

**AMENDMENT NO. _
TO
FREEWAY MAINTENANCE AGREEMENT
IN THE CITY OF OAKLAND**

This Amendment No. _ to the Freeway Maintenance Agreement in the City of Oakland is made and entered into by and between STATE of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE", and City of Oakland, hereinafter referred to as "CITY" and collectively referred to as "PARTIES".

WITNESSETH:

WHEREAS, a Freeway Maintenance Agreement in the City of Oakland", hereinafter referred to as "AGREEMENT", was executed by CITY on _____, and

WHEREAS, AGREEMENT by its terms provides that it may be amended or terminated at any time upon mutual consent of PARTIES; and

WHEREAS, CITY desires to maintain improvements to be constructed under a STATE issued Encroachment Permit No. _____ on Route _____ at [STREET NAME OVER/UNDERCROSSING] in the City of Oakland; consisting of resurfacing the undercrossing and striping bike lanes, etc); and

WHEREAS, PARTIES hereto now desire that AGREEMENT be amended.

NOW, THEREFORE, PARTIES agree to add "[NAME OF ARTICLES]" article below to AGREEMENT and shall become a part of AGREEMENT for all purposes.

1. VEHICULAR OVERCROSSINGS

- a. CITY/COUNTY will maintain, at CITY/COUNTY expense, the deck wearing surface and drainage system and all portions of the structure above the bridge deck, including, but without limitation, sidewalks, bridge rails and screens, lighting installations, signs, pavement markings, that may be required for the benefit or control of pedestrians and traffic traveling over that overcrossing structure.
- b. As directed by section 92.6 of the Streets and Highways Code, at locations determined by STATE, screening shall be placed on STATE freeway overpasses on which pedestrians are allowed. All screens installed under this program will be maintained by STATE, at STATE expense.

2. PEDESTRIAN/BICYCLE OVERCROSSINGS (non-vehicular) constructed as a permitted encroachment within STATE's right of way. CITY/COUNTY is solely responsible for, but not limited to, the structural adequacy, lighting, fencing, guard railing, drainage facilities, graffiti removal, sweeping and debris removal, signing, and striping, slope paving and delineation. CITY/COUNTY will maintain, at CITY/COUNTY expense, a safe facility for pedestrian and bicycle use along the entire length of the structure and the public use of the STATE highway beneath, by providing structure inspection, and structure maintenance.
3. VEHICULAR AND PEDESTRIAN UNDERCROSSINGS
 - a. CITY/COUNTY will maintain the CITY/COUNTY roadway, including the traveled way, shoulders, curbs, sidewalks, wall surfaces (including eliminating graffiti), drainage installations, lighting installations and traffic service facilities that may be required for the benefit or control of pedestrians and traffic using the CITY/COUNTY roadway beneath the undercrossing structure.
 - b. CITY/COUNTY will request STATE's District Encroachment Permit Engineer to issue the necessary Encroachment Permit for any proposed change in minimum vertical clearances between CITY/COUNTY roadway 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.
4. WALLS, SOUNDWALLS, AND COLUMNS - CITY/COUNTY is responsible for debris removal, cleaning and painting to keep CITY/COUNTY's side of any wall structure or column free of debris, dirt, and graffiti.
5. LANDSCAPED AREAS - CITY/COUNTY is responsible for the maintenance of any plantings or other types of roadside improvements of PROJECT lying outside of the fenced area restricting walk-on access to the freeway.

6. BICYCLE PATHS, LANES, AND CYCLE TRACKS constructed as permitted encroachments within STATE's right of way, CITY/COUNTY is solely responsible for all permitted improvements, including but not limited to the delineation, fencing, guard railing, drainage facilities, slope and structural adequacy. CITY/COUNTY will maintain, at CITY/COUNTY expense, a safe facility for bicycle travel along the entire length of the path/lane/cycle track by providing sweeping and debris removal when necessary; and all signing and striping, and pavement markings required for the direction and operation of that non-motorized facility.

7. LEGAL RELATIONS AND RESPONSIBILITIES

- a. 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.
- b. Neither CITY/COUNTY 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/COUNTY 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.
- c. 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/COUNTY under or in connection with any work, authority or jurisdiction conferred upon CITY/COUNTY under this Agreement. It is understood and agreed that CITY/COUNTY 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/COUNTY under this Agreement.

8. PREVAILING WAGES:

- a. 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/COUNTY 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/COUNTY agrees to include prevailing wage requirements in its contracts for public works. Work performed by CITY/COUNTY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.
- b. Requirements in Subcontracts - CITY/COUNTY 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/COUNTY'S contracts.

9. INSURANCE¹ - CITY/COUNTY and its contractors shall 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.

- a. SELF-INSURED² - CITY/COUNTY is self insured. CITY/COUNTY 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 and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certification of self-insurance

¹ Delete if self-insured

² Delete if not self-insured

letter ("Letter of Self-Insurance"), satisfactory to STATE, certifying that CITY/COUNTY meets the coverage requirements of this section. This Letter of Self-Insurance shall also identify the _____ location as depicted in EXHIBIT A. CITY/COUNTY 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.

- b. SELF-INSURED³ using Contractor - If the work performed under this AGREEMENT is done by CITY/COUNTY's contractor(s), CITY/COUNTY 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 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.

10. TERMINATION - This Agreement may be terminated by mutual written consent by PARTIES or by STATE for cause., CITY/COUNTY'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 and effect until amended or terminated as set forth in Article 13 above.

TERM OF AGREEMENT AMENDMENT - This Amendment shall become effective on the date as shown below and shall remain in full force and effect until amended or terminated at any time upon mutual consent of PARTIES or until terminated by STATE for cause.

PARTIES are empowered by Streets and Highways Code section 114 and 130 to enter into this Amendment and have delegated to the undersigned the authority to execute this Amendment on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Amendment.

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

³ Delete if not self-insured

CITY OF OAKLAND

STATE OF CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: City Administrator

TOKS OMISHAKIN
Director of Transportation

By

ATTEST;

CITY Clerk

PARVIZ LASHAI Date
Acting Deputy District Director
Maintenance District 4

CITY Attorney