

**FREEWAY MAINTENANCE
AGREEMENT
WITH
COUNTY OF MONTEREY**

THIS AGREEMENT is made effective this _____ 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. WHEREAS, on April 12, 2011 a Freeway Agreement was executed between COUNTY and STATE, wherein the PARTIES consented to certain adjustments of the local street and road system required for the development of that portion of STATE Highway Route (SR) 101 within the jurisdictional limits of the COUNTY of MONTEREY as a freeway; and
2. WHEREAS, recent adjustments to said freeway have now been completed, or are nearing completion, and the PARTIES hereto mutually desire to identify the maintenance responsibilities for improvements to separation structures and landscaped areas lying within those modified freeway limits; and
3. 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.
4. WHEREAS, pursuant to Section 1 of the above April 12, 2011 Freeway Agreement, COUNTY has resumed or will resume control and maintenance over each of the affected relocated or reconstructed COUNTY streets, except for those portions adopted as a part of the freeway proper.

NOW THEREFORE IT IS AGREED:

SECTION II

AGREEMENT

1. COUNTY agrees to continue their control and maintenance of each of the affected relocated or reconstructed COUNTY streets and roads as shown on that plan map attached hereto, marked Exhibit A, and made a part hereof by this reference.
2. STATE agrees to continue control and maintenance of those portions adopted as a part of SR 101 Freeway proper as shown Exhibit A.

3. When another planned future improvement has been constructed and/or a minor revision has been effected within the limits of the freeway herein described which will affect the PARTIES' division of maintenance responsibility as described herein, STATE will provide a new dated and revised Exhibit "A" which will thereafter supersede the attached original Exhibit "A" and become part of this Agreement.
4. COUNTY and STATE agree to accept their then respective operational and maintenance responsibilities and related associated costs thereof in the event jurisdictional boundaries of the PARTIES should change and Exhibit "A" is amended to reflect those changes.
5. COUNTY must obtain the necessary Encroachment Permits from STATE's District 5 Encroachment Permit Office prior to entering STATE right of way to perform COUNTY maintenance responsibilities. This permit will be issued at no cost to COUNTY.
6. LANDSCAPED AREAS - COUNTY is responsible for the maintenance of any plantings or other types of roadside development lying outside of the fenced right of way area reserved for exclusive freeway.
7. INTERCHANGE OPERATON - It is STATE's responsibility to provide efficient operation of freeway interchanges, including ramp connections to local streets and roads.
8. BICYCLE PATHS - Except for bicycle paths constructed as permitted encroachments within STATE's right of way for which the permittee is solely responsible for all path improvements, STATE will maintain, at STATE expense, all fences, guard railing, drainage facilities, slope and structural adequacy of any bicycle path located and constructed within STATE's right of way. COUNTY will maintain, at COUNTY expense, a safe facility for bicycle travel along the entire length of the path by providing sweeping and debris removal when necessary; and all signing and striping and pavement markings required for the direction and operation of that non-motorized facility.
9. LEGAL RELATIONS AND RESPONSIBILITIES
 - 9.1. 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 STATE highways and local facilities different from the standard of care imposed by law.

- 9.2. 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 conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless COUNTY and all of their 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.
- 9.3. 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 conferred upon COUNTY and 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.

10. PREVAILING WAGES:

- 10.1. 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.
- 10.2. 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.

11. INSURANCE:

- 11.1. 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.

- 11.2. SELF-INSURED - using Contractor - If the work performed under this Agreement is done by COUNTY's contractor(s), COUNTY 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 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 and shall be delivered to the STATE with a signed copy of this Agreement.
12. 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.
13. 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 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, 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
County Clerk to the Board

Approved as to Form:

As to Form and Procedure:

Office of the County Counsel
Charles J. McKee, County Counsel

By: _____
Attorney
Department of Transportation

By: _____
MARY GRACE PERRY
Deputy County Counsel

EXHIBIT “A”

(Plan map identifying STATE Route 101 (Freeway proper) and COUNTY road(s) and facilities (3-Sheets))