

**FREEWAY MAINTENANCE AGREEMENT
BETWEEN THE
CITY OF CHULA VISTA AND
THE SAN DIEGO ASSOCIATION OF GOVERNMENTS**

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 20____, (the “Effective Date”) by and between the City of Chula Vista, a Chartered Municipal Corporation (the “City”), and the San Diego Association of Governments (“SANDAG”) collectively referred to herein as a “Party” or the “Parties.”

WITNESSETH:

WHEREAS, SANDAG is a regional transportation commission responsible for planning and implementing transportation improvements within San Diego County; and

WHEREAS, the State of California, acting through the Department of Transportation (“Caltrans”) is the State agency vested with the ownership of, and which is responsible for the design, construction, maintenance, and operation of the California State Highway System; and

WHEREAS, in 1989, the California Legislature enacted and, in 1990, the Governor approved the addition of section 143 to the Streets and Highways Code, which specifically authorized the development of State Route 125 and specifically authorized a portion of the roadway to be developed, constructed, maintained and operated as a Toll Facility for a period of 35 years pursuant to a Development Franchise Agreement between the State of California and the Developer; and

WHEREAS, by document dated December 31, 1990, Caltrans and California Transportation Ventures, Inc., a California Corporation (“CTV”) entered into said Development Franchise Agreement; and

WHEREAS, the development and initial construction of the State Route 125 Toll Facility has been substantially completed and was opened to traffic on November 16, 2007, with the remaining development and construction limited to expansion to the ultimate facility, when appropriate; and

WHEREAS, effective December 21, 2011, South Bay Expressway, LLC (“SBX”) as successor in interest to CTV, assigned all of its right, title and interest in and to the Development Franchise Agreement, as amended, including, but not limited to, the associated leasehold interests held by SBX to SANDAG with the consent of Caltrans; and

WHEREAS, under the Development Franchise Agreement, SANDAG is responsible for the tolled segment of State Route 125 and required to operate and maintain it in accordance with State standards; and

WHEREAS, Caltrans is the owner of the State Highway System including the right-of-way over and on which State Route 125, within the jurisdictional limits of the City, was constructed as a toll facility; and Caltrans has entered into an Amended and Restated Development Franchise Agreement (DFA) and Lease with SANDAG for use of the

aforementioned state right-of-way for the operation and maintenance of the State Route 125 Toll Facility; and

WHEREAS, the Parties hereto mutually desire to clarify and establish the division of maintenance, as defined in Section 27 of the California Streets and Highways Code, and their respective responsibilities as to the separation structures and local streets and roads, or portions thereof; and

WHEREAS, the City has resumed or will resume control and maintenance over each of the affected relocated or reconstructed City streets, except for those portions within the Caltrans right-of-way.

NOW THEREFORE, in accordance with the mutual benefits contained in the aforementioned Recitals and in consideration thereof City and SANDAG agree as follows:

- A. City agrees to continue their control and maintenance of each of the affected relocated or reconstructed City streets and roads as shown on that plan map attached hereto, marked as Exhibit A, and made a part hereof by this reference.
- B. SANDAG agrees to continue control and maintenance of those portions of the SR 125 Toll Facility proper as required by the DFA and shown on Exhibit A for the period it remains a party to the facility lease as stipulated under the DFA.
- C. The Parties agree to divide the maintenance responsibilities on individual infrastructure items as provided in Exhibits A-C attached and made a part of this Agreement by reference, as long as it is not in conflict with the terms of the DFA or this Agreement. In case of a conflict, the terms of the DFA shall be primary and this Agreement shall be secondary.
- D. If there is mutual agreement on the change in the maintenance duties between the Parties, the Parties shall amend this Agreement and revise Exhibits A-C.
- E. When another planned future improvement has been constructed and/or a revision has been effected within the limits of the SR 125 Toll Facility herein described which will affect the Parties division of maintenance responsibility as described herein, the Parties shall amend this Agreement and revise Exhibits A-C which will thereafter supersede the original Exhibits A-C and become part of this Agreement.
- F. City and SANDAG agree to accept their respective operational and maintenance responsibilities and related associated costs thereof in the performance of this Agreement. In the event jurisdictional boundaries of the Parties should change then this Agreement shall be amended and Exhibits A-C shall be revised to reflect those subject changes.
- G. VEHICULAR AND PEDESTRIAN OVERCROSSINGS
 - 1. SANDAG will maintain, at SANDAG expense, the entire structure of any constructed vehicular and pedestrian overcrossings of the State Route 125 Toll Facility below the deck surface except as hereinafter provided. Additionally, SANDAG will maintain, at

SANDAG expense, all existing screening placed on overpasses on which pedestrians are allowed.

2. City will maintain, at City expense, the deck and/or surfacing and structural drainage system (and shall perform such work as may be necessary to ensure an impervious and/or otherwise suitable surface) and all portions of the structure above the bridge deck, including, but without limitation, lighting installations, as well as all sidewalks, signs, pavement markings and bridge rail surfacing that may be required for the benefit or control of vehicular and bicycle traffic and pedestrians using said overcrossing.

H. VEHICULAR AND PEDESTRIAN UNDERCROSSINGS

1. SANDAG will maintain the structure proper of all vehicular and pedestrian undercrossings of the State Route 125 Toll Facility while the roadway sections, including the traveled way, shoulders, curbs, sidewalks, signs, wall surfaces (including eliminating graffiti), drainage installations, lighting installations and pavement markings that may be required for the benefit or control of traffic using that undercrossing will be maintained by CITY. The Cities area of maintenance responsibility is shown in Exhibit A and typically extends from the City street centerline to the back of the sidewalk.
2. City will request a Caltrans 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 SANDAG or Caltrans). If the planned modifications will result in a reduction in the minimum clearance within the traveled way, an estimate of the clearance reduction must be provided to a Caltrans District Transportation Permit Engineer prior to starting work. Upon completion of that work, a clearance diagram will be furnished to a Caltrans District Transportation Permit Engineer that shows revised minimum clearances for all affected movements of traffic, both at the edges of the traveled way and at points of minimum clearance within the traveled way.

I. LANDSCAPED AREAS ADJACENT TO CROSSING STRUCTURES

Responsibility for the maintenance of any landscaped areas adjacent to crossing structures lying outside of the Caltrans right-of-way area shall reside with and be conducted by the City if the subject area is within the City's jurisdiction; and not with Caltrans or SANDAG. Responsibility for the maintenance of any landscaped areas adjacent to crossing structures lying inside of the Caltrans SR 125 toll facility right-of-way area shall be conducted by SANDAG or Caltrans and not with the City.

J. INTERCHANGE OPERATION

It is SANDAG's responsibility to provide efficient operation of any tolling equipment to ensure safety and the efficient operation of the freeway interchanges including ramp connections to local streets and roads.

K. ELECTRICALLY OPERATED TRAFFIC CONTROL DEVICES

The cost of installation, operation, maintenance, repairs, replacement and energy costs of safety lighting, traffic signals or other necessary electrically operated traffic control devices placed at interchanges of the State Route 125 Toll Facility and City streets and roads and at ramp connections of the State Route 125 Toll Facility and City facilities shall be shared by the Parties as shown in Exhibit B which, by this reference, is made a part of this Agreement. Costs for upgrading, reconstructing or revising the traffic control devices shall not be borne by SANDAG unless mutually agreed and negotiated by both parties under a separate agreement.

Basis for Billing:

1. The Parties hereby agree that monthly billings for all devices and systems identified in Exhibit B shall be based on actual costs for the following:
 - Maintenance and Operations
 - Labor, including overhead assessment
 - Other expenses
 - Equipment
 - Materials
 - Miscellaneous expenses
 - Electrical energy
2. All routine Maintenance and Operations costs shall be borne by the City as shown in Exhibit B. SANDAG will not be billed for these costs.
3. All monthly electrical energy billings for electrical facilities identified in Exhibit B will be borne by SANDAG. The City will not be billed for these costs.
4. Timing of traffic signals shall be the sole responsibility of the City and will be coordinated with Caltrans periodically to provide for efficient operations of the intersections.

L. LEGAL RELATIONS AND RESPONSIBILITIES:

1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a Party to the Agreement by imposing any standard of care with respect to the operation and maintenance of the State Route 125 Toll Facility and local facilities different from the standard of care imposed by law.
2. SANDAG shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers and employees from and against all claims for damages, liability, cost and expense (including without limitation attorneys' fees) arising out of or alleged by third parties to be the result of the negligent acts, errors or omissions or the willful misconduct of SANDAG, and SANDAG's employees, subcontractors or other persons, agencies or firms for whom SANDAG is legally responsible in connection with the execution of the work covered by this Agreement, except only for those

claims, damages, liability, costs and expenses (including without limitations, attorneys' fees) arising from the sole negligence or sole willful misconduct of the City, its officers, or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of SANDAG, its employees, agents or officers, or any third party. SANDAG's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. SANDAG's obligations under this Section shall not be limited by any prior or subsequent declaration by SANDAG. SANDAG's obligations under this section shall survive the termination of this Agreement.

3. City shall defend, indemnify, protect and hold harmless SANDAG, its elected and appointed officers and employees from and against all claims for damages, liability, cost and expense (including without limitation attorneys' fees) arising out of or alleged by third parties to be the result of the negligent acts, errors or omissions or the willful misconduct of City, and City's employees, subcontractors or other persons, agencies or firms for whom City is legally responsible in connection with the execution of the work covered by this Agreement, except only for those claims, damages, liability, costs and expenses (including without limitations, attorneys' fees) arising from the sole negligence or sole willful misconduct of the SANDAG, its officers, or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the SANDAG, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of City, its employees, agents or officers, or any third party. City's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the SANDAG, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. City's obligations under this section shall not be limited by any prior or subsequent declaration by City. City's obligations under this section shall survive the termination of this Agreement.

M. INSURANCE

SANDAG and their contractors shall maintain in force, during the term of this Agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, as required by the DFA. Coverage shall be evidenced by a Certificate of Insurance/Endorsement that shall be delivered to the City with a signed copy of this Agreement.

N. EFFECTIVE DATE

The Agreement shall take effect upon full execution of the Agreement, as of the Effective Date stated on page 1 of the Agreement.

O. TERMINATION DATE

This Agreement shall expire upon termination of the SANDAG/Caltrans Amended and Restated Development Franchise Agreement and Lease. At that time the City will engage CALTRANS and/or their franchisee to develop a new maintenance agreement.

P. RESERVED

Q. MISCELLANEOUS

1. Notices.

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified below.

To City:

City of Chula Vista
City Engineer
276 Fourth Avenue
Chula Vista California 91910

With a copy to:

City of Chula Vista
City Attorney
276 Fourth Avenue
Chula Vista California 91910

To SANDAG:

San Diego Association of Governments
Director of Operations
401 B Street, Suite 800
San Diego, California 92101

With a copy to:

San Diego Association of Governments
General Counsel
401 B Street, Suite 800
San Diego, California 92101

2. Entire Agreement.

This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the Parties relating to the subject matter hereof. Neither this Agreement nor any provision hereof may be amended, modified, waived or discharged except by an instrument in writing executed by the Party against which enforcement of such amendment, waiver or discharge is sought.

3. Capacity of Parties.

Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this Agreement; that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

4. Governing Law/Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California.

5. Modification.

No modification or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Parties hereto, and then shall be valid only in the specific instance and for the purpose for which given.

6. Counterparts.

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which, when taken together shall constitute but one instrument.

7. Severability.

In the event that any provision of this Agreement shall for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement or such other appropriate action as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein.

8. Headings.

The captions and headings in this Agreement are for convenience only and shall not define or limit the provisions hereof.

9. Waiver.

No course of dealing or failure or delay, nor the single failure or delay, or the partial exercise of any right, power or privilege, on the part of the Parties shall operate as a waiver of any rights herein contained. The making or the acceptance of a payment by either Party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any such breach.

10. No Additional Beneficiaries.

Despite the fact that the required performance under this Agreement may have an effect upon persons not Parties hereto, the Parties specifically intend no benefit therefrom, and agree that no performance hereunder may be enforced by any person not a Party to this Agreement.

11. Entire Agreement.

This Agreement supersedes any and all other agreements, either oral or written with respect to the subject matter contained herein.

[Remainder of page intentionally left blank]

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

CITY OF CHULA VISTA

SAN DIEGO ASSOCIATION
OF GOVERNMENTS (SANDAG)

BY _____
Mary Salas, Mayor

BY _____
_____, Executive Director

ATTEST:

BY _____
Donna Norris, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY _____
Glen R. Googins, City Attorney

BY _____
SANDAG, General Counsel

Exhibit A

(Plan map showing the SR 125 Toll Facility and CITY road/facilities, 1 key map and 1 for each crossing)

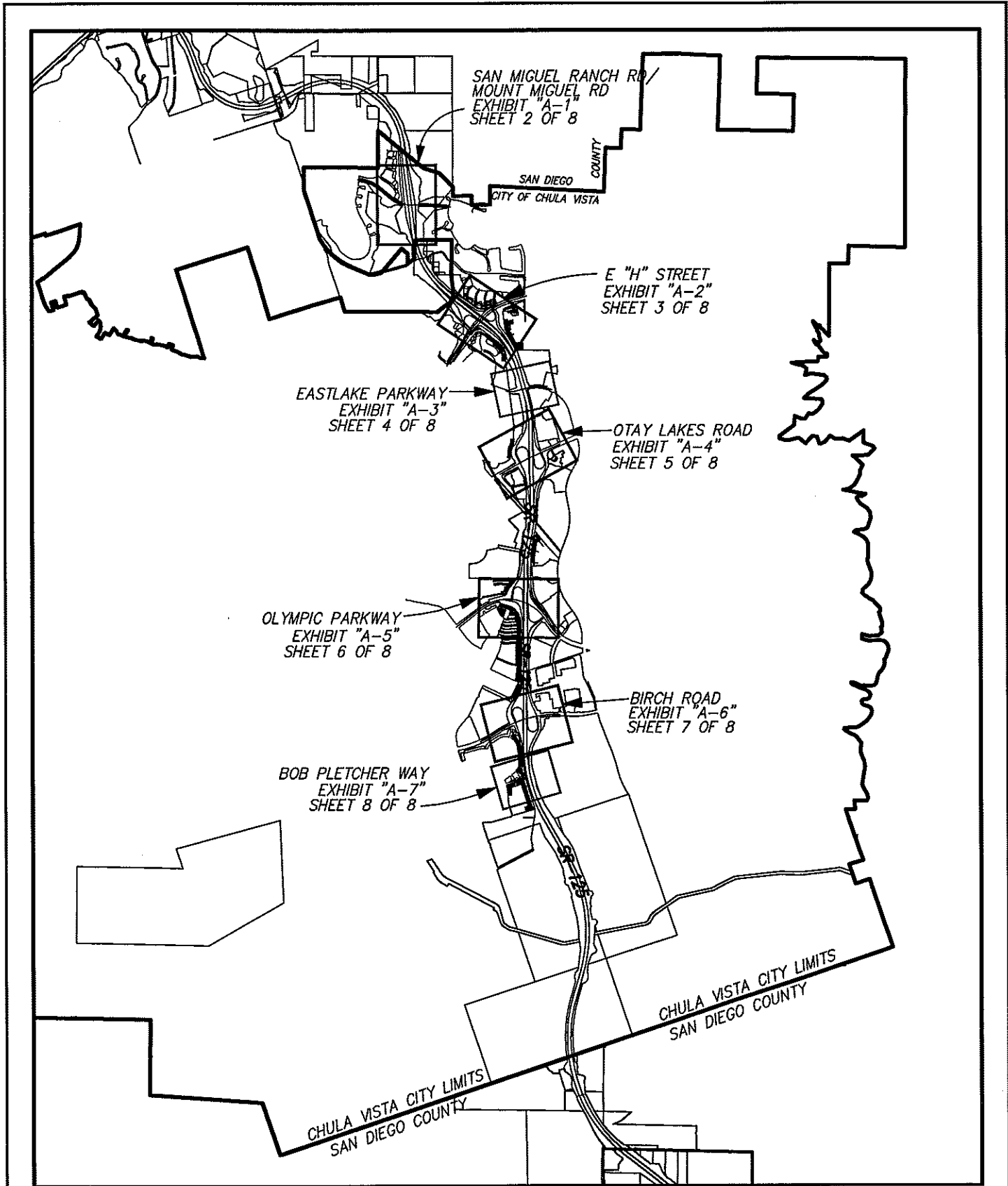
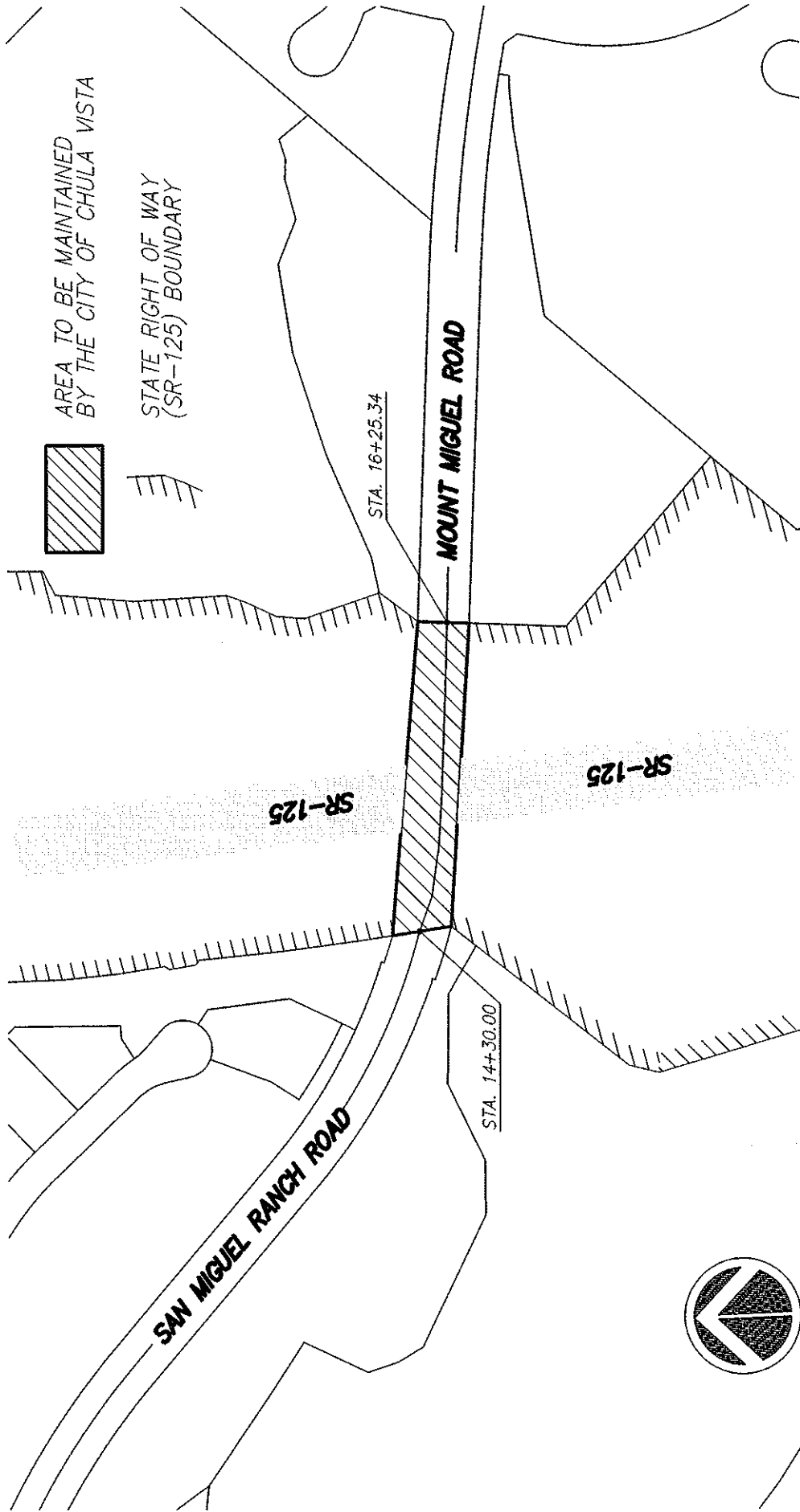


EXHIBIT "A"

DRAWN BY: BOUSHRA SALEM		TITLE: SR-125 WITHIN THE CITY OF CHULA VISTA BOUNDARY	PREPARED BY: BOUSHRA SALEM	
DATE: 03-08-13	SHEET 1 OF 8 SHTS.		APPROVED BY: KIRK AMMERMAN	



GRAPHIC SCALE
NOT TO SCALE

EXHIBIT A-1

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BOUSHRA SALEM

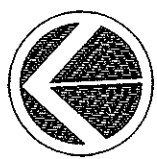
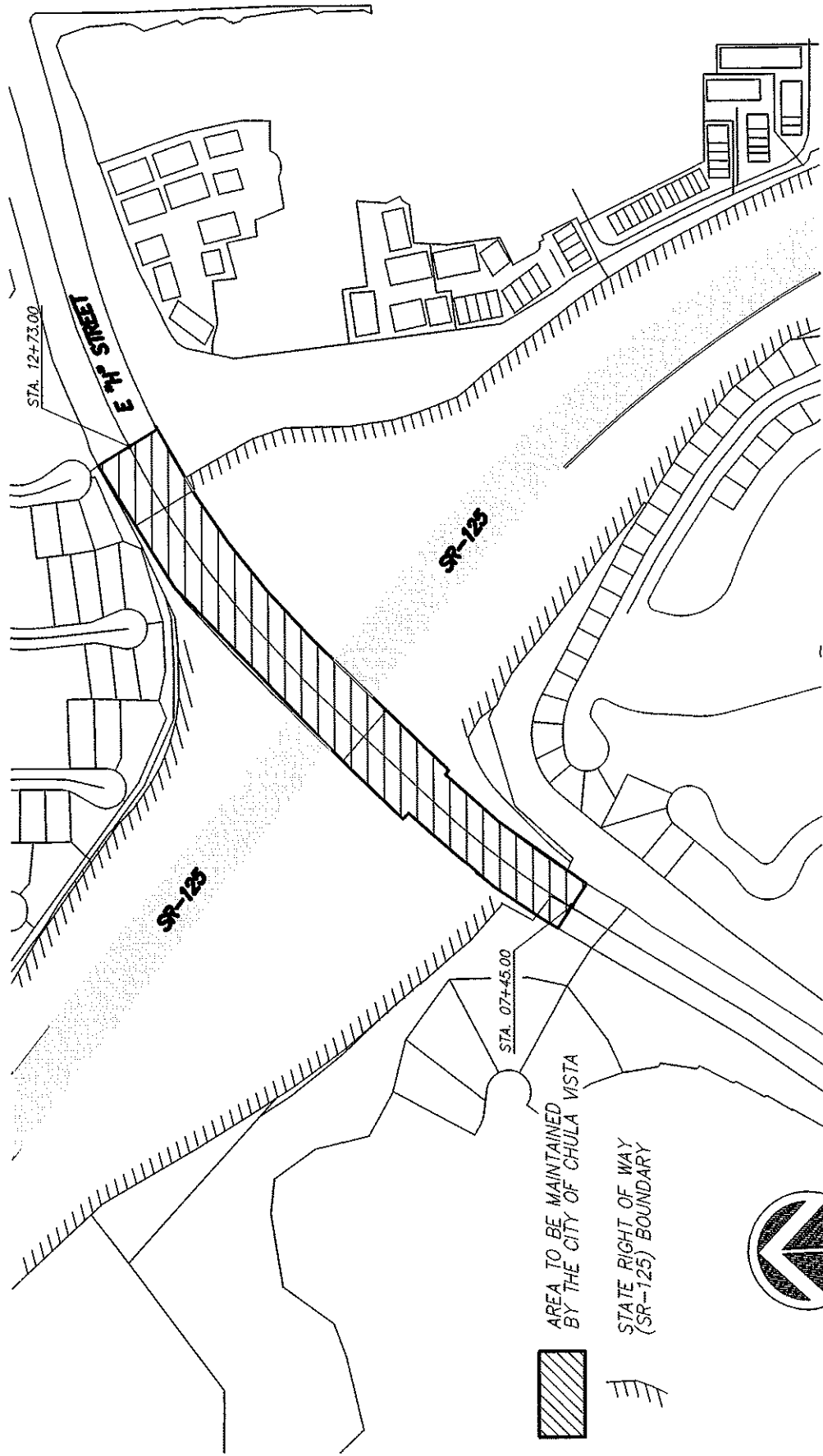
DATE: 03-08-13
SHEET 2 OF 8 SHTS

TITLE:

SAN MIGUEL RANCH ROAD/
MOUNT MIGUEL ROAD INTERCHANGE

BOUSHRA SALEM

APPROVED BY:
KIRK AMMERMAN



AREA TO BE MAINTAINED BY THE CITY OF CHULA VISTA

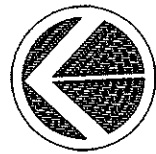
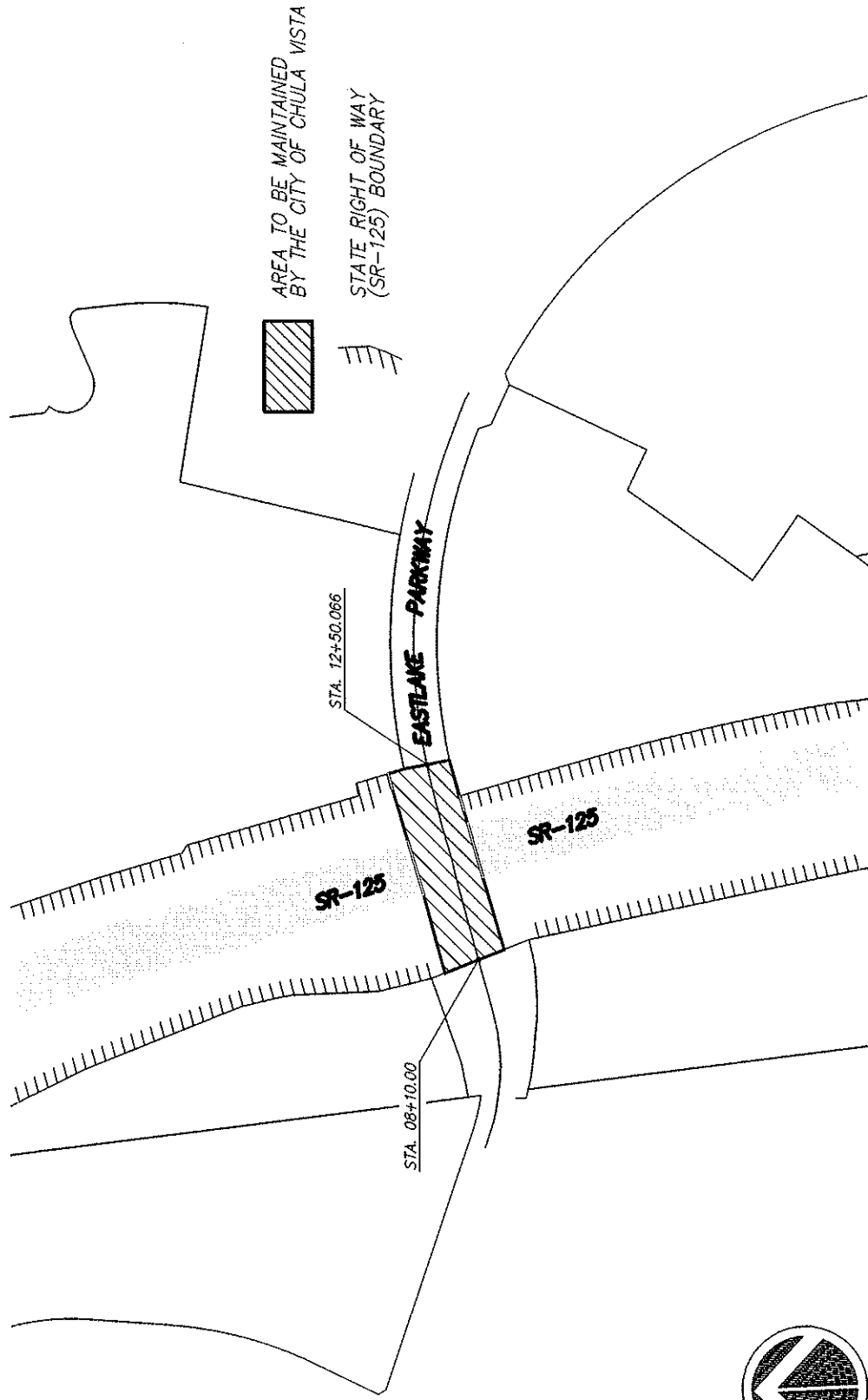
STATE RIGHT OF WAY (SR-125) BOUNDARY

GRAPHIC SCALE
NOT TO SCALE

EXHIBIT A-2

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DRAWN BY: BOUSHRA SALEM		TITLE:	
BOUSHRA SALEM		EAST "H" STREET INTERCHANGE	
DATE: 03-08-13	SHEET 3 OF 8 SHTS	APPROVED BY: KIRK AMMERMAN	

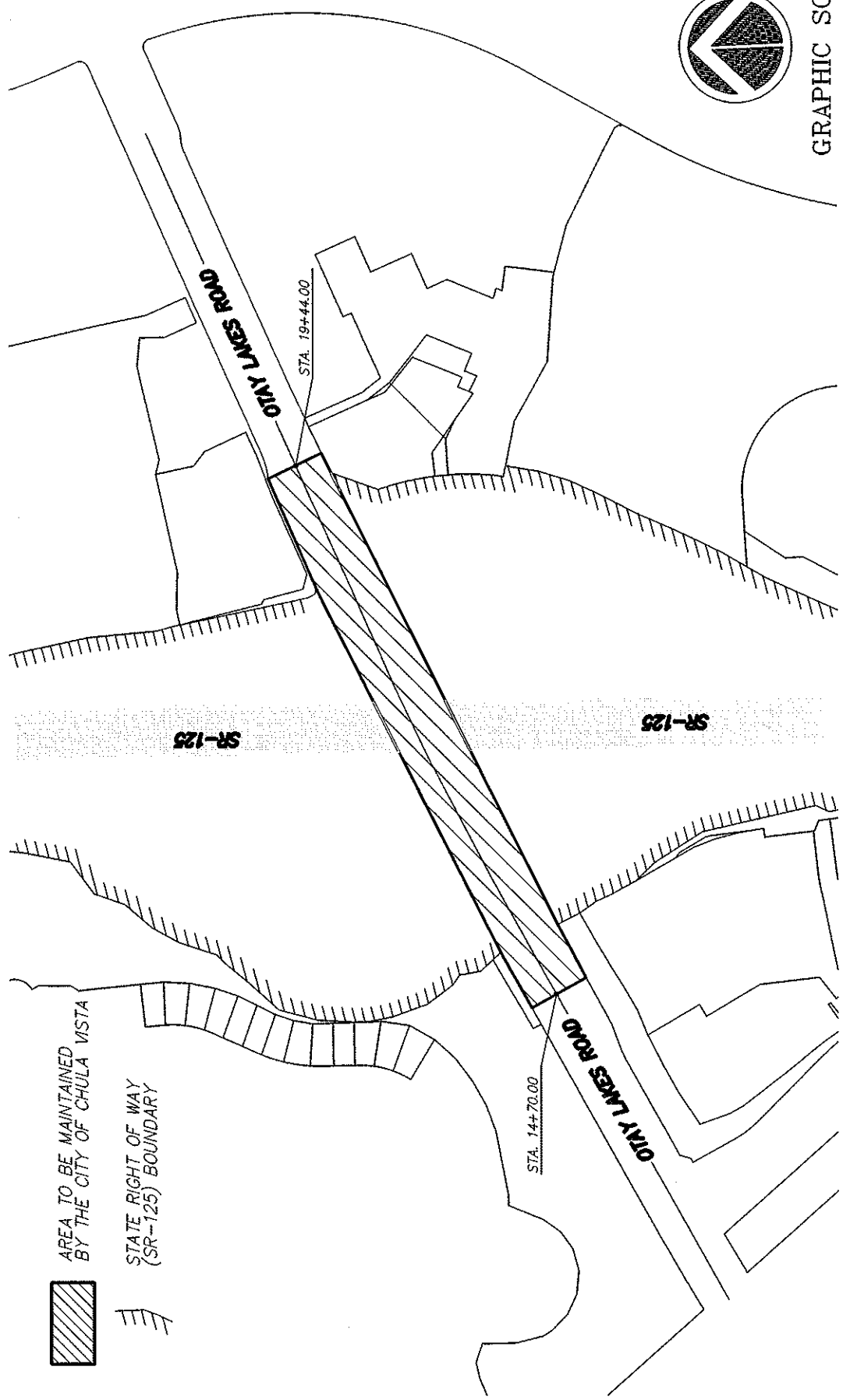


GRAPHIC SCALE
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EXHIBIT A-3

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DRAWN BY: BOUSHRA SALEM		TITLE: EASTLAKE PARKWAY OVERCROSSING	
DATE: 03-08-13		APPROVED BY: KIRK AMMERMAN	
SHEET 4 OF 8 SHTS		BOUSHRA SALEM	



GRAPHIC SCALE
NOT TO SCALE

EXHIBIT A-4

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DRAWN BY: BOUSHRA SALEM		TITLE:	
DATE: 03-08-13	SHEET 5 OF 8 SHTS	OTAY LAKES ROAD INTERCHANGE	
BOUSHRA SALEM		APPROVED BY: KIRK AMMERMAN	

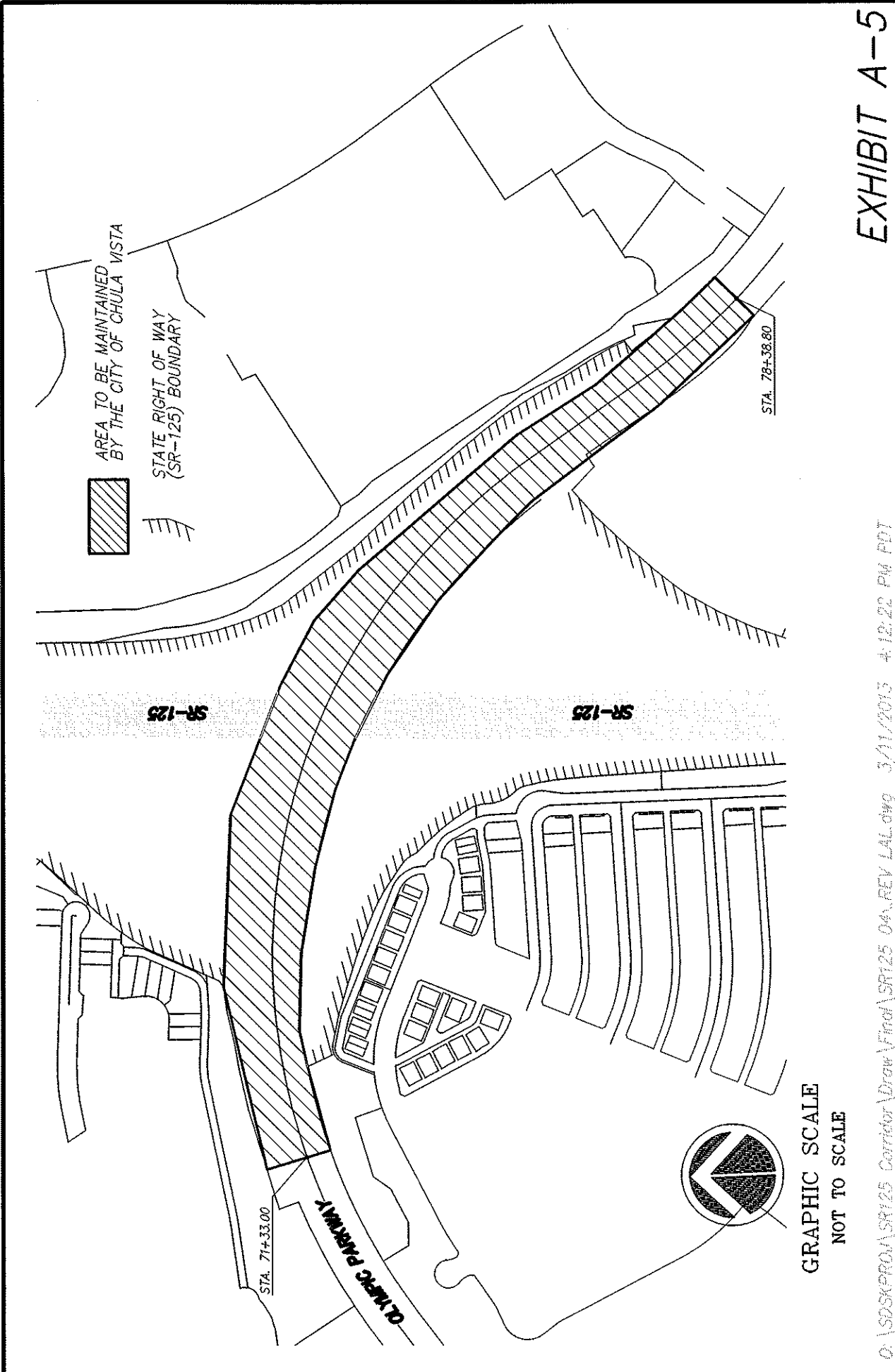


EXHIBIT A-5

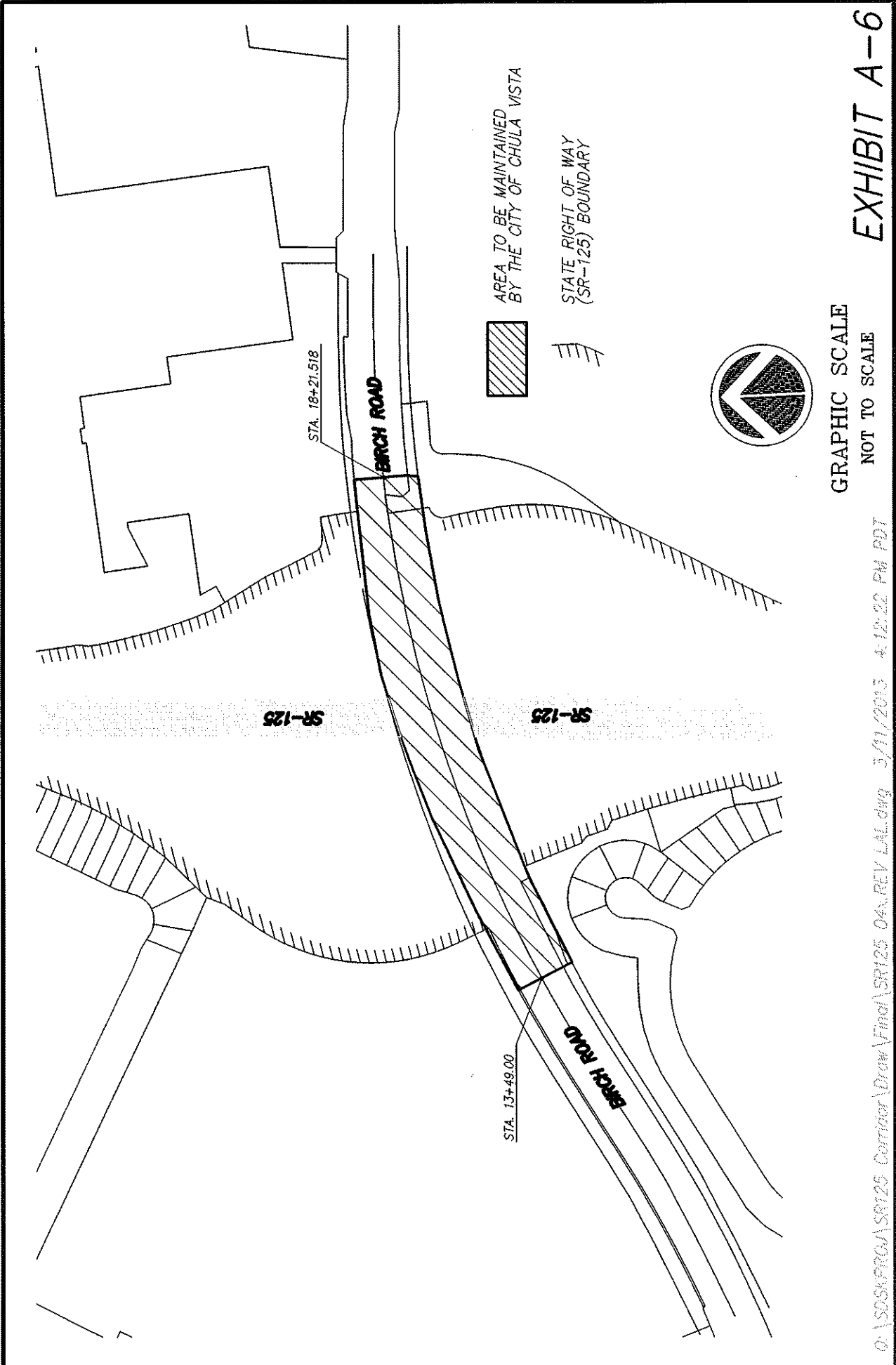
BOUSHRA SALEM
 APPROVED BY:
 KIRK AMMERMAN

OLYMPIC PARKWAY INTERCHANGE

DRAWN BY:
 BOUSHRA SALEM
 DATE: 03-08-13
 SHEET 6 OF 8 SHTS

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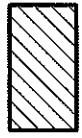
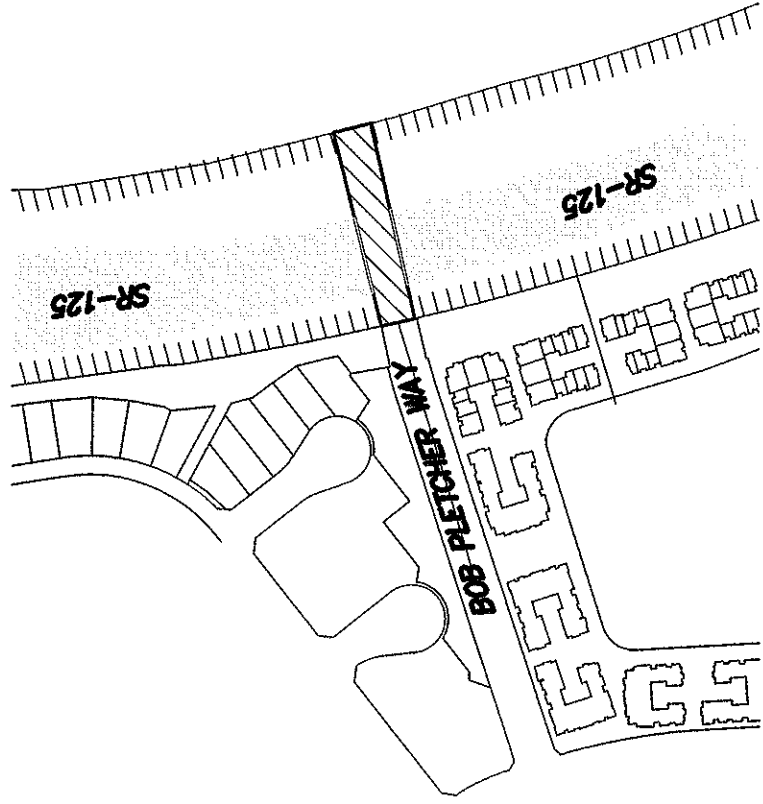


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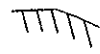
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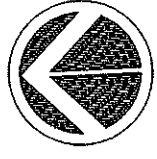
DRAWN BY: BOUSHRA SALEM		TITLE:	
DATE: 03-08-13	SHEET 7 OF 8 SHTS	BIRCH ROAD INTERCHANGE	
BOUSHRA SALEM		APPROVED BY: KIRK AMMERMAN	



AREA TO BE MAINTAINED
BY THE CITY OF CHULA VISTA



STATE RIGHT OF WAY
(SR-125) BOUNDARY



GRAPHIC SCALE
NOT TO SCALE

EXHIBIT A-7

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DRAWN BY:
BOUSHRA SALEM

DATE:
03-08-13

SHEET 8
OF 8 SHTS

TITLE:

BOB PLETCHER WAY UNDERROSSING

BOUSHRA SALEM

APPROVED BY:
KIRK AMMERMAN

Exhibit B

ELECRICALLY OPERATED TRAFFIC CONTROL DEVICES City of Chula Vista and SANDAG

**BASIS OF COST DISTRIBUTION
Operation & Maintenance – CITY 100%
Electrical Energy - SANDAG 100%**

TRAFFIC SIGNALS

#	Location	SCN	Meter Address	Original Turn on Date	Type	Plan No.	Remarks
1	Birch Rd/SR-125 SB	261	1875 Birch Road	11/16/07	Act	E-17	SR-125
2	Birch Rd/SR-125 NB	262	1972 Birch Road	11/16/07	Act	E-18	SR-125
3	East H/SR-125 SB	266	2107 East H Street	11/14/07	Act	E-34	SR-125
4	East H/SR-125 NB	267	2180 East H Street	11/15/07	Act	E-33	SR-125
5	Olympic Pkwy/SR-125 SB	268	1983 Olympic Pkwy	11/14/07	Act	E-20	SR-125
6	Olympic Pkwy/SR-125 NB	269	2050 Olympic Pkwy	11/14/07	Act	E-19	SR-125
7	Otay Lakes Road/SR-125 SB	270	2121 Otay Lakes Rd	11/15/07	Act	E-32	SR-125
8	Otay Lakes Road/SR-125 NB	271	2184 Otay Lakes Rd	11/15/07	Act	E-31	SR-125
9	San Miguel Ranch/SR-125 SB	263	2035 San Miguel Ranch Rd	11/16/07	Act	E-36	SR-125
10	San Miguel Ranch/SR-125 NB	264	135 Mount Miguel Rd	11/16/07	Act	E-35	SR-125

Exhibit C

(Individual maintenance items that are not provided for in the body of the Agreement.)

1. **TRAFFIC GUIDANCE SYSTEM.** With regard to traffic guidance systems and improvements, City shall perform at City expense all maintenance tasks for the following: curbside/median-mounted signs and guidepost within the areas shown in Exhibit A to be maintained by the City on Exhibit A. SANDAG, at SANDAG expense, shall perform all Maintenance Tasks located within the SR 125 toll facility right-of-way for the following: overhead signs and their support structures, guardrail, energy attenuators, median barriers and their appurtenances, and all trail blazing signs (SR 125 Guide Signs) located within Caltrans and City right-of-way.

2. **DRAINAGE AND ASSOCIATED COMPONENTS.** With regards to drainage and associated components, City shall perform all maintenance tasks for culverts, ditches, drains, structures, fences, curbs, sidewalks and other appurtenances including the medians within the areas shown to be maintained by the City on Exhibit A. SANDAG shall perform at its expense, all maintenance tasks for storm drain filter inserts including but not limited to installations, servicing, cleaning, permitting and replacing for those units located within the SR 125 toll facility right-of-way.