

IMPROVEMENT MAINTENANCE AGREEMENT WITH THE CITY OF ANGELS CAMP

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 Angels Camp; hereinafter referred to as "CITY" and collectively referred to as "PARTIES."

1. The PARTIES hereto mutually desire to identify the maintenance responsibilities of CITY for newly constructed or revised improvements within STATE's right of way by Permit Number 1024-NSI-0368.
2. This Agreement addresses CITY responsibility for the Speed Radar Feedback Signs (collectively the "IMPROVEMENT") placed within State Highway right of way on State Route 49, as shown on Exhibit A, attached to and made a part of this Agreement.
3. Maintenance responsibilities that include, but are not limited to, inspection, providing emergency repair, replacement, and maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of IMPROVEMENT as shown on said Exhibit A.
4. 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 then current edition of the State Maintenance Manual.
5. 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.
 - 5.1. 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.
6. CITY agrees, at CITY expense, to do the following:
 - 6.1. CITY will MAINTAIN or have authorized licensed contractor with appropriate class of license in the State of California, to MAINTAIN IMPROVEMENT conforming to those plans and specifications (PS&E) pre-approved by STATE.

CITY will have in place necessary encroachment permits prior to the start of any work within STATE'S right of way.

6.1.1. 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

6.2. CITY shall ensure that IMPROVEMENT areas designated on Exhibit A are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance during the entire life of this Agreement.

6.2.1. CITY shall expeditiously MAINTAIN, replace, repair or remove from service any components of IMPROVEMENT system that has become unsafe or unsightly.

6.3. CITY shall control weeds within three (3) feet of the IMPROVEMENT, 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 10 Maintenance at 1976 Dr. Martin Luther King Jr. Blvd., Stockton, CA, 95205.

6.4. CITY shall ensure IMPROVEMENT within the Agreement limits provide an acceptable walking and riding surface and will provide for the repair and removal of dirt, debris, graffiti, weeds, and any deleterious item or material on or about the IMPROVEMENT in an expeditious manner.

6.5. CITY shall remove IMPROVEMENT and appurtenances 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.

7. 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.

8. STATE shall Issue encroachment permits to CITY at no cost.

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 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.

9.2.If during the term of this Agreement, CITY should cease to MAINTAIN the IMPROVEMENT 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 IMPROVEMENT 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 IMPROVEMENT , STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) days within which to affect that cure.

9.3.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.

9.4.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.

9.5. PREVAILING WAGES:

9.5.1. 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.

9.5.2. 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.

10. INSURANCE - CITY 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.

11. TERMINATION - This Agreement may be terminated at any time by 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.

12. 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 & 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.

[SIGNATURES ON FOLLOWING PAGE]

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

THE CITY OF ANGELS CAMP

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mayor/Chairmen

Initiated and Approved

By: _____
City Administrator

By: _____
Deputy District Director
Maintenance District

ATTEST:

By: _____
City Clerk


By:  _____
For: Douglas L. White
City Attorney

EXHIBIT A

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