

6 orig's (w/Link) to Tom Fujiwara 11/5/08

**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 4th 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 the "PARTIES."

**WITNESSETH
RECITALS:**

1. The 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 No. 08-06-6-MC-1016.

2. This Agreement addresses CITY responsibility for the landscaping, planting, irrigation systems, litter and weed removal (collectively the "LANDSCAPING") placed within State Highway right-of-way on State Route 38, 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) The PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, and 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 the PARTIES' division of MAINTENANCE responsibility as described herein, the 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 with 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.
- 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 sign 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 condition 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 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, street lighting systems, sidewalks/bike paths and signs 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 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. 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 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 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 its 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 CITY's contracts with its contractors shall include a requirement that contractors and their subcontracts shall include prevailing wage requirements identical to those set forth in this Agreement.

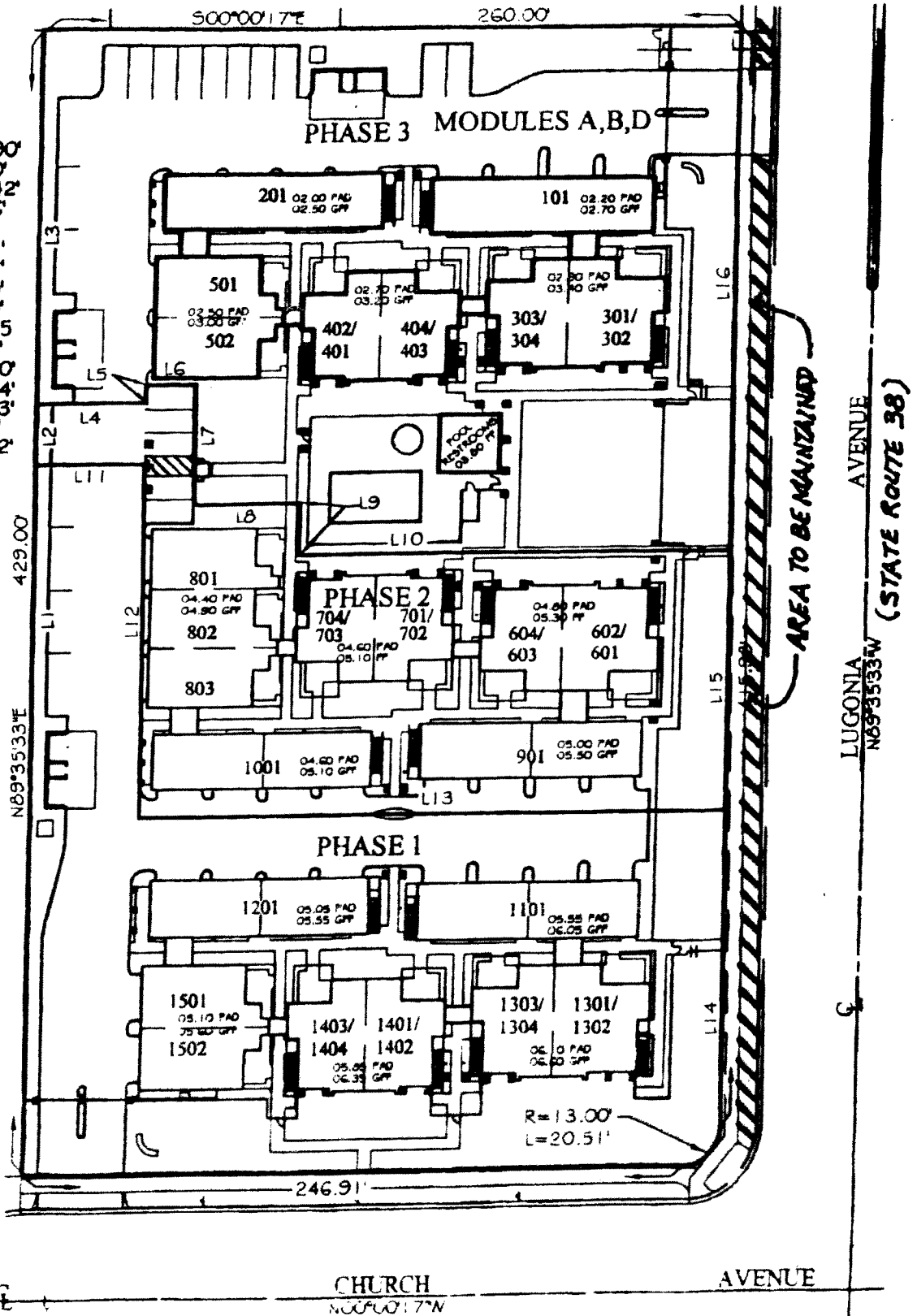
- g) Termination. This Agreement may be terminated by timely mutual written consent by the PARTIES, and CITY's failure to comply with the provisions of this Agreement will be grounds for a Notice of Termination by STATE.

LUGONIA HOMES

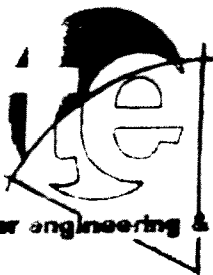
TRACT 17253
IN THE CITY OF REDLANDS
STATE OF CALIFORNIA

LINE TABLE

L1	N89°35'33"E	264.90'
L2	N89°35'33"E	24.90'
L3	N89°35'33"E	139.42'
L4	N00°00'17"W	40.06'
L5	N89°35'33"E	6.42'
L6	N00°00'17"W	18.41'
L7	N89°35'33"E	45.62'
L8	N00°00'17"W	39.78'
L9	N89°35'33"E	20.00'
L10	N00°00'17"W	161.75'
L11	N00°00'17"W	40.06'
L12	N89°35'33"E	135.00'
L13	N00°00'17"W	219.84'
L14	N89°35'33"E	117.03'
L15	N89°35'33"E	99.56'
L16	N89°35'33"E	199.32'



SCALE: 1" = 60'



Hatcher engineering & associates, inc.

EXHIBIT "A"