

**PROJECT SPECIFIC MAINTENANCE AGREEMENT  
FOR CHANGEABLE MESSAGE SIGNS IN THE CITY OF SAN JOSE**

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 San Jose; hereinafter referred to as “CITY” and collectively referred to as “PARTIES”.

**SECTION I**

**RECITALS**

1. WHEREAS, Encroachment Permit Number \_\_\_\_\_ was or shortly will be executed between CITY and STATE to Relocate and Replace 4 Changeable Message Signs on State Route (SR) 87, hereinafter referred to as “PROJECT”, and
2. WHEREAS, in accordance with the said permit, it was agreed by PARTIES that prior to or upon PROJECT completion, CITY and STATE will enter into a Maintenance Agreement, and
3. WHEREAS, the PARTIES hereto mutually desire to identify the maintenance responsibilities for improvements of PROJECT, and
4. WHEREAS there is an existing Electrical Facilities Agreement(s) with CITY of San Jose Dated August 17, 1995; and an existing Delegated Maintenance Agreement with CITY of San Jose Dated July 28, 1988; This agreement is not meant to replace but shall supersede the earlier agreement(s) exclusively with respect to cost split for items covered in this agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

**SECTION II**

**AGREEMENT**

5. Exhibit A consists of plan drawings that delineate the areas within STATE right of way which are the responsibility of the CITY to maintain in accordance with this Maintenance Agreement.
6. If there is mutual agreement on the change in the maintenance duties between PARTIES, the PARTIES can revise the Exhibits A & B by a mutual written-execution of the exhibit.
7. CITY must 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.
8. CHANGEABLE MESSAGE SIGNS

- 8.1. The Changeable Message Signs (CMS), as shown on Exhibit “B” including but not limited to Sign Support Structures, Foundations, Conduit Systems, Conductors/Cabling, Pull Boxes, and any other appurtenances necessary for the function of the CMS - which by this reference, is made a part of this Agreement, shall be maintained by CITY.
- 8.2. The cost of installation, operation, maintenance, repairs, replacement and energy costs of CMS placed at interchanges of SR 87 Freeway and CITY streets and roads and at ramp connections or SR 87 and CITY facilities as shown on Exhibit “B” shall be completely the responsibility of the City and shall be at no cost to STATE.
- 8.3. In the event that a CMS shown on Exhibit “B” is connected to the same power supply as STATE signal, CITY agrees to pay 100% of the Electrical costs for this CMS and other electrical items on same circuit (including STATE owned signal).
- 8.4. If STATE, at its sole discretion, decides to separate a CMS from STATE signals, to which it was previously connected, and to take over Operation and Maintenance of the signals, CITY agrees to pay full cost of such separation and to restore the STATE signal to an operating condition that is satisfactory to STATE.

## 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 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.
- 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 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 section 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.

## 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. 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.

10.2. 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

## 11. INSURANCE -

11.1. SELF-INSURED - CITY shall have the right to self-insure with respect to any of the insurance required under this consent, to the extent permitted by applicable law. If CITY elects to self-insure with respect to any of the insurance requirements under this consent, CITY shall submit to STATE a letter of self-insurance signed by a duly authorized representative of CITY, such letter evidencing that CITY's self-insurance program is adequately funded in CITY's reasonable judgement, in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this consent. Notwithstanding CITY's election of self-insure pursuant to the foregoing, CITY shall cause its contractors, subcontractors and/or agents to maintain commercially reasonable insurance coverages and coverage limits as required under this consent.

11.2. 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 \$2 million per occurrence and \$5 million in aggregate. 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 CITY'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 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 JOSE

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
LELAND WILCOX  
Chief of Staff  
City Manager's Office

LAURIE BERMAN  
Director of Transportation

APPROVED AS TO FORM

By: \_\_\_\_\_  
JON CALEGARI  
Deputy City Attorney

By: \_\_\_\_\_  
David Ambuehl  
Deputy District Director  
Maintenance District 4

As to Form and Procedure:

By: \_\_\_\_\_  
Attorney

Department of Transportation

## EXHIBIT “A”

(Plan map identifying the applicable STATE Routes (Freeway proper) and CITY road(s) and facilities)

## EXHIBIT “B”

## EXHIBIT “C”

(Individual maintenance items that are not provided for in the body of the Agreement.)