



Real Estate Assets Department

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LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



CITY OF SAN DIEGO LICENSE AGREEMENT

THIS CITY OF SAN DIEGO LICENSE AGREEMENT ("License") is entered into by and between the City of San Diego, a California municipal corporation ("CITY" or "LICENSOR"), and the California Department of Transportation, a State public agency ("LICENSEE"), to be effective as of Sept. 26, 2022 (the "Effective Date"), once signed by the parties and approved by the San Diego City Attorney. LICENSOR and LICENSEE are sometimes referred to in this License each individually as a "Party" or collectively as the "Parties."

RECITALS

- A. LICENSEE is constructing a Class I shared use, 12-foot wide concrete and hot-mixed asphalt (HMA) pathway, which is connecting Old Sorrento Valley Road to the existing SR-56 bike path. The new path will cross under the I-5/ Carmel Creek Bridges and the I-5 (northbound)/SR-56 (eastbound) Bridge.
- B. The project is identified as Class I Bike Path connection between Sorrento Valley Road and State Route 56 bike path and includes plant establishment and biological mitigation and weeding ("Project").
- C. An EIR approved October 23, 2013. A Categorical Exemption approved May 7, 2019. And a NEPA/CEQA Re-validation approved February 17, 2021. SCH# 2004101076. (collectively the "Project EIR").
- D. LICENSOR is the fee owner of certain vacant real property identified as Assessor Parcel Numbers ("APN") 307-390-06 located in San Diego, California, which is dedicated as open space park property under San Diego Resolution R-307952, ("License Area"), as more particularly depicted in Exhibit A, attached to this License.
- E. In order to carry-out the Project, LICENSEE desires to use the License Area to construct the bike path connecting the west end of the SR-56 Bike Path to Old Sorrento Valley Road (Carmel Valley Creek bike path) and associated appurtenances. ("License Use").
- F. LICENSOR is willing, subject to the terms and conditions of this License, to grant LICENSEE the non-exclusive right to use the License Area for the License Use.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the Parties agree as follows:

1. **License.** LICENSOR grants to LICENSEE, and its officers, employees, agents, contractors, and subcontractors a license for the non-exclusive use of the License Area to construct the Project(.
2. **Term.** Seven (7) years, commencing on January 1, 2023 until December 31, 2030.
3. **Entry and Use.** Subject to the terms and conditions of this License, LICENSOR grants permission to LICENSEE to enter upon and use the License Area solely for the License Use.
4. **License Use.** LICENSEE may use the License Area solely for the License Use and for no other purpose without LICENSOR's prior written consent in each instance.
5. **License Fee.** The license fee is waived, because the Project serves a public purpose by providing a public bike/pedestrian path that will go underneath I-5, crossing Carmel Valley Creek and connecting the west end of the SR-56 Bike Path to Old Sorrento Valley Road (Carmel Valley Creek bike path) in connection with the Coastal Rail Trail and I-5 North Coast Bike trail. This bike path serves several coastal cities and is a major commuting and recreational bicycling route.
6. **Governmental Approvals.** By entering into this License, neither LICENSOR nor LICENSOR's City Council is obligating itself to LICENSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LICENSEE's entry onto, use, development, maintenance or restoration of the License Area or the Project. "Discretionary action" includes, without limitation, re-zonings, variances, environmental clearances, and all other required governmental approvals.
7. **LICENSOR's Consent, Discretion.** LICENSOR's consent or approval under this License shall mean the written consent or approval of the Mayor of San Diego, or designee ("Mayor"), unless otherwise required by law or expressly provided for in this License, and shall be made in the Mayors discretion, subject to all applicable laws, rules, regulations, and directives of competent governmental authorities.
8. **Revocable License.** This License is not a lease. It is a license to use LICENSOR property, and may be revoked at will by LICENSOR, in its sole discretion as follows: (a) LICENSEE's breach or default of any of LICENSEE's obligations under this License, or in case of an emergency, immediately upon written notice delivered to LICENSEE; and (b) LICENSOR's convenience, upon sixty (60) days prior written notice delivered to LICENSEE. LICENSOR shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by LICENSEE as a result of such revocation or the termination of this License.

9. **LICENSEE's Waiver.** LICENSEE expressly waives any claim against LICENSOR and its elected officials, officers, employees, representatives and agents for any burden, expense, or loss which LICENSEE incurs as a result of LICENSOR's revocation or early termination of this License.
10. **No Holdover.** If LICENSEE continues to occupy or use the License Area after the expiration or earlier termination of this License, such occupancy or use shall ~~renew or~~ ^{NOT} extend this License, or give LICENSEE any rights in or to the License Area. If LICENSEE continues to occupy or use the License Area after the expiration or earlier termination of this License, LICENSOR may demand and receive from LICENSEE rent for the License Area at a mutually agreed upon rental rate or calculated at a market rental rate, either of which shall be determined as of the date of the expiration or termination of this License by qualified City staff. LICENSOR's acceptance of such rent shall neither constitute a renewal or extension of the license, nor give LICENSEE any rights in or to the License Area.
11. **Termination.** LICENSEE may terminate this License for any reason upon thirty (30) days prior written notice delivered to LICENSOR.
12. **Restoration of License Area.** Except as otherwise provided in this License, upon termination of this License by either Party, LICENSEE shall restore the License Area to its condition prior to LICENSEE'S entry upon or use of the License Area. Prior to the expiration of this License and upon completion of the Project, LICENSEE shall substantially restore the License Area , including removal of all garbage, debris, construction equipment placed or created on the Property by any LICENSEE Party.
13. **Superior Interests.** This License is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the License Area, whether or not of record. LICENSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the License Area, relative to any such superior interest. If LICENSEE's use of the License Area is or becomes inconsistent or incompatible with a preexisting, superior interest, LICENSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest. LICENSEE agrees that it shall hold LICENSOR harmless and that LICENSOR shall not have any liability to LICENSEE in the event that LICENSEE's use of the License Area becomes inconsistent or incompatible with a superior interest, regardless of whether that superior interest was disclosed by the LICENSOR prior to the Effective Date of this License.
14. **LICENSEE's Management of License Area and Construction Activities.**
- a. Prior to LICENSEE's commencement of the License Use, LICENSEE shall videotape or otherwise document, to LICENSOR's reasonable satisfaction, the existing condition of the Property and provide the documentation to LICENSEE.

The video or other documentation shall serve as a baseline for LICENSEE's obligations within the License Area.

- a. LICENSOR may demand work stoppage due to failure of LICENSEE to provide and maintain safe conditions as required under local, state and federal law and regulations, related to the License Use.
- b. LICENSEE shall comply with LICENSOR's Noise Abatement and Control Ordinance (San Diego Municipal Code section 59.5.0101 *et seq.*, as may be amended from time to time).
- c. LICENSEE shall not cause disruption or interruption in any and all utility services provided to the License Area at any time, without proper notification.
- d. The License Area will be revegetated in accordance with LICENSEE's revegetation plans and environmental permits, and to LICENSOR's reasonable satisfaction.
- e. LICENSOR may reasonably amend at any time this Section 12 to address compliance of laws and regulations and public health and safety in its sole discretion.

15. Maintenance of the License Area. Notwithstanding anything to the contrary in this License, LICENSEE shall maintain the License Area and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to LICENSOR. As appropriate, LICENSEE shall fence and screen the License Area to LICENSOR's reasonable satisfaction. If certain areas are not practical to fence, fencing may be waived by agreement of the parties. LICENSEE shall keep the License Area free and clear of rubbish, debris, litter, weeds and brush to LICENSOR's reasonable satisfaction. LICENSOR shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the License Area.

16. Entry and Inspection. LICENSOR may at all times enter and inspect the License Area.

17. Utilities. LICENSEE shall order, obtain and pay for all temporary utilities and all utility service and installation charges in connection with its use of the License Area.

18. Improvements and Personal Property.

- a. Improvements. Except for the License Use as set forth in this License, LICENSEE shall not construct any improvements, structures or installations on the License Area, and shall not alter the License Area without the express written consent of LICENSOR. Except as required by law, LICENSOR shall not be obligated to make any repair or assume any expense for any improvements or alterations to the License Area made by LICENSEE or LICENSEE Party. Unless

as otherwise agreed to in writing by LICENSOR or as otherwise required by this License, upon expiration or earlier termination of this License, LICENSEE shall remove LICENSEE Improvements; this requirement to remove said LICENSEE Improvements shall apply to LICENSEE whether LICENSEE constructed or installed said LICENSEE Improvements during the Term of this License or during any previous time period wherein LICENSEE PARTIES were authorized to use the License Area. LICENSEE shall, at LICENSEE's sole cost and expense, remove LICENSEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this License. LICENSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of LICENSEE Improvements as required by this License. If LICENSEE fails to remove LICENSEE Improvements as required, LICENSOR may, at its option, remove them at LICENSEE's sole cost and expense. Notwithstanding the foregoing, LICENSOR may, upon notice to LICENSEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any LICENSEE Improvements as of the expiration or earlier termination of this License, at no cost to LICENSOR. If LICENSOR elects to assume ownership of all or any LICENSEE Improvements, LICENSEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to effect such transfer of ownership to LICENSOR.

- b. Personal Property. LICENSEE shall remove from the License Area all LICENSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property brought to or placed upon the License Area by LICENSEE, upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this License. Any such items which LICENSEE fail to so remove shall be deemed abandoned and become LICENSOR's property free of all claims and liens, or LICENSOR may, at its option, remove such items at LICENSEE's sole cost and expense. LICENSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the License Area.
- c. Post-License License. LICENSOR grants to LICENSEE permission to enter upon and occupy the License Area, under the same terms and conditions of this License, after the expiration or earlier termination of this License solely for the purpose of removing LICENSEE Improvements and personal property as provided by this License. This provision shall survive the expiration or earlier termination of this License.
- d. Late Removal. Notwithstanding any provision of this License to the contrary, LICENSEE shall pay rent to LICENSOR for any period of time after the expiration or termination of this License needed to remove LICENSEE Improvements or personal property as required by this License, whether by LICENSOR or LICENSEE. Such rent shall be mutually agreed upon by the

parties or determined as of the date of the expiration or termination of this License, either of which shall be determined by qualified City staff.

19. **Insurance.** LICENSEE represents and warrants to LICENSOR that its entry upon and use of the License Area governed under this License are in furtherance of the Project. LICENSEE shall deliver to LICENSOR, prior to the Effective Date and shall maintain the same throughout the Term, a current certificate of insurance and all relevant endorsements for each of the following:

- a. Commercial General Liability Insurance ("CGL") written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an ISO form CA 00 01 12 90 or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work under this License.
- c. Workers' Compensation Insurance, as required by applicable laws, for all of LICENSEE employees who are subject to this License, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- d. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by LICENSEE or on LICENSEE's behalf; (b) LICENSEE's products; (c) LICENSEE's work, including without limitation LICENSEE's completed operations performed by or on LICENSEE's behalf; or (d) the License Area.
- e. Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the

named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LICENSEE's insurance and shall not contribute to it.

- f. Severability of Interest. Each policy must be endorsed to provide that LICENSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- g. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this License shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by LICENSOR. LICENSOR may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to LICENSOR's approval in each instance.
- h. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LICENSEE and must be disclosed and acceptable to LICENSOR at the time evidence of insurance is provided.
- i. Continuity of Coverage. All policies shall be in effect on or before the Effective Date, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LICENSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this License. LICENSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon LICENSOR's request. If insurance lapses or is discontinued for any reason, LICENSEE shall immediately notify LICENSOR and shall immediately obtain replacement insurance as soon as possible.
- j. Modification. To assure protection from and against the kind and extent of risk existing with the License Use, LICENSOR, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LICENSEE thirty (30) days prior written notice. LICENSEE shall also obtain any additional insurance required by LICENSOR for new improvements, changed circumstances, or LICENSOR's reasonable re-evaluation of risk levels related to the License Use.

- k. **Accident Reports.** LICENSEE shall immediately report to LICENSOR any accident causing property damage or injury to persons on the Premises or otherwise related to the License Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
 - l. **Causes of Loss - Special Form Property Insurance.** LICENSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LICENSEE's insurable property related to the License Use of the Premises under this License or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LICENSEE shall deliver a certificate of such insurance to LICENSOR's Department of Real Estate and Airport Management.
20. **Self-Insurance.** Notwithstanding the insurance provision of this section 18 to the contrary, LICENSEE shall have the right to self-insure with respect to any of the insurance required to be carried by LICENSEE under section 18, provided that (a) LICENSEE has not assigned its interest in this Agreement to any other entity; (b) LICENSEE governs and manages (either internally or through a third party administrator) its self-insurance program, and maintains sufficient reserves on its balance sheet committed to its self-insurance program liabilities, in a manner consistent with comparable programs managed by cities of comparable size and population; and (c) applicable laws(s) do not prohibit or render unenforceable LICENSEE's indemnification obligations under this Agreement.
21. **Indemnification & Hold Harmless.** LICENSEE shall protect, defend, indemnify and hold LICENSOR and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LICENSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this License or LICENSEE's entry upon, use, development, maintenance or restoration of the License Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LICENSEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or intentional misconduct of LICENSOR and its elected officials, officers, employees, representatives and agents. LICENSOR may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If LICENSOR chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LICENSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

22. **Compliance with Laws.** LICENSEE shall at all times in its use, occupancy, maintenance, and restoration of the License Area comply with all applicable laws, rules, regulations, and directives of competent governmental authorities, and at LICENSEE's sole cost and expense. At least annually, LICENSEE shall deliver to LICENSOR copies of all documentary evidence of such compliance received by or otherwise available to LICENSEE (e.g., validation of periodic inspections, if applicable) within five (5) business days of LICENSEE receiving the same.
23. **Permits & Approvals.** LICENSEE, at LICENSEE's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state, and federal authorities, including without limitation from LICENSOR, and LICENSEE shall conduct, carryout, and complete all License Uses in accordance with the terms and conditions of those permits.
24. **California Public Records Act.** LICENSOR shall determine, in its sole discretion, whether this License or information provided to LICENSOR by LICENSEE under this License is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). Upon LICENSOR's request, LICENSEE shall provide LICENSOR with specific and detailed legal grounds, including any applicable case law, upon which LICENSOR may rely, in LICENSOR's sole discretion, for withholding any information requested under the CPRA. If LICENSOR withholds disclosure of information in reliance on such legal analysis provided by LICENSEE, LICENSEE shall protect, defend, indemnify and hold LICENSOR and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from LICENSOR and all costs incurred by LICENSOR associated therewith, and shall defend, at LICENSEE's sole expense, any action brought against LICENSOR resulting from LICENSOR's nondisclosure of the information. LICENSOR may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If LICENSOR chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LICENSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- a. LICENSOR shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LICENSEE as a result of LICENSOR's disclosure or non-disclosure of this License or LICENSEE information requested under the CPRA. LICENSEE EXPRESSLY WAIVES ANY CLAIM AGAINST LICENSOR AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LICENSEE INCURS AS A RESULT OF LICENSOR'S DISCLOSURE OR NON-DISCLOSURE OF THIS LICENSE OR ANY LICENSEE INFORMATION REQUESTED UNDER THE CPRA.
25. **No Discrimination.** LICENSEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender identity, gender expression, sexual

orientation, medical status, national origin, ethnicity, age, marital status or disability in LICENSEE's use of the License Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.

26. **Equal Opportunity.** LICENSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LICENSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LICENSEE shall cause the foregoing provisions to be inserted in all of LICENSEE's contracts for work related to this License so that such provisions will be binding upon each of LICENSEE's contractors. LICENSEE shall fully cooperate with any investigation conducted by LICENSOR under LICENSOR'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon LICENSOR's request LICENSEE shall submit a current Workforce Report. LICENSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this License and debarment from participating in LICENSOR contracts for a period of not less than one (1) year.
27. **Equal Benefits.** LICENSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. LICENSEE shall certify that it will maintain such equal benefits throughout the term of this License. LICENSEE's failure to maintain equal benefits shall be a material breach of this License.
28. **Disabled Access Compliance.** LICENSEE will, as applicable to the License Area and LICENSEE's possession, use, and occupancy of the License Area, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, LICENSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LICENSEE's compliance shall include without limitation the following:
- a. LICENSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;

- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LICENSEE;
- c. LICENSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- d. Where required by law, LICENSEE shall, at LICENSEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the License Area which deny access to disabled persons; and
- e. LICENSEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.
- f. LICENSEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. LICENSEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this License.

29. LICENSOR Employee Participation Policy. LICENSOR may unilaterally and immediately terminate this License if LICENSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a LICENSOR officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LICENSEE for this License. It is not the intent of this policy that these provisions apply to members of the City Council.

30. LICENSEE's Risk. LICENSEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with LICENSEE's use or occupancy of the License Area and any damages to the improvements on, under or in the vicinity of the License Area resulting directly or indirectly from LICENSEE's use.

31. No Nuisance. LICENSEE shall not use the License Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.

32. Assignment and Sublicense. LICENSEE shall not assign or sublicense any rights granted by this License or any interest in this License without LICENSOR's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this License.

33. Signs. LICENSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without LICENSOR's prior written consent. If any such unauthorized item is found on the License Area, LICENSEE shall remove the item at its expense within twenty-four (24) hours after

notice by LICENSOR, or LICENSOR may summarily remove the item at LICENSEE's cost.

34. **Encumbrances.** LICENSEE shall keep the License Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with LICENSEE's use or occupancy of the License Area. LICENSEE shall protect, defend, indemnify and hold LICENSOR harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property in connection with such encumbrances and/or liens, including without limitation LICENSEE'S failure or the failure of any contractor or subcontractor hired by LICENSEE to pay any person or persons entitled to lien or encumber the Property under the California Civil Code.
35. **Taxes.** If applicable, LICENSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon LICENSEE or the License Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by LICENSEE, or levied by reason of LICENSEE's occupancy, use, development, maintenance or restoration of the License Area, including without limitation licensing and permitting costs and fees. LICENSEE acknowledges that this License may create a possessory interest subject to property taxation, and that LICENSEE may be subject to the payment of taxes levied on that interest. LICENSEE shall pay all such possessory interest taxes. LICENSEE's payment for such taxes, fees and assessments shall not reduce any payment due LICENSOR.
36. **Hazardous Substances.**
 - a. **Hazardous Substances.** LICENSEE PARTIES shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the License Area. LICENSEE PARTIES shall not install, store, utilize, generate or sell any Hazardous Substance on the License Area without LICENSOR's prior written consent. LICENSEE PARTIES shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
 - b. **Release.** A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a hazardous substance.

- c. Hazardous Substance. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- d. Remediation. If LICENSEE PARTIES' occupancy, use, development, maintenance or restoration of the License Area results in a release of a Hazardous Substance, LICENSEE shall pay all costs of remediation and removal to the LICENSOR's satisfaction for unrestricted reuse of the License Area, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- e. Removal. If LICENSEE or LICENSEE PARTIES have received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances or hazardous wastes to the License Area, LICENSEE and/or LICENSEE PARTIES shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment, or device from the License Area immediately upon or prior to the expiration or earlier termination of this License. Upon LICENSOR's request, LICENSEE shall deliver to LICENSOR true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment, or devices from the License Area. LICENSEE shall be responsible for any and all costs incurred by LICENSOR to remove any container, equipment or device requiring disposal or removal as required by this provision.
- f. Indemnity. LICENSEE shall protect, defend, indemnify and hold LICENSOR harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LICENSEE PARTIES' occupancy, use, development, maintenance or restoration of the License Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary LICENSOR response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LICENSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- g. Notice of Release. If LICENSEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the License Area, LICENSEE shall immediately notify LICENSOR and any appropriate regulatory or reporting agency in compliance with California Code of Regulations Title 19 and all other applicable laws or regulations. LICENSEE shall deliver a written report thereof to LICENSOR within three (3) business days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LICENSEE knows or has reasonable

cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LICENSEE shall take all actions necessary to alleviate the danger. LICENSEE shall immediately notify LICENSOR in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the License Area.

- h. **Environmental Assessment.** Upon reasonable cause to believe that LICENSEE's occupancy, use, development, maintenance or restoration of the License Area ("LICENSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the License Area, LICENSOR may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LICENSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LICENSEE's Operations on, in, from or under the License Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the License Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes and estimates of the cost of such remediation or removal. LICENSEE shall cause, or if LICENSEE fails to do so within a reasonable period of time, as determined by LICENSOR in its sole discretion, LICENSOR may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the License Area and compliance with environmental law and regulations are achieved, and LICENSEE shall pay all costs and expenses therefor.

37. Storm Water Pollution Prevention Program_– Best Management Practices.

LICENSOR and LICENSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the License Area in a manner which aids in the protection of City's precious water resources. It is LICENSEE's responsibility to identify and implement BMPs consistent with Water Board Order 2012-0011-DWQ and NPDES Permit No. CA 000003.

- 38. Prevailing Wages.** California prevailing wage requirements apply to the License Use. LICENSEE must comply with state prevailing wage laws, including, but not limited to, those requirements set forth in **Exhibit B – Prevailing Wage Requirements**, attached hereto and incorporated herein by this reference. If the License Use is federally funded, LICENSEE shall comply with all applicable federal laws, including, but not limited to, minimum wage rates under the Davis-Bacon Act. Should there be any difference between the state or federal wage rates, including health and welfare funds for any given craft, mechanic, or similar classifications needed to execute the License Use, it shall be

mandatory upon LICENSEE, its contractors or subcontractors to pay the higher of the two rates.

39. **Waiver.** The property constituting the License Area is publicly owned and held in trust for the benefit of LICENSOR's citizens. LICENSOR's failure to insist upon the strict performance of any of LICENSEE's obligations under this License, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. LICENSOR's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by LICENSOR to constitute a valid and binding waiver. LICENSOR's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this License, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. LICENSOR's acceptance of any rents shall not be a waiver of any default preceding the rent payment. LICENSOR's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but LICENSOR may at any and all times require the cure of the default.
40. **Cumulative Remedies.** LICENSOR's rights and remedies under this License are cumulative and shall not limit or otherwise waive or deny any of LICENSOR's rights or remedies at law or in equity.
41. **Survival.** Any obligation which accrues under this License prior to its expiration or termination shall survive such expiration or termination.
42. **Joint and Several Liability.** If LICENSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LICENSEE under this License.
43. **No Affiliation.** Nothing contained in this License shall be deemed or construed to create a partnership, joint venture or other affiliation between LICENSOR and LICENSEE or between LICENSOR and any other entity or party, or cause LICENSOR to be responsible in any way for the debts or obligations of LICENSEE or any other party or entity.
44. **Entire Agreement.** This License constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this License. Any modification, alteration or amendment of this License shall be in writing and signed by all the parties hereto. Each party represents and warrants that this License is binding upon such party in accordance with its terms.
45. **Counterparts.** This License may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

46. **Notices.** Any notice required or permitted to be given under this License shall be in writing and may be served personally, by email, or delivered by United States mail, postage prepaid, and addressed to LICENSEE and to LICENSOR as follows:

To CITY: THE CITY OF SAN DIEGO
Attention: Director, Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020
Email: pmaus@san diego.gov

To CALTRANS:
STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Attn: Steve Aragon
4050 Taylor Street, MS 310
San Diego, CA 92110
(619) 930-7589
Email: steve.aragon@dot.ca.gov

47. **Authority to Contract.** Each individual executing this License on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this License on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

48. **Acceptance of License Area.** By signing this License, LICENSEE represents and warrants that it has independently inspected the License Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the License Area and its suitability for the License Use. LICENSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the License Area or its suitability for the License Use, and that LICENSEE is relying solely on its own and independent inspections, tests, investigations and observations of the License Area in entering into this License. LICENSEE accepts the License Area in its current condition. LICENSEE acknowledges and agrees that unless set forth in this License, LICENSOR has no obligation to improve, modify, repair, replace, alter or otherwise develop the License Area at any time either prior to, on or after the Effective Date. LICENSEE shall not hold LICENSOR responsible for any defects in the License Area. LICENSEE accepts and assumes all risk of harm to all persons and property,

including without limitation LICENSEE's employees, from any defects in the License Area, and shall be solely responsible therefor.

49. **Facsimile or Electronic Signatures.** The Parties agree: (a) to deliver and accept signatures on or under this License by facsimile, e-mail, or electronic means (including digital signatures); and (b) that signatures delivered by facsimile, e-mail, or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

IN WITNESS WHEREOF, this License is executed to be effective as of the Effective Date.

Approved as to form:

BY: John Frederick Smith

for GLENN MUELLER
ASSISTANT CHIEF COUNSEL

Date: 07/28/2022

California Department of Transportation (CALTRANS),
a State public agency

BY: Chris Schmidt

Name: Chris Schmidt,
Deputy District Director
Right of Way Division

Approved as to form:

MARA W. ELLIOTT, CITY
ATTORNEY

By: Katherine A. Malcolm
Katherine A. Malcolm (Sep 26, 2022 09:09 PDT)

Name: Katherine A. Malcolm

Title: Deputy City Attorney

Date: Sep 26, 2022

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: Penny Maus
Penny Maus (Sep 23, 2022 00:38 CDT)

Penny Maus
Director, Department of Real Estate and Airport
Management

Exhibit A: License Area

Exhibit B: Prevailing Wage Requirements

[illegible]

NT8

Exhibit B: Prevailing Wage Requirements

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Permit is subject to State prevailing wage laws. For construction work performed under this Permit cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Permit cumulatively exceeding \$15,000, the PERMITTEE and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the PERMITTEE and its contractors and subcontractors shall ensure that all workers who perform work under this Permit are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. PERMITTEE and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Permit. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Permit in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Permit, each successive predetermined wage rate shall apply to this Permit on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Permit, such wage rate shall apply to the balance of the Permit.

2. Penalties for Violations. PERMITTEE and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall .

be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. Payroll Records. PERMITTEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. PERMITTEE shall require its contractors and subcontractors to also comply with section 1776. PERMITTEE and its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. PERMITTEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. PERMITTEE and its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. PERMITTEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. PERMITTEE shall be held responsible for its compliance as well as the compliance of its contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. PERMITTEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Subcontracts. PERMITTEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. PERMITTEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Permit, PERMITTEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Permit."

8. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will instruct PERMITTEE to withhold contract payments pursuant to the agreement between PERMITTEE and PERMITTEE's contractors when payroll records are delinquent or deemed inadequate by the CITY or other

governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5.

9.1 Intentionally omitted.

9.2 A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3 PERMITTEE certifies that PERMITTEE has verified that all contractors or subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and PERMITTEE shall provide proof of registration to the CITY upon request.

ORIGINAL

11-SD-005
PM 32.6-32.8
MA 11-8463

**MAINTENANCE AGREEMENT WITH CITY OF SAN DIEGO
FOR SORRENTO VALLEY / CARMEL VALLEY CREEK BIKE PATH**

This Agreement is made and entered into in duplicate, effective this 18th day of November, 2020, 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, herein referred to as "CITY," collectively referred to as "PARTIES."

WITNESSETH:

- A. WHEREAS, CITY has agreed to the responsibility of maintaining the bike path at least partially within STATE Right-of-Way which were at least partially constructed under Caltrans Expenditure Authorization (EA) 2T3420 and EA 426500, as well as STATE encroachment permit 11-16-00-0125. The bike path and associated appurtenances are hereinafter referred to as the "PROJECT"; and
- B. WHEREAS, under terms of the encroachment permit, it is the CITY's responsibility to maintain the PROJECT; and
- C. WHEREAS, the PARTIES hereto mutually desire to identify and/or clarify the division of maintenance responsibilities, as defined in Section 27 of the California Streets and Highways Code, as to the area lying within or outside highway limits, in reference to the PROJECT; and
- D. WHEREAS, pertaining to I-5, there is an existing Freeway Maintenance Agreement numbered FMA 11-8026 between CITY and STATE; and this new Agreement is not meant to replace or supersede the earlier Agreement.

NOW THEREFORE, IT IS AGREED:

- 1. Exhibit 'A' consists of plan drawings or maps that delineate the areas within STATE Right-of-Way which are the responsibility of CITY to maintain in accordance with this Maintenance Agreement.
- 2. When a planned future improvement is constructed and/or a minor revision has been effected with STATE's consent or initiation within the limits of the PROJECT herein described which

Document No. 00-21233
Filed SEP 15 2020
Office of the City Clerk
San Diego, California

affects the PARTIES' division of maintenance responsibility as described herein, STATE will provide a new dated and revised Exhibit 'A' which will thereafter supersede the attached original Exhibit 'A' and thereafter become a part of this Agreement.

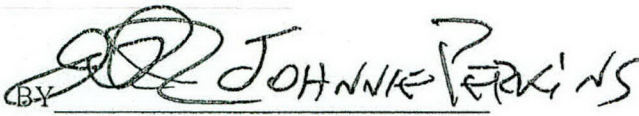
3. CITY and STATE agree to accept their respective operational and maintenance responsibilities and related associated costs thereof in the event jurisdictional boundaries of the PARTIES should change and Exhibit 'A' is amended to reflect those changes.
4. CITY must obtain an encroachment permit from STATE's District II Encroachment Permit Office prior to entering STATE Right-of-Way to perform MAINTENANCE responsibilities. CITY will submit a one-time encroachment permit application for routine MAINTENANCE as required by this Agreement and will submit individual encroachment permit applications for any substantive repair activities and obtain those necessary encroachment permits prior to the start of any non-MAINTENANCE work within the PROJECT. CITY contractors will also obtain encroachment permits prior to the start of any work within the PROJECT. These permits will be issued at no cost to CITY.
5. BICYCLE PATH:
CITY will maintain, at CITY expense, a safe facility for bicycle travel along the entire length of the PROJECT by providing sweeping, debris and graffiti removal, lighting facilities (if necessary), and all signage, bollards, striping, and pavement markings required for the direction and operation of the facility. In addition, CITY will maintain, at CITY expense, all fences, guard railing, drainage facilities, stream crossings, as well as slope and structural adequacy of the bicycle path located and constructed within STATE Right-of-Way.
6. BICYCLE / PEDESTRIAN UNDERCROSSING:
 - a) STATE will maintain the structure proper of all undercrossings of STATE highways while the undercrossing 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 under-roadway surface and the Structure that results from modifications to the under-roadway (except when said modifications are made by STATE). If the planned modifications will result in a reduction in the minimum

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.

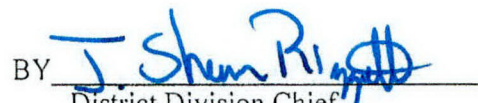
CITY OF SAN DIEGO
(CITY)

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY 
CITY Mayor

BOB FRANZOIA
Director of Transportation (Acting)

BY 
CITY Clerk

BY 
District Division Chief
Maintenance, District 11

APPROVED AS TO FORM:

BY 
CITY Attorney
Deputy City Attorney
Cassandra Mouglin

00-21233

October 19, 2020

ORIGINAL

11SD-15-3267328

EA: 2T342

Project Number: 1117000180

Agreement 11 - 0719

COOPERATIVE AGREEMENT

Local Contribution Only

This AGREEMENT, effective on January 28, 2020, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of San Diego, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

RECITALS

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code sections 114 and 130.
2. The term AGREEMENT, as used herein, includes this document and any associated attachments, exhibits, and amendments.
3. For the purpose of this AGREEMENT, connect at the most western termini of the State Route 56 Bike Path east of Interstate 5 (I-5) and pass under I-5 (Bridge #57-390) south of Carmel Creek Bridge and connect to the Old Sorrento Valley Road (Coastal Rail Trail and I-5 North Coastal Bike Trail), will be referred to hereinafter as PROJECT. This description only serves to identify the PROJECT. The project scope of work is defined in the appropriate authorizing documents per the Project Development Procedures Manual.
4. CITY will contribute an amount of \$2,250,000 to the PROJECT. Contributed funds will be used for the PROJECT.
5. PARTIES agree that funds will be contributed to the following PROJECT COMPONENTS:
 - CONSTRUCTION CAPITAL

312084

6. PARTIES hereby set forth the terms, covenants, and conditions for CITY's contribution toward the PROJECT.

ROLES AND RESPONSIBILITIES

7. CALTRANS is the SPONSOR and IMPLEMENTING AGENCY for the PROJECT.
8. CITY is a FUNDING PARTY contributing a fixed amount toward the PROJECT as shown in the FUNDING TABLE.
9. CALTRANS is responsible for completing all work for the PROJECT.

GENERAL CONDITIONS

10. All obligations of CALTRANS under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
11. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and Federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
12. 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 CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
13. This AGREEMENT is intended to be PARTIES' final expression and supersedes any oral understanding or writings pertaining to PROJECT.