



DATE: May 20, 2015
TO: Honorable Mayor and City Councilmembers
FROM: Property Management
SUBJECT: **PROPOSED MEMORANDUM OF UNDERSTANDING WITH SANDAG
FOR A PORTION OF THE INLAND RAIL TRAIL BIKEWAY**

SYNOPSIS

Staff recommends that the City Council approve a Memorandum of Understanding with the San Diego Association of Governments for the environmental review, design, right-of-way acquisition and construction of a portion of the Inland Rail Trail along Melrose Drive south of Oceanside Boulevard to the North County Transit District's Sprinter Railway right-of-way and authorize the City Manager to execute the agreement.

BACKGROUND

The Inland Rail Trail Bikeway ("IRT"), formally known as the Escondido to Oceanside Rail Trail/Bikeway Project, is a 21-mile bike trail that will eventually provide a continuous Class I Bikeway between the Oceanside Transit Center and the Escondido Transit Center. The IRT will be primarily in the Sprinter Railway right-of-way and will span the Cities of Oceanside, Vista, San Marcos, and Escondido, and a portion of unincorporated County territory. A Class I Bikeway, *i.e.* a Bike Path, provides a completely separated right-of-way for the exclusive use of bicycles and pedestrians with minimized crossflow by motorists.

On April 22, 2011, the San Diego Association of Governments ("SANDAG") approved funding to advance the preliminary engineering and environmental work, and on November 8, 2013, approved funding to complete the final design, right-of-way acquisition, and construction phases for the IRT. As part of this funding SANDAG assumed responsibility as the lead agency in project and program implementation of the overall IRT project that involves design, environmental review and permitting, right-of-way acquisition, and construction.

Phase 4 segment of the IRT primarily runs through Vista and San Marcos and includes a small portion of the Bike Path along the eastside of Melrose Drive between Oceanside Boulevard and the Sprinter Railway right-of-way.

ANALYSIS

The proposed Memorandum of Understanding (“MOU”) deals with the portion of the IRT that will take the Bike Path users to and from the Sprinter Rail right-of-way to Oceanside Boulevard along the eastside of Melrose Drive. Under the terms and agreements of the proposed MOU, SANDAG will fund all activities for the design, environmental permitting, right-of-way acquisition, including permanent right-of-way and temporary construction easement, and construction of the Bike Path improvements along the eastside of Melrose Drive.

Although SANDAG will be constructing the IRT, the City will be responsible for the maintenance and upkeep of the approximate 400-foot-long portion along Melrose Drive after the improvements are complete and accepted by the City. The proposed MOU provides for the coordination of project construction oversight and inspection, including material sampling and testing, with the City.

Upon the satisfactory completion of the improvements, the City will be required by the MOU to accept the improvements from SANDAG by adoption of a resolution and at that point the City will be responsible for the maintenance of the improvements.

FISCAL IMPACT

The estimated construction cost of approximately \$265,000 will be funded by SANDAG. The funding sources that will be used for the project are Statewide Transportation Improvement Program (STIP) and Local TransNet funds.

There is no adverse budgetary impact associated with this item to the City as the costs for the project are totally funded by SANDAG. The City shall be responsible for the ongoing maintenance of the completed improvements with funds appropriated in future annual budgets from the Parkway/ Median Program account (600619213.5355) which has sufficient funds available.

INSURANCE REQUIREMENTS

The MOU provides that the City of Oceanside be named as additional insured on any insurance policy for work performed on the project, *i.e.*, the portion of the IRT along Melrose Drive.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY’S ANALYSIS

The referenced document has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a Memorandum of Understanding with the San Diego Association of Governments for the environmental review, design, right-of-way acquisition and construction of a portion of the Inland Rail Trail along Melrose Drive south of Oceanside Boulevard to the North County Transit District's Sprinter Railway right-of-way and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Douglas E. Eddow
Real Property Manager



Michelle Skaggs Lawrence
Interim City Manager

REVIEWED BY:

Peter A. Weiss, Assistant City Manager

Hans K. Koger, Public Works Division Manager

Scott O. Smith, City Engineer

David DiPierro, City Traffic Engineer



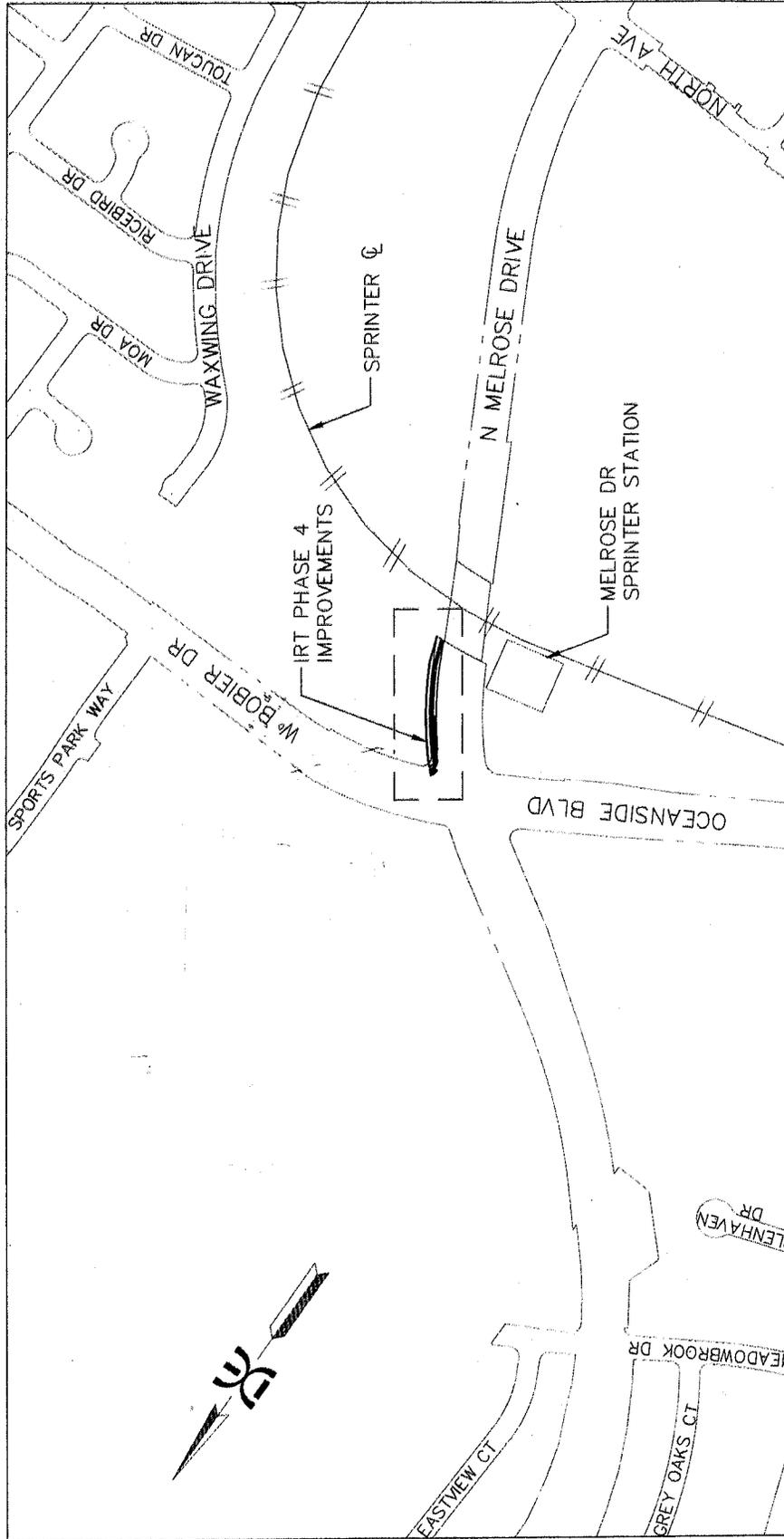




Attachments:

Memorandum of Understanding

INLAND RAIL TRAIL - PHASE 4



KEY MAP

NOT TO SCALE

**MEMORANDUM OF UNDERSTANDING
BETWEEN SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND CITY OF OCEANSIDE
FOR THE
INLAND RAIL TRAIL – SAN MARCOS TO VISTA SEGMENT PROJECT

SANDAG CONTRACT NUMBER 5004486**

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") dated March 25, 2015, solely for identification purposes, is made by and between the City of Oceanside, a California Charter City created by its charter and California Statute ("City"), and the San Diego Association of Governments ("SANDAG"), created and existing pursuant to California Statute. The effective date of this Agreement shall be the date that this Agreement is approved by the City (the "Effective Date").

RECITALS

WHEREAS, the Inland Rail Trail Bikeway ("IRT"), formally known as the Escondido to Oceanside Rail/Trail Bikeway Project, is a twenty-one (21)-mile bike trail that will provide a continuous Class I bicycle facility between the Oceanside Transit Center and the Escondido Transit Center, and will span the Cities of Oceanside, Vista, San Marcos, and Escondido, including a portion of unincorporated San Diego County; and

WHEREAS, both parties seek to complete a portion of the IRT, beginning at the southeast corner of the Oceanside Boulevard/West Bobier Drive and Melrose Drive intersection and continuing southerly approximately 400 feet on the eastside of Melrose Drive, and within public right-of-way in the City of Oceanside ("Project"), as depicted in Exhibit A; and

WHEREAS, on April 22, 2011, SANDAG approved funding to advance the preliminary engineering and environmental work, and on November 8, 2013, approved funding to complete the final design, right-of-way acquisition, and construction phases for the Project; and

WHEREAS, as part of this funding SANDAG assumed responsibility as a lead agency in project and program implementation of the Project for the City; and

WHEREAS, as part of the project and program implementation, SANDAG plans to perform the design, environmental review, right-of-way acquisition, and Project construction in coordination with the City; and

WHEREAS, the City agrees to maintain the Project as-built; and

WHEREAS, the parties wish to memorialize their agreement in this MOU to carry out the purposes set forth above.

UNDERSTANDING AND AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual understanding, agreements, and promises contained herein, the parties hereto do hereby agree as follows:

I. SANDAG AGREES:

A. General Requirements

1. SANDAG agrees to assume all responsibility for environmental review and permitting, design, right-of-way acquisition and construction of the Project.
2. Following the completion of construction in accordance with the "Acceptance of Work," City shall take sole responsibility for operation and maintenance of the Project facilities.

B. Environmental Clearances and Permits

SANDAG acting as the lead agency shall obtain all necessary resource or other government agency permits, approvals, environmental reviews, and clearances for the Project, including without limitation any review required under the California Environmental Quality Act, Public Resources Code 21000 et seq., and National Environmental Policy Act, 42 U.S.C. 4321 et seq., in which the Project will be constructed.

C. Plans, Specifications, and Estimates

1. SANDAG shall complete Plans, Specifications, and Estimates (PSE) and other necessary engineering design or survey work required for Project.
2. SANDAG shall include changes requested by City or meet and confer with City to attempt to resolve changes proposed by City that SANDAG proposes to reject. SANDAG shall not unreasonably reject changes proposed by City that are demonstrated by City to be necessary to reduce maintenance costs and other liabilities associated with the ownership and maintenance of the completed Project.

D. Right-of-Way

1. SANDAG shall acquire all right-of-way necessary for project construction, including permanent right-of-way and temporary easements. All such permanent right-of-way for the Project shall be conveyed in the name of and vested in the City of Oceanside, a California Charter City, free and clear of any and all liens and encumbrances. Upon the completion of the Project in all particulars, SANDAG shall present the deed or other instrument to the City for its acceptance and filing with the County Recorder.
2. SANDAG shall provide all right-of-way plats, legal descriptions, and agreements for the City.

E. Utilities

SANDAG shall coordinate all utility relocations necessary for project construction.

F. Project Construction, Contract Advertisement, and Award

SANDAG shall advertise the Project, Award the Contract, and perform construction management and inspection for the Project. The City shall be named as an additional insured on any insurance policy for work performed on the Project.

II. CITY AGREES:

A. Environmental Clearances and Permits

To the extent permits must be obtained from City for the Project, City shall provide such permits to SANDAG or its contractor(s) on an expedited basis and at no charge.

B. Plans, Specifications and Estimates

City shall review and comment on PSE prepared by SANDAG within fifteen (15) calendar days of receipt.

C. Construction Staging

City shall work with SANDAG to make available City properties for the purpose of temporary construction staging for the entire IRT, including this Project and the adjacent IRT work in the City of San Marcos and City of Vista.

D. Utilities

City, on behalf of SANDAG, shall provide assistance with requesting existing utility companies to timely remove or relocate their facilities within existing City right-of-way at no cost in support of the Project.

E. Project Construction Inspection

City reserves the right to perform inspections and testing of the materials used in and the method of construction of the improvements, together with the right to approve or disapprove the same in its reasonable discretion.

III. THE PARTIES MUTUALLY AGREE:

A. Acceptance of Work

Upon the completion of the improvements in all particulars and free and clear of any and all mechanics' liens, SANDAG shall remit to City a copy of the Notice of Completion, in a form satisfactory to the City Attorney; and an assignment of all warrants, and guarantees, licenses, and other instruments related to the improvements or any part thereof to the City Engineer. Upon receipt of such documents and instruments, City shall take all steps necessary to accept the improvements and adopt a resolution evidencing such acceptance. Acceptance shall not be unduly withheld. Upon the effective date of said resolution, SANDAG shall be relieved of all obligations and duties under this MOU.

B. Indemnification

1. SANDAG and City shall defend, indemnify, and hold the other party, its board, each member of its board, officials, employees, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of or incident to any intentional or negligent acts, errors, or omissions of the indemnifying party, its board, each member of its board, officials, employees, and agents in the performance of this MOU, including without limitation, the payment of all consequential damages and reasonable attorneys' fees, reasonable expert witness fees, and other related costs and expenses of defense. The sole exception to the indemnifying party's obligation to indemnify shall be for acts of negligence or willful misconduct of the indemnified party, its board, each member of its board, officials, employees, and agents. This is a comparative negligence provision and each party shall bear its own costs to the extent each is negligent.
2. The indemnifying party shall defend, at its own cost, expense, and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against the indemnified party, its board, each member of its board, officials, employees, and agents except as limited above in 1. The indemnifying party shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified party, its board, each member of its board, officials, employees, and agents in any such suits, actions or other legal proceedings except as limited above in 1. Each party's obligation to indemnify shall not be restricted to insurance proceeds.
3. The parties have had the opportunity to seek the advice of independent legal counsel prior to executing this Agreement. The parties acknowledge that no party, agent or attorney of any party has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement to induce the other party to execute this Agreement. Each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation or warranty not contained herein.
4. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this MOU or of any amendments or exhibits to this MOU.

C. Assignment

This MOU shall be automatically assigned to the City for operation and maintenance of the Project, upon the occurrence of the following events:

1. The SANDAG filing of an approved Notice of Completion ("NOC") for the construction project in accordance with the PSE with City; and
2. Written notice to SANDAG of acceptance of the NOC by City.
3. City agrees to timely process the NOC and shall not unreasonably deny or delay the issuance of such NOC.

D. Termination

1. SANDAG Board of Directors shall each have the right to terminate this MOU upon sixty (60) days written notice. Upon termination, City and SANDAG shall nevertheless work cooperatively to present any project work that took place prior to termination that is subject to potential fund reimbursement in accordance with any funding Agreement.
2. Termination of this Agreement shall not release either party from any liability or obligation hereunder resulting from an event which occurred before termination.

E. Notices

All notices required to be delivered under this MOU to the other party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To City: City of Oceanside
Attn: Scott O. Smith, City Engineer
300 North Coast Highway
Oceanside, CA 92054
Fax: (760) 435-6174

Copy to: Barbara L. Hamilton
Assistant City Attorney
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Fax: (760) 435-3970

To SANDAG: San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101-4231
Attention: Emilio Rodriguez, P.E.
Fax: (619) 699-4889

Copy to: San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101-4231
Attention: Executive Director
Fax: (619) 699-1995

F. Waiver

Any party's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision.

G. Dispute Resolution

1. The parties agree that they shall first meet, through their senior staff representatives, to attempt to informally resolve any dispute that arises under this MOU.
2. If the informal efforts are unsuccessful, then the parties agree to participate in mediation. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in Downtown San Diego, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within five (5) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be shared equally by the parties.
3. Any dispute not resolved through the mediation required by Paragraph (b) of this section, may proceed to litigation unless the parties agree in writing to submit the dispute to binding arbitration.
4. This MOU shall be construed according to its fair meaning and as if prepared by both parties hereto. This MOU shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this MOU. Article and section titles and captions are for convenience only and shall not constitute a portion of this MOU. As used in this MOU, masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. In the event of any litigation between the parties hereto, subject to the dispute resolution procedure set forth herein, the Superior Court of the State of California, in and for the County of San Diego, shall have exclusive jurisdiction.

H. Term of MOU

Except as otherwise provided above, this Agreement shall terminate upon (i) construction, completion, and financial closeout by SANDAG; and (ii) acceptance as described in "Acceptance of Work".

I. Counterparts

1. This MOU, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or written agreements which are not expressly set forth in this MOU or the related documents being executed in connection with this MOU.
2. This MOU may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

3. This MOU is executed in two (2) duplicate copies, each of which is deemed to be an original. This MOU includes Exhibit A (Location Map) thereto, which constitutes the entire understanding and agreement of the parties.

J. Entire Agreement

1. This MOU constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written, between the parties.
2. This MOU may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.
3. If any term, provision, condition, or covenant of this MOU or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.
4. All covenants, stipulations, promises, agreements, and obligations of the parties hereto contained in this MOU shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the parties hereto, respectively, and not of any member, officer, employee, or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this MOU against any member, officer, employee, or agent of the parties hereto.

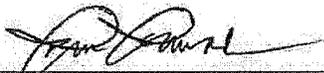
K. Cooperation

1. The parties agree to cooperate in good faith toward the completion of the Project, which shall include responding to all reasonable requests and providing all necessary approvals within a timely manner.
2. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents, and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this MOU, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this MOU.
3. The person(s) executing this MOU on behalf of the parties hereto warrant that, (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this MOU on behalf of said party; (iii) by so executing this MOU, such party is formally bound to the provisions of this MOU; and (iv) the entering into this MOU does not violate any provision of any other agreement to which said party is bound.
4. Time is of the essence in this MOU and every provision contained in this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of, but not necessarily on, the Effective Date hereof.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

CITY OF OCEANSIDE, A CALIFORNIA CHARTER CITY


GARY L. GALLEGOS
Executive Director

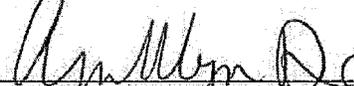
4-28-2015

DATE

MICHELLE SKAGGS LAWRENCE
DATE
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Office of General Counsel

4-27-15

DATE


for John Mullen
City Attorney

DATE

SANDAG'S SIGNATURE(S) MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC USING CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT FORM

Attachments:

Exhibit A - Location Map

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

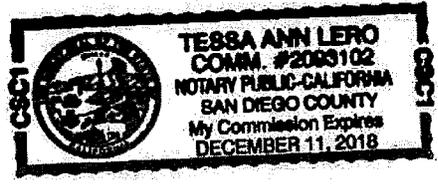
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)
On 4/28/15 before me, TESSA ANN LERO, NOTARY,
Date Here Insert Name and Title of the Officer
personally appeared Kim Kawada
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Tessa Ann Lero
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

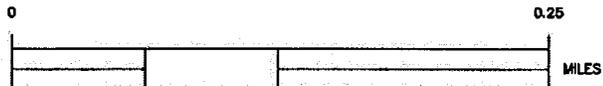
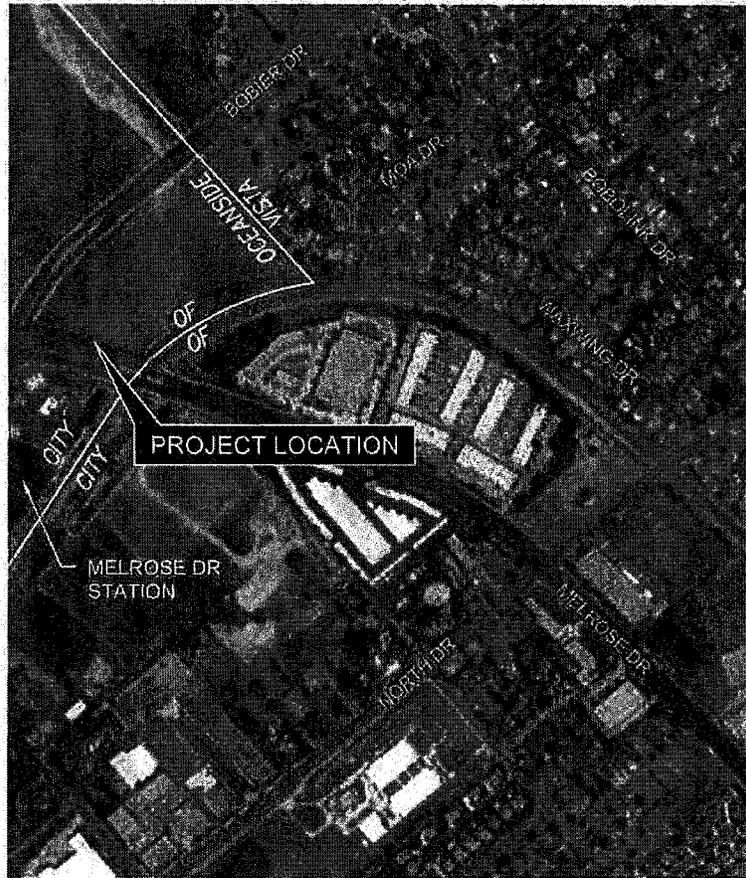
Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT A — PROJECT LOCATION



INLAND RAIL TRAIL
PROJECT MAP
CITY OF OCEANSIDE
DATE PREPARED: APRIL 15, 2015