

TRANSPORTATION ART MAINTENANCE AGREEMENT IN THE CITY OF FRESNO

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 Fresno; hereinafter referred to as "PUBLIC AGENCY"; and collectively referred to as "PARTIES".

SECTION I

RECITALS

1. WHEREAS, the PARTIES desire to work together to allocate their respective obligations relative to the Transportation Art Project (DESCRIPTION) constructed within STATE's right of way (by Encroachment Permit No. _____); and
2. WHEREAS, this Agreement addresses PUBLIC AGENCY's responsibility for maintaining the Transportation Art, hereinafter referred to as "ART", installed or painted within STATE right of way on Eastbound and Westbound SR 180, as shown in EXHIBIT A, titled "TRANSPORTATION ART LOCATION," attached to and made part of this Agreement; and
3. WHEREAS, the PARTIES hereto mutually desire to clarify the division of maintenance responsibility as defined in Section 27 of the California Streets and Highway Code that include, but are not limited to, providing emergency repair and maintenance (collectively hereinafter "MAINTAIN/MAINTENANCE") of ART at the location as shown on EXHIBIT A; and
4. WHEREAS, there are existing Freeway Maintenance Agreements between STATE and PUBLIC AGENCY, and this agreement is not intended to replace or supersede any other prior Freeway Maintenance Agreements.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. In consideration of the mutual covenants and promises herein contained, PUBLIC AGENCY and STATE agree as follows:
 - 1.1. When a change to this Agreement is necessary, PARTIES will execute a formal amendment in writing by and through their authorized representatives.

- 1.2. EXHIBIT A consists of plan drawings that delineate the areas within STATE right of way which are the responsibility of the PUBLIC AGENCY to maintain in accordance with this Agreement.
- 1.3. PARTIES agree maintenance responsibilities include, but are not limited to, inspection, providing emergency repair, and maintenance as defined in Section 2 below, of ART as shown in EXHIBIT A.
2. PUBLIC AGENCY's obligation hereunder, at PUBLIC AGENCY's expense, include the following:
 - 2.1. PUBLIC AGENCY shall MAINTAIN ART conforming to those plans pre-approved by STATE Transportation Art Proposal for as long as it remains in place.
 - 2.2. To MAINTAIN all ART within the Agreement limits of the STATE freeway right of way, as shown on EXHIBIT A. MAINTENANCE includes, but is not limited to restoration or replacement of damaged ART, removal of dirt, debris, graffiti, grown vegetation and weeds surrounding ART, and removal of any deleterious item or material on ART in an expeditious manner. Graffiti removal must conform to applicable STATE policies and guidelines that require prompt removal of offensive messages and time removal of all other graffiti. Maintenance practices must protect air and water quality as required by law.
 - 2.2.1. Refer to Maintenance Manual Volume I, Chapter D1.06 Graffiti, and Caltrans Deputy Directive DD-39 for graffiti removal and prevention policy.
 - 2.3. PUBLIC AGENCY shall submit the final form of the plans for ART 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 ART must meet STATE's standards.
 - 2.4. PUBLIC AGENCY is required to obtain from artist, or any party PUBLIC AGENCY contracts with for the ART, a signed, notarized, and executed Caltrans' *Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork Agreement*, which assigns all copyright interests in the ART to the STATE.
 - 2.5. PUBLIC AGENCY is required to annually obtain an Encroachment Permit from STATE's District ☐ Encroachment Permit Office prior to entering STATE right of way over a set 12-month period to perform PUBLIC AGENCY maintenance responsibilities. This permit will be issued at no cost to PUBLIC AGENCY.
 - 2.6. PUBLIC AGENCY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.

- 2.7. 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.
- 2.8. PUBLIC AGENCY shall ensure ART is provided with adequate scheduled routine maintenance necessary to maintain a neat and attractive appearance. PUBLIC AGENCY shall coordinate said MAINTENANCE with STATE prior to the start of any work
- 2.9. PUBLIC AGENCY shall replace or repair damaged ART when observed or within thirty (30) calendar days of being notified in writing by STATE.
- 2.9.1. PUBLIC AGENCY contact (position title), (telephone number), (email address).
- 2.10. PUBLIC AGENCY shall remove ART 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.
- 2.11. PUBLIC AGENCY shall expeditiously MAINTAIN, repair, replace, remove, or restore ART if it has become unsightly.
- 2.12. No work will be performed from the freeway or adjacent roadside, unless approved by STATE in the form of a separate Encroachment Permit. All work will be conducted from local streets or adjacent sidewalks if possible. PUBLIC AGENCY shall be responsible for necessary traffic operations, traffic control and traffic/lane closures required for MAINTENANCE operations in the area.
- 2.13. Other than STATE-approved ART, no alteration of the existing freeway structure or any other highway facility, including signage, will be permitted, unless pre-approved in writing by STATE. No landscaping shall be removed to accommodate ART unless approved by STATE.
- 2.14. All work by or on behalf of PUBLIC AGENCY will be done at no cost to STATE.
- 2.15. PUBLIC AGENCY shall remove ART whenever, in the opinion of STATE, it creates a maintenance or operational concern. In the event PUBLIC AGENCY fails to remove ART in a timely manner, STATE may remove ART thirty (30) calendar days following written notification to PUBLIC AGENCY, and STATE will bill PUBLIC AGENCY for all costs of its removal and for the restoration of STATE-owned areas to their original condition.

2.16. PUBLIC AGENCY may remove part or all of ART thirty (30) days following notification to STATE. PUBLIC AGENCY shall remove ART and restore STATE-owned areas to a safe and attractive condition acceptable to STATE.

2.16.1. STATE contact (position title), (telephone number), (email address).

2.17. PUBLIC AGENCY shall maintain all rights and obligations under this agreement with any party it contracts with for ART in order to fulfill PUBLIC AGENCY's obligations under this Agreement. These rights and obligations include, but are not limited to, the ability to repair or restore ART, remove ART, and clean ART.

2.18. ART located within STATE right-of-way becomes property of the STATE.

3. STATE shall have the following obligations and rights under this agreement.

3.1. Provide PUBLIC AGENCY with timely written notice of unsatisfactory conditions that require correction by the PUBLIC AGENCY. However, the non-receipt of notice does not excuse PUBLIC AGENCY from MAINTENANCE responsibilities assumed under this Agreement.

3.2. Provide PUBLIC AGENCY the necessary Encroachment Permits from STATE's District 6 Encroachment Permit Office prior to PUBLIC AGENCY's entering STATE right of way to perform PUBLIC AGENCY MAINTENANCE responsibilities. This permit will be issued at no cost to PUBLIC AGENCY.

3.3. Provide PUBLIC AGENCY's contractor and ART artist(s) an Encroachment Permit from STATE prior to the start of any work within STATE's right of way. A permit fee will be required for PUBLIC AGENCY's contractor and for ART artist(s).

3.4. Reserve the right to remove ART or alter parts thereof due to emergency, e.g., immediate safety hazard to public as determined by STATE, construction, rehabilitation, or other necessary activities affecting transportation facilities without any obligation, compensation to, or approval of PUBLIC AGENCY.

3.5. STATE will not be responsible for the cost of any MAINTENANCE, repair, restoration, or replacement of ART which is damaged by anything STATE does or does not do in the course of STATE's duties related to freeway operations and activities. STATE will not be responsible for any damages caused by any vandalism or accidents on the roadway.

3.6. STATE will notify PUBLIC AGENCY thirty (30) days in advance of any planned work that may impact the ART. If the work required is due to a public safety hazard, this notification period does not apply, and STATE will notify PUBLIC AGENCY as soon as practicable of the planned or performed work.

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 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.

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

4.3. 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 PUBLIC AGENCY under or in connection with any work, authority or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that PUBLIC AGENCY shall fully defend, indemnify and hold 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 section but not limited to, tortious, contractual, inverse condemnation, copyright infringement, claims under the Visual Artists Rights Act, claims under the California Art Preservation Act, or other theories or assertions of liability resulting from the installation and placement of artwork upon STATE's right of way located on/at _____.

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. PUBLIC AGENCY

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. PUBLIC AGENCY agrees to include prevailing wage requirements in its contracts for public work. Work performed by PUBLIC AGENCY's own forces is exempt from the Labor Code's Prevailing Wage requirements.

5.2. Requirements in Subcontracts - PUBLIC AGENCY 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.

6. INSURANCE

6.1. PUBLIC AGENCY is self-insured. PUBLIC AGENCY 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. The evidence of insurance is attached and incorporated into this Agreement as EXHIBIT B.

6.2. SELF-INSURED using Contractor - If the work performed on this Project is done under contract PUBLIC AGENCY 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, or by STATE for cause. PUBLIC AGENCY'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 as set forth by Article 1.1 above. It is being understood and agreed, however, that the execution of this Agreement shall not affect any preexisting obligations of the PUBLIC AGENCY to MAINTAIN other designated areas until a written notice from STATE has been issued that work in such areas, which PUBLIC AGENCY has agreed to MAINTAIN pursuant to the terms of said agreement, has been completed.

9. EXECUTION IN COUNTERPARTS – This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
10. USE OF ELECTRONIC SIGNATURES – Unless otherwise prohibited by law or PUBLIC AGENCY policy, the PARTIES agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the PUBLIC AGENCY and the STATE.

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 FRESNO
A California municipal Corporation

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Georgeanne A. White
City Manager

TONY TAVARES
Director of Transportation

By: _____
Deputy District Director
Maintenance District

ATTEST:
TODD STERMER, CMC

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

As to Form and Procedure:

By: _____
Attorney
Department of Transportation

By: _____
Christine C. Charitar Date
Deputy City Attorney

EXHIBIT A

(Plan map identifying the applicable STATE Routes (Freeway proper) and PUBLIC AGENCY road(s) and facilities), and other images as needed to convey location of ART.

DRAFT

EXHIBIT B – LETTER OF CERTIFICATE OF PUBLIC AGENCY _____
STATEMENT OF SELF INSURANCE

Insert (CT District) addressee information _____20__

ATTN: (name of CT representative)
Department of FinanceRE: Statement of Self Insurance for _____ Related to _____
Maintenance Agreement with State of California Department of Transportation
("STATE") for the _____ along Highway _____ at

Dear _____

The purpose of this letter is to certify that CITY/COUNTY/TRIBE is self-insured and self-funded covering third-party claims arising out of its general operations (for example, commercial general liability and automobile liability insurance). Further the CITY/COUNTY/TRIBE 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/COUNTY/TRIBE appropriates funds specifically to satisfy valid third-party claims and workers' compensation claims, which may be brought against the CITY/COUNTY/TRIBE.

The CITY/COUNTY/TRIBE certifies its self-insured, general liability coverage for bodily injury liability and property damage liability, meets the required coverage amounts in section 6.1 (INSURANCE) of the Maintenance Agreement, specifically general liability insurance, coverage of bodily injury liability and property damage liability in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. The CITY/COUNTY/TRIBE further represents that regarding any claims made in connection with the Maintenance Agreement by the STATE, the STATE will be first-in-line regarding the reserved, self-insured amounts.

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

Sincerely,

(Name printed and signed)
FINANCE MANAGER

| Dist | COUNTY | ROUTE | POST MILES TOTAL PROJECT | SHEET NO. | TOTAL SHEETS |
|------|--------|-------|-----------------------------|--------------|-----------------|
| 06 | Fre | 180 | 57.60 | ## | ??? |

LICENSED LANDSCAPE ARCHITECT

X-XX-XX

PLANS APPROVAL DATE

THE STATE OF CALIFORNIA AND ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.

NOTE:

FOR ACCURATE RIGHT OF WAY DATA, CONTACT
RIGHT OF WAY ENGINEERING AT THE DISTRICT OFFICE.

FREE WAY COLUMN
(COLUMN MURAL LOCATION)(Type)
20 TOTAL (471 SF ART SURFACE/COLUMN)