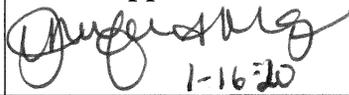


CITY COUNCIL ACTION REQUEST

Department(s): PRNS	CEQA: Not a Project, File No. PP09-218	Coordination: CAO, PW, PBCE, CMO- Budget Office	Dept. Approval: /s/ Jon Cicirelli
Council District(s): 3 and 4			CMO Approval:  1-16-20

SUBJECT: AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CALTRANS AGREEMENT FOR COYOTE CREEK TRAIL (MABURY ROAD – EMPIRE STREET)

RECOMMENDATION:

Adopt a resolution authorizing the City Manager or designee to:

- (a) Negotiate and execute a Freeway Maintenance Agreement with Caltrans to operate and maintain the planned Coyote Creek Trail beneath Highway 101 between Mabury Road and Empire Street; and
- (b) Amend the agreement to modify the parties' maintenance responsibilities.

BASIS FOR RECOMMENDATION:

The Coyote Creek Trail, from Mabury Road to Empire Street, requires an under-crossing beneath Highway 101. The trail will provide a pedestrian and bicycle route between the Berryessa BART Station, and the Empire Gardens residential neighborhood. The Master Plan for this trail project, entitled *Coyote Creek Trail Master Plan (Montague Expressway to Watson Park)*, was approved by the City Council on September 13, 2011.

The City needs to enter into a Freeway Maintenance Agreement with Caltrans in order to operate the trail once constructed. The agreement defines the scope of improvements and the roles and responsibilities for operating the planned regional trail system. The agreement confirms operation and maintenance obligations consistent with other trails in the City's Trail Network. Execution of the agreement is expected prior to June 2020, so Caltrans can issue a permit prior to start of construction. This is a standard, template-based agreement that the City has previously used for similar trail under-crossings; most recently for the planned Coyote Creek Trail undercrossing at Highway 280. The agreement acknowledges that the parties may agree to a change in maintenance responsibilities in the future. The authorization granted with this Council action acknowledges that the City Manager may negotiate and execute mutually-agreed upon changes to the agreement if they do not extend beyond typical operations and maintenance responsibilities for trail projects.

Climate Smart San José:

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

COST AND FUNDING SOURCE:

Presently, \$5,049,000 is designated in the Trail: Coyote Creek Mabury Road to Empire Street) Reserve (Fund 375 Appn 8479). As reported to the City Council on January 29, 2019 (Item 5.3) authorizing the execution of a design contract for this project in the amount of \$1.72 million, the estimated cost to operate and maintain this trail segment is approximately \$6,000. This cost will be reevaluated for incorporation into a future budget upon the project's completion.

FOR QUESTIONS CONTACT: Nicolle Burnham, Deputy Director, at (408)793-5514

Overview:

1. Refer to Maintenance Agreements Manual to ensure a complete agreement is submitted.
2. Determine if there are any overlapping agreements within the project limits. If there are, determine whether the new agreement is intended to supersede the old agreement.
3. If attempting to amend "portions" of an existing agreement, a formal amendment is required and must be reviewed by the Statewide Mtce Agreement Coordinator (SMAC) and Legal. There are no amendment templates. Contact SMAC for guidance.
4. Adding new language shall require review and approval by the SMAC and Legal unit prior to forwarding to CITY/COUNTY for approval or execution of agreement.
5. The District Coordinator should work with the appropriate program to ensure new language addresses the specific maintenance needs covered by the agreement.

Preparing the document:

1. Use Track Changes function to allow for easy reviewing by SMAC and Legal
 - 1.1. TIP - In Word, prior to turning on the track change function, modify the template so that the appropriate City or County information is not tracked, remove informational comments, remove the highlighting from the text. Once those changes are complete turn on and track the modifications made to article language.
2. Select appropriate party, i.e., CITY, COUNTY, etc., remove highlighting; only use language appropriate to the specific agreement, i.e., remove superfluous language where variable is indicated, remove all comments
3. Required to be included with each agreement (where applicable); Exhibits, Encroachment Permits, previous agreements, project plans, as-built plans, Right of Way maps, Proof of Insurance etc.
4. Provide any information needed to establish boundaries between adjoining agencies (County/city or city/city limits).

Submit via email:

5. Forward draft agreements to SMAC for review and submittal to Legal
6. Provide brief description of proposed agreement (what's changed?) in a memo or the email with the submittal.
 - 6.1. Expect minimum 14 working days to process for standard reviews
 - 6.2. Complex agreements require additional time
 - 6.3. Changes, rejections, questions will also add time
7. Legal will notify SMAC of needed changes, make requests for further information, and/or make comments.
8. SMAC will email the reviewed document to District Coordinator
9. District Coordinator will incorporate requested changes, answer requests and submit corrected/modified agreement back to SMAC for resubmittal to Legal.
10. Legal will notify SMAC when agreement is acceptable and approvable.
11. SMAC will ask district to prepare document for signature by Legal.
12. Once Legal has signed the agreement, it is ready for signature by the Local agency
13. District Coordinator will obtain local agency and district signatures and email copy of wet-signed document to SMAC for Records Management Document number.

**PROJECT SPECIFIC MAINTENANCE AGREEMENT
FOR TRAIL IN THE CITY OF SAN JOSÉ**

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

SECTION I

RECITALS

1. WHEREAS, Cooperative Agreement Number _____ was executed between CITY and STATE to construct a trail under U.S. Highway (“US”) 101, hereinafter referred to as “PROJECT”, and
2. WHEREAS, in accordance with the said agreement, 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 constructed under the Cooperative Agreement Number _____, and
4. WHEREAS there is an existing Freeway Maintenance Agreement(s), 04-SCL-280 PM 1.1, with the City of San José; dated May 31st, 2016. This agreement is not meant to replace or supersede the earlier agreement(s).

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 CITY to maintain in accordance with this Maintenance Agreement.
6. If there is mutual agreement to change in the maintenance duties between PARTIES, the PARTIES can revise the Exhibit A by a mutual written-execution of the exhibit.
7. CITY must obtain the necessary Encroachment Permits from STATE’s District 4 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. STATE will maintain the STATE-constructed freeway bridge, its support structure and other structural components except as hereinafter provided.
9. CITY will maintain the trail and all its related facilities including, but not limited to: paving, supportive structural components, aggregate base shoulder, chain link fence, light fixtures under the STATE's bridge structure, litter removal, signing, striping and pavement marking required for trail operation, drainage and storm water control measures as permitted encroachments within STATE's right of way.
10. CITY will request STATE's District Encroachment Permit Engineer to issue the necessary Encroachment Permit for any proposed change in minimum vertical clearances between CITY trail surface and the structure that results from modifications to the roadway (except when said modifications are made by STATE). If the planned modifications will result in a reduction in the minimum clearance within the traveled way, an estimate of the clearance reduction must be provided to STATE's Transportation Permit Engineer prior to starting work. Upon completion of that work, a vertical clearance diagram will be furnished to STATE's Transportation Permit Engineer that shows revised minimum clearances for all affected movements of traffic, both at the edges of the traveled way and at points of minimum clearance within the traveled 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 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.

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. 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 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 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. Coverage shall be evidenced by a self-insurance letter in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement in a form satisfactory to STATE, along with a signed copy of the 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 \$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.

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.

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 JOSÉ

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BOB FRANZOIA
Acting Director of Transportation

Initiated and Approved

By: _____
City Manager

By: _____
DAVE AMBUEHL
Deputy District Director
Maintenance District 4

ATTEST:

By: _____
City Clerk

As to Form and Procedure:

By: _____
City Attorney

By: _____
Attorney
Department of Transportation

DRAFT

DRAFT

Draft date

EXHIBIT "A"

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

DRAFT

DRAFT

Draft date

EXHIBIT "B"

TRAFFIC SIGNAL AND LIGHTING
Caltrans and CITY/COUNTY of _____
Effective _____, 20____

BASIS OF COST DISTRIBUTION
State-Owned and Maintained
Billed by the State

<u>Route and PM</u>	<u>Location</u>	<u>Type of Facility</u>	<u>Cost Distribution</u>	
			<u>State</u>	<u>CITY/COUNTY</u>

Utility-Owned and Maintained
Billed by the State

<u>Route and PM</u>	<u>Location</u>	<u>Type of Facility</u>	<u>Cost Distribution</u>	
			<u>State</u>	<u>CITY/COUNTY</u>

DRAFT

Draft date

EXHIBIT "C"

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

DRAFT