

Mathilda Ave SR 237-US 101
04-SCL-101-PM 45.2/45.8
04-SCL-237- PM 2.7/3.3
EA 04-4H2901

**FREEWAYMAINTENANCE
AGREEMENT
WITH
CITY OF SUNNYVALE**

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

SECTION I

RECITALS

1. WHEREAS, on _____ a Freeway Agreement was executed between CITY and STATE, wherein the PARTIES consented to certain adjustments of the local street and road system required for the development of those portion of United States Route (US) 101 and STATE Highway Route (SR) 237 within the jurisdictional limits of the CITY as a freeway; and
2. WHEREAS, recent adjustments to said freeway have now been completed, or are nearing completion, and the PARTIES hereto mutually desire to identify the maintenance responsibilities for improvements to separation structures and landscaped areas lying within those modified freeway limits; and
3. WHEREAS, on May 31, 1962, a Freeway Maintenance Agreement was executed between CITY and STATE, wherein the PARTIES consented to certain adjustments of the Maintenance responsibilities for road system required for those portions of US 101 and SR 237 within the jurisdictional limits of CITY as a freeway; and
4. WHEREAS, on July 11, 1967, a Supplemental Freeway Maintenance Agreement was executed between CITY and STATE, wherein the PARTIES consented to certain adjustments of the May 31, 1962 Freeway Maintenance Agreement between STATE and the CITY; and
5. WHEREAS, on January 2, 2008, a Delegated Maintenance Agreement of State Highways in the City of Sunnyvale was executed between CITY and STATE, wherein the PARTIES agreed that certain maintenance responsibilities were delegated to the CITY to a split of Maintenance costs for certain electrical facilities on portions of SR 237 within the jurisdictional limits of the CITY; and
6. WHEREAS, pursuant to Section 6 of the above referenced Freeway Agreement dated _____, 2018, CITY has resumed or will resume control and maintenance over each of the affected

relocated or reconstructed CITY streets, except for those portions adopted as a part of the freeway proper.

7. 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.

NOW THEREFORE IT IS AGREED:

SECTION II

AGREEMENT

1. PARTIES agree that those portions of the May 31, 1962 Freeway Maintenance Agreement, (later supplemented by July 11, 1967 Supplemental Freeway Maintenance Agreement) concerning the area of Mathilda Avenue between Almanor Avenue and Innovation Way will be superseded by this Agreement with regard to maintenance responsibilities of PARTIES.
2. PARTIES agree that the Exhibit B of the January 2, 2008 Delegated Maintenance Agreement will be superseded by Exhibit B of this agreement, with regard to Traffic Signals and Safety Lighting Maintenance responsibilities of PARTIES. All other provisions of the January 2, 2008 Delegated Maintenance Agreement will remain in effect.
3. CITY agrees to continue their control and maintenance of each of the affected relocated or reconstructed CITY streets and roads as shown on that plan map attached hereto, marked **Exhibit A**, and made a part hereof by this reference.
4. STATE agrees to continue control and maintenance of those portions adopted as a part of US 101 and SR 237 Freeways proper as shown **Exhibit A**.
5. If there is mutual agreement on the change in the maintenance duties between PARTIES, the PARTIES can revise Exhibits A and/or B by a mutual written execution of Exhibit A and/or B.
6. When other planned future improvements are constructed and/or a minor revision is effected within the limits of the freeway herein described, which will affect the PARTIES' division of maintenance responsibility as described herein, STATE will provide a new dated and revised Exhibit A which will thereafter supersede the attached original Exhibit A and become part of this Agreement.

7. CITY and STATE agree to accept their then respective operational and maintenance responsibilities and related associated costs thereof in the event jurisdictional boundaries of the PARTIES should change and Exhibit A is amended to reflect those changes.
8. CITY must obtain the necessary Encroachment Permits from STATE's District 04 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.
9. VEHICULAR AND PEDESTRIAN OVERCROSSINGS (Local Street over the Freeway)
 - 9.1. STATE will maintain, at STATE expense, the entire structure of any STATE constructed vehicular and pedestrian overcrossings of US 101 and SR 237 below the deck wearing surface and any wearing surface treatment thereon.
 - 9.2. 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, as well as all traffic service facilities (sidewalks, signs, pavement markings, bridge rails, etc.) that may be required for the benefit or control of traffic using that overcrossing.
 - 9.3. 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.
10. VEHICULAR AND PEDESTRIAN UNDERCROSSINGS (Freeway over the Local Street)
 - 10.1. STATE will maintain the entire structure of all STATE-constructed vehicular and pedestrian undercrossings of STATE freeways except as hereinafter provided.
 - 10.2. CITY will maintain the roadway sections, including the traveled way, shoulders, curbs, sidewalks, wall surfaces (including eliminating graffiti), drainage installations, lighting installations and traffic service facilities that may be required for the benefit or control of traffic using that undercrossing.
 - 10.3. 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.

11. WALLS 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.
12. LANDSCAPED AREAS - CITY is responsible for the maintenance of any plantings or other types of roadside development lying outside of the fenced right of way area reserved for exclusive 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
 - 14.1. The cost of installation, operation, maintenance, repairs, replacement and energy costs of safety lighting, traffic signals or other necessary electrically operated traffic control devices placed at interchanges of US 101 and SR 237 Freeways and CITY streets and roads and at ramp connections or US 101 and SR 237 and CITY facilities shall be shared by the PARTIES as shown in Exhibit "B" which, by this reference, is made a part of this Agreement.
 - 14.2. The said cost shall be paid by CITY and the STATE shall reimburse the CITY their agreed upon share
 - 14.3. Timing of traffic signals, which shall be coordinated with CITY to the extent that no conflict is created with freeway operations, shall be the sole responsibility of STATE. Maintenance of the "designed" timing is the responsibility of the CITY. Timing records shall be kept in both CITY Maintenance and Traffic Branches.
15. BICYCLE PATHS - Except for bicycle paths constructed as permitted encroachments within STATE's right of way for which the permittee is solely responsible for all path improvements, STATE will maintain, at STATE expense, all fences, guard railing, drainage facilities, slope and structural adequacy of any bicycle path located and constructed within STATE's right of way. CITY will maintain, at CITY expense, a safe facility for bicycle travel along the entire length of the path by providing sweeping and debris removal when necessary; and all signing and striping and pavement markings required for the direction and operation of that non-motorized facility.
16. LEGAL RELATIONS AND RESPONSIBILITIES
 - 16.1. 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.

16.2. 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 all of 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.

16.3. 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.

17. PREVAILING WAGES:

17.1. 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.

17.2. 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.

18. INSURANCE:

- 18.1. 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 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 in a form satisfactory to STATE, along with a signed copy of the Agreement.
- 18.2. 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 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 and shall be delivered to the STATE with a signed copy of this Agreement.

19. 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.

20. 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 SUNNYVALE

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

MALCOLM DOUGHERTY
Director of Transportation

By: _____
CITY Manager

By: _____
Deputy District Director
Maintenance District 04

ATTEST:

By: _____
CITY Clerk

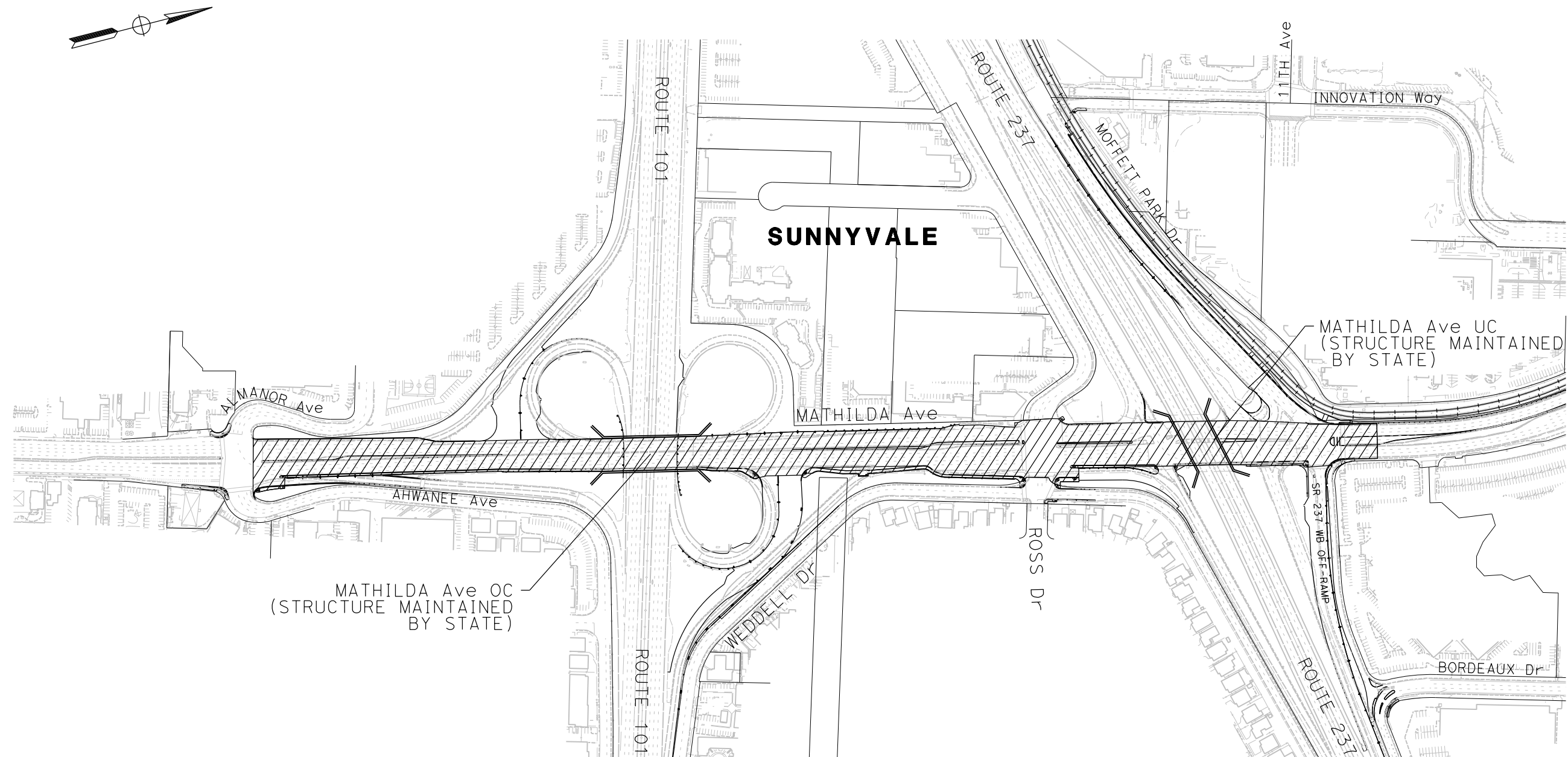
As to Form and Procedure:

By: _____
CITY Attorney

By: _____
Attorney
Department of Transportation

 CITY OF SUNNYVALE IS RESPONSIBLE FOR MAINTENANCE IN THE SHADED AREA.

EXHIBIT A



**STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
FREEWAY MAINTENANCE AGREEMENT with the CITY OF SUNNYVALE**

04-SCL-101, 237

POST MILES 45.2/45.8, 2.7/3.3

DATE: JULY 2018

Prepared August 1, 2018

EXHIBIT “B”

TRAFFIC SIGNAL AND LIGHTING AGREEMENT

Caltrans and CITY of SUNNYVALE
Effective _____, 2018

BASIS OF COST DISTRIBUTION

Maintenance and Operations of Utility-Owned and Maintained Lighting
by the City of Sunnyvale (CITY) for Caltrans, Department of Transportation (STATE)

CITY to bill STATE for Expenses

<u>Route and PM</u>	<u>Location</u>	<u>Type of Facility</u>	<u>Cost Distribution (%)</u>	
			<u>State</u>	<u>CITY</u>
101 PM 45.7	Mathilda Ave. and S/B on and off ramps	Signals & Safety Lighting	50%	50%
101 PM 45.7	Mathilda Ave. and N/B on and off ramps	Signals & Safety Lighting	50%	50%
237 PM 2.83	Mathilda Ave. and E/B on and off ramps	Signals & Safety Lighting	50%	50%
237 PM 3.0	Mathilda Ave. and W/B off ramp/Moffett Park Drive	Signals & Safety Lighting	25%	75%