

# City of Costa Mesa

## Inter Office Memorandum

**To:** Planning Commission  
**From:** Mel Lee, Senior Planner *MEL*  
**Date:** October 1, 2009  
**Subject:** **PROCEDURE FOR FENCE AND LANDSCAPE IMPROVEMENTS IN CALTRANS RIGHT-OF-WAY**

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This memo has been prepared in response to Commissioner Mensinger's request for the procedures to make landscape or fence improvements within a Caltrans right-of-way.

- Landscape work within Caltrans right-of-way requires approval of a landscape maintenance agreement between Caltrans and the City - specifically, the Transportation Services Division.
- In turn, an agreement between the City and the property owner is also required. Additionally, an encroachment permit is issued by Caltrans for the work.
- The length of time for Caltrans approval of an encroachment permit varies with the scope of the proposed work and the time it takes for all concerned parties to approve the landscape maintenance agreement.

A "boiler plate" landscape maintenance agreement is attached to this memo for reference. For additional information, please contact Raja Sethuraman, Transportation Services Manager, at (714) 754-5032 or at [rsethuraman@ci.costa-mesa.ca.us](mailto:rsethuraman@ci.costa-mesa.ca.us).

### Attachment

cc: Acting Dev. Svs. Director  
Sr. Deputy Attorney  
Transportation Services Manager  
Staff (4)  
File (2)

**FLYNN, CLAIRE**

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**From:** SETHURAMAN, RAJA  
**Sent:** Tuesday, September 29, 2009 4:24 PM  
**To:** FLYNN, CLAIRE; LEE, MEL  
**Subject:** FW: Boiler Plate for Landscaping Maintenance Agreement

**Attachments:** Landscape03-11-09.doc



Landscape03-11-09  
.doc (55 KB)

-----Original Message-----

**From:** Mimi Chau [mailto:mimi\_chau@dot.ca.gov]  
**Sent:** Monday, June 01, 2009 8:52 AM  
**To:** SETHURAMAN, RAJA  
**Cc:** Massoud Tajik  
**Subject:** Fw: Boiler Plate for Landscaping Maintenance Agreement

Hello Roger,  
Per our phone conversation earlier, please find the attached boiler plate for the  
Landscaping Maintenance Agreement .  
Please let me know if you need more further information .

Thank you and take care,

(See attached file: Landscape03-11-09.doc)

## INSTRUCTION PAGE

1. Highlighted portions are instructions to the Agreement drafters.
2. Use "mark up" function to allow for easy reviewing.
3. Many options are provided or can be inserted and drafter needs to work with the District Maintenance Units to select the needed ones.
4. In cases where Agreements need clauses which are not already provided for in this template, they can be added to suit their specific needs. The Agreement must be reviewed/approved by Headquarters Legal prior to execution.

**AGREEMENT FOR LANDSCAPE MAINTENANCE  
WITHIN STATE HIGHWAY RIGHT OF WAY  
ON ROUTE \_\_\_ WITHIN THE CITY/COUNTY OF \_\_\_\_\_**

THIS AGREEMENT is made and executed effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the City/County of \_\_\_\_\_, hereinafter referred to as "CITY/COUNTY," together referred to as "PARTIES".

WITNESSETH

RECITALS:

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE's right of way by [choose as appropriate] a Cooperative Agreement (s) dated \_\_\_\_\_, Permit Number (s) \_\_\_\_\_.
2. This Agreement addresses CITY/COUNTY responsibility for the [list can include, but is not limited to, landscaping, planting, irrigation systems, hardscaping, mulches, control, litter and weed removal, Biofiltration Swales, Linear Radial Gross Solid Removal Devices, sidewalks, bike paths, and parking restriction signs] (collectively the "LANDSCAPING") placed within State Highway right of way on State Route \_\_\_\_\_, as shown on Exhibit A, attached to and made a part of this Agreement. [If there are different MAINTENANCE responsibilities for each of the items in the List, group them together and name each group, e.g., LANDSCAPING, IMPROVEMENTS, SYSTEM, etc.]

**Section I**

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

- a) PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, & maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of LANDSCAPING as shown on said Exhibit "A."
- b) 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's responsibility as described herein, PARTIES will agree upon and execute a new dated and revised Exhibit which will be made a part hereof and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement. 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.

## Section II

CITY/COUNTY agrees, at CITY/COUNTY expense, to do the following:

- a) CITY/COUNTY may install, or contract authorizing a licensed contractor with appropriate class of license in the State of California, to install {if relevant} and thereafter will MAINTAIN (Section 27 of the Streets and Highways Code) LANDSCAPING conforming to those plans and specifications (PS&E) pre-approved by STATE.
- b) CITY/COUNTY will submit the final form of the PS&E, prepared, stamped and signed by a licensed landscape architect, for LANDSCAPING to STATE's District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way. All proposed LANDSCAPING must meet STATE's applicable standards.
- c) CITY/COUNTY shall ensure that LANDSCAPED areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- d) 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.
- e) CITY/COUNTY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
- f) To furnish electricity for irrigation system controls, water, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement.
- g) To replace unhealthy or dead plantings when observed or within 30 days when notified in writing by STATE that plant replacement is required.
- h) To prune shrubs, tree plantings, and trees to control extraneous growth and ensure STATE standard lines of sight to signs and corner sight distances are always maintained for the safety of the public.
- i) To MAINTAIN, repair and operate the irrigation systems in a manner that prevents water from flooding or spraying onto STATE highway, spraying parked and moving automobiles, spraying pedestrians on public sidewalks/bike paths, or leaving surface water that becomes a hazard to vehicular or pedestrian/bicyclist travel.

- j) To control weeds 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: the District Maintenance at (insert your address here).
- k) To expeditiously repair any STATE facility damage ensuring from CITY'S LANDSCAPE (include IMPROVEMENTS, SYSTEM, if relevant) sign and presence and, activities, including, but not limited to, damaged caused by plants and plant roots and to reimburse LANDSCAPE presence and activities should STATE be required to cure a CITY/COUNTY default.
- l) )To remove LANDSCAPING (include IMPROVEMENTS, SYSTEM, if relevant) and appurtenances and restore STATE owned areas to a safe and attractive (include IMPROVEMENTS, SYSTEM, if relevant) condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- m) To furnish electricity and MAINTAIN lighting system and controls for all street lighting systems installed by and for CITY/COUNTY.
- n) To inspect LANDSCAPING (include IMPROVEMENTS, SYSTEM, if relevant) on a regular monthly or weekly basis to ensure the safe operation and condition of the LANDSCAPING.
- o) To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING (include IMPROVEMENTS, SYSTEM, if relevant) system component that has become unsafe or unsightly.
- p) To MAINTAIN all sidewalks/bike paths within the Agreement limits of the STATE highway right of way, as shown on Exhibit A, at CITY/COUNTY expense. MAINTENANCE includes, but is not limited to, concrete repair, replacement and to grind or patch vertical variations in elevation of sidewalks/bike paths for an acceptable walking and riding surface, and the removal of dirt, debris, graffiti, weeds, and any deleterious item or material on or about sidewalks/bike paths or the LANDSCAPING (include IMPROVEMENTS, SYSTEM, if relevant) in an expeditious manner.
- q) To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.
- r) To allow random inspection of LANDSCAPING, (include IMPROVEMENTS, SYSTEM, if relevant), street lighting systems, sidewalks/bike paths and signs by a STATE representative.

- s) To keep the entire landscaped area policed and free of litter and deleterious material.
- t) All work by or on behalf of CITY/COUNTY will be done at no cost to STATE.

### Section III

STATE agrees to do the following:

- a) May provide CITY/COUNTY with timely written notice of unsatisfactory conditions that require correction by the CITY/COUNTY. However, the non-receipt of notice does not excuse CITY from maintenance responsibilities assumed under this Agreement.
- b) Issue encroachment permits to CITY/COUNTY and CITY/COUNTY contractors at no cost to them.

### Section IV

#### 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 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.
- b) If during the term of this Agreement, COUNTY/CITY should cease to MAINTAIN the LANDSCAPING (include IMPROVEMENTS, SYSTEM, if relevant) to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of CITY/COUNTY at CITY/COUNTY's expense or direct CITY/COUNTY to remove or itself remove LANDSCAPING (include IMPROVEMENTS, SYSTEM, if relevant) at CITY/COUNTY's sole expense and restore STATE's right of way to its prior or a safe operable condition. CITY/COUNTY 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 LANDSCAPING (include IMPROVEMENTS, SYSTEM, if relevant), STATE will provide written notice to CITY/COUNTY to cure the default and CITY/COUNTY will have thirty (30) days within which to effect that cure.

- c) 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 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/COUNTY 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/COUNTY.
- d) 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 arising 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.
- e) Prevailing Wage Requirements: 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, repair or maintenance LOCAL AGENCY must conform to the provisions of Labor Code sections 1720 through 1815, all applicable regulations and coverage determinations issued by the Director of Industrial Relations. LOCAL AGENCY agrees to include prevailing wage requirements in its contracts for public work. Work performed by LOCAL AGENCY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.
- f) Prevailing Wage Requirements in Subcontracts  
LOCAL AGENCY 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). Subcontracts shall include all prevailing wage requirements set forth in LOCAL AGENCY's contracts.
- g) Insurance  
CITY/COUNTY and their 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 of California, its officers, agents and employees as the additional insured in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a certificate of Insurance in a form satisfactory to Department that shall be delivered to Department with a signed copy of this Agreement.

h) Termination

This Agreement may be terminated by timely mutual written consent by PARTIES, and CITY/COUNTY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.

i) 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 Street 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.**

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

THE CITY/COUNTY OF

STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
MAYOR

WILL KEMPTON  
Director of Transportation

Attest:

By: \_\_\_\_\_  
CITY/COUNTY Clerk

By: \_\_\_\_\_  
Deputy District Director  
Maintenance

By: \_\_\_\_\_  
CITY/COUNTY Attorney

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

*\*\*Approval by STATE'S Attorney is not required unless changes are made to this form, in which case, the draft will be submitted to Headquarters for review and approval by STATE's Attorney as to form and procedures.*