



Meeting Date: 6/26/07

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Cynthia Daniels, AICP

Agenda Item No. I-13

Reviewed By: City Manager [Signature]

City Attorney [Signature]

Finance SW

Other NA

**DATE:** June 13, 2007

**TO:** City Council

**FROM:** Lou Balderrama, City Engineer  
Public Works Department

**SUBJECT:** Landscape Maintenance Agreement With California Department of Transportation For Future Parking Lot at 255 E. Fifth Street for Oxnard Transportation Center

**RECOMMENDATION**

That City Council approve and authorize the Mayor to execute the agreement to maintain landscape area at 255 E. Fifth Street between the City and the California Department of Transportation (Caltrans) (Agreement No. A-6886).

**DISCUSSION**

On September 18, 2001, the City Council approved a grant agreement (Agreement No. A-5850) with the California Department of Transportation to acquire property for a future parking lot on East Fifth Street for the Oxnard Transportation Center. The project (Project Specification No. PW01-24) includes a landscape planter within the Caltrans right of way on East Fifth Street (State Route 34). Caltrans requires a maintenance agreement for the landscaping and irrigation within their right of way before they will grant the City an encroachment permit to construct the public improvements. The maintenance agreement provides for City maintenance of the landscaping and irrigation, and any necessary repairs resulting from auto collisions and vandalism, at no cost to Caltrans. Maintenance of the landscaped parkway will be included with the maintenance of the future parking lot for the Oxnard Transportation Center.

**FINANCIAL IMPACT**

The on-going cost for maintenance will not start until the parking lot is constructed in Fiscal Year 2007-08. The estimated annual cost for maintenance is less than \$250 per year. There are sufficient funds in Account No. 213-3110-803-8209 to fund this request.

LB:CD

Attachment #1 - Agreement No. A-6886

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DEPARTMENT OF TRANSPORTATION  
DISTRICT 7, 100 SOUTH MAIN STREET, 2<sup>ND</sup> FL.  
LOS ANGELES, CA 90012



**AGREEMENT FOR MAINTENANCE OF LANDSCAPE  
AREA WITHIN STATE HIGHWAY RIGHT OF WAY**

Permit No. 707-NMC-0262

Location: 07-VEN-034-4.43

This Agreement is made and executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between the State of California, acting by and through the Department of Transportation, District 7, located at 100 South Main Street, Los Angeles, California 90012, hereinafter referred to as "STATE", and City of Oxnard, located at 1060 Pacific Avenue, Building 2, Oxnard, California 93030, hereinafter referred to as "PERMITTEE".

A. RECITALS:

The parties desire to provide that PERMITTEE may install and maintain State Highway improvements which shall include planting 3 trees, shrubs and sod along 5<sup>th</sup> Street (Route 034) just east of Meta Street in City of Oxnard, referred to herein as "PROJECT", as are shown on the attached Exhibit. PERMITTEE is willing to fund one hundred (100%) of all design, capital outlay, maintenance, and staffing costs.

B. AGREEMENT:

In consideration of the mutual covenants and promises herein contained, PERMITTEE agrees as follows:

1. PERMITTEE will submit plans, prepared and signed by a licensed Landscape Architect to the Office of Permits for review and approval and will obtain all necessary encroachment permits prior to the start of any work within STATE'S right of way,
2. After installation of project and to the satisfaction of STATE, PERMITTEE shall apply for an annual maintenance permit (NLM) in accordance with STATE'S standard permit procedures. PERMITTEE shall obtain aforesaid encroachment permit through the Caltrans, District 7, Office of Permits at (213) 897-3631.
3. PERMITTEE may contract with others to install, and thereafter to maintain the PROJECT per Section 6. A separate encroachment permit is required for any sponsored third party which shall be issued at no cost. In addition, a letter is required from PERMITTEE stating that authorization has been granted to a third party to perform such

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maintenance work. It is understood that terms and conditions of this agreement, or any interest herein, or any portion hereof, with exception to Section 7 shall not be assigned or delegated to third parties.

4. Damage to PROJECT resulting from accident, storm, neglect or other causes beyond the control of the STATE are the responsibility of the PERMITTEE.
5. STATE will maintain all highway signs, paved drainage structures, and other non-landscape highway appurtenance with exception to those items listed in Section "A", Recitals and as shown on the attached Exhibit.
6. In addition to designing and installing these permitted landscape items, PERMITTEE agrees to:
  - a) Provide and maintain all water and irrigation systems including utility costs for Project. Irrigation system will be maintained and operated to avoid slope damage, excessive water flooding, or spraying onto the pavement.
  - b) Replace unhealthy or dead plantings as they are observed.
  - c) Keep entire PROJECT free of litter, debris and deleterious material.
  - d) Control rodents and pests.
  - e) Control weed growth before weeds exceed 6 inches in length. Any weed control performed by chemical weed sprays (pesticides) shall comply with all laws, rules, and regulations established by the California Department of Food and Agriculture.
  - f) Maintain the landscaping, paving or other unplanted areas along the roadside within the limits of the Project, exclusive of paved drainage facilities, so as not to obstruct the flow of water.
  - g) Maintain all plantings shall be maintained in such condition that they do not interfere with the free flow of traffic, includes the maintenance of adequate sight distances and visibility of signs, signals, and pedestrians.
  - h) Prune shrubs and tree plantings necessary to control extraneous growth. Trees shall be pruned using the highest professionally accepted standards in a manner that will encourage good development while preserving their health, structure, and natural appearance. Tree or shrub pruning for sign or building visibility is not permitted.
  - i) Maintain sidewalks in a safe and barrier-free condition.
  - j) Adequately water and fertilize all plantings to maintain a healthy growth. Plants shall be fertilized 3 times a year.
7. It is understood that for any reason PERMITTEE decides not to renew its maintenance permit required herein, or if the planting is not maintained to the minimum standards specified herein, STATE shall provide PERMITTEE with a written notice. PERMITTEE

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shall respond within thirty (30) days of receipt of said notice. Said response shall describe the action to be taken by PERMITTEE to bring the affected areas back into compliance. In the event PERMITTEE does not provide such response and take any action, this AGREEMENT will be terminated. If PERMITTEE does not correct requested maintenance, then PERMITTEE will reimburse STATE, on presentation of a bill, for all costs incurred by STATE forces or a STATE contractor to maintain or remove the PROJECT and to pave over or otherwise restore the area to a condition satisfactory with STATE.

8. All work performed for or by PERMITTEE within the PROJECT will be done at no cost to the STATE.
9. Various future STATE projects may be implemented which will require removal and/or modification to all or a portion of PROJECT. Any replacement landscaping including irrigation facilities may be STATE'S responsibility. Upon completion of work, which affects the limits of maintenance, a revised Exhibit will be prepared and delivered to PERMITTEE'S for review. Exhibit will supersede the original limits shown on the original permit plans.
10. Changes to PROJECT affecting public safety or public convenience, all design and specification changes and all major changes including removal, severe pruning (topping), or addition of either planting or irrigation shall be approved by STATE in advance of performing work. Unless otherwise directed by STATE'S representative, changes authorized will require an encroachment permit. Failure to notify STATE of such changes shall result in the immediate removal of PROJECT or portions of PROJECT at PERMITTEE'S expense.

**C. LEGAL RELATIONS AND RESPONSIBILITIES:**

1. Nothing in this provision of this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this agreement, or affects the legal liability of either party by imposing any standard of care respecting the design, construction, and maintenance of STATE highway right of way different from the standard of care imposed by law.
2. It is understood and agreed that neither STATE, nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by PERMITTEE under or in connection with any work performed by PERMITTEE under this agreement. It is further understood and agreed that, pursuant to Government Code Section 895.4, PERMITTEE shall defend, indemnify and hold harmless the STATE, and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought for or on account of injuries to or

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death of any person or damage to property resulting from anything done or omitted to be done by PERMITTEE under or in connection with any work performed by PERMITTEE under this agreement.

3. PERMITTEE agrees to indemnify, hold harmless and defend State, its legislative bodies and each member thereof, and every officer, employee, representative or agent of State, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by PERMITTEE or its agents, employees, subconsultants, subcontractors, consultants and other persons acting on PERMITTEE'S behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, or acts for which PERMITTEE or its agents, employees, consultants and other persons acting on PERMITTEE'S behalf would be held strictly liable.
4. State agrees to indemnify, hold harmless and defend PERMITTEE, its legislative bodies, and each member thereof, and every officer, employee, representative or agent of PERMITTEE, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration that arise directly or indirectly from any acts or omissions related to this Agreement performed by State or its agents, employees, subconsultants, subcontractors, consultants and other permits acting on State's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, or acts for which State or its agents, employees, consultants and other persons acting on State's behalf would be held strictly liable.
5. PERMITTEE waives any and all rights to any type of express, implied and comparative indemnity against STATE, its officers and employees arising from any work performed by PERMITTEE under this agreement.
6. Upon termination of this agreement, ownership and title to all materials, equipment and appurtenances installed inside STATE'S right of way will automatically be vested in STATE. Those materials and equipment installed outside of the STATE'S right of way will automatically and immediately be vested in PERMITTEE, and no further agreement will be necessary to transfer ownership.

**D. TERM OF AGREEMENT**

This AGREEMENT shall become effective upon execution and shall remain in full

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force in **perpetuity** until terminated. Failure to comply with provisions set forth in Section B, Article 7 would be grounds for Notice of Termination by STATE.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in duplicate as of the day and year stated above.

*CITY OF OXNARD*

*STATE OF CALIFORNIA*

Signature: See below

\_\_\_\_\_

Print Name: \_\_\_\_\_

JEFFREY A. YUEN

Title: \_\_\_\_\_

LANDSCAPE ASSOCIATE

Phone: \_\_\_\_\_

(213) 897-6381

Date: \_\_\_\_\_

\_\_\_\_\_

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**CITY OF OXNARD:**

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

*James S. Rupp, Jr. for*  
\_\_\_\_\_  
Gary L. Gillig, City Attorney

APPROVED AS TO CONTENT:

*Lou Balderrama*  
\_\_\_\_\_  
Lou Balderrama, City Engineer

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