

**MAINTENANCE AGREEMENT BETWEEN THE
CITY OF CHULA VISTA AND
THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
FOR THE EAST PALOMAR STREET TRANSIT STATION
STREET IMPROVEMENTS**

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2018, (the “Effective Date”) by and between the City of Chula Vista, a California Chartered Municipal Corporation (“City”), and the Metropolitan Transit System, a public transportation service provider (“MTS”), for the purpose of outlining and defining the roles, responsibilities, terms and conditions related to maintenance, repair and replacement of certain infrastructure that are part of the “East Palomar Street Transit Station Street Improvements” (the “Project”). The City and MTS may be referred to in this Agreement individually as a “party” and collectively as the “parties”.

RECITALS:

WHEREAS, the parties desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within City’s right of way; and

WHEREAS, this Agreement is intended to identify the overall commitment and responsibilities regarding maintenance of the landscape, irrigation, and sidewalk areas (collectively the “Landscaping”) located within the Project area; and

WHEREAS, the Project area lies within the jurisdiction of the City; and

WHEREAS, City jurisdiction shall refer to all areas located within the City right-of-way.

NOW, THEREFORE, in accordance with the mutual benefits contained in the aforementioned Recitals and in consideration thereof, City and MTS agree as follows:

Article I - Maintenance

The City and MTS agree to allocate maintenance responsibilities, including but not limited to inspection, repair, replacement, and general maintenance as shown on Exhibit “A” and as further described below .

1. The City shall maintain, at City expense:
 - a) All improvements within the City right of way on **Exhibit “A”** that are not shown as an MTS responsibility including but not limited to pavement, curbs, gutters, sidewalks, traffic signs, pavement striping, pavement markings, pavement legends, traffic signal, and landscaped areas.

2. MTS agrees to perform and complete the following, at MTS expense:
 - a) To maintain all landscaped areas designated on **Exhibit “A”** as frequently as necessary to maintain a safe, neat and attractive appearance, as determined by

the City. MTS's landscape obligations shall include, but not be limited to, maintaining the landscaping system in a state of good repair, maintaining healthy plant growth, controlling weed growth, and keeping areas free of litter.

~~b) To furnish electricity for irrigation system controls, water, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement.~~

~~e) To replace unhealthy or dead plantings when observed by MTS or within 30 days when notified in writing by City that plant replacement is required.~~

d)b) To prune shrubs, tree plantings, and trees to control extraneous growth and to ensure City standard lines of sight to signs and corner sight distances are always maintained for the safety of the public.

e)c) To maintain, repair, and operate the irrigation systems in a manner that prevents water from flooding or spraying onto City roadways, 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.

~~f) To control weeds at a level acceptable to the City. MTS shall perform any weed control by chemical weed sprays (herbicides) in strict compliance with all federal, state, and local laws, rules, and regulations, including but not limited to those established by the California Department of Food and Agriculture.~~

g)d) To furnish electricity and maintain accent, landscape, and other electric powered systems and controls for any lighting, security or informational systems installed by and for MTS within the areas shown on **Exhibit "A"**.

h)e) To maintain all sidewalk areas, bus shelters, and other related transit amenities, within the areas shown as MTS responsibility on **"Exhibit A"**. MTS acknowledges and agrees that such maintenance includes, but is not limited to, concrete repair, replacement and to grind or patch vertical variations in elevation of sidewalks 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, benches, shelters, trash receptacles, or the landscaping in an expeditious manner.

i)f) To allow random inspection of Landscaping, street lighting systems, sidewalks and signs by a City representative.

~~j) To keep the landscaped area policed and free of litter and deleterious material.~~

3. MTS acknowledges and agrees that all work performed by or on behalf of MTS under this Agreement will be done at no cost to City.

Article II – Exhibit "A" Revisions

1. When a planned future improvement is constructed or a minor revision has been implemented within the limits of the City's right-of-way with City's prior written consent or some other action or circumstance affects the parties' division of maintenance responsibility as described herein, the parties agree to work in good faith to prepare a new dated and revised **Exhibit "A"** to thereafter become a part of this Agreement. To become effective, the revised exhibit must be executed by both parties through their authorized representatives. No other formal amendment to this Agreement will be required for the revised exhibit to become effective.

Article III - Access

1. For the purposes of this Agreement, MTS shall not be required to obtain a permit for routine maintenance work that does not require traffic control permit for traffic control devices to be placed within the City right-of-way.
2. For all other work under this ~~agreement~~Agreement, MTS shall obtain a no-cost encroachment permit and obtain future encroachment permit riders as required for any changes to the scope of work allowed by this Agreement prior to the start of any work within City's right-of-way.

Article IV - Non-Interruption of Use or Operation of Facilities

1. MTS agrees and covenants not to permanently interrupt the use or operation of the City's facilities covered by this Agreement.
2. MTS agrees and covenants that any temporary interference by MTS with the use or operation of the City's facilities shall be made only with the City's prior written consent. MTS specifically agrees, except as provided in Article V, section 5, that during any temporary interference, it will neither cause any lane of the City's roadways to be closed for the entire length of such roads, nor to cause the flow of traffic to be reduced to less than one lane, each direction, on such the roads.
3. MTS agrees and covenants to work in good faith with the City to permit such temporary interference, and the City shall not unreasonably withhold its consent to such interference.
4. Notwithstanding any contrary provision in Article V, in the event of damage caused by an act of God, War, or other casualty, or damage caused under circumstances where it would be impractical or impossible for one party to notify the other party of the necessity for temporary interference with the other party's facilities, the party creating the temporary interference may, without notice, make emergency repairs to restore its service. The party creating the temporary interference shall, however, take reasonable and prudent measures to protect the facilities of the other party and minimize such interference, and as soon as practically possible, notify the other party of such emergency repairs. If permanent repairs are required after such emergency repairs have been made, reasonable notice shall be given to the other party.

Article V - Indemnity

- ~~1. MTS shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers and employees from and against all claims for damages, liabilities, costs, and expenses (including without limitation attorneys' fees) arising out of or alleged by third parties to be the result of the negligent acts, errors, or omissions or the willful misconduct of MTS or MTS's employees, subcontractors or other persons, agencies, or firms for whom MTS is legally responsible in connection with the performance or existence of the work covered by this Agreement, except only for those claims, damages, liability, costs and expenses (including without limitations, attorneys' fees) arising from the sole negligence or sole willful misconduct of the City. MTS' obligations under this Section include but are not limited to indemnification and defense for all liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts, errors, or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts, errors, or omissions of MTS, its employees, agents, or officers, or any third party. MTS's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. MTS's obligations under this Section shall not be limited by any prior or subsequent declaration by MTS. MTS's obligations under this section shall survive the termination of this Agreement.~~
1. Neither City nor any officer, official, director, or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by MTS under or in connection with any work, authority, or jurisdiction delegated to MTS under this Agreement. It is understood and agreed that, pursuant to California Government Code Section 895.4, MTS shall fully defend, indemnify, and save harmless City, and all officers, officials, directors, and employees thereof from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in California Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MTS under or in connection with any work, authority, or jurisdiction delegated to MTS under this Agreement.
2. Neither MTS, nor any director, officer, or employee thereof, is responsible for any 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 delegated to City under this Agreement. It is also understood and agreed that, pursuant to California Government Code Section 895.4, City shall fully defend, indemnify, and save harmless MTS, its directors, officers, and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in California Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority, or jurisdiction delegated to City under this Agreement.

Article VI – Standard of Care

1. All work performed by either party or its representatives shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations and in compliance

with the most recent edition of the Standard Specifications for Public Works Construction and San Diego Regional Supplement (Greenbook). To the extent that all or a portion of a party's facilities is damaged by the other party, the party causing the damage shall repair and/or replace other party's facilities. The repair and/or replacement shall meet the standards of the facility owner's jurisdiction and be subject to the review and approval of the appropriate representative, generally the City or County Engineer, as the case may be. Each party shall bear its own costs, expenses, and losses.

2. MTS and Chula Vista shall maintain the areas within their responsibility to maintain the facility or area in a reasonably good, clean and working condition. All facilities shall be maintained in a manner as to promote public safety and to comply with applicable laws and regulations. All work shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.

3. All work performed by either party shall be in compliance with applicable local, state and federal laws, rules, or regulations.

Article VII – Insurance

MTS 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 City, its officers, agents and employees as additional insured in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a Certificate of Insurance/Endorsement in a form satisfactory to the City that shall be delivered to the City with a signed copy of this Agreement.

MTS maintains a program of self-insurance for its Commercial General Liability exposures. Claims are processed and administered in accordance with the California Government Code. MTS's utilization of self-insurance shall not in any way limit liabilities assumed under this Agreement. In addition, MTS shall require and ensure that all contractors retained by the MTS to perform work on the Project or work on improvements identified in Article I of this Agreement ("MTS Contractors") meet the insurance requirements.

Article VIII – Termination

Either party may terminate this Agreement by providing written notice to the other party. Termination shall become effective 90 days after notice is received, unless a later date is specified in the notice.

Article IX – Miscellaneous

1. Effective Date.

The Agreement shall take effect upon full execution of the Agreement, as of the Effective Date stated on page 1 of the Agreement.

2. Duty To Third Parties

Nothing within the provisions of this Agreement is intended to create rights in third parties not parties to this Agreement or to affect the legal liability of a Party as to a third party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

3. Notices.

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified below.

To City:

William S. Valle
City of Chula Vista
City Engineer
276 Fourth Avenue
Chula Vista California 91910

With a copy to:

Glen R. Googins
City of Chula Vista
City Attorney
276 Fourth Avenue
Chula Vista California 91910

To MTS:

Timothy E. Allison
San Diego Metropolitan Transit System
Manager of Real Estate Assets
1255 Imperial Avenue, Suite 1000
San Diego, California 92101-7490

2. Entire Agreement.

This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the Parties relating to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or written with respect to the subject matter contained herein.

3. Capacity of Parties.

Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this Agreement; that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

4. Governing Law/Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, which shall also be deemed to be the sole and proper venue for any action or proceeding relating to this Agreement.

5. Modification.

No amendment, modification, waiver, or discharge of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Parties hereto, and then shall be valid only in the specific instance and for the purpose for which given.

6. Counterparts.

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which, when taken together shall constitute but one instrument.

7. Severability.

In the event that any provision of this Agreement shall for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement or such other appropriate action as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein.

8. Headings.

The captions and headings in this Agreement are for convenience only and shall not define or limit the provisions hereof.

9. Waiver.

No course of dealing or failure or delay, nor the single failure or delay, or the partial exercise of any right, power or privilege, on the part of the Parties shall operate as a waiver of any rights herein contained. The making or the acceptance of a payment by either Party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any such breach.

10. No Additional Beneficiaries.

Despite the fact that the required performance under this Agreement may have an effect upon persons not Parties hereto, the Parties specifically intend no benefit therefrom, and agree that no performance hereunder may be enforced by any person not a Party to this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

CITY OF CHULA VISTA

**SAN DIEGO METROPOLITAN
TRANSIT SYSTEM**

BY _____
Mary Casillas Salas, Mayor

BY _____
Paul Jablonski, Chief Executive Officer

ATTEST:

BY _____
Kerry Bigelow, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM AND
LEGALITY:

BY _____
Glen R. Googins, City Attorney

BY _____
Karen Landers, General Counsel