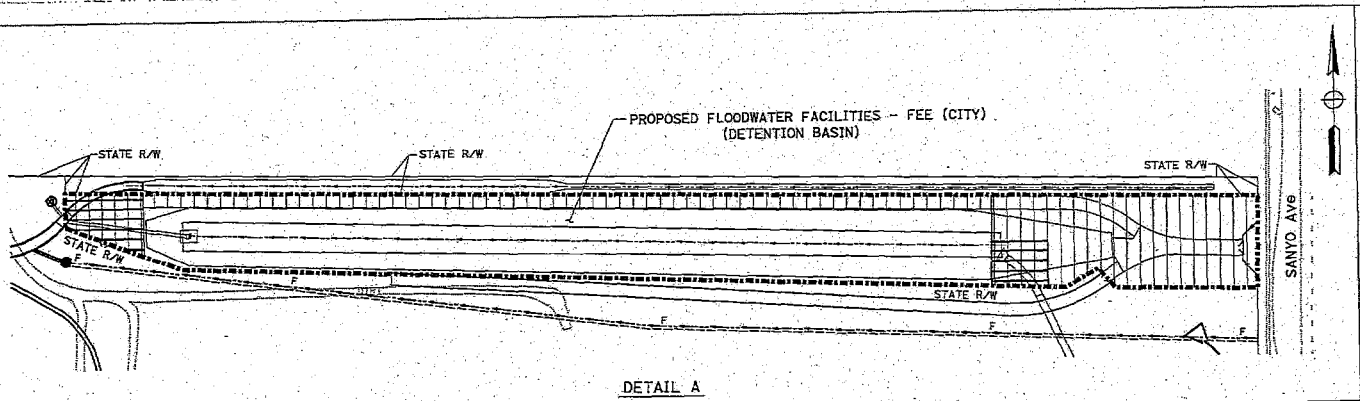
City of San Diego Environmental
Analysis Section Environmental
Clearance:


Marlene Davis
District Budget Manager/UP 


Name: Myra Hennmann
Environmental Analysis Section








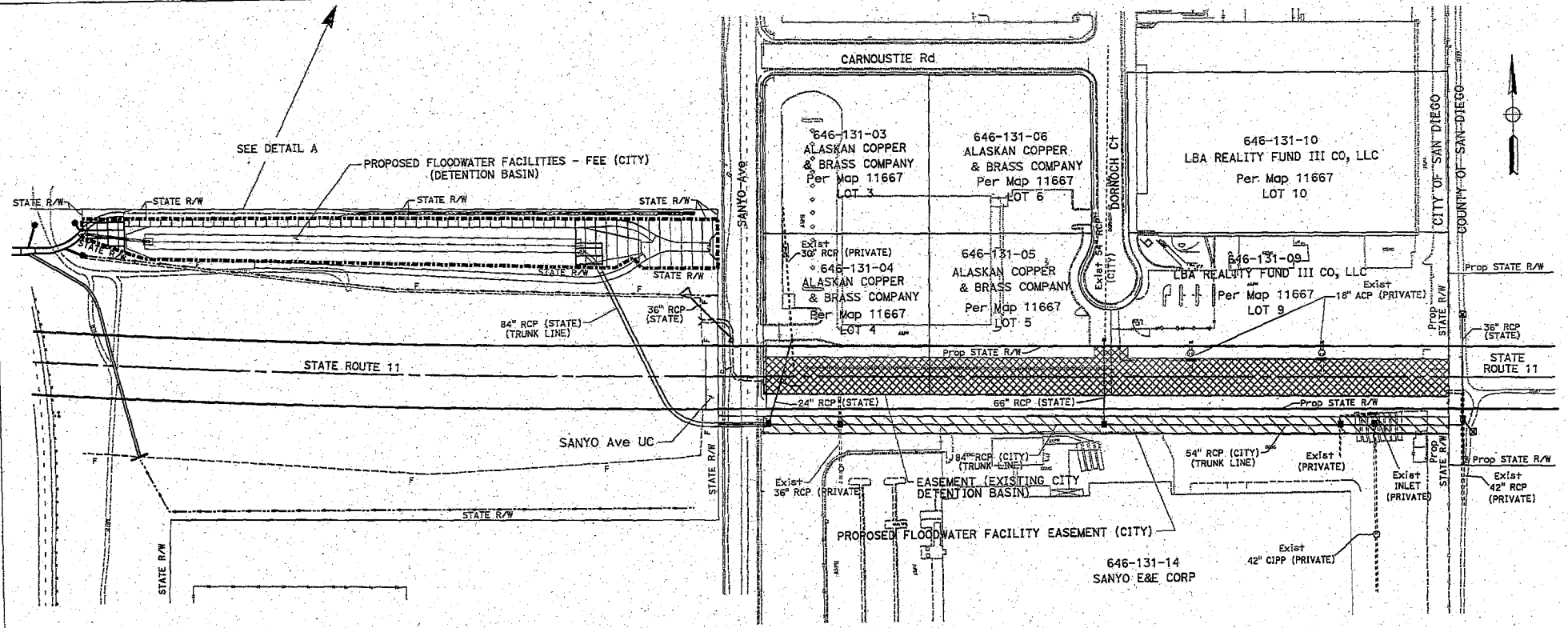
**EXHIBIT A
VICINITY MAP**



DETAIL A

LEGEND:

-  PROPOSED FLOODWATER FACILITIES - FEE (CITY)
-  PROPOSED MAINTENANCE ACCESS EASEMENT (STATE)
-  DRAINAGE EASEMENT (STATE)
-  EASEMENT - (PORTION OF CITY OWNED EASEMENT TO BE QUITCLAIMED)
-  PROPOSED FLOODWATER FACILITY EASEMENT (CITY)



**EXHIBIT B
LAYOUT OF EASEMENTS**

NO SCALE