

**AGREEMENT FOR LANDSCAPE MAINTENANCE  
WITHIN STATE HIGHWAY RIGHT OF WAY  
ON ROUTES 49 AND 193 WITHIN THE COUNTY OF EL DORADO**

THIS AGREEMENT is made and executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the County of El Dorado, hereinafter referred to as "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.
2. This Agreement addresses COUNTY responsibility for the bike paths and simulated wood fences (collectively the "LANDSCAPING") placed within State Highway right of way on State Routes 49 and 193, as shown on Exhibit A, attached to and made a part of this Agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION I

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

1. 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."
2. 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 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

2.1.1. COUNTY agrees, at COUNTY expense, to do the following:

3. COUNTY may install, or contract authorizing a licensed contractor with appropriate class of license in the State of California, to install 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.
4. COUNTY will submit the final form of the PS&E, prepared, stamped and signed by a licensed civil engineer, 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.
5. 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.
6. 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.
7. COUNTY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
8. To 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 the California Department of Food and Agriculture. All chemical spray operations shall be reported quarterly to STATE to: Landscape Specialist District 3 Maintenance at, 703 B Street. Marysville, CA. 95901.
9. To expeditiously repair any STATE facility damage ensuing from COUNTY'S LANDSCAPE presence and activities and to reimburse STATE for its costs to repair the STATE facility damage ensuing from COUNTY's LANDSCAPE presence and activities should STATE be required to cure a COUNTY default.
10. To remove LANDSCAPING and appurtenances and restore STATE owned areas to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
11. To inspect LANDSCAPING on a regular monthly basis to ensure the safe operation and condition of the LANDSCAPING.

12. To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING system component that has become unsafe or unsightly.
13. To MAINTAIN all /bike paths and simulated wood fences within the Agreement limits of the STATE highway right of way, as shown on Exhibit A, at COUNTY expense. MAINTENANCE includes, but is not limited to, simulated wood fences repair, replacement, concrete repair, replacement and to grind or patch vertical variations in elevation of 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 bike paths or the LANDSCAPING in an expeditious manner.
14. To allow random inspection of LANDSCAPING, by a STATE representative.
15. To keep the entire landscaped area policed and free of litter and deleterious material.
16. All work by or on behalf of COUNTY will be done at no cost to STATE.

### SECTION III

STATE agrees to do the following:

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

### SECTION IV

#### 19. LEGAL RELATIONS AND RESPONSIBILITIES

- 19.1. 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 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 COUNTY facilities different from the standard of care imposed by law.
20. If during the term of this Agreement, COUNTY should cease to MAINTAIN the LANDSCAPING to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of COUNTY at

COUNTY's expense or direct COUNTY to remove or itself remove LANDSCAPING at COUNTY's sole expense and restore STATE's right of way to its prior or a safe operable condition. 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, STATE will provide written notice to COUNTY to cure the default and COUNTY will have thirty (30) days within which to effect that cure.

21. Neither 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 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 COUNTY.
22. 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 COUNTY under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that 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 COUNTY under this Agreement.

### 23. PREVAILING WAGE REQUIREMENTS

23.1. 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. COUNTY 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. COUNTY agrees to include prevailing wage requirements in its contracts for public work. Work performed by COUNTY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

### 23.2. PREVAILING WAGE REQUIREMENTS IN SUBCONTRACTS

23.2.1. COUNTY 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 COUNTY's contracts.

### 23.3. SELF – INSURED

23.3.1. COUNTY is self-insured. COUNTY agrees to deliver evidence of self-insured coverage in a form satisfactory to STATE, along with a signed copy of the Agreement.

### 23.4. SELF – INSURED USING CONTRACTOR

23.4.1. If the work performed on this Project is done under contract COUNTY 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.

## 24. TERMINATION

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

## 25. TERM OF AGREEMENT

25.1. 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 & 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 COUNTY OF EL DORADO

STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
RON BRIGGS  
Chair, Board of Supervisors

MALCOLM DOUGHERTY  
Director of Transportation

Attest:

By: \_\_\_\_\_  
COUNTY Clerk

By: \_\_\_\_\_  
JODY JONES, District Director

By: \_\_\_\_\_  
COUNTY Attorney

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