

27751

REVISED AGREEMENT

73706

Supplement No. 1

This REVISED AGREEMENT, made and entered into by and between the CITY OF LONG BEACH, a municipal corporation in the County of Los Angeles (hereinafter referred to as CITY), and the COUNTY OF LOS ANGELES, a political subdivision of the State of California (hereinafter referred to as COUNTY), acting on behalf of the Los Angeles County Flood Control District (hereinafter referred to as DISTRICT).

WITNESSETH

WHEREAS, CITY and COUNTY have heretofore executed CITY-COUNTY Agreement No. 73706, dated November 13, 2001, (hereinafter referred to as PRIOR AGREEMENT), regarding the parties' cooperative efforts with respect to the design and construction of the Termino Avenue Storm Drain project, as shown on Exhibit A of PRIOR AGREEMENT; WATER QUALITY IMPROVEMENTS consisting of a Continuous Deflective Separation (CDS) unit and a sewer diversion system, as shown on Exhibit B of PRIOR AGREEMENT; and waterline betterment consisting of waterline improvements, as shown on Exhibit C of PRIOR AGREEMENT; and

WHEREAS, none of the improvements contemplated by PRIOR AGREEMENT have been constructed; and

WHEREAS, CITY and COUNTY are proposing to change the alignment of the Termino Avenue Drain, as shown on Exhibit A of this REVISED AGREEMENT; and

WHEREAS, CITY desires to revise the proposed water quality improvements to include catch basin screens and Abtech filter sponges, in lieu of the previously proposed CDS unit; and

WHEREAS, CITY desires to have COUNTY perform a waterline relocation, in lieu of the previously proposed waterline betterment; and

WHEREAS, Section (3) paragraph m., of PRIOR AGREEMENT provides that PRIOR AGREEMENT may be modified, in writing, with the signature of both parties in the manner originally executed; and

WHEREAS, COUNTY is administering all matters for the DISTRICT pursuant to Section 56-3/4 of the COUNTY'S Charter and in accordance with an Agreement approved on December 26, 1984, between the COUNTY and DISTRICT; and

WHEREAS, PROJECT, as revised, is entirely within the jurisdictional limits of CITY; and

WHEREAS, PROJECT, as revised, is in the general interest of CITY and COUNTY.

NOW, THEREFORE, CITY and COUNTY mutually agree as follows:

(1) DEFINITIONS:

- a. The term DRAIN shall refer to the Termino Avenue Drain, as shown on Revised Exhibit A, attached hereto.
- b. The term WATER QUALITY IMPROVEMENTS shall refer to catch basin screens, Abtech filter sponges (or equivalent) and a sewer diversion system.
- c. The term WATERLINE RELOCATION shall refer to the waterline relocation, as depicted on the plans prepared by CITY, pursuant to paragraph (2) d., below.
- d. The term PROJECT shall refer to DRAIN, WATER QUALITY IMPROVEMENTS, and WATERLINE RELOCATION, collectively.

(2) CITY AGREES:

- a. To pursue community support for PROJECT.
- b. To provide reasonable assistance to COUNTY in the preparation of any additional environmental documents or approvals required to comply with the California Environmental Quality Act.
- c. To issue permits to COUNTY, on a no-fee basis, authorizing COUNTY to proceed with the construction of PROJECT and authorizing the occupancy and use of CITY'S public streets, as determined necessary by COUNTY, for the construction of PROJECT, and the operation, maintenance, repair, improvement, or reconstruction of DRAIN.
- d. To prepare plans, specifications, and cost estimates for WATERLINE RELOCATION, at CITY'S sole cost and expense, in accordance with the PROJECT schedule.
- e. To fund 50 percent of the actual WATERLINE RELOCATION costs, including any mitigation measures incorporated in the PROJECT as a result of the environmental review process related to WATERLINE RELOCATION, and any changes or modifications to final plans and

specifications for WATERLINE RELOCATION necessitated by unforeseen and unforeseeable field conditions encountered during construction.

- f. To review and provide comments on the plans and specifications for DRAIN and WATER QUALITY IMPROVEMENTS, and when all CITY'S comments have been satisfactorily addressed, to approve said plans and specifications.
- g. Upon execution of this REVISED AGREEMENT by both parties and receipt of an invoice from COUNTY, to deposit CITY funds with COUNTY in the amount of Two Million Four Hundred Fifty Five Thousand and 00/100 Dollars (\$2,455,000.00), which includes Two Million and 00/100 Dollars (\$2,000,000.00), as CITY'S contribution for DRAIN costs and Four Hundred Fifty Five Thousand and 00/100 Dollars (\$455,000.00), which is 50 percent of the estimated WATERLINE RELOCATION costs as stated in paragraph (4) a., below.
- h. Prior to start of construction, CITY will salvage and remove any trees or landscaping within the former Pacific Electric Railroad right of way including the reach between 7th Street and 8th Street, known as the greenbelt, and the reach between 10th Street and Loma Avenue, known as the Community Garden. Upon completion of DRAIN, CITY will restore the former Pacific Electric Railroad right-of-way landscape affected by construction of DRAIN. For the purpose of this REVISED AGREEMENT, grading operations necessary to restore the Pacific Electric Railroad right of way to the original elevation prior to start of DRAIN construction are considered part of DRAIN, not part of landscape restoration.
- i. To continue to be responsible for the maintenance along the former Pacific Electric Railroad right of way and the Marine Stadium.
- j. To grant or transfer to COUNTY any temporary or permanent right of way of CITY that is necessary for the construction of PROJECT and for the operation, maintenance, repair, improvement, or reconstruction of DRAIN, at no cost to COUNTY, to the extent not already provided by law. Permanent right-of-way easements will be granted or transferred only for operation, maintenance, repair, improvement, or reconstruction of DRAIN.
- k. To hereby appoint COUNTY as its attorney-in-fact to act on behalf of the CITY in all negotiations pertaining to the construction of PROJECT in accordance with the approved plans and specifications.
- l. To cooperate with COUNTY in conducting negotiations with and, where appropriate, to issue notices to, public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the

construction, operation, or maintenance of PROJECT. Where utilities have been installed in CITY streets or on CITY property, CITY will provide the necessary right of way for the relocation of any utilities or facilities that interfere with the construction, operation, or maintenance of PROJECT at no cost to COUNTY.

- m. That COUNTY shall not be responsible for the cost of any relocation or modification of DRAIN that is made necessary by relocation, change of grade, or other modification of any street or structure owned or under the control of the CITY and to release COUNTY from all expense or liability relating to alteration, modification, or relocation of DRAIN necessitated by future street operation, repair, alteration, improvement, realignment, or reconstruction.
- n. Upon completion of PROJECT, to accept ownership and thereafter operate, maintain, and repair at CITY'S sole cost and expense the following: (1) all catch basins for DRAIN, (2) WATER QUALITY IMPROVEMENTS, and (3) WATERLINE RELOCATION.
- o. To be responsible for filing and submitting the necessary applications for, and obtaining, the required permits for the sewer diversion system portion of the WATER QUALITY IMPROVEMENTS from the Sanitation District of Los Angeles County. The fee for a sewer connection permit and any other permitting fee for WATER QUALITY IMPROVEMENTS will be borne by CITY.
- p. Utility relocation costs for CITY owned utilities shall be borne by CITY. Where CITY has prior rights with respect to any utility company or owner of a substructure or overhead facility, CITY will take all necessary steps to grant, transfer, or assign all of CITY'S prior rights to COUNTY, at no cost to COUNTY, or to appoint COUNTY as its attorney-in-fact to exercise such prior rights.
- q. To be responsible for water quality sampling in connection with, and monitoring and documenting the effectiveness of WATER QUALITY IMPROVEMENTS on a monthly basis, and to share data and results with COUNTY at no cost to COUNTY. The obligation to share data and results with COUNTY shall expire five years after completion of the PROJECT.
- r. To be responsible for the operation, maintenance, and repair of all CITY streets in which DRAIN is located.
- s. To indemnify, defend, and hold COUNTY, DISTRICT, their agents, officers, and employees harmless from and against any and all claims, actions, liability and expense arising or resulting from: (1) any act or omission of CITY, its officers, employees, agents, and/or consultants of any tier in conjunction with PROJECT, or (2) the breach of any obligation

of CITY under this REVISED AGREEMENT. CITY'S obligations under this paragraph shall not apply to the extent that the claim, action, liability, or expense is the result of COUNTY'S own negligence or willful misconduct.

(3) COUNTY AGREES:

- a. To prepare the plans, specifications, and cost estimates for DRAIN and WATER QUALITY IMPROVEMENTS, at COUNTY'S sole cost and expense.
- b. To finance the total cost of DRAIN and WATER QUALITY IMPROVEMENTS, in excess of the CITY'S contribution as specified in paragraph (2) g., above.
- c. To accept the deposit of CITY'S funds in accordance with this REVISED AGREEMENT.
- d. To obtain all required permits and approvals for PROJECT other than those to be obtained by CITY, as specified above; to advertise PROJECT for construction bids; to award and administer the construction contract; to modify approved plans and specifications for DRAIN and WATER QUALITY IMPROVEMENTS necessitated by unforeseen or unforeseeable field conditions encountered during construction as necessary to ensure DRAIN and WATER QUALITY IMPROVEMENTS are constructed as intended; to cause PROJECT to be constructed in accordance with the approved plans and specifications; and to act on behalf of CITY in negotiations pertaining thereto.
- e. Utility relocation costs for non-CITY owned utilities shall be borne by COUNTY or the respective utility companies based on CITY'S prior rights or existing written agreements.
- f. Upon completion of DRAIN, to accept ownership thereof and thereafter operate and maintain DRAIN at COUNTY'S sole cost and expense, exclusive of all catch basins.
- g. To indemnify, defend, and hold CITY, its agents, officers, and employees harmless from and against any and all claims, actions, liability, and expense arising or resulting from: (1) any act or omission of COUNTY, its officers, employees, agents, or consultants of any tier in connection with PROJECT, or (2) the breach of any obligation of COUNTY under this REVISED AGREEMENT. COUNTY'S obligations under this paragraph shall not apply to the extent that the claim, action, liability or expense is the result of CITY'S own negligence or willful misconduct.

- h. To fund 50 percent of the actual WATERLINE RELOCATION costs, including any mitigation measures incorporated in the PROJECT as a result of the environmental review process related to WATERLINE RELOCATION, and any changes or modifications to final plans and specifications for WATERLINE RELOCATION necessitated by unforeseen and unforeseeable field conditions encountered during construction.

(4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. The estimated PROJECT costs are summarized as follows:

DRAIN

i.	Estimated Construction Contract Cost (Excluding restoration cost along the former Pacific Electric Railroad right of way)	\$24,000,000
ii.	Estimated Contract Administration Cost (10 percent of Construction Contract Cost)	\$2,400,000
iii.	Total Estimated Construction Cost	<u>\$26,400,000</u>

WATER QUALITY IMPROVEMENTS

i.	Estimated Construction Contract Cost	
	1. Abtech Filter Sponges (or equivalent) and Catch Basin Screens	\$500,000
	2. Sewer Diversion System	\$500,000
ii.	Estimated Contract Administration Cost (10 percent of Construction Contract Cost)	\$100,000
iii.	Total Estimated Construction Cost	<u>\$1,100,000</u>

WATERLINE RELOCATION

i.	Estimated Construction Contract Cost	\$827,000
ii.	Estimated Contract Administration Cost (10 percent of Construction Contract Cost)	\$83,000
iii.	Total Estimated Construction Cost	<u>\$910,000</u>

TOTAL PROJECT COSTS \$28,410,000

PROJECT FUNDING

i.	CITY'S share for DRAIN (total contribution)	\$2,000,000
ii.	COUNTY'S share for DRAIN	\$24,400,000
iii.	COUNTY'S share for WATER QUALITY IMPROVEMENTS	\$1,100,000
iv.	CITY'S share for WATERLINE RELOCATION	\$455,000
v.	COUNTY'S share for WATERLINE RELOCATION	\$455,000
vi.	Total funding available for PROJECT	<u>\$28,410,000</u>

- b. CITY'S deposit for WATERLINE RELOCATION, as described in paragraph (2) g., above, is based on 50 percent of the estimated WATERLINE RELOCATION costs.
- c. If CITY'S deposit, as set forth in paragraph (2) g., above is not delivered to COUNTY within thirty (30) days after the date of the invoice by COUNTY, CITY shall pay COUNTY interest thereon from that date at the rate of 7 percent per annum.
- d. COUNTY shall furnish CITY, within one hundred and twenty (120) calendar days after the completion of PROJECT, a final accounting of the construction contract and contract administration costs of WATERLINE RELOCATION. If the final cost of WATERLINE RELOCATION is less than CITY'S Four Hundred Fifty Five Thousand and 00/100 Dollars (\$455,000.00) deposit, COUNTY shall, within sixty (60) days, refund the difference to CITY. Conversely, if the final cost of WATERLINE RELOCATION exceeds CITY'S Four Hundred Fifty Five Thousand and 00/100 Dollars (\$455,000.00) deposit, CITY shall, within sixty (60) days, pay to COUNTY the amount by which the cost of WATERLINE RELOCATION set forth in the final accounting exceeds said Four Hundred Fifty Five Thousand and 00/100 Dollars (\$455,000.00) deposit.
- e. CITY hereby represents and warrants that it has sufficient title to or interest in all properties on which the PROJECT is to be located, to permit the construction of PROJECT and that CITY has sufficient title to or interest in all properties on which DRAIN is to be located to permit the operation, maintenance, repair, improvement, or reconstruction of DRAIN, free from all liens, encumbrances, and conditions, and that CITY'S title to or interest in all properties on which DRAIN is to be located may properly be granted or transferred to DISTRICT. Upon completion of DRAIN, CITY shall execute and deliver any and all documents necessary

to grant or transfer to DISTRICT sufficient title or interest in the property on which DRAIN is located to permit DISTRICT to operate, maintain, repair, improve, or reconstruct DRAIN.

- f. COUNTY shall have the right to reject all bids after notifying CITY and may re-advertise PROJECT if COUNTY deems such action is to be in the best interest of the COUNTY.
- g. COUNTY may terminate this REVISED AGREEMENT without cause at any time, at COUNTY'S sole unilateral discretion. If COUNTY terminates this REVISED AGREEMENT pursuant to this paragraph, CITY shall be entitled to a refund of all CITY funds previously deposited with COUNTY for this PROJECT and COUNTY shall have no further obligation to CITY in connection with this REVISED AGREEMENT, other than restoring any CITY improvements that have been damaged by COUNTY'S construction activities to a condition equal to or better than the condition that existed immediately prior to the start of the construction activities.
- h. During construction of PROJECT, COUNTY shall furnish an inspector or other representative to perform the functions of an inspector. CITY may also furnish, at no cost to COUNTY, an inspector or other representative to inspect construction of PROJECT. Said inspectors shall cooperate and consult with each other. The COUNTY inspector shall be the only inspector with power to direct the contractor. The CITY inspector shall not issue any directive(s) to the contractor, but shall work through the COUNTY inspector.
- i. To hereby release COUNTY, DISTRICT and their respective agents, officers, and employees from any and all expense or liability relating to street operation, maintenance or repair except for damages and repairs to CITY public streets or CITY property caused by negligence by COUNTY.
- j. In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this REVISED AGREEMENT to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each of the parties indemnifies, defends, and holds harmless the other party for any liability, cost, or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

IN WITNESS WHEREOF, the parties hereto have caused this REVISED AGREEMENT to be executed by their respective officers, duly authorized, by the CITY OF LONG BEACH on February 12, 2009, and by the COUNTY OF LOS ANGELES on March 3, 2009.

COUNTY OF LOS ANGELES

By *Don Krabe*
Chairman, Board of Supervisors

ATTEST:

SACHI A. HAMAI
Executive Officer of the
Board of Supervisors of the
County of Los Angeles

By *Don*
Deputy



ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By *R Fortner*
Deputy

42 MAR 03 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

CITY OF LONG BEACH

By *8j* Assistant City Manager
City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By *Amey*
Deputy City Attorney

REVISED EXHIBIT (A)

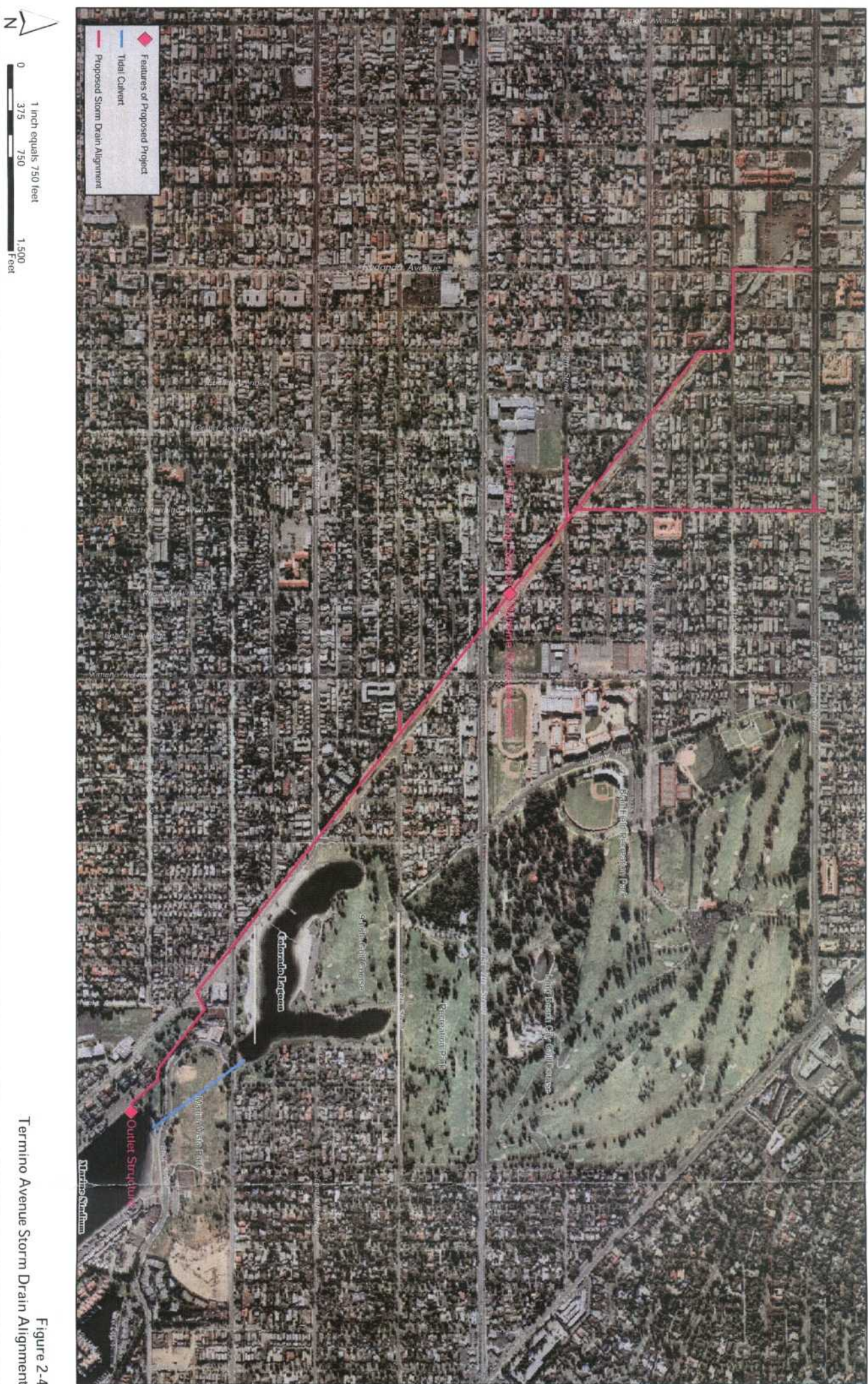


Figure 2-4
Termino Avenue Storm Drain Alignment