

COMMUNITY GARDEN MAINTENANCE AGREEMENT WITH THE CITY OF FRESNO

THIS AGREEMENT is made effective this _____ day of _____, 2025, 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 "CITY" and collectively referred to as "PARTIES."

1. This Agreement addresses CITY's responsibility for all facilities, including but not limited to, pre-fabricated restroom, prefabricated picnic shelter, shipping container storage, trash encloser, electrical system, water system, sewerage system, drainage system, paving, planter boxes, picnic area facilities, driveways, sidewalks, area fencing, trees, shrubs, and etc.) (collectively the "PLANTING GARDEN") placed within State Highway right of way in the area bounded by Route 41 southbound ramp, and McKinley Avenue at postmile 25.28, shown on Exhibit A, attached to and made a part of this Agreement.
2. Maintenance responsibilities that include, but are not limited to, inspection, providing repair, replacement, and maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of PLANTING GARDEN area as shown on said Exhibit "A."
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 Streets and Highways Code and the State Maintenance Manual.
4. 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.
 - 4.1. 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.
5. CITY agrees, at CITY's expense, to do the following:
 - 5.1. CITY will MAINTAIN or have authorized licensed contractor with appropriate class of license in the State of California, to MAINTAIN PLANTING GARDEN conforming to those plans and specifications (PS&E) pre-approved by STATE. CITY will have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way.

- 5.1.1. City shall ensure that LANDSCAPED areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance including providing for water, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement.
- 5.1.2. 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.
- 5.1.3. To replace unhealthy or dead plantings when observed or within 30 days when notified in writing by STATE that plant replacement is required.
- 5.1.4. To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING system component that has become unsafe or unsightly.
- 5.2. To furnish electricity for irrigation system controls, and lighting system
- 5.3. 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.
- 5.4. 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 06 Maintenance Landscape Specialist at 1635 West Pine Avenue, Fresno, CA 93728.
- 5.5. To MAINTAIN all facilities within area shown on Exhibit A.
- 5.6. To remove dirt, debris, graffiti, weeds, and any deleterious item or material on or about the PLANTING GARDEN in an expeditious manner. Graffiti removal must protect air and water quality as required by law. CITY shall conform to the terms stated in STATE's Maintenance Manual, Volume 1, Family D Chapter, D1.07.
- 5.7. To remove Persons Experiencing Homelessness (PEH) and any structures, personal property, debris, and/or other items related to the encampment from the Location shown in Exhibit A, 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 Location in shown in Exhibits A.

5.8. If during the term of this Agreement, CITY should cease to MAINTAIN the PLANTING GARDEN to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of CITY at CITY's expense or direct CITY to remove or itself remove PLANTING GARDEN at CITY's sole expense and restore STATE's right of way to its prior or a safe operable condition. CITY 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 PLANTING GARDEN, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) days within which to affect that cure.

5.9. CITY, at CITY's expense, shall remove all graffiti and legally remove and dispose of all debris and trash from the above facilities. Any graffiti that in any way resembles or on a mural, artwork, paintings, or other similar elements may not be removed without first consulting and obtaining approval from the STATE.

6. STATE may provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from maintenance responsibilities assumed under this Agreement.

7. STATE shall issue encroachment permits to CITY at no cost.

8. LEGAL RELATIONS AND RESPONSIBILITIES:

8.1. 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 CITY facilities different from the standard of care imposed by law.

8.2. 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 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 CITY 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 CITY.

8.3. 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 arising 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.

8.4. PREVAILING WAGES:

8.4.1. Labor Code Compliance- If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. 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 works. Work performed by CITY's own forces is exempt from the Labor Code's Prevailing Wage requirements.

8.4.2. Requirements in Subcontracts - CITY shall require its contractors to include prevailing wage requirements in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" 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.

9. INSURANCE -

9.1. 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, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence, \$2 million in aggregate, and \$5 million in excess. Coverage shall be evidenced by a certification of self-insurance letter ("Letter of Self-Insurance"), satisfactory to STATE, certifying that CITY meets the coverage requirements of this section. This Letter of Self-Insurance shall also identify the

PLANTING GARDEN location as depicted in EXHIBIT A. CITY shall deliver to STATE the Letter of Self-Insurance with a signed copy of this AGREEMENT. A copy of the executed Letter of Self-Insurance shall be attached hereto and incorporate as Exhibit B.

9.2. SELF-INSURED using Contractor - If the work performed under this AGREEMENT is done by CITY's contractor(s), CITY 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 STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence, \$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.

10. TERMINATION. This Agreement may be terminated at any time 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.

11. TERM OF AGREEMENT -This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force for ten years.

PARTIES are empowered by Streets and Highways Code Section 114 & 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

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____

Georgeanne A. White
City Manager

By: _____

John Liu, Deputy District Director
Maintenance and Operations,
District 06

APPROVED AS TO FORM:

ANDREW JANZ
City Attorney

By: _____

Brent Richardson Date
Deputy City Attorney

ATTEST:

AMY K. ALLER
Interim City Clerk

By: _____

Deputy Date

EXHIBIT A

EXHIBIT A

FREE 41, PM 25.3
AT MCKINLEY AVENUE

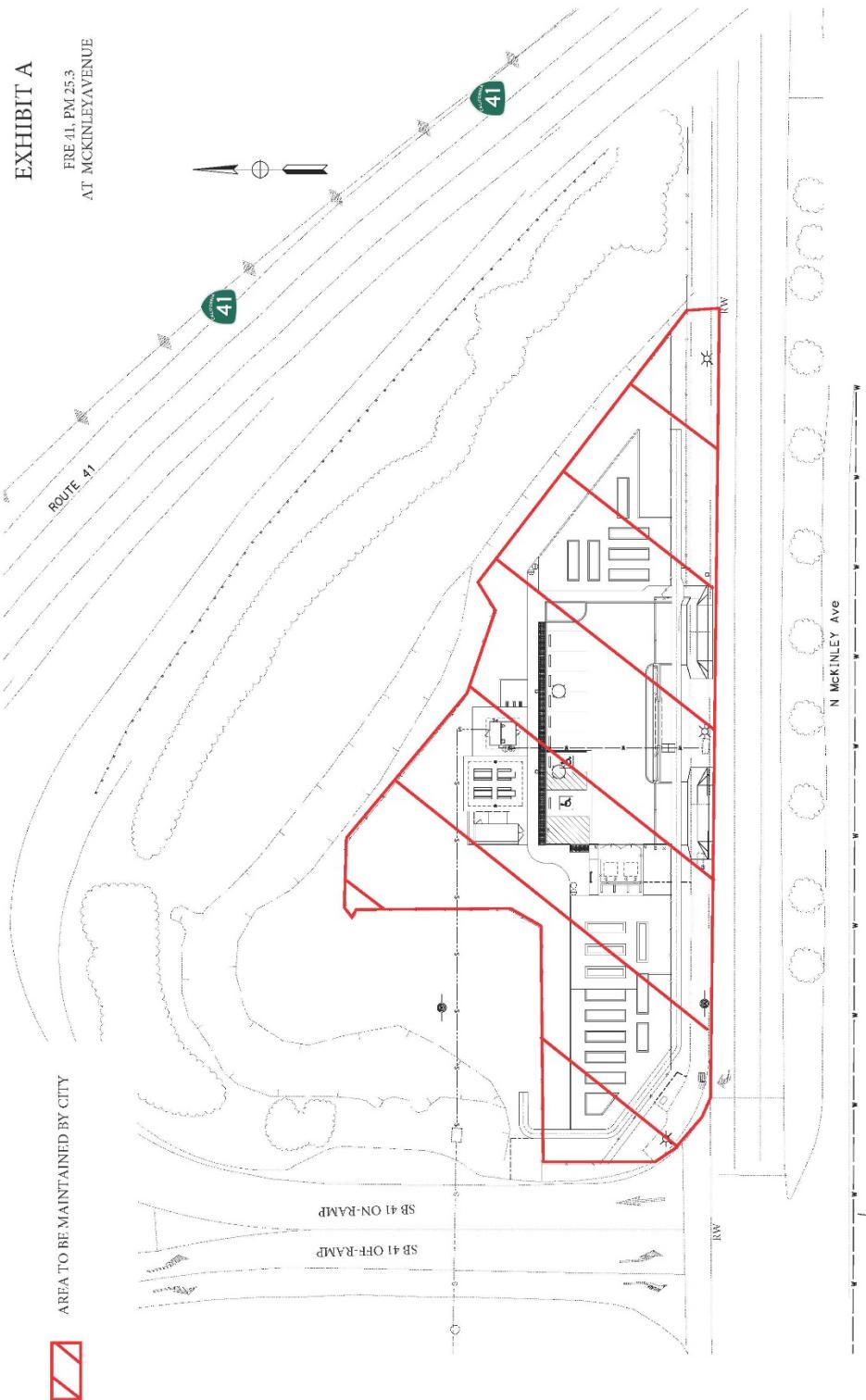


EXHIBIT B – LETTER OF CERTIFICATE OF CITY OF FRESNO STATEMENT OF SELF INSURANCE

Department of Transportation, District 6
1352 W. Olive Avenue
Fresno, CA 93728
ATTN: Daniel Lum

_____20_____

CITY OF FRESNO

RE: Statement of Self Insurance for City of Fresno Related to PLANTING GARDEN Maintenance Agreement with State of California Department of Transportation ("STATE") for the Maintenance of PLANTING GARDEN along Highway 41 within City of Fresno at postmile 25.28

Dear Mr. Lum,

The purpose of this letter is to certify that the CITY 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 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 liability and property damage liability, meets the required coverage amounts in section 9 (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, \$2 million in aggregate, and \$5 million in excess. The CITY 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,