

**FREEWAY MAINTENANCE AGREEMENT
WITH
CITY OF CAPITOLA**

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 Capitola; hereinafter referred to as "CITY" and collectively referred to as "PARTIES".

SECTION I

RECITALS

1. Cooperative Agreement Number 05-0388 was executed between the Santa Cruz County Regional Transportation Commission and STATE on May 18, 2021 to construct Northbound and Southbound auxiliary lanes between the Bay Street/Porter Avenue and State Park Drive Interchanges on State Route 1, Bus-on-Shoulder elements, drainage facilities, construct retaining walls and sound walls, including the replacement of the Capitola Avenue Overcrossing with bicycle and pedestrian facilities on Capitola Avenue in both directions at the new bridge, and construction of a new bicycle and pedestrian overcrossing at Mar Vista Drive, on State Route (SR) 1, hereinafter referred to as "PROJECT", and
2. On August 17, 1959 and February 24, 1961, Freeway Agreements were executed between CITY and STATE, wherein the PARTIES consented to certain adjustments of the local street and road system required for the development of that portion of STATE Highway Route (SR) 1, declared a freeway, within the jurisdictional limits of the CITY, and
3. Recent adjustments to said freeway have now been completed, or are nearing completion, and the PARTIES hereto mutually desire to identify the maintenance responsibilities of the CITY for areas lying within those modified freeway limits,
4. There are existing Freeway Maintenance Agreements, with CITY dated August 24, 1955 ('55), May 18, 1962 ('62), October 28, 1963 ('63), and October 18, 1966 ('66). This Agreement is meant to completely supersede the '55 and '63 agreements, and supersede portions of the '62 and '66 agreements relative to the CITY limits.

NOW THEREFORE IT IS AGREED:

SECTION II

AGREEMENT

1. PARTIES agree this Agreement shall supersede in its entirety the said Freeway Maintenance Agreement executed by PARTIES on August 24, 1955 and October 28, 1963.
2. PARTIES agree this Agreement shall supersede the portions of said Freeway Maintenance Agreements executed on My 18, 1962 and October 18, 1966, relative to the CITY limits.
3. Pursuant to Section 3__ of the _____, 20__ Freeway Agreement, CITY has resumed or will resume control and maintenance over each of the relocated or reconstructed CITY roads, frontage roads, and other STATE constructed local roads, except for any portion which is adopted by STATE as a part of the freeway proper.
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. CITY agrees to continue their control and maintenance of each of the affected relocated or reconstructed CITY streets and roads as shown on that attached hereto, Exhibit A and C and made a part hereof by this reference.
6. When another planned future improvement has been constructed and/or a minor revision has been effected within the limits of the freeway herein described which will affect the PARTIES' maintenance responsibility as described herein, and there is mutual agreement on a change in the maintenance responsibilities between PARTIES, the PARTIES can revise the Exhibit A and/or C by a mutual written-execution of each of the exhibits.
7. CITY must obtain the necessary Encroachment Permits from STATE's District 5 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. VEHICULAR OVERCROSSINGS
 - 8.1. CITY will maintain, at CITY expense, the deck wearing surface and structural drainage system (and shall perform such work as may be necessary to ensure an impervious and/or otherwise suitable surface) and all portions of the structure above the bridge deck, including, but without limitation, lighting installations (including all electrical costs), as well as all traffic service facilities (sidewalks, signs, pavement markings, bridge rails, etc.) and drainage facilities that may be required for the benefit or control of traffic using that overcrossing.

8.2. 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, excluding any decorative features added to the screening which shall be maintained by the CITY

9. VEHICULAR AND PEDESTRIAN UNDERCROSSINGS

9.1. CITY will maintain the CITY paved roadway sections, including the traveled way, shoulders, curbs, sidewalks, slope paving, wall surfaces (including eliminating graffiti), drainage installations, lighting installations (including all electrical costs) and traffic service facilities that may be required for the benefit or control of traffic using that undercrossing.

9.2. 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 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.

10. WALLS, SOUNDWALLS, AND COLUMNS – CITY is responsible for debris removal, cleaning, and painting to keep CITY's side of any wall structure or column free of debris, dirt, and graffiti. Any plantings or vegetation that grow over the top of or on the CITY side of any walls, soundwalls, or State R/W fence from State jurisdiction into CITY jurisdiction shall be the responsibility of the CITY to trim and/or limb.

11. ENCAMPMENTS REMOVAL - CITY shall remove Persons Experiencing Homelessness (PEH) and any structures, personal property, debris, and/or other items related to the encampment from CITY's areas of responsibility shown on 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.

12. LANDSCAPED AREAS CITY 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.

13. INTERCHANGE OPERATION - It is STATE's responsibility to provide efficient operation of freeway interchanges, including ramp connections to local streets and roads.

14. ELECTRICALLY OPERATED TRAFFIC CONTROL DEVICES

A separate "Electrical Facilities Cost Sharing Agreement" may be executed in the future allocating these costs between the PARTIES.

15. LEGAL RELATIONS AND RESPONSIBILITIES

15.1. 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.

15.2. 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 conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and their officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, 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.

15.3. 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 and 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, tortuous, 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.

16. PREVAILING WAGES:

16.1. 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.

16.2. 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.

17. 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.

18. 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.

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

THE CITY OF

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mayor

Initiated and Approved

By: _____
City Manager

By: _____
Deputy District Director
Maintenance District 5

ATTEST:

By: _____
City Clerk

By: _____
City Attorney

EXHIBIT “A”

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

EXHIBIT “C”

A separate “Electrical Facilities Cost Sharing Agreement” will be executed in the future allocating costs between parties.