



MUNICIPAL UTILITIES AND
ENGINEERING DEPARTMENT

M E M O R A N D U M

TO: N. Enrique Martinez, City Manager

THROUGH: Rosemary Hoerning, Municipal Utilities and Engineering Director *PH.*

FROM: Tom T. Fujiwara, Assistant City Engineer *TTF.*

DATE: November 10, 2008

SUBJECT: Caltrans Landscape Maintenance Agreement for Amethyst Bible Church
(CUP No. 818) - Northwest Corner of Mentone Boulevard and Amethyst
Street

On September 3, 2008, the Redlands City Council approved the Caltrans Landscape Maintenance Agreement between the City and Caltrans in which the City agreed to be responsible for the maintenance of landscaping in the parkway of Mentone Boulevard (State Route 38) along the frontage of the property owned by Amethyst Bible Church. As a condition of the City entering into this agreement, the Amethyst Bible Church executed and recorded a Covenant with the City taking full responsibility for paying the cost of maintaining the parkway and assuring no expense to the City for such maintenance.

Recently, Caltrans requested a revision to the Caltrans Landscape Maintenance Agreement to include the permit number assigned specifically to this project. Attached are six originals of the revised agreement for your review and approval. Since the City Council adopted Resolution No. 6776 at the Council meeting of November 4, 2008, authorizing the City Manager to execute this type of an agreement, we request that you and City Clerk approve and sign all six originals of the attached agreement. The agreement was reviewed and approved by the City Attorney. Please return all six originals of the agreement to this office. Thank you.

Done 11-13-08
Copy attached

Attachment

TTF:tf

FILE: CUP NO. 818

**AGREEMENT FOR LANDSCAPE MAINTENANCE
WITHIN STATE HIGHWAY RIGHT OF WAY
ON ROUTE 38 WITHIN THE CITY OF REDLANDS**

THIS AGREEMENT is made and executed effective this 13th day of November 2008, by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the CITY of REDLANDS, hereinafter referred to as "CITY," 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 Permit Number 08-06-6-CS-1012.
2. This Agreement addresses CITY responsibility for the landscaping, planting, and irrigation systems, (collectively the "LANDSCAPING") placed within State Highway right of way on State Route 38 (Mentone Boulevard at Amethyst Street), as shown on Exhibit A, attached to and made a part of this Agreement.

Section I

In consideration of the mutual covenants and promises herein contained, CITY 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 provide a new dated and revised Exhibit "A" which will be made a part hereof by an amendment to this Agreement when executed and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement.

Section II

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

- a) CITY 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 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 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 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 in perpetuity.
- g) To replace unhealthy or dead plantings when observed within 30 days when notified 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 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 Landscape Specialist in the Region Office at 1808 Batavia Street, Orange, CA 92865.
- k) 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.
- l) To expeditiously repair any STATE facility damage ensuing from CITY'S LANDSCAPE improvements and presence and, activities, including, but not limited to, damage caused by plants and plant roots and to reimburse STATE for its costs to repair STATE facility damage ensuing from CITY's LANDSCAPE presence and activities should STATE be required to cure a CITY default.
- m) To remove LANDSCAPING and appurtenances and restore STATE owned areas to a safe and attractive acceptable to STATE in the event this Agreement is terminated as set forth herein.
- n) To furnish electricity and MAINTAIN lighting system and controls for all street lighting systems installed by and for CITY.
- o) To inspect LANDSCAPING on a regular monthly or weekly basis to ensure the safe operation and condition of the LANDSCAPING.
- p) To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING system component that has become unsafe or unsightly.
- q) To MAINTAIN all sidewalks/bike paths within the AGREEMENT limits of the STATE highway right of way, as shown on Exhibit A, at CITY 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 in an expeditious manner.
- r) To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.

- s) To allow random inspection of LANDSCAPING by a STATE representative.
- t) To keep the entire landscaped area policed and free of litter and deleterious material.
- u) All work by or on behalf of CITY will be done at no cost to STATE.

Section III

STATE agrees to do the following:

- a) Provide CITY with timely written notice of unsatisfactory conditions that require correction by CITY.
- b) Issue encroachment permits to CITY and CITY contractors at no cost to them.
- c) Ensure that the costs of relocation, reconstruction or replacement of LANDSCAPING resulting from future public and private projects and encroachment permittees are borne by the parties responsible for these activities that result in the need to relocate, reconstruct or replace the LANDSCAPING.

Section IV

Legal Relations and Responsibilities:

- a) Nothing in 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, CITY 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 CITY at CITY's expense or direct CITY to remove or itself remove LANDSCAPING at CITY's sole expense and restore STATE's right of way to its prior or a safe operable condition. The CITY 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 CITY to cure the default and CITY will have thirty (30) days within which to effect that cure.

- c) 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 arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the CITY 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.
- 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 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 under this Agreement.
- e) Insurance. CITY 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.
- f) Prevailing Wage Requirements. Workers employed in the performance of work contracted for by CITY, and /or performed under encroachment permit, are covered by the prevailing wage provisions of the Labor Code in the same manner as are workers employed by STATE's contractors.

CITY shall require its contractors to include prevailing wage requirements in all subcontracts entered into to perform the work mentioned in this agreement. All the CITY's contracts with their contractors shall include a requirement that contractors and their subcontracts shall include prevailing wage requirements identical to those set forth in this Agreement.

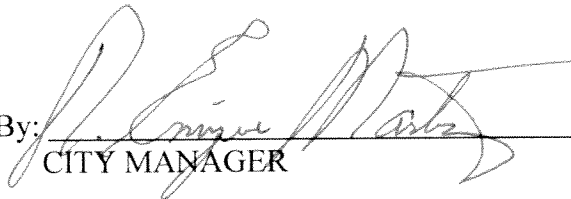
- g) Termination. This Agreement may be terminated by timely mutual written consent by the PARTIES, and CITY's failure to comply with the provisions of this Agreement will be grounds for a Notice of Termination by STATE.
- h) Term of Agreement. This Agreement shall become effective on the date first 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.

The PARTIES are empowered by Street and Highways Code section 114 & 130 to enter into this Agreement and has 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 OF REDLANDS

STATE OF CALIFORNIA
DEPARTMENT OF
TRANSPORTATION

By: 
CITY MANAGER

WILL KEMPTON
Director of Transportation

Attest:

By: 
CITY CLERK

By: _____
Deputy District Director
Maintenance

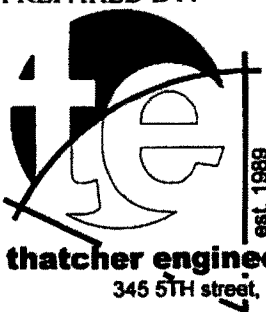
By: _____
Department of Transportation

**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.

EXHIBIT 'A'

MAINTENANCE AREA EXHIBIT
SR-38

PREPARED BY:



- land planning
- civil engineering
- landscape architecture

phone 909.748.7777
fax 909.748.7776

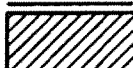
thatcher engineering & associates, inc.

345 5TH street, suite 'b' redlands, ca 92374



APN 0298-251-09

LEGEND:



AREA TO BE MAINTAINED

LIMITS OF
CALTRANS RW

PROPOSED RW

PROPOSED
SIDEWALK

EXISTING RW

MENTONE
(CALTRANS RW)

BLVD.

PROPOSED
CURB & GUTTER

AMETHYST
STREET



SCALE 1"=100'

EXHIBIT 'A'
LANDSCAPE MAINTENANCE AGREEMENT
EXECUTED _____, 2008
ENCROACHMENT PERMIT NO. 08-06-G-C5-1012

SIGNATURE: *[Signature]*
CITY OF REDLANDS APPROVAL

SIGNATURE: _____
CALTRANS APPROVAL

DATE: 11/10/08

DATE: _____

DATE:
11/3/08

SCALE:
1"=100'

SHEET 1 OF 1