

## **NON-VEHICULAR OVERCROSSING (NVOC) MAINTENANCE AGREEMENT WITH CITY OF FRESNO**

This Maintenance Agreement (“AGREEMENT”) is made by and between the State of California, acting by and through the Department of Transportation (“STATE”), and the City of Fresno (“LOCAL AGENCY”), a California municipal corporation; each may be referred to individually as a “PARTY,” and jointly as “PARTIES.”

### **RECITALS**

1. The Roeding Park Pedestrian Overcrossing (“Non-Vehicular Overcrossing”) on STATE Highway Route (SR) 99 at PM 23.01, hereinafter referred to as the “NVOC.”
2. It was agreed by the PARTIES that prior to construction, the LOCAL AGENCY and STATE will enter into a Maintenance Agreement for the inspection, maintenance and their respective financial responsibility towards the NVOC.

The PARTIES hereto mutually agree as follows:

### **OPERATIVE PROVISIONS**

1. **Maintenance Standards.** The LOCAL AGENCY shall perform all maintenance in compliance with the standards set forth in Streets and Highways Code Section 27, and in accordance with California laws, regulations, and STATE standards, including STATE’S Maintenance Manual, Code of Safe Operating Practices, policies, procedures, and specifications in effect and as amended. “Maintain” or “maintenance” under this AGREEMENT includes inspections of all structures and facilities, repairs, cleaning, replacements, and improvements, if necessary, as described herein.
2. **Amendment to Agreement.** This AGREEMENT may only be amended by a written agreement executed by all PARTIES.
3. **Successors.** This AGREEMENT shall be binding upon and inure to the benefit of each of the PARTIES and their respective successors-in-interest any subsequently incorporated city or other municipality established within the LOCAL AGENCY’S jurisdictional limits. If the successor city or municipality fails to accept the obligations of the LOCAL AGENCY by entering into a new agreement with STATE, LOCAL AGENCY shall continue to be contractually bound by the terms of this AGREEMENT.
4. **Encroachment Permits.** Before LOCAL AGENCY may enter STATE ROW to perform any maintenance or work in the areas covered by this AGREEMENT, LOCAL AGENCY must first apply for and obtain an encroachment permit for maintenance work from the STATE’S District 6 Encroachment Permit Office. LOCAL AGENCY must apply for and obtain additional encroachment permits, if necessary, to enter or perform any work within STATE ROW not covered by this AGREEMENT. An encroachment permit issued by the STATE will be at no cost to LOCAL AGENCY.

## 5. Definitions of Structure and Facility Components:

1. **NON-COMPLEX STRUCTURE** - Typical standard ordinary bridge structure types/components as determined by the STATE, e.g., reinforced concrete box girder bridges.
2. **COMPLEX STRUCTURE** – These are bridge structure types that employ structural systems/ components that are more complex than standard ordinary bridge types, or possess complex structural characteristics such as movable, suspension, cable stayed, tied arch, and others. These may include unique bridge structures as determined by the STATE that may be proposed by LOCAL AGENCY or STATE, as Gateway, Signature, or Blue-Ribbon transportation facilities that are more structurally complex than the typical standard ordinary highway bridge structure.
3. **NVOC's Non-Complex or Complex STRUCTURAL COMPONENTS** including, but not limited to, the following:
  - a) **DECK** – The structural component of the NVOC that supports, and is below, the DECK SURFACE (Wearing Surface), and distributes loads to the superstructure.
  - b) **SUPERSTRUCTURE** – The structural component(s) of the NVOC that support the DECK and distribute loads to and are supported by columns/piers (including but not limited to girders, beam, truss, stringer, floor beam, arch, cable, pin-and-hanger assemblies, bearing and/or gusset plate elements).
  - c) **SUBSTRUCTURE** – Structural components of the NVOC that support the superstructure and distribute loads to and are supported by footings and foundations (including but not limited to column, pier wall, abutment, pier cap, footing, pile cap and/or pile elements).
4. **NVOC's NON-STRUCTURAL COMPONENTS** facilities and improvements including, but not limited to, the following:
  - a. **DECK SURFACE** (Wearing Surface) – The top surface of road/street surfaces above the DECK for pedestrian and bicycle traffic (e.g., roadway surface).
  - b. **DRAINAGE FACILITIES** – Any facility which provides drainage to any location, including but not limited to, wing walls, drains, drain inlets, gutters, curbs, and inlet grates.
  - c. All portions of the NVOC structure above the bridge DECK, including, but not limited to, lighting, sidewalks, signs, bike paths, pavement overlays, decorative artwork integral or attached to SCREENING, concrete pilasters, pavement

markings, striping, architectural details, and improvements for compliance with the Americans with Disabilities Act, as depicted on Exhibit "A."

- d. **BRIDGE RAILS & POSTS** – Portions of the NVOC that act as a safety barrier to keep pedestrian, bicycle traffic, etc., from falling from the structure, typically attached to the bridge DECK and DECK SURFACE.
  - e. **LIGHTING** – Electrical lamps and light posts installed within STATE's RIGHT-OF-WAY that facilitate safe passage of the traveling public.
  - f. **SCREENING** - Fencing installed on NVOC bridge, inclusive of rails/posts/safety barriers, to protect the safety of the traveling public.
  - g. **SIGNAGE** - Signs that provide any traffic related guidance.
  - h. **Other improvements** that may be constructed above the bridge DECK, with STATE's prior written approval, such as traffic controls, traffic lights, sidewalks, signs, bike paths, pavement overlays, bridge rails and posts, decorative artwork integral or attached to SCREENING, concrete pilasters, pavement markings, striping, architectural details, and improvements for compliance with the Americans with Disabilities Act, as depicted in Exhibit "A."
6. **Portions of Non-Vehicular Overcrossings (NVOCs), at State's determination, have been classified as follows, depending on their location relative to State's ROW, and are distinguished by zones as depicted in Exhibit "A":**
- a) **Category I** – NVOC structure entirely located within STATE's RIGHT OF WAY, or portions of the NVOC structure located within STATE's RIGHT OF WAY.
  - b) **Category II** – Portions of the NVOC structure located outside STATE's RIGHT OF WAY but contributing towards the safety and structural integrity of portions of the NVOC structure within the STATE's RIGHT OF WAY.
  - c) **Category III** – Portions of the NVOC structure located entirely outside STATE's RIGHT OF WAY and NOT contributing towards the safety and structural integrity of the NVOC structure within the STATE's RIGHT OF WAY.

#### 7. **Non-Complex NVOC Structure Provisions:**

**Non-Vehicular Overcrossing (NVOC) Zone Classifications** have been categorized depending on their location relative to State's ROW, and have related responsibilities as follows - and are as depicted and described in Exhibit "A":

- A. **Category I – NVOC structure entirely located within STATE's RIGHT OF WAY, or portions of the NVOC structure located within STATE's RIGHT OF WAY.**
  - a) LOCAL AGENCY shall own Category I portion of the NVOC.

- b) STATE shall inspect and maintain, at STATE's expense, NVOC's structural components and SCREENING (except maintaining the integral or attached decorative artwork on the SCREENING), and perform inspections or activities, as determined by STATE.
- c) LOCAL AGENCY shall inspect and maintain, at LOCAL AGENCY's expense, NVOC's NON-STRUCTURAL COMPONENTS, excluding the SCREENING.
- d) LOCAL AGENCY understands and acknowledges that structural and maintenance inspections must be made to ensure the NVOC retains its integrity for the safety of the public using this structure and for travelers using the STATE RIGHT OF WAY. LOCAL AGENCY also shall perform structural and maintenance inspections necessary to maintain the safety and structural integrity of the NVOC structure and facilities noted above, which are under LOCAL AGENCY's responsibilities.
- e) LOCAL AGENCY understands and acknowledges that structural and maintenance repairs must be made to ensure the NVOC retains its integrity for the safety of the public using this structure and for travelers using the STATE RIGHT OF WAY. LOCAL AGENCY also shall perform structural and maintenance repairs, and replace or complete other improvements necessary, to maintain the safety and structural integrity of the NVOC structure and facilities noted above, which are under LOCAL AGENCY's responsibilities.
- f) In the event STATE determines that repairs to the facilities or improvements under LOCAL AGENCY's responsibilities must be made, to ensure that the NVOC in STATE's RIGHT OF WAY retains its integrity for the safety of the public, the STATE may perform repairs and seek reimbursement from the LOCAL AGENCY which the LOCAL AGENCY shall reimburse the State within thirty (30) calendar days of receipt of invoice from STATE.

g) **Encampments Removal:**

STATE shall remove Persons Experiencing Homelessness (PEH) and any structures, personal property, debris, and/or other items related to the encampment within Category I zone of the NVOC, subject to STATE's Encampment Removal policy, MPD 1001 R1 and applicable State and Federal Law.

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

**B. Category II – Portions of the NVOC structure located outside STATE's RIGHT OF WAY but contributing towards the safety and structural integrity of portions of the NVOC structure within the STATE's RIGHT OF WAY.**

- a. LOCAL AGENCY shall own Category II portions of the NVOC structure.

- b. LOCAL AGENCY shall inspect and maintain, at LOCAL AGENCY's expense, structural components and perform maintenance inspections or activities on NVOC's STRUCTURAL COMPONENTS, as determined by State.
- c. LOCAL AGENCY shall inspect and maintain, at LOCAL AGENCY's expense, NVOC's NON-STRUCTURAL COMPONENTS.
- d. LOCAL AGENCY understands and acknowledges that structural and maintenance inspections must be made to ensure the NVOC retains its integrity for the safety of the public using this structure and for travelers using the STATE RIGHT OF WAY. LOCAL AGENCY also shall perform structural and maintenance inspections necessary to maintain the safety and structural integrity of the NVOC structure and facilities noted above, which are under LOCAL AGENCY's responsibilities.
- e. LOCAL AGENCY understands and acknowledges that structural and maintenance repairs must be made to ensure the NVOC retains its integrity for the safety of the public using this structure and for travelers using the STATE RIGHT OF WAY. LOCAL AGENCY also shall perform structural and maintenance repairs, and replace or complete other improvements necessary, to maintain the safety and structural integrity of the NVOC structure and facilities noted above, which are under LOCAL AGENCY's responsibilities.
- f. In the event STATE determines repairs to the facilities or improvements under LOCAL AGENCY's responsibilities must be made to ensure that the NVOC in STATE's RIGHT OF WAY retains its integrity for the safety of the public, the STATE may perform repairs and seek reimbursement from the LOCAL AGENCY which the LOCAL AGENCY shall reimburse the STATE within thirty (30) calendar days of receipt of invoice from STATE.
- g. Where access is controlled, LOCAL AGENCY shall provide means of access to STATE. If necessary, STATE shall have unrestricted access to portions of the NVOC in Category II to perform inspections and maintenance, at STATE's expense on NVOC's STRUCTURAL COMPONENTS.
- h. **Encampments Removal:**

LOCAL AGENCY shall remove Persons Experiencing Homelessness (PEH) and any structures, personal property, debris, and/or other items related to the encampment within Category II zone subject to STATE's Encampment Removal policy, MPD 1001 R1 and applicable State and Federal law.

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

**C. Category III – Portions of the NVOC structure located entirely outside STATE's RIGHT OF WAY and NOT contributing towards the safety and structural integrity of the NVOC structure within the STATE's RIGHT OF WAY.**

- a. LOCAL AGENCY shall own Category III portions of the NVOC structure.
- b. LOCAL AGENCY shall inspect and maintain, at LOCAL AGENCY's expense, SCREENING and NVOC's STRUCTURAL COMPONENTS and NON-STRUCTURAL COMPONENT.

**c. Encampments Removal:**

LOCAL AGENCY shall remove Persons Experiencing Homelessness (PEH) and any structures, personal property, debris, and/or other items related to the encampment within Category III zone, subject to applicable State and Federal law.

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

8. **Graffiti Abatement.** LOCAL AGENCY, at LOCAL AGENCY's expense, shall remove all graffiti and legally remove and dispose of all debris and trash from the entire NVOC. Any graffiti on a mural, artwork, paintings, or other similar elements within STATE ROW may not be removed without first consulting and obtaining approval from the STATE's District 6 Transportation Art Coordinator.
9. **Weed Abatement.** LOCAL AGENCY shall 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 STATE via the Landscape Specialist, Maintenance Support, Caltrans District 6 Office, at 1635 West Pine Avenue, Fresno, CA 93728.
10. **Default.** If a PARTY fails to perform obligations assumed under this AGREEMENT, the non-defaulting PARTY may by written notice request that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails or refuses to do so; the non-defaulting PARTY may complete the obligations and seek reimbursement from the defaulting PARTY who shall pay the invoice within thirty (30) calendar days. If there is an immediate threat to maintain the structural integrity of, or prevent imminent danger of destruction to, the NVOC, either PARTY may perform necessary maintenance or remedial measures to maintain the structural integrity and/or prevent destruction of the NVOC without notice or delay.
11. Any PARTY who is assigned obligation under this AGREEMENT shall complete them at their own costs, unless expressly stated otherwise in this AGREEMENT.

## 12. Legal Relations and Responsibilities.

### A. No Third-Party Beneficiaries.

This AGREEMENT is not intended to create duties, obligations, or rights of third parties beyond the PARTIES to this AGREEMENT. Nor does this AGREEMENT affect a PARTY's legal liability by imposing any standard of care for the operation and maintenance of STATE highways and LOCAL AGENCY facilities different from the standard of care imposed by law.

### B. Indemnification.

Neither LOCAL AGENCY nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE in connection with any work, authority or jurisdiction conferred upon STATE pursuant to this AGREEMENT. To the fullest extent permitted by Law, STATE, shall fully defend, indemnify, and save harmless LOCAL AGENCY and its officers and employees from all claims, suits or actions of every kind occurring by reason of anything done or omitted to be done by STATE, its contractors, sub-contractors, and/or its agents pursuant to this AGREEMENT.

Neither STATE nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by LOCAL AGENCY in connection with any work, authority or jurisdiction conferred upon LOCAL AGENCY pursuant to this AGREEMENT. To the fullest extent permitted by Law, LOCAL AGENCY, shall fully defend, indemnify, and save harmless STATE and its officers and employees from all claims, suits or actions of every kind occurring by reason of anything done or omitted to be done by LOCAL AGENCY, its contractors, sub-contractors, and/or its agents pursuant to this AGREEMENT.

### C. Prevailing Wages and Labor Code Compliance. LOCAL AGENCY shall comply with any and all applicable labor and prevailing wage requirements in Labor Code Sections 1720 through 1815 and implementing regulations for any public works or maintenance contracts and subcontracts executed for the LOCAL AGENCY's work under this AGREEMENT.

### D. Insurance.

Self-Insured. LOCAL AGENCY is self-insured. LOCAL AGENCY shall deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury and property damage liability, in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess, as may be amended as the minimum liability coverage limits codified in the State's Standard Specifications. by delivering a Letter Certifying Self-Insurance. The Letter of Self-Insurance must be substantially in the form of Exhibit B, and identify the AGREEMENT by location as depicted in Exhibit A. LOCAL AGENCY shall provide the original Letter Certifying Self-Insurance as a condition to STATE's

execution of this AGREEMENT. A copy of the original letter shall be attached to this AGREEMENT as Exhibit B.

**Self-Insured using Contractor.** If the work performed under this AGREEMENT is done by LOCAL AGENCY's contractor(s), LOCAL AGENCY 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 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, as may be amended as the minimum liability coverage limits codified in the State's Standard Specifications. LOCAL AGENCY will provide a certificate of insurance evidencing this insurance in a form satisfactory to STATE as a condition to STATE's execution of this AGREEMENT.

13. **Termination.** This Agreement may be terminated by the mutual written consent of each PARTY.
14. **Effective Date.** This AGREEMENT shall become effective on the last of the dates each PARTY's authorized representative has executed this AGREEMENT.
15. **Authority.** Each individual executing this AGREEMENT on behalf of each PARTY represents and warrants that he/she is duly authorized to execute this AGREEMENT. LOCAL AGENCY represents and certifies that it has, through its regular political process, authorized the execution of this AGREEMENT by appropriate resolution, delegation, or plenary authority, as required. A true and correct copy of the local resolution or ordinance has been provided to the STATE.
16. **Electronic Signatures.** Electronic signatures of the PARTIES, whether digital or encrypted, are intended to authenticate this written AGREEMENT, and shall have the same force and effect as manual signatures for this AGREEMENT.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

**CITY OF FRESNO,**  
A California municipal corporation

**STATE OF CALIFORNIA**  
**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Georgeanne A White                      Date  
City Manager

By: \_\_\_\_\_  
Jason Miao, Acting                      Date  
Deputy District Director,  
Maintenance and Operations

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

By: \_\_\_\_\_  
Jennifer M. Quintanilla                      Date  
Senior Deputy City Attorney

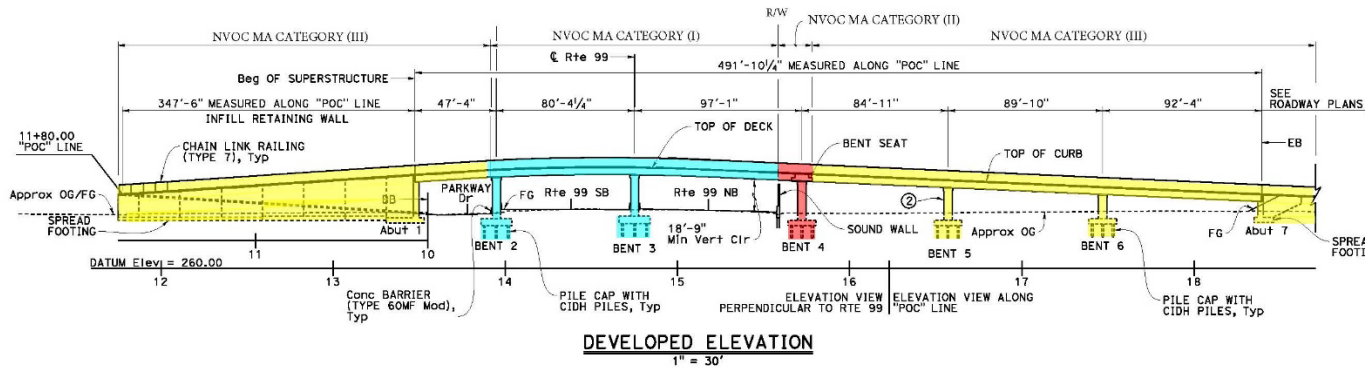
ATTEST:  
AMY K. ALLER  
Interim City Clerk

By: \_\_\_\_\_  
Deputy    Date

Attachments:  
Exhibit A  
Exhibit B

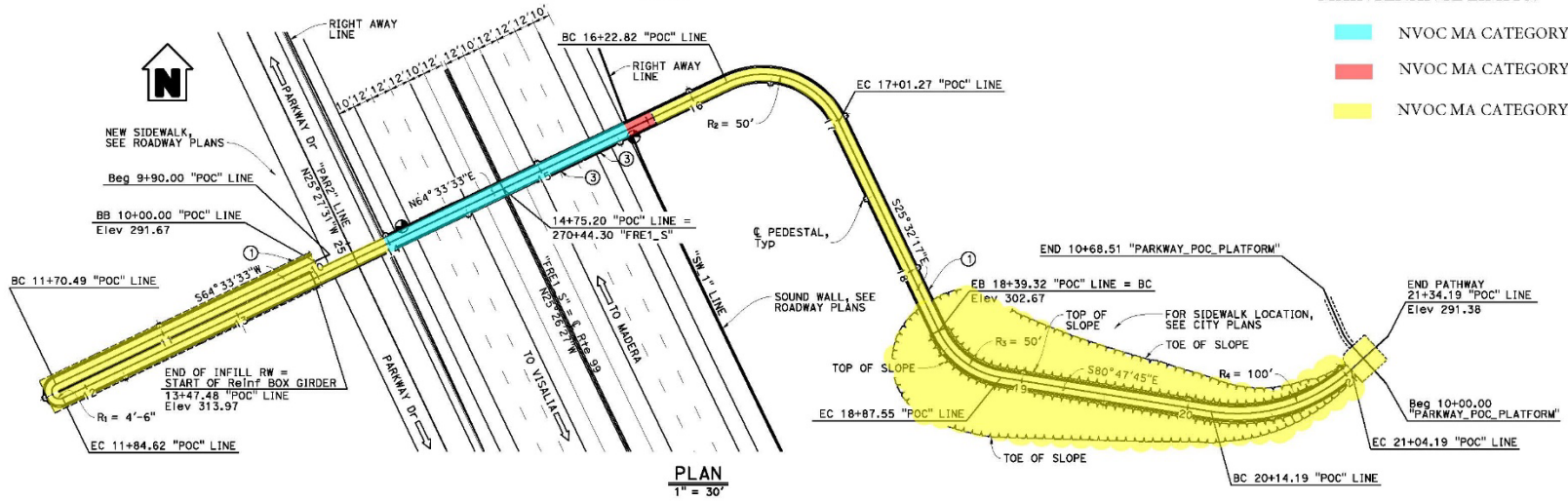
# EXHIBIT A

ROEDING PARK POC  
Br #42-0463  
PM 23.01



### MAINTENANCE LIMITS:

- NVOC MA CATEGORY I
- NVOC MA CATEGORY II
- NVOC MA CATEGORY III



**EXHIBIT B**  
**LETTER CERTIFYING CITY'S SELF-INSURED STATUS**

On Local Agency letterhead

Department of Transportation  
1352 W. Olive Avenue  
Fresno, CA 93728  
ATTN: Daniel Lum

\_\_\_\_\_, 20\_\_

Re: Statement of Self-Insurance for City of Fresno for NVOC Maintenance Agreement  
No. TR 06-4-0002 with California Department of Transportation for the Non-  
Vehicular Overcrossing along SR 99 at postmile 23.01

Dear Mr Lum:

This letter certifies that the City of Fresno is self-insured and self-funded covering third-party claims arising out of its general operations (e.g., commercial general liability and automobile liability insurance). Further, the CITY is self-insured covering workers' compensation claims and has received the consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the CITY appropriates funds specifically to satisfy valid third-party claims and workers' compensation claims, which may be brought against the CITY.

The CITY certifies its self-insured, general liability coverage for bodily injury and property damage liability, and meets the required coverage amounts in section 12D (Insurance) of the NVOC Maintenance Agreement, specifically general liability insurance, coverage of bodily injury and property damage liability in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess.

If you need any additional information regarding this letter, please direct those inquiries through my office.

Sincerely,

Finance Manager/Risk Manager/Authorized Representative's Title