

**LANDSCAPE MAINTENANCE AGREEMENT
WITHIN STATE HIGHWAY RIGHT OF WAY
ON ROUTE 68 WITHIN THE COUNTY OF MONTEREY**

THIS AGREEMENT is made effective this ____-th day of _____, 2016, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as “STATE” and the COUNTY of MONTEREY; hereinafter referred to as “COUNTY” and collectively referred to as “PARTIES”.

SECTION I

RECITALS

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE’s right of way by Permit Number(s) 0516NOP0144.
2. This Agreement addresses COUNTY responsibility for the landscaping, planting, irrigation systems, defined hardscaping, mulches, litter and weed removal, bio filtration swales, linear radial gross solid removal devices and parking restriction signs (collectively the “LANDSCAPING”) placed within State Highway right of way at the State Route 68 / Route 1 interchange, as shown on Exhibit A, attached to and made a part of this Agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. In consideration of the mutual covenants and promises herein contained, COUNTY and STATE agree as follows:
 - 1.1. PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, and maintenance, (collectively hereinafter “MAINTAIN/MAINTENANCE”) of LANDSCAPING as shown on said Exhibit “A.”
 - 1.2. 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. 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.
 - 1.3. Electrical costs shall be addressed under a separate Electrical Maintenance Agreement.

2. COUNTY agrees, at COUNTY expense, to do the following:
 - 2.1. COUNTY may install, or contract, authorizing a licensed contractor with appropriate class of license in the State of California, to install and thereafter will MAINTAIN LANDSCAPING conforming to those plans and specifications (PS&E) pre-approved by STATE.
 - 2.2. 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 California Streets and Highways Code (hereinafter referred to as the Streets and Highways Code) and the then current edition of the State Maintenance Manual.
 - 2.3. COUNTY will submit the final form of the PS&E, prepared, stamped and signed by a licensed landscape architect, for LANDSCAPING to STATE's District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way. All proposed LANDSCAPING must meet STATE's applicable standards.
 - 2.4. COUNTY shall ensure that LANDSCAPED areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
 - 2.5. 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.
 - 2.6. COUNTY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
 - 2.7. To furnish electricity for irrigation system controls, water, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement.
 - 2.8. To replace unhealthy or dead plantings when observed or within 30 days when notified in writing by STATE that plant replacement is required.
 - 2.9. 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.
 - 2.10. 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.
 - 2.11. 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

Maintenance at District 5 Landscape Specialist, 50 Higuera Street, San Luis Obispo, CA. 93401.

- 2.12. To remove LANDSCAPING improvements, systems 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.
 - 2.13. To inspect LANDSCAPING improvements and/or systems on a regular monthly or weekly basis to ensure the safe operation and condition of the LANDSCAPING.
 - 2.14. To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING improvement or system component that has become unsafe or unsightly.
 - 2.15. To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.
 - 2.16. To allow random inspection of LANDSCAPING, improvements or systems, street lighting systems, sidewalks/bike paths and signs by a STATE representative.
 - 2.17. To keep the entire landscaped area policed and free of litter and deleterious material.
 - 2.18. All work by or on behalf of COUNTY will be done at no cost to STATE.
3. STATE agrees to do the following:
 - 3.1. May provide COUNTY with timely written notice of unsatisfactory conditions that require correction by the COUNTY. However, the non-receipt of notice does not excuse COUNTY from maintenance responsibilities assumed under this Agreement.
 - 3.2. Issue encroachment permits to COUNTY and COUNTY contractors at no cost to them.
4. LEGAL RELATIONS AND RESPONSIBILITIES:
 - 4.1. 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 COUNTY facilities different from the standard of care imposed by law.

- 4.2. If during the term of this Agreement, COUNTY should cease to MAINTAIN the LANDSCAPING improvements or systems to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of COUNTY at COUNTY's expense or direct COUNTY to remove or itself remove LANDSCAPING improvements or systems at COUNTY's sole expense and restore STATE's right of way to its prior or a safe operable condition. COUNTY 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 improvements or systems, STATE will provide written notice to COUNTY to cure the default and COUNTY will have thirty (30) days within which to affect that cure.
 - 4.3. Neither COUNTY 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 COUNTY 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 COUNTY.
 - 4.4. 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 COUNTY under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that COUNTY 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 COUNTY under this Agreement.
5. PREVAILING WAGES:
- 5.1. Labor Code Compliance- If the work performed on this Project is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. COUNTY 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. COUNTY agrees to include prevailing wage requirements in its contracts for public work. Work performed by COUNTY's own forces is exempt from the Labor Code's Prevailing Wage requirements.

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

6. INSURANCE

6.1. SELF-INSURED - COUNTY is self-insured. COUNTY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming the 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 in a form satisfactory to STATE, along with a signed copy of the Agreement.

6.2. SELF-INSURED using Contractor - If the work performed on this Project is done under contract COUNTY shall require its contractors 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 the 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.

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

8. 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 Sections 114 and 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 covenant 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 COUNTY OF MONTEREY

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
JANE PARKER
Chair, Board of Supervisors

MALCOLM DOUGHERTY
Director of Transportation

Initiated and Approved

By: _____
LEW BAUMAN
County Administrative Officer

By: _____
SARA VON SCHWIND
Deputy District Director
Maintenance & Operations, District 5

ATTEST:

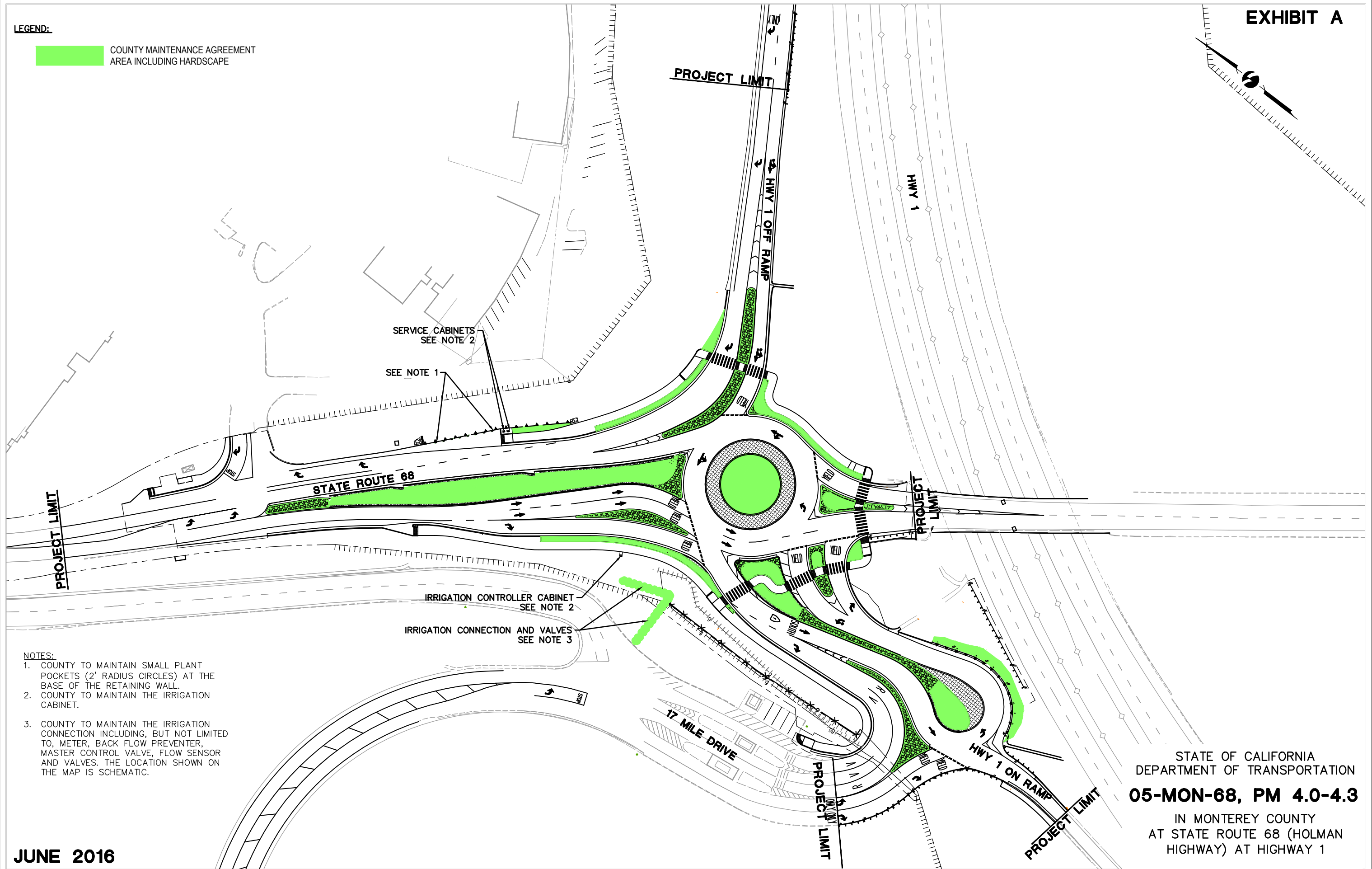
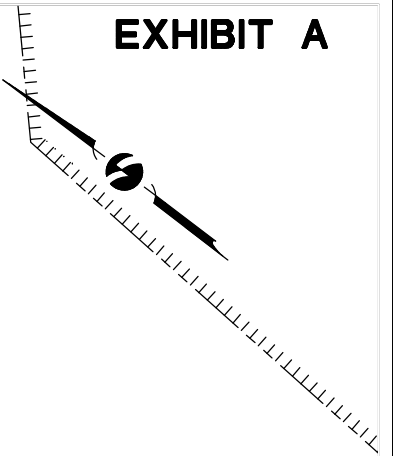
By: _____
GAIL T. BORKOWSKI
Clerk to the Board of Supervisors

By: _____
CHARLES J. McKEE
County Counsel

By: _____
DENISE E. ZUNIGA
Attorney
Department of Transportation

LEGEND:

COUNTY MAINTENANCE AGREEMENT
AREA INCLUDING HARDSCAPE



NOTES:

- 1. COUNTY TO MAINTAIN SMALL PLANT POCKETS (2' RADIUS CIRCLES) AT THE BASE OF THE RETAINING WALL.
- 2. COUNTY TO MAINTAIN THE IRRIGATION CABINET.
- 3. COUNTY TO MAINTAIN THE IRRIGATION CONNECTION INCLUDING, BUT NOT LIMITED TO, METER, BACK FLOW PREVENTER, MASTER CONTROL VALVE, FLOW SENSOR AND VALVES. THE LOCATION SHOWN ON THE MAP IS SCHEMATIC.

JUNE 2016

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
05-MON-68, PM 4.0-4.3
IN MONTEREY COUNTY
AT STATE ROUTE 68 (HOLMAN
HIGHWAY) AT HIGHWAY 1