

## **LANDSCAPE MAINTENANCE AGREEMENT WITH THE CITY OF LAKE ELSINORE**

THIS AGREEMENT is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the CITY of Lake Elsinore; hereinafter referred to as "CITY" and collectively referred to as "PARTIES."

1. The PARTIES hereto mutually desire to identify the maintenance responsibilities of CITY for newly constructed or revised improvements within STATE's right of way by Encroachment Permit Number 08-21-6-MC-1380 dated \_\_\_\_\_.
2. This Agreement addresses CITY responsibility for the landscaping, irrigation, shrubs, and groundcover (collectively the "LANDSCAPING") placed within State Highway right of way on State Route 74, as shown on Exhibit A, attached to and made a part of this Agreement.
3. Maintenance responsibilities that include, but are not limited to, inspection, providing emergency repair, replacement, and maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of LANDSCAPING as shown on said Exhibit "A."
4. The degree or extent of maintenance work to be performed, and the standards, therefore, shall be in accordance with the provisions of Section 27 of the Streets and Highways Code and the then current edition of the State Maintenance Manual.
5. When a planned future improvement is constructed and/or a minor revision has been effected with STATE's consent or initiation within the limits of the STATE's right of way herein described which affects PARTIES' division of maintenance responsibility as described herein, PARTIES will agree upon and execute a new dated and revised Exhibit "A" which will be made a part hereof and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement.
  - 5.1. The new exhibit can be executed only upon written consent of the PARTIES hereto acting by and through their authorized representatives. No formal amendment to this Agreement will be required.
6. CITY agrees, at CITY's expense, to do the following:
  - 6.1. CITY will MAINTAIN or have authorized licensed contractor with appropriate class of license in the State of California, to MAINTAIN LANDSCAPING conforming to those plans and specifications (PS&E) pre-approved by STATE. CITY will have in place a valid necessary encroachment permits prior to the start of any work within STATE'S right of way.

- 6.1.1. An Encroachment Permit rider may be required for any changes to the scope of work allowed by this Agreement prior to the start of any work within STATE's right of way
- 6.2. CITY shall ensure that LANDSCAPED areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance including providing for water, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement.
  - 6.2.1. To prune shrubs, tree plantings, and trees to control extraneous growth and ensure STATE standard lines of sight to signs and corner sight distances are always maintained for the safety of the public.
  - 6.2.2. To replace unhealthy or dead plantings when observed or within 30 days when notified in writing by STATE that plant replacement is required.
  - 6.2.3. To expeditiously MAINTAIN, replace, repair or remove from service any components of LANDSCAPING system that has become unsafe or unsightly.
- 6.3. To furnish electricity for irrigation system controls, and lighting system controls for all street lighting systems installed by CITY.
- 6.4. To MAINTAIN, repair and operate the irrigation systems in a manner that prevents water from flooding or spraying onto STATE highway, spraying parked and moving automobiles, spraying pedestrians on public sidewalks/bike paths, or leaving surface water that becomes a hazard to vehicular or pedestrian/bicyclist travel.
- 6.5. To control weeds at a level acceptable to the STATE. Any weed control performed by chemical weed sprays (herbicides) shall comply with all laws, rules, and regulations established by the California Department of Food and Agriculture. All chemical spray operations shall be reported quarterly (Form LA17) to the STATE to: District 08 Maintenance at 464 W. 4th Street San Bernardino CA 92401.
- 6.6. CITY shall ensure LANDSCAPING within the Agreement limits provide an acceptable walking and riding surface, and will provide for the repair and removal of dirt, debris, graffiti, weeds, and any deleterious item or material on or about the LANDSCAPING in an expeditious manner.
- 6.7. To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.

6.8. To remove LANDSCAPING and appurtenances and restore STATE owned areas to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.

7. STATE may provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from maintenance responsibilities assumed under this Agreement.

8. STATE shall Issue encroachment permits to CITY at no cost to it.

9. CITY shall remove Persons Experiencing Homelessness (PEH) and any structures, personal property, debris, and/or other items related to the encampment from the Location(s) shown in Exhibit A, subject to State's Encampment Removal policy, MPD 1001 R1 and applicable State and Federal law.

A. Nothing in this Agreement grants or waives the right of California Highway Patrol (CHP) and other law enforcement agencies having jurisdiction over the Locations in shown in Exhibit A.

10. CITY's graffiti removal shall be limited to removal of text only in accordance with Streets and Highway Code Section 96. Any graffiti that in any way resembles a mural, artwork, paintings, or other similar elements may not be removed. CITY shall discuss such possible art with STATE's District \_\_\_\_ Transportation Art Coordinator before conducting any graffiti removal or remediation.

#### 11. LEGAL RELATIONS AND RESPONSIBILITIES:

11.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not party to this Agreement, or affect the legal liability of either PARTY to this Agreement by imposing any standard of care respecting the design, construction and maintenance of these STATE highway improvements or CITY facilities different from the standard of care imposed by law.

11.2. If during the term of this Agreement, CITY should cease to MAINTAIN the LANDSCAPING to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of CITY at CITY's expense or direct CITY to remove or itself remove LANDSCAPING at CITY's sole expense and restore STATE's right of way to its prior or a safe operable condition. CITY hereby agrees to pay said STATE expenses, within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing LANDSCAPING, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) days within which to affect that cure.

11.3. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement with the exception of those actions of STATE necessary to cure a noticed default on the part of CITY.

11.4. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

#### 11.5. PREVAILING WAGES:

11.5.1. Labor Code Compliance- If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, CITY must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. CITY agrees to include prevailing wage requirements in its contracts for public works. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

11.5.2. Requirements in Subcontracts - CITY shall require its contractors to include prevailing wage requirements in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in CITY's contracts.

## 12. INSURANCE

12.1. SELF-INSURED - CITY is self-insured. CITY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certification of self-insurance letter ("Letter of Self-Insurance"), satisfactory to STATE, certifying that CITY meets the coverage requirements of this section. This Letter of Self-Insurance shall also identify the landscape parkway location as depicted in EXHIBIT A. CITY shall deliver to STATE the Letter of Self-Insurance with a signed copy of this AGREEMENT. A copy of the executed Letter of Self-Insurance shall be attached hereto and incorporate as Exhibit B.

12.2. SELF-INSURED using Contractor - If the work performed under this AGREEMENT is done by CITY's contractor(s), CITY shall require its contractor(s) to 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, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.

13. TERMINATION - This Agreement may be terminated by timely mutual written consent by PARTIES, and CITY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.

14. TERM OF AGREEMENT -This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES or until terminated by STATE for cause.

PARTIES are empowered by Streets and Highways Code Section 114 & 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

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

THE CITY OF LAKE ELSINORE

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Steve Manos  
Mayor

Initiated and Approved

By: \_\_\_\_\_  
Jason Simpson  
City Manager

By: \_\_\_\_\_  
Deputy District Director  
Maintenance District

ATTEST:

By: \_\_\_\_\_  
Candice Alvarez  
City Clerk

By: \_\_\_\_\_  
Barbara Leibold  
City Attorney

#### EXHIBIT A

(Plan map identifying the applicable STATE Routes (Freeway proper) and  
CITY/COUNTY road(s) and facilities)