

11/66600

DUPLICATE ORIGINAL

**WET UTILITY REIMBURSEMENT AGREEMENT
BETWEEN SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND CITY OF SAN DIEGO
REGARDING THE ELVIRA TO MORENA DOUBLE TRACK (EMDT) PROJECT**

UTILITY AGREEMENT NO. 5004566 DATE 9/22/15

The San Diego Association of Governments, a legislatively-created public agency, hereinafter called "SANDAG," proposes to realign four miles of the existing LOSSAN track between CP Elvira (MP 257.9) to CP Morena (MP260.5) to accommodate the construction of an adjacent second mainline track and proposes to construct a universal crossover and new signal at CP Rose, hereinafter called "PROJECT," and City of San Diego, hereinafter called "CITY", owns water and sewer facilities within the limits of the PROJECT.

SANDAG and CITY (referenced herein individually as "party" and collectively as "parties") hereby mutually agree that:

I. WORK TO BE DONE

SANDAG shall relocate CITY's water and sewer facilities as shown on SANDAG's construction contract plans for the PROJECT and as indicated in Exhibit "A", ("RELOCATION") which by this reference are made a part hereof. CITY hereby acknowledges review of SANDAG's plans for the RELOCATION and agrees to the construction in the manner proposed.

II. LIABILITY OF WORK

Any existing water and sewer facilities owned by CITY that are located within the San Diego Metropolitan Transit System ("MTS") right-of-way under the Pipe Line License (Contract No. 54669) between The Atchison, Topeka and Santa Fe (AT&SF) Railway Company and the City of San Diego, dated August 4, 1950, and the Pipe Line License (Contract No. 61255) between AT&SF Railway Co. and James Stewart Company, dated August 15, 1957, and the Pipe Line License (Contract No. 64014) between AT&SF Railway Co. and the City of San Diego, dated October 30, 1959, and the Pipe Line License (Contract No. 146285) between AT&SF Railway Co. and Inland Industries, Inc., dated September 7, 1973, and the Pipe Line License (Contract No. 141615) between AT&SF Railway Co. and the City of San Diego, dated April 3, 1973, and the Pipe Line License (Contract No. 132821) between AT&SF Railway Co. and the City of San Diego, dated August 14, 1969, and the Agreement (Contract No. 183307) between AT&SF Railway Co. and the City of San Diego, dated May 28, 1991, will be relocated at CITY's expense.

In addition, any work on existing and/or new facilities outside the MTS right-of-way required to complete the relocation of CITY's water and sewer facilities within the MTS right-of-way shall be at CITY's expense. Any such work on existing or new facilities outside the MTS right-of-way shall be subject to the CHANGE ORDER procedure in Article III and shall not be performed until the proposed CHANGE ORDER is approved.

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FILED JUL 28 2015
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

UTILITY AGREEMENT NO. 5004566

Pursuant to California Public Utilities Code Sections 120244, 132353.4 & 132354, SANDAG may exercise all rights and powers granted to SANDAG that are necessary to carry out the PROJECT, including but not limited to all property rights granted to MTS.

III. PERFORMANCE OF WORK

SANDAG shall perform RELOCATION work in accordance with current design and construction standards including, but not limited to: City of San Diego Sewer Design Guide, City of San Diego Water Design Guidelines (Books 1-7), the Standard Specifications for Public Works Construction dated 2012 ("GREENBOOK") and the City of San Diego Supplements dated 2009 ("SUPPLEMENTS") and the Specifications for Public Works Construction dated 2012 ("WHITEBOOK").

If SANDAG receives a proposed construction change order from its contractor ("CHANGE ORDER") that will increase the CONSTRUCTION COST in Article V, SANDAG will immediately notify CITY and provide CITY the opportunity to review and approve or deny said CHANGE ORDER. For a CHANGE ORDER that will increase the CONSTRUCTION COST by five percent (5%) or less, CITY shall provide SANDAG with a written approval or denial of said CHANGE ORDER within five (5) business days following CITY's receipt thereof. For a CHANGE ORDER that will increase the CONSTRUCTION COST by more than five percent (5%), CITY shall provide SANDAG with a written approval or denial of said CHANGE ORDER within fifteen (15) business days following CITY's receipt thereof. CITY shall be responsible for the additional costs of an approved CHANGE ORDER.

CITY shall have access to all phases of the RELOCATION work for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the construction contract for the PROJECT and this Utility Agreement.

CITY shall abide by all railroad protocol and procedures, including the necessary MTS and North County Transit District railroad safety training for personnel, for all RELOCATION work in and/or adjacent to MTS right-of-way. However, all questions regarding the RELOCATION work will be directed to SANDAG's PROJECT Manager or his/her designee for their evaluation and final disposition. Any access by CITY shall be in accordance with all safety requirements in place for the PROJECT and reasonable notice shall be provided to SANDAG in advance of such access.

Upon completion of the RELOCATION by SANDAG, CITY agrees to accept ownership and maintenance of the constructed facilities and relinquishes SANDAG from any obligations concerning the replaced facilities. CITY shall submit a Notice of Completion to SANDAG within thirty (30) days of the completion and acceptance of the RELOCATION work.

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IV. BETTERMENT OF WORK

If CITY determines that any portion of the RELOCATION work requires betterment of CITY's facilities, SANDAG shall ensure that any and all betterment required is incorporated as part of the RELOCATION work. All costs of betterment of the facilities, as requested by CITY, shall be added to the CONSTRUCTION COST, as detailed in Article V below, and shall be paid for by CITY.

V. PAYMENT OF WORK

CITY shall be responsible for the cost of the RELOCATION, in an amount not to exceed \$9,130,328, which consists of the sum of the CONSTRUCTION COST and SUPPLEMENTAL COST as set forth in Exhibit "B", which is attached hereto and incorporated herein by reference. CONSTRUCTION COST is the actual reasonable third party construction costs incurred by SANDAG for the RELOCATION work, betterment costs pursuant to Article IV, if any, and any approved CHANGE ORDERS. SUPPLEMENTAL COST consists of project management, design, plan review, construction management, and related costs incurred by SANDAG and shall be equal to twenty-seven percent (27%) of the CONSTRUCTION COST.

The CONSTRUCTION COST will be paid or reimbursed by CITY within forty-five (45) days following CITY's receipt of SANDAG's written request for payment, provided that SANDAG includes invoices and reasonably satisfactory evidence of actual construction costs together with its request for payment. Each request for payment shall include a breakdown of the CONSTRUCTION COST itemized by facility type and system as indicated in the plans. Prior to payment, CITY reserves the right to ask for additional clarification or reasonable supporting documentation to substantiate any request for payment or reimbursement of the CONSTRUCTION COST.

The SUPPLEMENTAL COST will be paid or reimbursed by CITY within forty-five (45) days following CITY's receipt of SANDAG's written request for payment, with no further documentation or breakdown required.

VI. GENERAL CONDITIONS

If the PROJECT is canceled or modified so as to eliminate the necessity of the RELOCATION work, SANDAG will notify CITY in writing of the elimination of the need for the work, which notice may also include termination of this Utility Agreement by SANDAG, which termination shall be under terms that are mutually acceptable to both parties.

SANDAG shall, in all activities undertaken pursuant to this Utility Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes,

UTILITY AGREEMENT NO. **5004566**

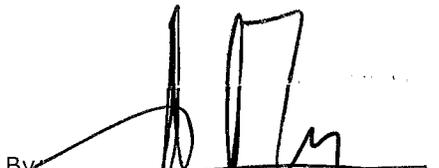
orders, ordinances, rules, regulations, plans, policies and decrees applicable to the PROJECT, including all requirements related to prevailing wage, Davis-Bacon Act, and Buy-America.

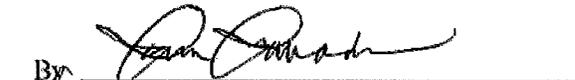
All obligations of SANDAG under the terms of this Utility Agreement are subject to the passage of adequate funds for the PROJECT by the SANDAG Board of Directors and any applicable federal funding source.

IN WITNESS WHEREOF, the above parties have executed this Utility Agreement the day and year above written.

CITY OF SAN DIEGO

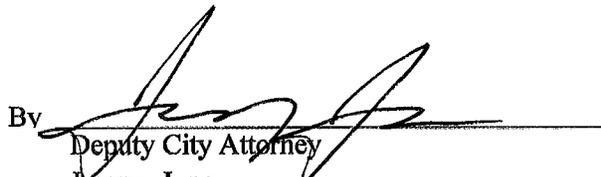
SAN DIEGO ASSOCIATION
OF GOVERNMENTS

By: 
Albert P. Recharny
Deputy Director
Public Works Contracts

By: 
Gary Gallegos
Executive Director

Approved as to form:

Approved as to form:

By: 
Deputy City Attorney
Jeremy Jung

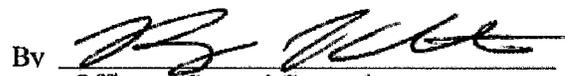
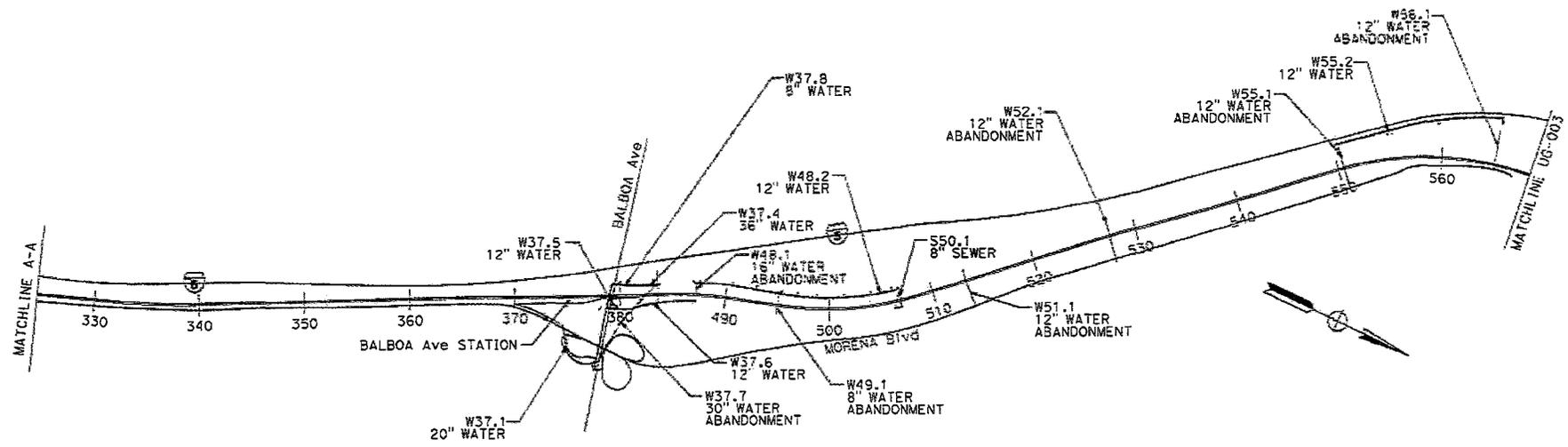
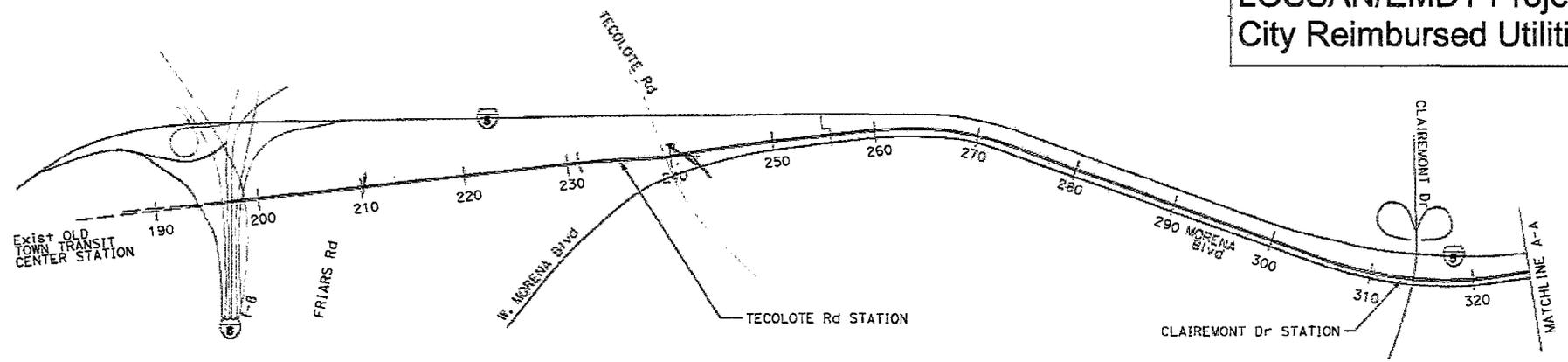
By: 
Office of General Counsel
Ryan Kohut

Exhibit A - LOSSAN/EMDT Project City Reimbursed Utilities



NO.	DATE	REVISION	BY	CHK	APRV

**PARSONS
BRINCKERHOFF**
401 B STREET, SUITE 1650 SAN DIEGO, CA 92101
TEL (619) 338-9376 FAX (619) 338-8123



DESIGNED BY: _____ DATE: _____
DRAWN BY: _____
CHECKED BY: _____
SANDAG

SANDAG
401 B STREET, SUITE 800
SAN DIEGO, CA 92101-4231
(619) 699-1900



ELVIRA TO MORENA DOUBLE TRACK
EXHIBIT B
UTILITY RELOCATIONS
KEY MAP 1 OF 2

SCALE NO SCALE
SANDAG CONTRACT NO. 5001904
DRAWING NO. SHEET NO.

METERS
 FEET
 METERS
 FEET
 METERS
 FEET

Exhibit B - LOSSAN Reimbursement Agreement

Anticipated drawdown of funding: FY16

Category	System	System Description	Basis of Estimate	Construction Cost	Construction Contingency	27% of Construction Cost for Project Management, Design, Plan Review, and Construction Management (Excludes Contingency)	Total Cost
Sewer	50.1	New 8" Sewer	95% GMP	\$ 368,773	\$ 28,172	\$ 99,569	\$ 496,514
						Total Sewer	\$496,514
Water	37.1	New 20" Water	95% GMP	\$ 739,436	\$ 56,489	\$ 199,648	\$ 995,573
Water	37.4	New 36" Water	95% GMP	\$ 2,260,092	\$ 172,658	\$ 610,225	\$ 3,042,975
Water	37.5	New 12" Water	95% GMP	\$ 313,731	\$ 23,967	\$ 84,707	\$ 422,405
Water	37.6	New 12" Water	95% GMP	\$ 363,585	\$ 27,776	\$ 98,168	\$ 489,529
Water	37.7	Abandon 30" Water	95% GMP	\$ 44,407	\$ 3,392	\$ 11,990	\$ 59,790
Water	37.8	New 8" Water	95% GMP	\$ 416,478	\$ 31,816	\$ 112,449	\$ 560,743
Water	48.1	Abandon 16" Water	95% GMP	\$ 17,311	\$ 1,322	\$ 4,674	\$ 23,308
Water	48.2	New 12" Water	95% GMP	\$ 856,875	\$ 65,460	\$ 231,356	\$ 1,153,691
Water	49.1	Abandon 8" Water	95% GMP	\$ 17,311	\$ 1,322	\$ 4,674	\$ 23,308
Water	51.1	Abandon 12" Water	95% GMP	\$ 17,311	\$ 1,322	\$ 4,674	\$ 23,308
Water	52.1	Abandon 12" Water	95% GMP	\$ 17,311	\$ 1,322	\$ 4,674	\$ 23,308

Category	System	System Description	Basis of Estimate	Construction Cost	Construction Contingency	27% of Construction Cost for Project Management, Design, Plan Review, and Construction Management (Excludes Contingency)	Total Cost
Water	55.1	Abandon 12" Water	95% GMP	\$ 17,311	\$ 1,322	\$ 4,674	\$ 23,308
Water	55.2	New 12" Water	95% GMP	\$ 767,535	\$ 58,635	\$ 207,234	\$ 1,033,404
Water	56.1	Abandon 12" Water	95% GMP	\$ 17,311	\$ 1,322	\$ 4,674	\$ 23,307
Water	58.1	New 12" Water	95% GMP	\$ 546,539	\$ 41,752	\$ 147,566	\$ 735,857
						Total Water	\$ 8,633,813
		Totals		\$ 6,781,318	\$ 518,053	\$ 1,830,956	\$ 9,130,328