

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

000445

51

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
ENGINEERING & CAPITAL PROJECTS

3. DATE:
July 28, 2008

11/18

4. SUBJECT:

EXTENSION OF COOPERATIVE AGREEMENT WITH CALTRANS FOR IMPROVEMENTS TO SR163/CLAIREMONT MESA BOULEVARD INTERCHANGE

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Deborah Van Wansele, 533-3012, MS 608

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Siavash Pazargadi, 533-3757, MS 608

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					None with this action
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	8/7/08	8	DEPUTY CHIEF	<i>[Signature]</i>	9/15/08
2	EAS	<i>[Signature]</i>	8/8/08	9	COO	Not required	
3	EOCP- EXEMPT			10	CITY ATTORNEY	<i>[Signature]</i>	10/22/08
4	COUNCIL LIAISON OFFICE	<i>[Signature]</i>	8/15/08	11	ORIG. DEPT	<i>[Signature]</i>	10/23/08
5	FACILITIES FINANCING	<i>[Signature]</i>	8/20/08	DOCKET COORD: _____ COUNCIL LIAISON <i>[Signature]</i> 8/19/08			
6	FINANCIAL MANAGEMENT	<i>[Signature]</i>	8/26/08	<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 11/18/08			
7	AUDITOR	<i>[Signature]</i>	9/18/08				

11. PREPARATION OF RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

Authorizing the Mayor to execute an amendment to a Cooperative Agreement with Caltrans for improvements to the SR-163/Clairemont Mesa Boulevard interchange, extending the termination date of the Agreement to December 31, 2011.

11A. STAFF RECOMMENDATIONS:

Approve the ordinance

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 6

COMMUNITY AREA(S): Kearny Mesa

ENVIRONMENTAL IMPACT: This activity is covered under the EIR for the New Century Center, LDR #96-0165, SCH#96031091. This activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental document adequately covered this activity as part of the previously approved project, this activity is not a separate project for purposes of CEQA review per CEQA Guidelines Section 15060(c)(3).

HOUSING IMPACT: N/A

OTHER ISSUES: 6 votes are required for passage

2008 AUG 27 PM 1:36

DATE ISSUED: July 28, 2008 REPORT NO:

ATTENTION: Council President and City Council

ORIGINATING DEPARTMENT: Engineering and Capital Projects, Transportation Engineering Operations Section

SUBJECT: Extension of a Cooperative Agreement with Caltrans for Improvements to the SR-163/Clairemont Mesa Boulevard Interchange

COUNCIL DISTRICT(S): 6

CONTACT/PHONE NUMBER: Deborah Van Wanseele, (619) 533 3012
Siavash Pazargadi, (619) 533-3757

REQUESTED ACTION:

Council authorization for the Mayor to execute an amendment to a Cooperative Agreement with Caltrans for improvements to the State Route 163/Clairemont Mesa Boulevard interchange, extending the termination date of the Agreement from December 31, 2008, to December 31, 2011.

STAFF RECOMMENDATION:

Staff recommends Council approval of the resolution.

EXECUTIVE SUMMARY:

On June 27, 2005, the City and Caltrans entered into an Agreement with Caltrans for improvements to the State Route 163/Clairemont Mesa Boulevard interchange. These improvements included widening the overpass and reconstructing the ramps on the east side of the interchange. The termination date for this Agreement is December 31, 2008.

It has been determined that the plant establishment period for the project's landscaping will not be completed prior to the termination date on the Agreement. Caltrans is requesting that the termination date for the Agreement be extended to December 31, 2011, a 3-year extension. Because this extension will extend the Agreement beyond five years' duration, Council approval via ordinance is required.

FISCAL CONSIDERATIONS:

None with this action

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

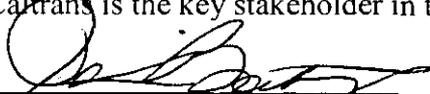
Council approved the Cooperative Agreement to fund the interchange improvements on June 27, 2005.

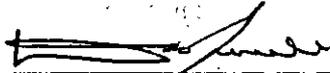
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Caltrans is the key stakeholder in this action.


Patti K Boekamp
Director,
Engineering & Capital Projects


David Jarrell
Deputy Chief of Public Works

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE COOPERATIVE AGREEMENT WITH CALTRANS FOR THE DESIGN IMPROVEMENTS TO THE STATE ROUTE I-163/CLAIREMONT MESA BOULEVARD INTERCHANGE.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor is authorized to execute an Amendment to the Cooperative Agreement with Caltrans for the design of improvements to the State Route I-163/Clairemont Mesa Boulevard Interchange, extending the termination of the Agreement by three years to December 31, 2011, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. OO-_____.

Section 2. That this activity is covered under the EIR for the New Century Center, LDR No. 96-0165, SCH No. 96031091. This activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental document adequately covered this activity as part of the previously approved project, this activity is not a separate project for purposes of California Environmental Quality Act [CEQA] per State CEQA Guidelines Section 15060(c)(3).

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc
10/17/08
Aud.Cert.: N/A
Or.Dept:E&CP
O-2009-57

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

11-SD-163
 KP 13.2/15.4
 EA 11-241503/4
 Agreement No. 11-0618/A1
 SR-163/Clairemont Mesa Blvd
 Interchange Reconstruction

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2008, 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 body politic and a municipal corporation of the State of California, referred to herein as "CITY".

RECITALS

1. The parties hereto entered into an Agreement (Document No. 300607, District Agreement Number 11-8230) on June 27, 2005, said Agreement stated CITY proposes to widen a bridge overpass and improvements to the interchange at Clairemont Mesa Boulevard and State Route 163 (SR-163) in 2 phases. Phase 1 will consist of widening the bridges and reconstructing the East Side ramps of State Route 163 (SR-163)/Clairemont Mesa Boulevard overcrossing, referred to herein as "PROJECT".
2. It has been determined that the PROJECT will not be completed prior to the termination date of said Agreement

IT IS THEREFORE MUTUALLY AGREED

1. The termination date specified in Section III, Article 24 of the original Agreement is now December 31, 2011, instead of December 31, 2008.
2. Section III, Article 1 of the original Agreement is replaced in its entirety with the following article:

"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)."

3. All other terms and conditions of said Agreement (Document No. 300607) shall remain in full force and effect.

4. This Amendment No. 1 to Agreement No. 11-0618 is hereby deemed to be a part of Document No. 300607.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Will Kempton
Director of Transportation

By: _____
Deputy District Director

Approved as to Form and Procedure:

By: *[Signature]*
Attorney
Department of Transportation

Certified as to Funds:

By: _____
District Budget Manager BK _____

Certified as to Financial Terms and Conditions:

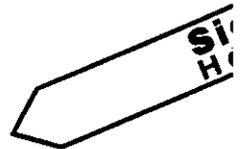
By: *[Signature]*
Accounting Administrator

CITY OF SAN DIEGO

By: _____
Mayor

By: _____
City Attorney

By: _____
City Clerk



COPY

000453

11-SD-163
KP 13.2/15.4
EA 241503/4
Agreement No. 11-0618
SR-163/Clairemont Mesa
Blvd. Interchange
Reconstruction

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON JUN 27 2005, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and

CITY OF SAN DIEGO, a body politic and a municipal corporation of the State of California, referred to herein as "CITY".

RECITALS

1. CITY proposes to widen a bridge overpass and improvements to the interchange at Clairemont Mesa Boulevard and State Route 163 (SR-163) in 2 phases. Phase 1 will consist of widening the bridges and reconstructing the East Side ramps of State Route 163 (SR-163)/Clairemont Mesa Boulevard overcrossing, referred to herein as "PROJECT". Phase 2 will reconstruct the West Side ramps of the interchange and will be the subject of a future agreement. CITY will open Phase 2 to traffic by 2010.
2. STATE is authorized to do all acts necessary, convenient, or proper for the construction or improvement of all highways under its jurisdiction, possession, or control.
3. CITY is authorized to plan, design, acquire right of way, and construct CITY projects over and under the State Highway system.
4. STATE and CITY are public agencies authorized under the Streets and Highways Code section 130 to enter into an agreement under which STATE will advertise, award, and administer the construction contract (considered as construction engineering costs) and will provide a full time Resident Engineer for PROJECT while CITY will provide a qualified full time support staff and two (2) full time Transportation Engineers as site inspectors subject to approval of STATE.
5. CITY is willing to fund one hundred percent (100%) of the PROJECT construction costs, estimated to be \$9.4 million. Said estimated cost represents fifty-six percent (56%) of Regional Surface Transportation Program (RSTP) fund (FUND), estimated to be \$5,240,700 and forty-four percent (44%) of local match fund (MATCH FUND),

DOCUMENT NO. KL-300607-2

JUN 27 2005

CLERK
SANTA ANA COUNTY

C00454

estimated to be \$4,159,300, as shown in Exhibit A, attached to and made a part of this Agreement.

6. CITY also is willing to fund one hundred percent (100%) of the contract administration, and construction engineering costs for PROJECT, estimated to be \$600,000 from MATCH FUND.
7. STATE and CITY mutually desire to jointly participate in the construction of PROJECT and desire to specify herein the terms and conditions under which PROJECT is to be constructed, financed, and maintained.
8. The purchase of rights of way, the handling of known utility relocation, and preliminary and design engineering for PROJECT have been subjects of a separate prior Cooperative Agreement (District Agreement #11-0604, Document #015889) dated August 10, 2004.

SECTION I

STATE AGREES:

1. To provide labor, materials, tools, and equipment for PROJECT including advertising, award, contract administration, and such other construction engineering as may be required for the satisfactory completion of PROJECT.
2. At no cost to CITY, to provide a full time Resident Engineer and quality assurance activities for PROJECT.
3. Construction staking & surveying, materials source inspection (within California), and independent assurance sampling and testing, will be considered as part of construction engineering costs paid by CITY.
4. To construct PROJECT by contract in accordance with the Plans, Specifications, and Estimates (PS&E) prepared by CITY and accepted by STATE.
5. To establish a separate account or accounts for PROJECT to accumulate charges for all costs to be paid by CITY pursuant to this Agreement.
6. To submit to CITY a billing for a deposit in the amount of \$376,000 fifteen (15) days prior to STATE's bid advertising date for a contract to construct PROJECT. Said deposit represents MATCH FUND for one (1) month of the estimated construction costs, estimated to be \$290,000 and MATCH FUND for two (2) months of the estimated construction engineering costs, estimated to be \$86,000. Thereafter, STATE shall prepare and submit to CITY monthly billing statements for MATCH FUND of the estimated expenditures for construction costs and construction engineering costs to maintain one (1) month estimated construction cost and two (2)

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months estimated construction engineering costs in advance as construction of PROJECT proceeds. *(Please see Exhibit A for updated amount)*

7. To seek Federal authorization (E-76) for RSTP apportionments programmed to the PROJECT by CITY.
8. To be responsible for ensuring that all Federal policies, procedures, and provisions are included in the final PROJECT PS&E are adhered to in the administration of PROJECT.
9. To be responsible for PROJECT closeout and final reporting as required for STATE Administered Federally funded projects (i.e., reconciliation of expenditures, construction claims, DBE utilization, etc).
10. To submit to CITY a monthly construction progress report which describes the work performed and completed during the reporting period with pertinent contract data such as change orders issued, and cumulative costs of change orders.
11. To provide CITY quarterly reports of actual PROJECT expenditures and an accounting of advance deposits made by the CITY.
12. To allow on the site of PROJECT, at no cost to STATE, a field site representative of CITY who is a qualified, licensed Civil Engineer in the State of California, to represent CITY during the construction of PROJECT. STATE's Resident Engineer and CITY's representative shall cooperate and consult with each other, but the decision of STATE's Resident Engineer shall be final. CITY's representative shall have no dealings with STATE's contractor or with the public, local agencies, etc., without prior consent of STATE's Resident Engineer.
13. To consult with CITY on all change orders for PROJECT with an estimated cost over \$50,000 before implementation except when the safety of motorists and/or pedestrians or the protection of property requires the immediate issuance of that change order.
14. Upon completion of PROJECT, final accounting and all work incidental thereto, to furnish CITY with a detailed statement of the total actual costs of construction and construction engineering for PROJECT, including the costs of any claims related to the construction contract which have been allowed to the construction contractor pursuant to the construction contract administrative claims process or arbitration, and claims-related defense costs incurred by STATE. STATE thereafter shall refund to CITY (promptly after completion of STATE's final accounting of costs for PROJECT) any amount of CITY's payments STATE is holding after actual costs to be borne by CITY have been deducted, and all Federal funds authorized on PROJECT have been fully expended; or shall bill CITY for any additional amount required to complete CITY's financial obligations assumed pursuant to this Agreement.
15. To maintain all State highway facilities as constructed under PROJECT in accordance with the provisions of the freeway agreements and freeway maintenance agreements

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presently in effect or as may be executed or modified hereafter and to make no claim against CITY for any portion of such maintenance expense.

16. To retain, or cause to be retained for audit by CITY's auditors, for a period of three (3) years from the date of processing, the final detailed statement for the costs of PROJECT, all records and accounts of STATE relating to the construction of PROJECT, and to make such materials available at STATE's District 11 Office. Copies thereof shall be furnished to CITY, if requested by CITY, at CITY's cost.
17. To provide CITY with a monthly listing of noticed potential claims received from the contractor and the status of outstanding claims for PROJECT.
18. To use STATE's construction contract claims process in consultation with CITY and to notify CITY within three (3) days upon receipt of claims for PROJECT by providing a copy of the contractor's reply to the "Proposed Final Estimate" setting forth such a claim.
19. To prepare the "Proposed Final Estimate" no later than sixty (60) days after STATE's acceptance of the PROJECT construction contract in accordance with Section 7-1.17 of STATE's current Standard Specifications or advise CITY of the alternative date for that submittal.
20. To provide, at CITY's expense, any "State-furnished materials" as shown on the plans and as provided in the Special Provisions for PROJECT. STATE will submit a billing to CITY in the amount of \$96,800, as shown in Exhibit A, representing the MATCH FUND actual cost of said "State-furnished materials" within forty-five (45) days of receipt of CITY's request. Upon subsequent receipt by STATE of CITY's payment, these materials will be available to CITY.
21. State's Contact Ed Hajj, Project Manager
 Department of Transportation, District 11
 2829 Juan Street
 San Diego, CA 92110
 (619) 220-5433

SECTION II

CITY AGREES:

1. To reimburse STATE for one hundred percent (100%) of the costs of construction, contract administration, and construction engineering for PROJECT, including construction staking and surveys, and materials inspection which will be done by STATE.
2. To deposit with STATE within twenty (20) working days of receipt of billing from STATE (which billing will be forwarded fifteen (15) days prior to STATE's bid

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advertising date for a contract to construct PROJECT) the amount of \$376,000. Said deposit represents MATCH FUND for one (1) month of the estimated construction costs, estimated to be \$290,000 and MATCH FUND for two (2) months of the estimated construction engineering costs, estimated to be \$86,000. Thereafter, to deposit with STATE within twenty (20) working days of receipt of billing from STATE, for two (2) months estimated construction engineering costs and one (1) month estimated construction costs and to continue making such advance deposits of estimated expenditures on a monthly basis until the completion of PROJECT

3. To bear one hundred percent (100%) of the total actual construction and construction engineering costs of PROJECT, including the cost of materials to be furnished by STATE, supplemental work, change orders, claims related to the construction contract paid to the construction contractor, including those paid as a result of STATE's administrative claims process and/or as an award in arbitration, and the cost of STATE's defense of all PROJECT-related claims which may be filed by said contractor. The actual construction and construction engineering costs of PROJECT shall be determined only after completion of all work, the closure of all claims, and upon final accounting of all costs for PROJECT.
4. To provide, at no cost to STATE, a qualified full time support staff and two (2) full time Transportation Engineers as site inspectors subject to approval of STATE and other resources necessary to accomplish construction of PROJECT. All resources provided by CITY and STATE shall be coordinated by and be under the specific direction of STATE's Resident Engineer.
5. To allow STATE to obligate and encumber \$5,240,700 of Federal RSTP apportionments on PROJECT to be applied to the \$9.4 million estimate for construction costs. CITY will be responsible for depositing the required MATCH FUND to STATE for construction and construction engineering costs.
6. To bear one hundred percent (100%) of the actual construction engineering costs, which are estimated to be \$600,000. Said construction engineering costs, excluding the costs of providing a qualified full time support staff and two (2) full time Transportation Engineers as site inspectors, shall include the costs of personnel resources and their equipment and all direct and indirect costs (functional and administrative overhead assessment) attributable to construction engineering applied in accordance with STATE's standard accounting procedures, except only those costs which are determined to be included in STATE's quality assurance responsibility as stipulated in Article 2 of Section I of this Agreement. The actual costs of construction engineering for PROJECT shall be determined after completion of all work, the closure of all claims, and upon final accounting of all costs for PROJECT.
7. CITY's initial total obligation of the project is estimated to be \$10 million including \$600,000 estimated for construction engineering costs and \$9.4 million for construction cost. The actual Construction Engineering costs are to be paid by the City of San Diego. This amount is subject to be increased to cover the cost of additional utility protection, relocation or removal as provided in Article 12 of

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Section III of this Agreement, to cover the costs for remedy and/or remedial action of hazardous substance or contaminated sites, and to cover the costs of protecting cultural, archaeological, paleontological, or other protected materials as is provided for in Articles 13 and 14 of Section III of this Agreement. The total obligation of CITY may also be increased to cover costs in excess of the initial estimated total costs of construction and construction engineering and as specified in Article 15 of Section III of this Agreement. CITY is responsible for payment of all PROJECT expenditures that RSTP funding does not cover. There is no "vote" option or "disagreement" option.

8. To not dispute the amount of differences on monthly billings which are future estimates.
9. To pay STATE after completion of all work and within twenty-five (25) working days after receipt of a detailed statement made upon final accounting of costs therefore, any amount over and above the aforementioned deposits in Article 1 of this Section II, required to complete CITY's financial obligations assumed pursuant to this Agreement.
10. Upon execution of this Agreement, to certify that CITY funds are budgeted for the total cost of PROJECT.
11. STATE's construction contract claims process will be used for all PROJECT-related claims made by the construction contractor, with STATE acting as the lead agency in consultation with CITY, and CITY shall abide by the outcome of said claims process. In the event that arbitration under the provisions of Public Contract Code section 10240 et seq. results from that contract claims process, STATE will act as the lead agency in arbitration unless otherwise mutually agreed to by STATE and CITY.
12. To replace and/or repair existing highway planting and irrigation systems damaged or removed by proposed improvements. Disturbed slopes shall be finish graded to allow planting and irrigation work to be completed within sixty (60) days initial grading. A functional test of irrigation systems shall be performed prior to a minimum one (1) year plant establishment period at CITY's expense. CITY shall maintain water supply to areas outside project limits affected by this project or replace plants damaged by lack of water in adjacent areas as a result of the interruption of the water supply.
13. Upon completion of work under this Agreement, CITY shall replace and repair planting and irrigation systems, assume maintenance and the expense thereof for the landscape and irrigation system for PROJECT, for an additional period of 4 years (Construction contract includes a one year plant establishment). If CITY does not maintain the PROJECT landscape and irrigation system at an acceptable standard, STATE shall maintain that landscaping and irrigation system at CITY's expense.
14. To provide written notice to STATE requesting any "State-furnished materials" as shown on the plans and as provided in the Special Provisions for PROJECT. CITY shall deposit with STATE in the amount of \$96,800 representing the MATCH FUND

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actual costs of said "State-furnished materials" within twenty (20) days of receipt of STATE's billing. Upon receipt by STATE of CITY's payment, these materials will be made available to CITY.

15. City's Contact: Mark S. Koll, Associate Civil Engineer
City of San Diego
1010 Second Ave. Suite 1200 M-S 612
San Diego, CA 92110
(619) 533-3669

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE and CITY under the terms of this Agreement are subject to the appropriation of resources by their Legislatures in the annual State Budget Acts.
2. Should any portion of PROJECT be financed with Federal funds or State gas tax funds, all applicable laws, rules, and policies relating to the use of such funds shall apply notwithstanding other provisions of this Agreement.
3. STATE's goal for the utilization of Disadvantaged Business Enterprise (DBE) will be included in the construction contract for PROJECT. The contract goal will be based on a technical analysis of contract items and certified DBE subcontractors in the area. STATE will award the construction contract to the lowest responsible bidder who meets the goal or who made, in the sole judgment of STATE, a good faith effort to do so.
4. STATE shall not advertise for bids for the construction contract for PROJECT until after this Agreement is executed by both parties thereto. STATE shall also not advertise for bids for a contract to construct PROJECT until CITY delivers to STATE control and/or possession to all necessary rights of way, free and clear of all encumbrances detrimental to STATE's present and future uses, at the time of CITY's certification of rights of way ready for construction. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid by CITY.
5. Prior to advertising for bids for the construction contract for PROJECT, CITY may terminate this Agreement, in writing, provided that CITY pays STATE for all costs related to termination of PROJECT incurred by STATE under the terms of this Agreement.
6. If, upon opening of bids for the construction contract for PROJECT, it is found that the lowest responsible bid is not more than ten percent (10%) over the Engineer's Estimate, STATE and CITY may conduct a joint review of the bids immediately following opening of the bids and prior to submittal of STATE's District 11 letter of recommendation to award to STATE's Office Engineer in Sacramento, if so requested

by CITY. After the joint review, and within the time allowed for award, STATE may then award the construction contract for PROJECT.

7. If upon review of the aforementioned bids, CITY, by written notice to STATE's District 11 office, elects to not proceed with PROJECT, thereby causing STATE to reject all bids, CITY agrees to pay STATE for all costs related to termination of PROJECT incurred by STATE, including all legal costs and damages resulting from rejection of all bids for the PROJECT construction contract.
8. If, upon opening bids for the construction contract for PROJECT, it is found that the lowest responsible bid exceeds the Engineer's Estimate by more than 10 percent (10%), STATE and CITY shall consult upon a course of action. If, after fifteen (15) days, a course of action is not agreed upon, this Agreement shall be deemed to be terminated by mutual consent pursuant to Article 9 of this Section III.
9. If termination of this Agreement is by mutual consent, CITY will bear one hundred percent (100%) of all PROJECT-related costs incurred by STATE pursuant to this Agreement.
10. After award of the construction contract for PROJECT, should CITY, after a request by STATE, not fulfill its funding commitments specified in Articles 2, 3, and 4 of Section II of this Agreement or not authorize funding beyond the amount specified in Article 4 of Section II of this Agreement, STATE shall ensure that all operating roadways are in a safe and satisfactory permanent operating condition and shall then cease work on PROJECT. Costs incurred by STATE pursuant to this Agreement in excess of payments made by CITY will be billed to CITY and are subject to payment by CITY within thirty (30) days or STATE, acting through the State Controller, may withhold an equal amount from future apportionments due CITY from the Highway User Tax Fund.
11. During the construction of PROJECT, CITY may, at no cost to STATE, furnish a representative, if it so desires. While said representative and STATE's Resident Engineer will cooperate and consult with each other, the decisions of STATE's Resident Engineer shall prevail as final, binding, and conclusive in all matters concerning the construction contract for PROJECT.
12. If unknown existing public and/or private utility facilities are discovered during construction of PROJECT, or if there is a significant change required in any approved utility relocation plan, the provisions of STATE's current Standard Specifications Section 8-1.10 (Utilities and Non-Highway Facilities) shall apply. STATE will make all necessary arrangements with the owners of such facilities for the protection, relocation, or removal of the discovered utility facilities in accordance with STATE's policy and procedures for those facilities located within the limits of work providing for the improvement to the State highway and in accordance with local jurisdiction's policy for those facilities located outside of the limits of work for the improvement to the State highway. The cost of the protection, relocation, or removal shall be apportioned between the owner of the utility facility and CITY in accordance with

STATE's policy and procedure. STATE shall require any utility owner performing relocation work in the State highway right of way to obtain an encroachment permit from STATE prior to the performance of said relocation work. The requirements of the most current version of STATE's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way" shall be fully complied with. Any relocated or new facilities shall be correctly shown and identified on the "As-Built" plans for PROJECT.

13. If cultural, archaeological, paleontological or other protected materials are encountered during construction of PROJECT, STATE shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material.
14. Any hazardous material or contamination of an HM-1 category found within the existing State highway right of way during construction requiring remedy or remedial action, as defined in Division 20, Chapter 6.8 et seq. of the Health and Safety Code, shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within the local road right of way during construction requiring the same defined remedy or remedial action shall be the responsibility of CITY. For the purpose of the Agreement, hazardous material of HM-1 category is defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be remediated by reason of its mere discovery regardless of whether it is disturbed by PROJECT or not. STATE shall sign the HM-1 manifest and pay all costs for remedy or remedial action within the existing State highway right of way, except that if STATE determines, in its sole judgment, that STATE's cost for remedy or remedial action is increased as a result of proceeding with construction of PROJECT, that additional cost identified by STATE shall be borne by CITY. CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the local road right of way. STATE will exert every effort to fund the remedy or remedial action for which STATE is responsible. In the event STATE is unable to provide funding, CITY will have the option to either delay further construction of PROJECT until STATE is able to provide funding or CITY may proceed with the remedy or remedial action at CITY's expense without any subsequent reimbursement by STATE. The total cost of these materials is estimated to be \$220,000. Since STATE has already encumbered the RSTP funds, CITY will be billed 44% of \$220,000, or \$96,800 in accordance with Section II, Article 6.
15. The remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within and outside the existing State highway right of way during construction shall be the responsibility of CITY, at CITY's expense, as a result of proceeding with construction of PROJECT. For the purposes of this Agreement any hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed or otherwise protected in place should PROJECT had not proceeded. CITY shall sign any HM-2 manifest if construction of PROJECT proceeds and HM-2 material must be removed in lieu of being treated in place.

16. If hazardous material or contamination of either HM-1 or HM-2 category is found during construction on new right of way acquired by or on account of CITY for PROJECT, CITY shall be responsible, at CITY's expense, for all required remedy or remedial action and/or protection in the absence of a generator or prior property owner willing and prepared to perform that corrective work.
17. Locations subject to remedy or remedial action and/or protection include utility relocation work required for PROJECT. Costs for remedy and remedial action and/or protection shall include but not be limited to, the identification, treatment, protection, removal, packaging, transportation, storage, and disposal of such material.
18. The party responsible for funding any hazardous material cleanup shall be responsible for the development of the necessary remedy and/or remedial action plans and designs. Remedial actions proposed by CITY on the State highway right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices and those standards mandated by the Federal and State regulatory agencies.
19. Additional costs arising out of any or all of the situations described above in Articles 12 through 18 of this Section III shall be borne by CITY as part of the costs of PROJECT which CITY is funding one hundred percent (100%). STATE may be required to stop work on PROJECT until additional funding is provided by CITY and/or restore the site of PROJECT to a condition of safe operation using then unexpended funds for PROJECT if those additional funds are not made available for PROJECT.
20. Upon completion of all work under this Agreement, ownership and title to all materials, equipment and appurtenances (other than utilities) installed under PROJECT within the State highway right of way will automatically be vested in STATE, and no further agreement will be necessary to transfer ownership to STATE, and materials, equipment and appurtenances installed outside of the State highway right of way will be automatically vested in CITY. No further agreement will be necessary to transfer ownership as hereinabove stated.
21. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of State highways and public facilities different from the standard of care imposed by law.
22. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code section 895.4, CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and

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description brought for or on account of injury (as defined in Government Code section 810.8) occurring by reason of anything done or omitted to be done by CITY in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

23. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
24. Except as otherwise provided in Articles 5, 7, and 9 of this Section III, those portions of this Agreement pertaining to the construction of PROJECT shall terminate upon completion and acceptance of the construction contract for PROJECT by STATE and upon completion of CITY's financial obligations under this Agreement, or on December 31, 2008, whichever is earlier in time. However, the ownership, operation, maintenance, indemnification, and claims clauses shall remain in effect unless terminated or modified, in writing, by mutual agreement. Should any claim arising out of the contract to construct PROJECT be asserted against STATE, CITY agrees to extend the termination date of this Agreement and provide funding, subject to CITY's governing body budgeting sufficient funds to cover CITY's share of those additional costs, or CITY shall execute a subsequent agreement to cover those eventualities.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF SAN DIEGO

Will Kempton
Director

By: Allen Kemp
Deputy District Director

By: [Signature]
City Manager

Approved as to Form and Procedure:

William B. B...
Attorney
Department of Transportation

Attest: [Signature]
Deputy City Attorney

Certified as to Funds:

[Signature]
District Budget Manager
BK: 1

Certified as to Financial Terms and
Conditions:

[Signature]
Accounting Administrator

f- 300607

EXHIBIT A

	FUND (RSTP Fund)	MATCH FUND (Local Match Fund)	Subtotal
<u>Construction Costs</u>	\$5,108,500	\$4,062,500	\$9,180,000
State-furnished materials	\$132,200	\$96,800	\$220,000
Total	\$5,240,700	\$4,159,300	\$9,400,000
<u>Construction Engineering Costs</u>			
	\$0.00	\$600,000	\$600,000
Total PROJECT cost			\$10,000,000

One (1) month of MATCH FUND estimated construction cost:

$$\$4,062,500 / 14 \text{ month construction duration} = \$290,000$$

Two (2) months of MATCH FUND estimated construction engineering cost:

$$(\$600,000 / 14 \text{ month construction duration})(2) = \$86,000$$

Total \$376,000

ROUTE 163/CLAIRMONT MESA BLVD.				
Caltrans	300 WORKING DAYS			
STAFF	ITEM	PY	Classification Used	@ 1758 hrs/PY
*Senior Construction Engineer/Bridge/Dist.		0.171	Project Manager/State	\$106.94 \$0.00
*Resident Engineer		1.365	Project Manager/State	\$97.45 \$0.00
Structures Rep.		0.4	Project Manager/State	\$97.45 \$68,526.84
Structures Inspection		0.81	Transportation Engineer, Range D/State	\$88.55 \$126,093.43
**Civil/Site inspector	Roadway, drainage, paving, striping	1.6	Transportation Engineer, Range D/State	\$0.00 \$0.00
Field Surveys	Staking project	0.3	Transportation Engineer, Range D/State	\$97.45 \$51,395.13
Office Surveys	Developing Staking Notes	0.14	Transportation Engineer, Range D/State	\$97.45 \$23,984.39
Right-Of-Way Activities	Prepare Relinquishment and Vacation Map	0.07	Transportation Engineer, Range D/State	\$97.45 \$11,992.20
Electrical inspector	Ramp meter, 2 Traffic Signals	0.2	Transportation Engineer, Range D/State	\$88.55 \$31,134.18
Landscape inspector	irrigation, landscape, plant establishment	0.3	Transportation Engineer, Range D/State	\$88.55 \$46,701.27
Material tester (on site and off site)	compaction, concrete sampling	0.8	Material tester/State	\$73.37 \$103,187.57
M.E.T.S.	Beam Fabrication	0.3	Material tester/State	\$73.37 \$38,695.34
^ Office person	Records Maintenance	0.4	Admin Support/State	\$73.37 \$51,593.78
Public Affairs	Public Notice			\$4,000.00
Public Affairs	Media/Public Interaction	0.07	Public Affairs/State	\$73.37 \$9,028.91
SWPPP/Traffic		0.14	Transportation Engineer, Range D/State	\$97.45 \$23,984.39
	TOTAL	4.32		\$590,317.44

- * = Resident Engineer is full time. The State will contribute the Resident Engineer's time, the Senior Construction Engineer/Bridge/District for the duration of the project.
- ** = Civil/Site Inspectors to be full time, provided by the city and report to the State's Resident Engineer. Inspectors will be qualified and prescreened by the State.
- ^ = The City of San Diego will provide a full time office tech to perform office assistance. The State will provide a half time office tech to train and run estimates.

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RESOLUTION NUMBER R-300607

ADOPTED ON JUNE 27, 2005

AUTHORIZING REIMBURSEMENT AGREEMENT AND CO-
OP FOR CLAIREMONT MESA BOULEVARD/SR-163
INTERCHANGE

WHEREAS, the City and General Dynamics Properties, Inc. entered into a Development Agreement and First Amendment to the Development Agreement [collectively, Development Agreement] on file in the Office of the City Clerk as Document Numbers 00-18848 and 00-18867, respectively, contemplating development of a mixed-use retail, commercial, and industrial/business park project on certain real property in the Kearny Mesa area of the City; and

WHEREAS, the Development Agreement requires LNR Kearny Mesa, Inc. [LNR] as successor-assignee to General Dynamics Properties, Inc. to advance fund certain improvements to the Clairemont Mesa Boulevard/SR-163 Interchange [Project]; and

WHEREAS, the Council of the City of San Diego authorized the City Manager, via Resolution No. R-299586, to execute for and on behalf of said City, an agreement in furtherance of LNR's advance funding obligations for the Project, under the terms and conditions set forth in the Assurance Agreement on file in the Office of the City Clerk as Document No. RR-299586-1 [Assurance Agreement]; and

WHEREAS, under the Assurance Agreement, LNR is obligated to advance fund \$10,900,000 for Phase I of the Project (ramp and bridge widening on the eastern side of the SR-163 Interchange); and

WHEREAS, the City entered into the Assurance Agreement based upon the State of California Department of Transportation's [Cal Trans's] approval of the \$10,900,000 estimate for construction of Phase I; and

WHEREAS, since execution of the Assurance Agreement by the Parties, Cal Trans has increased the cost estimate for Phase I of the Project by \$2,700,000 to reflect escalating construction prices and other factors for construction of Phase I of the Project; and

WHEREAS, to proceed with construction of Phase I of the Project, the City and LNR have worked in good faith to obtain additional funding to meet the revised cost estimate for construction of Phase I of the Project [Additional Funding]; and

WHEREAS, LNR's contribution towards the Additional Funding will be achieved by LNR's advance funding of the additional amount of \$1,000,000 [Additional Contribution] in consideration of the City performing its obligations as set forth in the Reimbursement Agreement on file in the Office of the City Clerk as Document No. RR _____, including, reimbursement by the City, conditioned upon the City's receipt of Trans Net Local Street and Road Program Funds for the Project, beginning in Fiscal Year 2008. NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a Reimbursement Agreement with LNR [Agreement], in furtherance of LNR's obligations under the Development Agreement, under the terms and conditions set forth in the Agreement on file in the Office of the City Clerk as Document No. RR _____, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

BE IT FURTHER RESOLVED, that the City Manager is authorized to enter into the cooperative agreement with the State of California for construction Phase I of the Interchange on file in the Office of the City Clerk as Documents No. RR-300670 together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Susan Y. Cola
Deputy City Attorney

SYC:kat
06/23/05
Aud.Cert: N/A
Or.Dept:E&CP
R-2005-1383