COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

December 30, 2004

IN REPLY PLEASE REFER TO FILE: PD-4

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

HIGHWAYS-THROUGH-CITIES
FLOMAR DRIVE FROM MEMPHIS AVENUE TO LA FORGE STREET
CITY OF WHITTIER-RESOLUTION NO. 3889
FLOMAR DRAIN
CITY-COUNTY COOPERATIVE AGREEMENT
SUPERVISORIAL DISTRICT 4
4 VOTES

IT IS RECOMMENDED THAT YOUR BOARD:

1. In conjunction with the provisions of the agreement between the City of Whittier and the County of Los Angeles, to be approved concurrently with this Resolution, adopt the enclosed Resolution finding that the proposed drainage improvements of Flomar Drive between the aforementioned limits, within the City of Whittier, are of general County interest and providing that County-aid shall be extended to the City of Whittier in the amount of $425,000 from the Road Fund for this purpose. This action will have no impact on the County General Fund.

2. Acting on your own behalf and also as governing body of the Los Angeles County Flood Control District (District), approve and instruct the Chair of the Board to sign the agreement between the City of Whittier and the County of Los Angeles, which establishes the City's responsibility to design and construct Flomar Drain. It also provides for the County to finance City support costs up to a maximum amount of $95,000 and the construction contract costs up to a maximum amount of $405,000. The total County contribution is up to a maximum of $500,000. The City will

finance the total project costs in excess of County contribution. The County's contribution of $425,000 is included in the Fiscal Year 2004-05 Road Fund, and $75,000 is available from the Fiscal Year 2004-05 Flood Control District Fund Budget.

3. Delegate authority to the Interim Director of Public Works to accept the drain for operation and maintenance upon completion of the drain to the District's sole and complete satisfaction.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Public Works proposes to financially participate in the construction of Flomar Drain in the City of Whittier. The primary purpose of Flomar Drain is to upgrade an existing road culvert and improve street drainage along Flomar Drive. Road funds are expended for that portion of the project that alleviates the street flooding. The City will perform preliminary engineering, right-of-way acquisition, utility relocations, and construction administration. The County will finance the City support costs up to a maximum amount of $95,000 and the construction contract costs up to a maximum amount of $405,000. The City will finance all costs in excess of County's contributions.

Your Board's adoption of the enclosed Resolution will authorize the expenditure of County Highways-Through-Cities funds in the City of Whittier for the portion within the City streets. Sections 1686 of the California Streets and Highways Code provides that the improvement and maintenance of all city streets is of general county interest. The board of supervisors of any county may, by a resolution adopted by a four-fifths vote of its members, determine that county aid shall be extended for the improvement or maintenance of streets within a city or extending along or across the boundary of a city.

Your Board's approval of the enclosed agreement is necessary for the delegation of responsibilities and the cooperative finance of the project. Your Board's delegation of authority is necessary for the Interim Director of Public Works to accept the drain for operation and maintenance.

Implementation of Strategic Plan Goals

This action is consistent with the County's Strategic Plan Goal of Organizational Effectiveness by utilizing a collaborative effort to expedite completion of the project. It also satisfies the goal of Service Excellence by providing assistance to the City in funding this project, which will alleviate flooding and increase pedestrian and vehicular safety throughout the project area.

FISCAL IMPACT/FINANCING

The County contribution for the proposed project is up to a maximum amount of $95,000 for the City support costs and up to a maximum amount of $405,000 for the construction contract costs. Public Works will deposit $95,000 with the City of Whittier upon the full execution of this Agreement. Prior to advertisement of the project for construction bids, Public Works will deposit $405,000 with the City. The County's contribution of $425,000 is included in the Fiscal Year 2004-05 Road Fund budget and $75,000 is available from the Fiscal Year 2004-05 Flood Control District Fund budget. There is no impact on the County General Fund.

FACT AND PROVISIONS/LEGAL REQUIREMENTS

The agreement has been reviewed and approved as to form by County Counsel. This agreement was executed by the City of Whittier on December 15, 2004.

ENVIRONMENTAL DOCUMENTATION

A Negative Declaration for this project was prepared by the County and adopted by your Board on September 4, 2001, Synopsis No. 77. The City of Whittier has concurred with the Negative Declaration on December 14 , 2004.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This project will not have a significant impact on current flood control services or projects currently planned. Upon construction completion to the satisfaction of the Los Angeles County Flood Control District, the District will be responsible for future operation, maintenance, and repair of the drain.

CONCLUSION

Enclosed are two copies of the Resolution and three originals of the agreement, which have been executed by the City and approved as to form by County Counsel. Please return two fully executed originals of the agreement and one copy of the Resolution along with one approved copy of this letter to Public Works for further processing. The resolution and the agreement labeled County Original is to be retained for your files.

Respectfully submitted,

DONALD L. WOLFE
Interim Director of Public Works

TG:ph
C050698/P:\pdpub\Temp\FLOOD\PROJECTS\Fiomar Drain (UDN 10-1.50)\Agmt & board letter\FD Board Letter.doc

Enc. 2

cc: Chief Administrative Office
County Counsel

RESOLUTION NO. 3889

IT IS RESOLVED that the improving of street drainage of Flomar Drive from Memphis Avenue to La Forge Street, within the City of Whittier, are of general County interest and that County-aid shall be extended, therefore, from the Road Fund, to be expended in accordance with all applicable provisions of law relating to funds derived from the Highway Users Tax, in the amount of $425,000, to be made available from the Road Fund for this purpose, and in conjunction with the provisions of the agreement between the City of Whittier and the County approved concurrently with this resolution.

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The foregoing Resolution was on the _____ day of _____, 2005, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio of the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts.

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of the
County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR
COUNTY COUNSEL

By _____
Deputy

AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF WHITTIER, 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 acting on its own behalf and on behalf of the Los Angeles County Flood Control District, a body corporate and politic, hereinafter referred to as "COUNTY."

WITNESSETH

WHEREAS, DISTRICT is a political entity separate and distinct from COUNTY, and is governed by COUNTY Board of Supervisors, pursuant to Section 3 of the Los Angeles County Flood Control Act; and

WHEREAS, pursuant to Section 56-3/4 of COUNTY'S Charter, DISTRICT'S functions are performed by COUNTY'S Department of Public Works; and

WHEREAS, CITY and COUNTY desire that a new storm drain on Flomar Drive between Memphis Avenue and La Forge Street, identified as Flomar Drain as shown on Exhibit A, be constructed within CITY, hereinafter referred to as "DRAIN"; and

WHEREAS, DRAIN is entirely within the jurisdictional limits of CITY; and

WHEREAS, DRAIN is in the general interest of CITY and COUNTY; and

WHEREAS, CITY is willing to perform PRELIMINARY ENGINEERING, CONSTRUCTION ADMINISTRATION, RIGHT-OF-WAY ACQUISITION, and UTILITY RELOCATIONS for DRAIN, hereinafter referred to as "CITY SUPPORT"; and

WHEREAS, COUNTY is willing to finance a portion of CITY SUPPORT costs in an amount not to exceed Ninety-five Thousand and 00/100 Dollars ($95,000.00); and

WHEREAS, CONSTRUCTION CONTRACT COSTS of DRAIN is currently estimated to be Five Hundred Thousand and 00/100 Dollars ($500,000.00); and

WHEREAS, COUNTY is willing to finance a portion of CONSTRUCTION CONTRACT COSTS of DRAIN in an amount not to exceed Four Hundred Five Thousand and 00/100 Dollars ($405,000.00); and

WHEREAS, CITY is willing to finance CITY SUPPORT costs and CONSTRUCTION CONTRACT COSTS in excess of COUNTY'S contributions; and

WHEREAS, CITY is willing to accept COUNTY'S contributions in the manner stated herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by CITY and COUNTY and of the premises herein contained, it is hereby agreed as follows:

I. DEFINITIONS

a. PRELIMINARY ENGINEERING, as referred to in this AGREEMENT, shall consist of environmental documentation; design survey; soils report; traffic engineering and geometric investigation; preparation of plans, specification, and cost estimates; right-of-way certification; utility engineering; obtaining COUNTY approval of DRAIN; and all other necessary work prior to advertising of DRAIN for construction bids.

b. CONSTRUCTION ADMINISTRATION, as referred to in this AGREEMENT, shall consist of construction contract administration, construction inspection, materials testing, construction survey, changes and modification of plans and specifications for DRAIN, necessitated by unforeseen or unforeseeable field conditions encountered during construction of DRAIN, and all other necessary work after advertising of DRAIN for construction bids to cause DRAIN to be constructed in accordance with said plans and specifications approved by COUNTY.

c. RIGHT-OF-WAY ACQUISITION, as referred to in this AGREEMENT, shall consist of investigation and preparation of search maps for right-of-way identification; property appraisals; title reports; preparation of legal descriptions; acquisition of any parcel of land and easements including negotiations, condemnation activities, and escrow costs; clearing any improvements within right of way; obtaining permits to enter other property; incidental and litigation expense; and all other work necessary to acquire right of way for construction and future maintenance of DRAIN as required by DISTRICT.

d. UTILITY RELOCATIONS, as referred to in this AGREEMENT, shall consist of all payments to utility companies or contractor for the relocations of facilities necessary for the construction of DRAIN and all payments to others including COUNTY and DISTRICT for the necessary right of way needed for the relocations.

e. CONSTRUCTION CONTRACT COSTS, as referred to in this AGREEMENT, shall consist of all payments to the contractor for construction of DRAIN.

f. CITY SUPPORT, as referred to in this AGREEMENT, shall consist of PRELIMINARY ENGINEERING, CONSTRUCTION ADMINISTRATION, RIGHT-OF-WAY ACQUISITION, and UTILITY RELOCATIONS for DRAIN.

II. (1) CITY AGREES:

a. To perform CITY SUPPORT for DRAIN.

b. To obtain COUNTY'S written approval of all work associated with PRELIMINARY ENGINEERING, RIGHT-OF-WAY ACQUISITION, and UTILITY RELOCATIONS prior to advertising of DRAIN for construction bids.

c. To invoice COUNTY for CITY SUPPORT costs in an amount not to exceed Ninety-five Thousand and 00/100 Dollars ($95,000.00) upon the full execution of this AGREEMENT.

d. To invoice COUNTY for CONSTRUCTION CONTRACT COSTS in an amount not to exceed Four Hundred Five Thousand and 00/100 Dollars ($405,000.00) upon the full execution of this AGREEMENT but in no event earlier than thirty (30) days prior to advertisement of DRAIN for construction bids.

e. To accept deposit of COUNTY'S funds in accordance with the terms of this AGREEMENT.

f. To finance the remaining costs of CITY SUPPORT and CONSTRUCTION CONTRACT COSTS for DRAIN in excess of COUNTY'S contributions.

g. To ensure that CITY contractor adds COUNTY and DISTRICT, their officers, employees, and agents as additional insured on their insurance policies, including comprehensive general liability and automobile policies, with the minimum limits of coverage per Subsection 7-3 of the Standard Specifications for Public Works Construction.

h. Upon completion of construction and at no cost to COUNTY or DISTRICT, to operate and maintain DRAIN until DRAIN is accepted by DISTRICT for operation and maintenance in accordance with the provisions of Section II (2) e and (3) e below.

i. Upon DISTRICT'S acceptance of DRAIN, to grant DISTRICT permission to occupy and use CITY public streets and permanent right of way necessary for the operation, maintenance, repair, and replacement of DRAIN at no cost to COUNTY or DISTRICT.

j. Upon DISTRICT'S acceptance of DRAIN, to take all necessary steps to grant, transfer, or assign all prior rights over utility companies and owners of substructure and overhead facilities to DISTRICT for the operations, maintenance, repair, and replacement of DRAIN at no cost to COUNTY or DISTRICT.

k. To indemnify, defend, and save harmless COUNTY and DISTRICT, their agents, officers, and employees from and against any and all liability and expense arising from any act or omission of CITY, its officers, employees, agents, or subconsultants of any tier in conjunction with DRAIN including defense costs, legal fees, claims, actions, and causes of action for damages of any nature whatsoever including, but not limited to, bodily injury, death, personal injury, or property damage.

(2) COUNTY AGREES:

a. To review all work associated with PRELIMINARY ENGINEERING, RIGHT-OF-WAY ACQUISITION, and UTILITY RELOCATIONS and to approve the work if they meet DISTRICT'S standards.

b. To finance CITY SUPPORT costs in an amount not to exceed Ninety-five Thousand and 00/100 Dollars ($95,000.00).

c. To finance CONSTRUCTION CONTRACT COSTS for DRAIN in an amount not to exceed Four Hundred Five Thousand and 00/100 Dollars ($405,000.00).

d. To deposit with CITY the COUNTY'S contributions upon the full execution of this AGREEMENT and receipt of invoice from CITY in accordance to Section II (1) c and (1) d.

e. Upon completion of construction of DRAIN to DISTRICT'S sole and complete satisfaction, to accept ownership of and, therefore, be responsible for the operation and maintenance of DRAIN.

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

a. CITY shall be responsible for any and all costs necessary to complete construction of DRAIN in excess of COUNTY'S contributions.

b. CITY will complete the construction of DRAIN within forty-eight (48) months of the date of COUNTY'S approval of this AGREEMENT. Failure to do so shall allow COUNTY to cause the provisions of this AGREEMENT to be null and void, and CITY shall immediately return all COUNTY'S deposits for DRAIN within thirty (30) days of invoice from COUNTY. If CITY'S payment is not delivered to the COUNTY office identified on the billing invoice within thirty (30) days of invoice, CITY shall pay COUNTY interest thereon from the date after the due date of the invoice at the rate of seven percent (7%) per annum.

c. During construction of DRAIN, CITY shall furnish an inspector or other representative to perform the functions of an inspector at no cost to COUNTY. COUNTY may also furnish, at no cost to CITY, an inspector or other representative to inspect construction of DRAIN. Said inspectors shall cooperate and consult with each other. COUNTY inspector shall not issue any directive(s) to the contractor but shall work through CITY inspector. The orders of CITY'S inspector to the contractor or any other CITY person in charge of construction shall prevail and be final.

d. CITY, nor COUNTY, nor DISTRICT, shall be responsible for any and all expenses relating to any future relocation, alteration, and modification of

DRAIN once installed, necessitated by future street improvements, realignments, or reconstruction.

e. DISTRICT shall not be deemed responsible for the DRAIN unless and until DISTRICT formally accepts DRAIN pursuant to Section II (2) e. above, which transfer shall be free and clear of all liens and encumbrances including, without limitation, mechanic's liens.

f. Any review by or on behalf of COUNTY, in connection with DRAIN, shall not relieve CITY or any third party contractor of any of its obligations or create any responsibility for COUNTY and DISTRICT in connection with the work to be performed by CITY including, without limitations, PRELIMINARY ENGINEERING, CONSTRUCTION ADMINISTRATION, RIGHT-OF-WAY ACQUISITION, and UTILITY RELOCATIONS.

g. Within sixty (60) days after final payment to construction contractor for DRAIN, CITY shall perform a final and separate accounting of cost of DRAIN and forward it to COUNTY for review and approval. Within thirty (30) days of COUNTY'S approval of the final separate accounting and if the costs in this accounting are less than the amount of funds previously deposited with CITY for COUNTY'S contribution, CITY shall return the excess funds to COUNTY. If the excess funds are not delivered to COUNTY from CITY within thirty (30) days of COUNTY'S approval of the final separate accounting, CITY shall pay COUNTY interest thereon from the date of the approval at the rate of seven percent (7%) per annum.

h. COUNTY may unilaterally terminate this AGREEMENT without cause at any time prior to award of the construction contract by giving thirty (30) days prior written notice to CITY and, in such event, CITY shall not be entitled to any compensation except for costs incurred to date up to the maximum of Ninety-five Thousand and 00/100 Dollars ($95,000.00) provided for CITY SUPPORT.

i. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public 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, will 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 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 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.

j. It is understood and agreed that the provisions of the Assumption of Liability Agreement No. 32044 between CITY and COUNTY, adopted by the Board of Supervisors with an effective date of March 22, 1978, and currently in effect, is inapplicable to this AGREEMENT.

k. This AGREEMENT may be modified only by the mutual written consent of all parties. Amendments and modifications of a nonmaterial nature may be made by mutual written consent of the parties' Directors of Public Works or their delegates.

l. Each party shall have no financial obligation to the other party under this AGREEMENT except as herein expressly provided.

m. This AGREEMENT was prepared by all parties and, therefore, shall not be interpreted for or against either party on the basis of who prepared it.

n. The provisions of this AGREEMENT shall be interpreted and enforced pursuant to the laws of the State of California.

o. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

CITY:

Mr. David T. Mochizuki
Director of Public Works
City of Whittier
13230 Penn Street
Whittier, CA 90602-1772

COUNTY:

Mr. Donald L. Wolfe
Interim Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA91802-1460

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IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized, by the CITY OF WHITTIER on DECEMBER 15, 2004, and by the COUNTY OF LOS ANGELES on _____, 2005.

COUNTY OF LOS ANGELES,
acting on its own behalf and also on
behalf of the Los Angeles County
Flood Control District

By_____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By_____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By Francis E. Scott
Deputy

CITY OF WHITTIER

By Owen Newcomer
Mayor

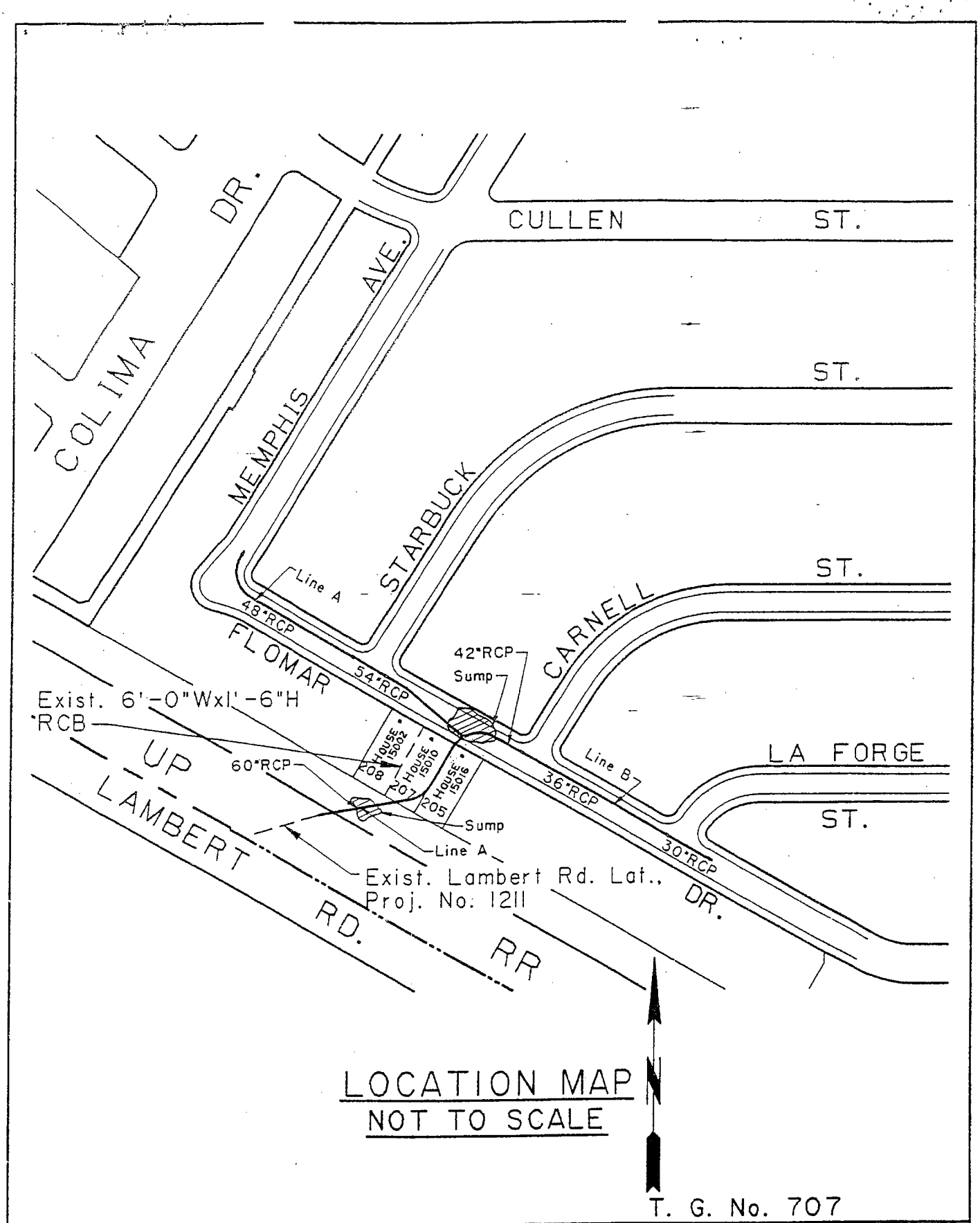
ATTEST:

By Kathryn Allenshall
City Clerk

APPROVED AS TO FORM:

By_____
ASST. City Attorney

\\pw01\pwpublic\pdpub\Temp\FLOOD\PROJECTS\Flomar Drain (UDN 10-1.50)\Agmt & board letter\Flomar Drain Agreement2.doc



PREPARED BY H. THIND	LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
DATE 5-26-98	FLOMAR DRAIN LOCATION MAP
SCALE NTS	

Exhibit A

980079.FLD.CONCEPT