

**AGREEMENT FOR MAINTENANCE OF GATEWAY  
MONUMENT SIGN IN THE CITY OF COSTA MESA**

THIS AGREEMENT is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the State of California, acting by and through its Department of Transportation, hereinafter referred to as "STATE" and the City of Costa Mesa, hereinafter referred to as the "CITY", and collectively referred to as "PARTIES."

RECITALS

1. WHEREAS, under permit 13-NGM-0143, CITY proposes to construct a "Gateway Monument Sign Structure", hereinafter referred to as "PROJECT" within STATE's right of way as it shown in Exhibit "A", and
2. WHEREAS, in accordance with the said Permit, it was agreed by PARTIES that prior to issuing the referenced Permit, CITY and STATE will enter into maintenance agreement; and
3. WHEREAS, this Agreement is necessitated as the result of CITY's proposal to build the "PROJECT" at CITY's expense within STATE right of way. The purpose of this Agreement is to document that CITY will resume ownership, maintenance, inspection, repair, rehabilitation, replacement and full operational responsibilities of this "PROJECT"; at no cost to STATE, and
4. WHEREAS, this Agreement is not meant to replace or supersede the earlier Agreement.

NOW THEREFORE, IT IS AGREED:

5. Exhibit "A" consists of plan drawing that delineated the "PROJECT" within STATE right of way, which is the responsibility of the CITY to maintain in accordance with this Maintenance Agreement.
6. "PROJECT"
  - a) CITY will have ownership and full maintenance responsibilities for this "PROJECT", which are included but not limited to the following:
  - b) CITY will maintain, at CITY's expense, the structural integrity of this "PROJECT". CITY will be fully responsible to remove the "PROJECT" if it creates a safety or operational concern due to deterioration or inadequate maintenance. The STATE will notify the CITY in writing if it has determined the "PROJEC" requires removal. STATE's Failure to notify the CITY does not absolve CITY of it is duty to maintain the "PROJECT" in a safe condition.

- c) CITY shall perform regularly scheduled maintenance as needed at CITY's expense. CITY'S maintenance will include but will not be limited to: removal of debris and cleaning and/or painting, removal of dirt, prompt removal of offensive messages and removal of all other graffiti in a timely manner to restore and maintain the integrity of the "PROJECT". Maintenance practices shall protect air and water quality as required by law.
- d) CITY will be fully responsible for paying all electrical services including, but not limited to, energy bills and replacement/repair of any lighting fixture, which are used in the "PROJECT"
- e) CITY will be fully responsible for the structural integrity of the "PROJECT". CITY to ensure to avoid safety hazard to the public at all the time and "PROJECT" shall be replaced if it is desired by CITY at no cost to STATE.
7. CITY will be responsible for removal of the "PROJECT" at no cost to STATE in order to accommodate any future improvements by the STATE. The CITY shall perform the task within 120 days of written notice by STATE. In case of CITY's failure to perform the requested task, STATE will remove the "PROJECT" in behalf of CITY. The CITY shall be solely responsible to reimburse STATE for all the cost associated with the removal and restoration of the area in a timely manner.
8. CITY must obtain the necessary Encroachment Permits from STATE's District 12 Encroachment Permit Office prior to entering STATE right of way to perform CITY's maintenance responsibilities. The permit shall be valid for a two year time frame in order to allow the City to respond to maintenance issues in timely manner. This permit will be issued at no cost to CITY. CITY's obligations hereunder are conditioned on the CITY's ability to obtain and maintain such permit using reasonable effort.
9. CITY agrees that the STATE can inspect the PROJECT with or without giving notice to CITY. STATE will notify the CITY in writing of any deficiency, giving 30 days time frame (unless repair of the deficiency takes longer to correct, in which case, CITY's obligation is to commence repair within 30 days and continue until fully corrected in a diligent manner) to CITY to rectify the defect and upon CITY failing to do so can ask CITY to remove the PROJECT or STATE can perform the work at CITY's expense.
10. The STATE reserve the right to remove or alter the "PROJECT" that presents an immediate safety hazard to the public without delay or advanced notification to the CITY.
11. The STATE reserves the right to remove the "PROJECT" due to construction, rehabilitation, or other necessary activities affecting the transportation facilities without any obligation, compensation to, or approval of the CITY. The STATE will strive to notify the CITY of its intent to remove the "PROJECT" to allow for timely removal and salvage by the CITY if possible.
12. CITY will be responsible for maintenance landscape work adjacent to "PROJECT"

vicinity as it is described under a separate Landscape Maintenance Agreement which was executed on \_\_\_\_\_.

### 13. LEGAL RELATIONS AND RESPONSIBILITIES

13.1. 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.

13.2. 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.

### 14. PREVAILING WAGES:

14.1 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'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

14.2 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's contracts.

### 15. INSURANCE

15.1. SELF-INSURED: CITY is self insured. CITY agrees to deliver evidence of self-insured coverage in a form satisfactory to STATE, along with a signed copy of the Agreement.

15.2. 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. 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.

16. 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. Prior to termination of this agreement, CITY will be required to remove the "PROJECT" and restore the site to the STATE's standard at no cost to the STATE. The CITY shall perform the task within 120 days of written notice by STATE. In case of CITY's failure to perform the requested task, STATE will remove the "PROJECT" in behalf of CITY. The CITY shall be solely responsible to reimburse STATE for all the cost associated with the removal and restoration of the area in a timely manner.

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

THE CITY OF COSTA MESA

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Mayor

MALCOLM DOUGHERTY  
Director of Transportation

ATTEST:

By: \_\_\_\_\_  
CITY Clerk

By: \_\_\_\_\_  
James Pinheiro  
Deputy District Director  
Operations and Maintenance  
District 12

As to Form and Procedure:

By: \_\_\_\_\_  
CITY Attorney

By: \_\_\_\_\_  
Attorney  
Department of Transportation