

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Transportation&Storm Water Dept	DATE: 11/25/2013
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SUBJECT: State Route 11 Freeway Maintenance Agreement between Caltrans and City of San Diego

PRIMARY CONTACT (NAME, PHONE): Linda Marabian,(619) 533-3082, MS 608	SECONDARY CONTACT (NAME, PHONE): Gary Chui, (619) 533-3770, MS 608
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**COMPLETE FOR ACCOUNTING PURPOSES**

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE):** No costs associated with this action.

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	McFadden, Kris	03/27/2014
Financial Management	CFO		
Equal Opportunity Contracting	DEPUTY CHIEF	Heinrichs, Tony	07/08/2014
Liaison Office	COO		
Comptroller	CITY ATTORNEY	Gerrity, Ryan	07/14/2014
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:     RESOLUTIONS     ORDINANCE(S)     AGREEMENT(S)     DEED(S)

1. Authorizing the Mayor, or his designee, to execute a Freeway Maintenance Agreement with Caltrans for State Route 11.

STAFF RECOMMENDATIONS:  
Approve the resolution

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

COUNCIL DISTRICT(S):    Alvarez (8)

<b>COMMUNITY AREA(S):</b>	Otay Mesa East
<b>ENVIRONMENTAL IMPACT:</b>	This activity is not a “project” and is not subject to CEQA pursuant to CEQA Guidelines Section 15060 (c)(3). This determination is predicated on Section 21065 of the guidelines, which defines “project” as an activity which may cause either a direct physical change in the environment or a reasonable indirect foreseeable physical change in the environment.
<b>CITY CLERK INSTRUCTIONS:</b>	Upon Council approval, please forward a copy of the Resolutions and signed agreements to Edric Doringo, Transportation Engineering & Operations Division, MS 608.

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 11/25/2013

ORIGINATING DEPARTMENT: Transportation&Storm Water Dept

SUBJECT: State Route 11 Freeway Maintenance Agreement between Caltrans and City of San Diego

COUNCIL DISTRICT(S): Alvarez (8)

CONTACT/PHONE NUMBER: Linda Marabian/(619) 533-3082, MS 608

**DESCRIPTIVE SUMMARY OF ITEM:**

This action is to approve a freeway Maintenance Agreement between Caltrans and the City of San Diego for Segment 1 of the State Route 905/State Route 11 freeway-to-freeway connectors up to Enrico Fermi Drive, which will span over Sanyo Avenue. This Freeway Maintenance Agreement memorializes the roles and responsibilities in regards to executing future maintenance and improvements for the portion of Sanyo Avenue that is within the State right of way.

**STAFF RECOMMENDATION:**

Approve the resolution

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

SANDAG and Caltrans, along with key local, state, and federal agencies in the United States and Mexico, are progressing with a plan to improve border crossings in the southern San Diego/Baja California region. The proposed State Route 11 (SR 11) and Otay Mesa East Port of Entry (POE) project will improve the efficient movement of people and goods between the United States and Mexico.

The proposed improvements are broken down into 3 segments. Segment 1 will construct the SR 905/SR 11 freeway-to-freeway connectors up to Enrico Fermi Drive. Segment 2 will build the remaining portion of SR 11 (from Enrico Fermi to the POE) and the proposed Commercial Vehicle Enforcement Facility. Segment 3 will construct the Port of Entry.

It is the policy of the State of California Department of Transportation (Caltrans) to maintain freeways and State highways and their bridge structures, and for local jurisdictions to assume the responsibility of the street surfaces of local roads which cross over or under the State facility within State right of way. Freeway Maintenance Agreements memorialize these responsibilities.

Segment 1 of the project is currently under construction. This is the SR 905/SR 11 freeway-to-freeway connectors up to Enrico Fermi Drive. This segment of the freeway will span over Sanyo Avenue. As shown in exhibit A of the SR-11 Freeway Maintenance Agreement, a portion of Sanyo Avenue will be within the Caltrans Right of Way. This Freeway Maintenance Agreement provides the framework and protocol between the agencies by defining roles, responsibilities, and processes in regards to executing future maintenance and improvements for the portion of Sanyo Avenue that is within the State right of way.

**FISCAL CONSIDERATIONS:**

No funding is required for this action.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):**

N/A

**PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):**

The State Route 11 Cooperative and Utility Agreements between Caltrans and City of San Diego was heard at the NR&C Committee meeting on October 16, 2013 and forwarded to the full City Council with a recommendation to approve. This action was approved by Council on December 10, 2013, Resolution number 308602.

The State Route 11 Freeway Maintenance Agreement will be presented before the SG&LU committee.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Caltrans will provide and conduct community public outreach efforts throughout their project endeavors.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

City of San Diego, CALTRANS, FHWA, SANDAG, Otay Mesa East

McFadden, Kris

Originating Department

Heinrichs, Tony

Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO

**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

DATE:

July 1, 2014

SUBJECT: State Route 11 Freeway Maintenance Agreement between Caltrans and City of San Diego

**GENERAL CONTRACT INFORMATION**

Recommended Agency: State of California Department of Transportation (Caltrans)

Amount of this Action: N/A

Funding Source: N/A

Goal: N/A

**SUBCONTRACTOR PARTICIPATION**

There is no subcontractor participation associated with this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Caltrans is a Government Agency, and as such, is exempt from submitting Work Force Reports. Refer to San Diego Municipal Code Section 22.2703 (b).

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708).

This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

This action is to approve a freeway Maintenance Agreement with Caltrans for State Route 905/State Route 11. No Costs associated with this action.

KP

**FREEWAY MAINTENANCE AGREEMENT  
WITH CITY OF SAN DIEGO**

THIS AGREEMENT is made and entered into in duplicate, effective this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the State of California, acting by and through its Department of Transportation, hereinafter referred to as "STATE," and the City of San Diego, hereinafter referred to as "CITY," and collectively referred to as "PARTIES."

**WITNESSETH:**

- A. WHEREAS, on April 3, 2006, a Freeway Agreement was executed between the CITY and STATE, wherein the PARTIES consented to certain adjustments of the local street and road system required for the development of that portion of State Highway Route 11 (SR-11) within the jurisdictional limits of the CITY as a freeway; and
- B. WHEREAS, recent adjustments to said freeway have now been completed, or are nearing completion, and the PARTIES hereto mutually desire to clarify and revise the division of maintenance, as defined in section 27 of the California Streets and Highways Code, and their respective responsibilities as to separation structures and local CITY streets and roads, or portions thereof, and areas lying within or outside those modified freeway limits; and
- C. WHEREAS, pursuant to Section 1 of the above April 3, 2006 Freeway Agreement, CITY has assumed or will assume control and maintenance over each of the affected relocated or reconstructed CITY streets, except for those portions adopted as a part of the freeway proper.

**NOW THEREFORE, IT IS AGREED:**

- 1. CITY agrees to continue their control and maintenance of each of the affected, relocated, or reconstructed CITY streets and roads as shown on that plan map attached hereto, marked Exhibit "A," and made a part hereof by this reference.

2. STATE agrees to continue control and maintenance of those portions adopted as a part of SR-11 proper as shown Exhibit "A."
3. When a planned future improvement has been constructed and/or a minor revision has been effected within the limits of the freeway herein described which will affect the PARTIES' division of maintenance responsibility as described herein, STATE will provide a new dated and revised Exhibit "A," which will be made a part hereof by an amendment to this Agreement, which will thereafter supersede the attached original Exhibit "A" and become part of this Agreement.
4. CITY and STATE agree to accept their respective operational and maintenance responsibilities and related associated costs thereof in the event jurisdictional boundaries of the PARTIES should change and Exhibit "A" is amended to reflect those changes.
5. CITY must obtain the necessary Encroachment Permits from STATE's District 11 Encroachment Permit Office prior to entering STATE right of way to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.
6. VEHICULAR AND PEDESTRIAN UNDERCROSSINGS:
  - a) STATE will maintain the structure proper of all STATE-constructed vehicular and pedestrian undercrossings of STATE freeways while the roadway sections, including the traveled way, shoulders, curbs, sidewalks, wall surfaces (including eliminating graffiti), drainage installations, lighting installations, and traffic service facilities that may be required for the benefit or control of traffic using that undercrossing will be maintained by CITY.
  - b) CITY will request STATE's District Transportation Permit Engineer to issue the necessary Encroachment Permit for any proposed change in minimum vertical clearances between the traveled way portion of the underroadway surface and the Structure that results from modifications to the underroadway (except when said modifications are made by STATE). If the planned modifications will result in a reduction in the minimum clearance within the traveled way, an estimate of the clearance reduction must be provided to STATE's District Transportation Permit Engineer prior to starting work. Upon completion of that work, a clearance diagram will be furnished to STATE's District Transportation Permit Engineer that shows revised minimum clearances for all affected

movements of traffic, both at the edges of the traveled way and at points of minimum clearance within the traveled way.

7. WALLS:

Responsibility for debris removal, cleaning, and painting to keep CITY's side of any wall structure free of debris, dirt, and graffiti shall not lie with STATE.

8. LANDSCAPED AREAS ADJACENT TO CROSSING STRUCTURES

Responsibility for the maintenance of any plantings or other types of roadside development lying outside of the fenced right of way area reserved for exclusive freeway use shall lie with the CITY and not with STATE.

9. LEGAL RELATIONS AND RESPONSIBILITIES:

a) 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 STATE highways and local facilities different from the standard of care imposed by law.

b) 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, under or in connection with any work, authority, or jurisdiction conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify, and save harmless CITY and all of their 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, and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

c) 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 under or in connection with any work, authority, or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify, and save harmless STATE and all of 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 under this Agreement.

d) Labor Code Compliance / Prevailing Wages:

When required by law, work performed on this Project is done under contract and falls within the Labor Code Section 1720(a)(1) definition of “public work” in that it is construction, alteration, demolition, installation, repair, or maintenance, the CITY must conform to the provisions of Labor Code Sections 1720 through 1815, all applicable regulations and coverage determinations issued by the Director of Industrial Relations. When required by law, CITY agrees to include Prevailing Wage requirements in its contracts for public works. Work performed by CITY’s own forces is exempt from the Labor Code’s Prevailing Wage requirements.

e) Prevailing Wage Requirements in Subcontracts:

When required by law, CITY shall require its contractors to include Prevailing Wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a “public work” as defined in the Labor Code section 1720(a)(1). When required by law, these subcontracts shall include all Prevailing Wage requirements set forth in CITY’s contracts.

f) Insurance:

CITY and their 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 State of California, its officers, agents, and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate. Coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE that shall be delivered to STATE with a signed copy of this Agreement.

10. EFFECTIVE DATE:

This Agreement shall be effective upon the date appearing on its face and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the parties or until terminated by STATE for cause. It being understood and agreed, however, that the execution of this Freeway Maintenance Agreement shall not affect any pre-existing obligations of CITY to maintain other designated areas until a written notice from STATE has been issued that work in such areas, which CITY has agreed to maintain pursuant to the terms of a Freeway Agreement, has been completed.

*The PARTIES are empowered by Street and Highways Code Section 114 & 130 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.*

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

**CITY OF SAN DIEGO**

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

BY \_\_\_\_\_  
MAYOR

MALCOLM DOUGHERTY  
Director of Transportation

ATTEST:

BY \_\_\_\_\_  
CITY Clerk

BY \_\_\_\_\_  
District Division Chief  
Maintenance, District 11

APPROVED AS TO FORM:

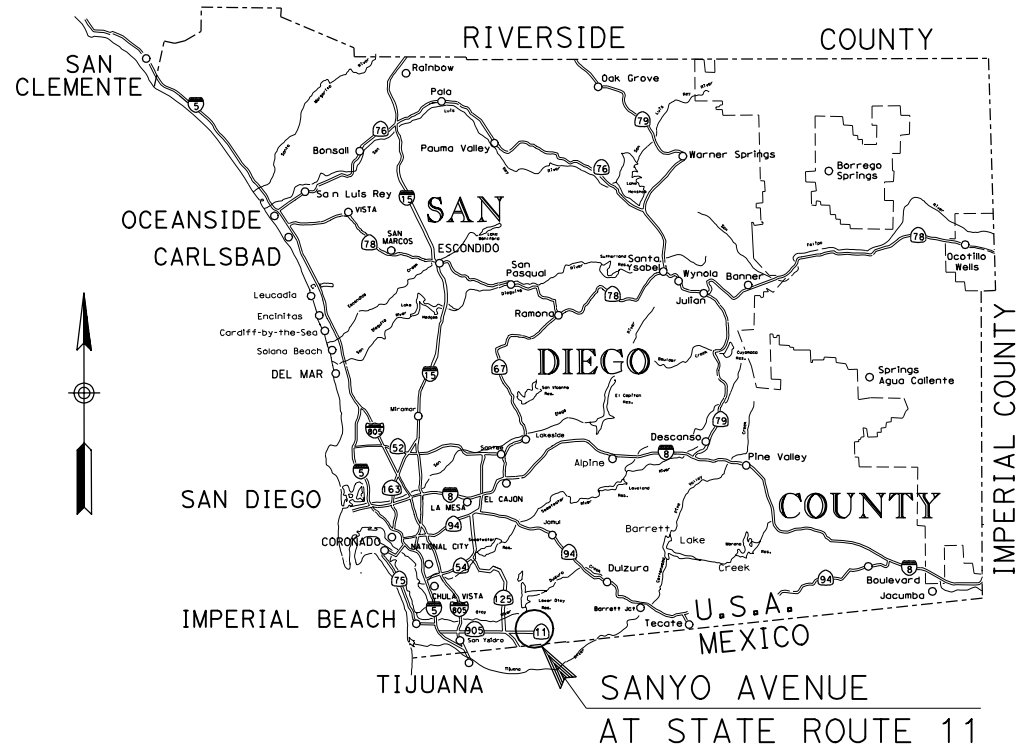
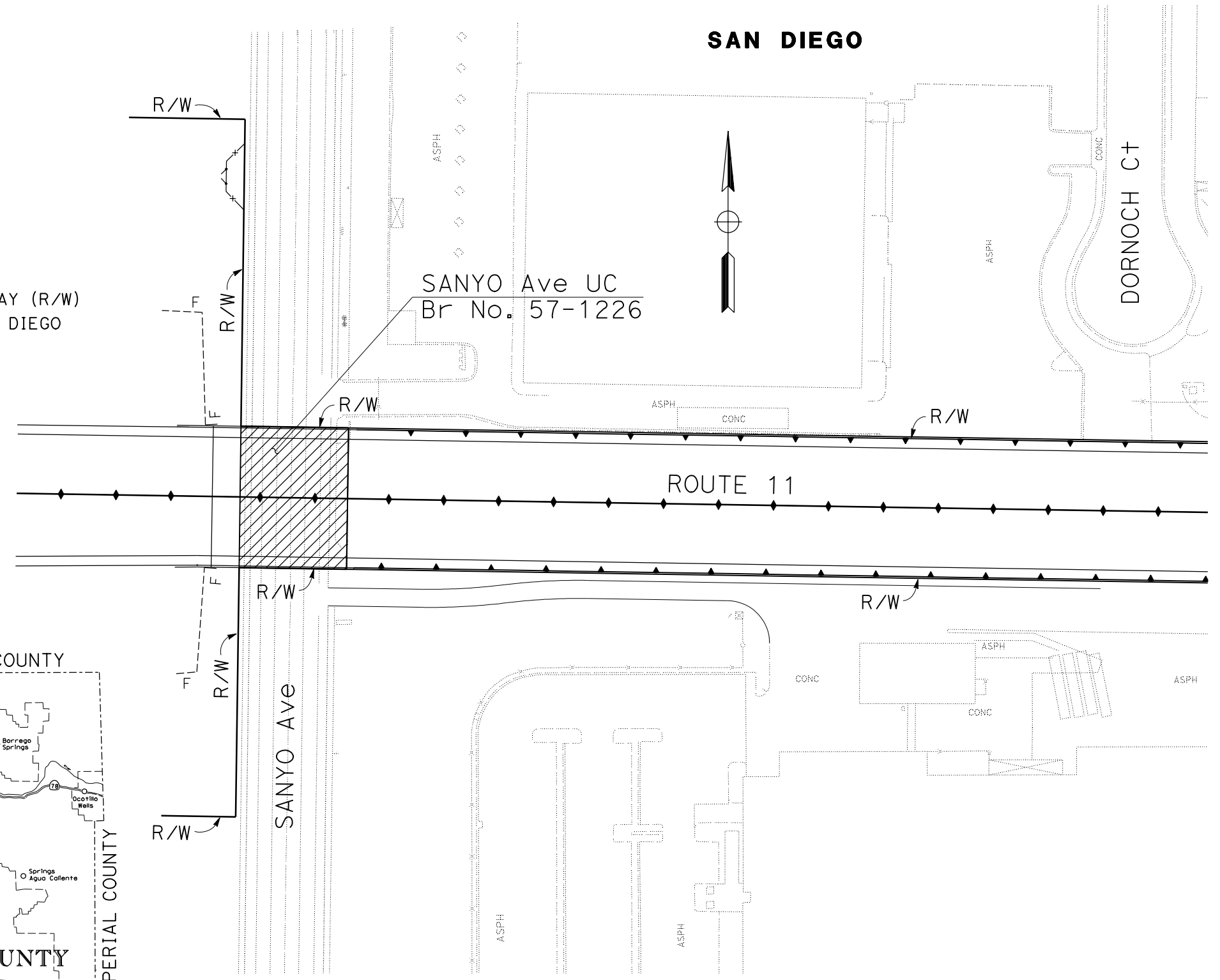
BY \_\_\_\_\_  
CITY Attorney

BY \_\_\_\_\_  
Legal Attorney\*\*  
Department of Transportation

*\*\*Approval by STATE'S Attorney is not required unless changes are made to this form, in which case, the draft will be submitted to Headquarters for review and approval by STATE's Attorney as to form and procedures.*

DIST.	CO.	ROUTE	POSTMILE
11	SD	11	0.82
FMA 11-8384		(11/28/12)	

 AREA WITHIN CALTRANS RIGHT OF WAY (R/W) TO BE MAINTAINED BY CITY OF SAN DIEGO



AREA MAP

**FREWAY MAINTENANCE AGREEMENT  
EXHIBIT "A"**

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING A FREEWAY MAINTENANCE  
AGREEMENT BETWEEN CALTRANS AND THE CITY OF  
SAN DIEGO FOR STATE ROUTE 11.

WHEREAS, SANDAG and Caltrans, along with key local, state, and federal agencies in the United States and Mexico, are progressing with a plan to improve border crossings in the southern San Diego/Baja California region and the proposed State Route 11 (SR-11) and Otay Mesa East Port-of-Entry (POE) (Project) will improve the efficient movement of people and goods between the United States and Mexico; and

WHEREAS, the proposed improvements are broken down into 3 segments in which Segment 1 will construct the SR-905/SR-11 freeway-to-freeway connectors up to Enrico Fermi Drive, Segment 2 will build the remaining portion of SR-11 (from Enrico Fermi to the POE) and the proposed Commercial Vehicle Enforcement Facility and Segment 3 will construct the Port-of-Entry; and

WHEREAS, it is the policy of the State of California Department of Transportation (Caltrans) to maintain freeways and State highways and their bridge structures, and for local jurisdictions to assume the responsibility of the street surfaces of local roads which cross over or under the State facility within the State right-of-way and Freeway Maintenance Agreements memorialize these responsibilities; and

WHEREAS, Segment 1 of the project is currently under construction which is the SR-905/SR-11 freeway-to-freeway connectors up to Enrico Fermi Drive and this segment of the freeway will span over Sanyo Avenue as shown in exhibit A of the SR-11 Freeway Maintenance Agreement, which a portion of Sanyo Avenue will be within the Caltrans Right-of-Way.

WHEREAS, this Freeway Maintenance Agreement provides the framework and protocol between the agencies by defining roles, responsibilities, and processes in regards to executing future maintenance and improvements for the portion of Sanyo Avenue that is within the State Right-of-Way; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized to execute a Freeway Maintenance Agreement with Caltrans and the City of San Diego for the State Route 11.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Ryan P. Gerrity  
Deputy City Attorney

RPG:cw  
07/14/14  
Or.Dept: Transportation & Storm Water Dept.  
CC No.: N/A  
Doc. No. 822035

I hereby certify that the foregoing Resolution 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)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor