

RESOLUTION NO. 2023-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORLAND
APPROVING THE MAINTENANCE AGREEMENT WITH CALTRANS FOR
THE INTERSTATE 5 BEAUTIFICATION PROJECT

THIS AGREEMENT is made effective this 18 day of July, 2023, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the City of Orland; hereinafter referred to as "CITY" and collectively referred to as "PARTIES."

SECTION I

RECITALS

1. WHEREAS, the PARTIES hereto mutually desire to identify the maintenance responsibilities of CITY for newly constructed improvements within STATE's right of way as identified by Cooperative Agreement number 03-0774, executed by the parties on April 29, 2022;
2. WHEREAS, the PARTIES desire to work together to allocate their respective obligations relative to Transportation Art (which includes graphics upon a required engineered transportation feature that expresses unique attributes of a community's history, resources, or character) within STATE's right of way;
3. WHEREAS, this Agreement addresses CITY's responsibility for maintaining the Transportation Art installed or painted within the State Highway right of way as depicted in detail in Exhibit A, attached to and made a part of this Agreement, hereinafter "ART." The ART which the CITY shall be obligated to maintain is located on State Route 5 at the Route 32/5 Separation as shown in Exhibit A; and
4. WHEREAS, the PARTIES hereto mutually desire to clarify the division of maintenance responsibility as defined in Section 27 of the California Streets and Highway Code that include, but are not limited to, providing emergency repair and maintenance (collectively hereinafter "MAINTAIN/MAINTENANCE") of ART at the location as shown on Exhibit A.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:

- 1.1. When a change to this agreement is necessary, the PARTIES will execute a formal amendment in writing by and through their authorized representatives.
 - 1.2. Exhibit A portrays images that delineate the locations within STATE's right of way where ART will be located, what that ART comprises, and for which the CITY is responsible to MAINTAIN under this AGREEMENT.
2. CITY's obligations hereunder, at CITY's expense, include the following:
- 2.1. CITY shall MAINTAIN the ART conforming to the details set forth in Exhibit A.
 - 2.2. CITY shall ensure ART is provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance. CITY shall coordinate said MAINTENANCE with STATE prior to the start of any work.
 - 2.3. 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.
 - 2.4. CITY and CITY contractors will be required to obtain an encroachment permit from STATE prior to the start of any work within the STATE's right of way.
 - 2.5. CITY shall restore or repair damaged ART when observed or within thirty (30) calendar days of being notified in writing by STATE.
 - 2.6. CITY shall remove ART and restore STATE-owned areas to a safe and attractive condition acceptable to the STATE, in the event this agreement is terminated as set forth herein.
 - 2.7. CITY shall expeditiously MAINTAIN, repair, or restore ART if it has become unsightly.
 - 2.8. CITY shall MAINTAIN all ART within the Agreement limits of the STATE highway right of way, as shown on Exhibit A, at CITY's expense. MAINTENANCE/MAINTAIN includes but is not limited to: (1) restoration of damaged ART; (2) removal of dirt, debris, graffiti, grown vegetation and weeds surrounding ART and the immediate area CITY uses to access and maintain ART; and (3) removal of any deleterious item or material on ART in

an expeditious manner. Graffiti removal must conform to applicable STATE policies and guidelines that require prompt removal of offensive messages and timely removal of all other graffiti. MAINTENANCE practices must protect air and water quality as required by law.

- 2.9. CITY, at CITY's sole cost and expense, shall remove all graffiti from the Artwork. CITY is solely responsible for ensuring that any graffiti that in any way resembles a mural, artwork, paintings, or other similar elements shall not be removed without the written authorization of STATE. Graffiti removal must protect air and water quality as required by law. CITY shall conform to the terms stated in STATE's Maintenance Manual, Volume 1, Family D Chapter, D1.06. CITY shall discuss such possible graffiti removal with STATE's District 3 Transportation Art Coordinator before conducting any graffiti removal or remediation.
- 2.10. CITY shall engage in weed abatement operations. CITY shall control weeds at a level acceptable to STATE. Any weed control performed by chemical weed sprays (herbicides) shall comply with all laws, rules, and regulations established by California Department of Food and Agriculture. All chemical spray operations shall be reported quarterly (form LA17) to STATE via the STATE's Landscape Specialist, Maintenance Support, Caltrans District Office at 703 B Street, Marysville, CA 95901.
- 2.11. All work will be performed from the adjacent on and off ramps, as approved by STATE in the form of a separate Encroachment Permit. CITY shall be responsible for necessary traffic operations, traffic control and traffic/lane closures required for MAINTENANCE operations in the area.
- 2.12. Other than STATE-approved ART, no alteration of the existing freeway structure or any other highway facility, including signage, will be permitted, unless pre-approved in writing by STATE. No landscaping shall be removed to accommodate ART unless approved by STATE.
- 2.13. All work by or on behalf of CITY will be done at no cost to STATE.
- 2.14. CITY shall remove ART whenever, in the opinion of the STATE, it creates a maintenance or operational concern. In the event CITY fails to remove ART in a timely manner upon such notice, STATE may remove ART thirty (30) calendar days following written notification to CITY, and STATE will bill CITY for all costs of its removal and for the restoration of STATE-owned areas to their original condition. CITY agrees to bear STATE's cost associated with said ART removal.

- 2.15. CITY may remove part or all of ART thirty (30) days following notification and subsequent approval of STATE. CITY shall remove ART and restore STATE-owned areas to a safe and attractive condition acceptable to STATE.
- 2.16. CITY warrants that it will obtain from ART's artist(s), hereinafter "ARTIST," or any party CITY contracts with for the ART, an assignment of all copyright interests in the ART to the STATE, or such equivalent as determined by STATE in its sole discretion, in accordance with STATE's Project Development Procedures Manual ("PDPM"), Chapter 29, Section 9, Transportation Art.
- 2.17. CITY warrants that it shall obtain and maintain all rights and obligations from ARTIST(s) or any party it contracts with for ART necessary to fulfill CITY's obligations under this Agreement. These rights and obligations include, but are not limited to, the ability to repair or restore ART, remove ART, and clean ART.
- 2.18. Upon completed installation of the ART within STATE right of way, the tangible ART shall become property of the STATE.
3. STATE shall have the following obligations and rights under this Agreement:
 - 3.1. 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.
 - 3.2. Provide CITY, upon receiving CITY's request, the necessary Encroachment Permits from STATE's District 3 Encroachment Permit Office prior to CITY's entering STATE right of way to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.
 - 3.3. Provide CITY's contractor and/or ARTIST(s), upon separate written requests, an Encroachment Permit from STATE prior to the start of any work within STATE's right of way. A permit fee will be required for CITY's contractor and for ART artist(s).
 - 3.4. STATE reserves the right to remove ART or alter parts thereof due to emergency, construction, rehabilitation, or other necessary activities affecting these transportation facilities without any obligation, compensation to, or approval of CITY.

- 3.5. STATE reserves the right to remove ART or alter parts thereof that present an immediate safety hazard to the public, as determined by STATE, without delay or advance notification to CITY.
- 3.6. STATE will not be responsible for the cost of any MAINTENANCE, repair, or restoration of ART which is damaged by the STATE's actions or omissions done in the course of STATE' s duties related to highway operations and activities. STATE will not be responsible for any damage to the ART caused by any third-party, including but not limited to, vandalism or accidents on STATE's right of way.
- 3.7. STATE will notify CITY thirty (30) days in advance of any planned work that may impact the ART. If any such work required is due to a public safety hazard, this notification period does not apply, and STATE will notify CITY as soon as practicable of the planned or performed work.

4. LEGAL RELATIONS AND RESPONSIBILITIES

- 4.1. 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.
- 4.2. If during the term of this Agreement, CITY should cease to MAINTAIN ART 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 ART at CITY's sole expense and restore STATE' s right of way to its prior condition. CITY hereby agrees to pay said STATE expenses, within thirty (30) calendar days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing ART, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) calendar days within which to affect that cure.
- 4.3. Neither STATE not 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 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.

5. PREVAILING WAGES:

5.1. Labor Code Compliance- If the work performed on the ART 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.

5.2. Prevailing Wage 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.

6. INSURANCE

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

- 6.2. 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 \$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.
7. WHEREAS, on October 3, 2023, the Council of the City of Orland through Resolution No. 2023-08 approved a recommendation to accept MAINTENANCE responsibilities for the ART.
8. TERMINATION - This Agreement may be terminated by mutual written consent of PARTIES, and by STATE for cause. CITY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.
9. 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.
10. COUNTERPARTS - This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
11. ELECTRONIC SIGNATURES - Electronic signatures of the PARTIES, whether digital or encrypted, are intended to authenticate this written AGREEMENT, and shall have the same force and effect as manual signatures for this AGREEMENT.

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 ORLAND

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mayor/Chairman

Initiated and Approved

By: _____
CITY Manager

By: _____
Deputy District Director
Maintenance District 3

ATTEST:

By: _____
CITY Attorney

By: _____
CITY Clerk

EXHIBIT B – STATEMENT OF SELF INSURANCE FOR CITY OF ORLAND

California Department of Transportation

___/___/20___

703 B Street
Marysville, CA 95901

ATTN: Jose Luis Valdez, District 3 Maintenance Project Delivery Liaison

CITY OF ORLAND
Department of Finance

RE: Statement of Self Insurance for City of Orland ("CITY") Related to Maintenance Agreement for Art with the State of California, acting by and through the Department of Transportation, ("STATE") for improvements along STATE Route 5 in the County of Glenn between Post Mile 25.25 and PM 25.79, MA-County of Glenn-03-GLE-005-PM 25.25-PM 25.79 ("Maintenance Agreement").

Dear Mr. Valdez,

The purpose of this letter is to certify that the CITY is self-insured and self-funded covering third-party claims arising out of its general operations (for example, commercial general liability and automobile liability insurance). Further the CITY is self-insured covering workers' compensation claims and has received the consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the CITY appropriates funds specifically to satisfy valid third-party claims and workers' compensation claims, which may be brought against the CITY.

The CITY certifies its self-insured, general liability coverage for bodily injury liability and property damage liability, meets the required coverage amounts in section 6 (INSURANCE) of the Maintenance Agreement, specifically general liability insurance, coverage of bodily injury liability and property damage liability in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. The CITY further represents that regarding any claims made in connection with the Maintenance Agreement by the STATE, the STATE will be first-in-line regarding the reserved, self-insured amounts.

If you need any additional information regarding this letter, please direct those inquiries through my office.

Sincerely,

FINANCE MANAGER