

**PROJECT SPECIFIC MAINTENANCE AGREEMENT  
FOR THE CITY OF SAN FRANCISCO**

This Maintenance Agreement (“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 and County of San Francisco, a municipal corporation; acting by and through its Public Utilities Commission hereinafter referred to as “CITY” and collectively referred to as “PARTIES”.

**SECTION I**

**RECITALS**

1. WHEREAS, CITY has applied to STATE for an encroachment permit to construct improvements adjacent to State Route (SR) 35, hereinafter referred to as “PROJECT”.
2. WHEREAS, in accordance with the said permit application, it was agreed by PARTIES that prior to or upon PROJECT completion, CITY and STATE will enter into this AGREEMENT;
3. WHEREAS, the PARTIES hereto mutually desire to identify the maintenance responsibilities for improvements of PROJECT constructed under the Permit Number \_\_\_\_\_ and for project improvements at eleven additional locations where STATE holds an easement.
4. WHEREAS, if there are any existing Freeway Maintenance Agreement(s), with CITY, this agreement is not meant to replace or supersede the earlier agreement(s).
5. WHEREAS, CITY is entering into AGREEMENT in an effort to appropriately apportion responsibility for the project improvements, while continuing to reserve all rights related to its use of the property and not waiving any arguments that its property interest does not require an encroachment permit for the project improvements.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

**SECTION II**

**AGREEMENT**

6. Exhibit A consists of plan drawings that delineate the areas within STATE right of way which are the responsibility of the CITY to maintain pursuant to this AGREEMENT.
7. If there is mutual agreement on the change in the maintenance duties between PARTIES, the PARTIES can revise the Exhibit A by a mutual written-execution of the exhibit

8. CITY shall obtain the necessary Encroachment Permits from STATE's District 04 Encroachment Permit Office prior to entering STATE right of way to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.

9. PEDESTRIAN BRIDGE

CITY will maintain, at CITY expense, and be solely responsible for the entire structure of any CITY constructed pedestrian bridge; including all structural and non-structural elements.

10. MULTIUSE TRAILS, DRIVEWAYS

CITY at CITY expense is solely responsible for maintenance of multi-use trails, driveways; including but not limited to: the structural adequacy, graffiti removal, sweeping, debris removal, and signage required for the direction and operation of facility. CITY will maintain, at CITY expense, a safe facility for travel constructed within STATE's right of way.

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 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.

11.2. 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, under or in connection with any work, authority or jurisdiction conferred upon STATE under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY 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 or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

11.3. 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 CITY under or in connection with any work, authority or jurisdiction conferred upon CITY 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.

11.4. Nothing in this AGREEMENT will be construed to alter or affect CITY's or STATE's respective rights under the Deed of Right of Way for State Highway, by and between Spring Valley Water Company (predecessor to CITY) and STATE, dated March 15, 1924, and recorded Book 139 at Page 368 in the Official Records of San Mateo County.

## 12. PREVAILING WAGES:

12.1. 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, then 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 work. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

12.2. Requirements in Subcontracts - CITY 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 CITY's contracts

## 13. INSURANCE -

13.1. 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, 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.

13.2. SELF-INSURED using Contractor - If the work performed on this PROJECT is done under contract CITY 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 \$2 million per occurrence and \$4 million in aggregate. 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.

14. 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.

15. 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 if permitted under the relevant deed.

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 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 SAN FRANCISCO

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
SFPUC General Manager

MALCOLM DOUGHERTY  
Director of Transportation

Initiated and Approved

By: \_\_\_\_\_  
City/County Manager

By: \_\_\_\_\_  
LEAH BUDU  
Deputy District Director  
Maintenance District 04

Approved as to form:

By: \_\_\_\_\_  
DAVID CHIU, City Attorney

