

**AGREEMENT TO MAINTAIN MEDIAN LANDSCAPE ADJACENT TO 1527
NEWPORT BLVD. LOCATED WITHIN THE CITY AND STATE RIGHT-OF-WAY**

THIS AGREEMENT is made effective this 10 day of November, 2015, by and between the City of Costa Mesa, hereinafter referred to as "CITY", and Level 1 Community Association, a California nonprofit mutual benefit corporation, herein referred to as "LEVEL 1". CITY and LEVEL 1 are collectively referred to herein as "PARTIES".

RECITALS

1. The CITY and the State of California, Department of Transportation ("STATE") are parties to that certain LANDSCAPE MAINTENANCE AGREEMENT WITHIN STATE HIGHWAY RIGHT OF WAY ON ROUTE 55 WITHIN THE CITY OF COSTA MESA, dated 11/10/15 attached hereto as Exhibit A, which is made a part of this Agreement as though fully set forth herein ("the LMA").
2. Pursuant to the LMA, the CITY is responsible for the landscaping and maintenance of certain areas within the STATE right-of-way, including portions of the median (the "MEDIAN") directly adjacent to the Level 1 development at 1527 Newport Blvd. ("the PROPERTY").
3. The MEDIAN is depicted in the attached Exhibit B which is made a part of this Agreement as though fully set forth herein.
4. A portion of the MEDIAN is located within the STATE's right-of-way; the other portion is located within the CITY's right-of-way, as depicted on Exhibit B.
5. That portion of the MEDIAN located within the CITY's right-of-way is not part the LMA between the CITY and the STATE.
6. The LMA allows the CITY to transfer responsibility for the installation and maintenance of the STATE portion of the MEDIAN's landscaping to third parties.
7. The specific landscaping, appearance and maintenance of the entire MEDIAN is of the utmost importance to the success, marketing and value of the PROPERTY. Accordingly, LEVEL 1 has requested that the CITY allow them to enter onto all portions of the MEDIAN to install and maintain the landscaping of the MEDIAN as depicted on Exhibit B, and to assume the CITY's responsibilities under the LMA, at its sole cost and expense.

8. CITY desires to allow LEVEL 1 to assume all of its responsibilities, without limitation, under the LMA for the STATE portion of the MEDIAN, and to otherwise install and maintain the landscaping and irrigation systems within the CITY portion of the MEDIAN under the same terms and conditions as for the STATE portion of the MEDIAN set forth in the LMA, upon the terms and conditions set forth herein.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. In consideration of the mutual covenants and promises herein contained, CITY and LEVEL 1 agree as follows:
 2. LEVEL 1 agrees, at its sole cost and expense, to do the following:
 - 2.1. To assume all of the CITY's obligations and responsibilities, without limitation, set forth in the LMA attached as Exhibit A, for the STATE owned portion of the MEDIAN depicted in Exhibit B.
 - 2.2. To assume all of the obligations and responsibilities, without limitation, set forth in the LMA attached as Exhibit A, for the CITY owned portion of the MEDIAN depicted in Exhibit B, so that these obligations and responsibilities apply to the CITY portions of the MEDIAN, in favor of the CITY.
 - 2.2.1. For purposes of interpretation of the obligations and responsibilities of this Agreement, for the CITY owned portions of the MEDIAN, the word "STATE" in Section II, paragraphs 4.1 through 4.20 and paragraph 6.2 of the LMA, is hereby amended to read "CITY"; the word "CITY" in Section II, paragraphs 4.1 through 4.20 and paragraph 6.2 of the LMA, is hereby amended to read "LEVEL 1".
3. CITY agrees to do the following:
 - 3.1. To allow LEVEL 1 to assume CITY's obligations and responsibilities, without limitation, set forth in the LMA attached as Exhibit A, for the MEDIAN depicted in the attached Exhibit B.
 - 3.2. To allow LEVEL 1 to enter into the MEDIAN for the purposes of installation, maintenance and repair of the landscaping and irrigation systems as depicted in Exhibit B.
 - 3.3. To provide LEVEL 1 with timely written notice of unsatisfactory conditions that require correction by the LEVEL 1. However, the non-receipt of notice does not excuse LEVEL 1 from maintenance responsibilities assumed under this Agreement.
 - 3.4. To issue encroachment permits, where reasonably necessary, to LEVEL 1 at no cost to them.
4. INSURANCE

4.1. Minimum Scope and Limits of Insurance. LEVEL 1 shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

4.1.1. Broad-form commercial general liability, in a form at least as broad as ISO from #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

4.1.2. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

4.2. Endorsements. The general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

4.2.1. Additional insureds:

4.2.1.1. "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Level 1 pursuant to its contract with the City; products and completed operations of the Level 1; premises owned, occupied or used by Level 1; automobiles owned, leased, hired, or borrowed by the Level 1."

4.2.1.2. "The State of California and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Level 1 pursuant to its contract with the City; products and completed operations of the Level 1; premises owned, occupied or used by Level 1; automobiles owned, leased, hired, or borrowed by Level 1."

4.2.2. Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."

4.2.3. Other insurance: "LEVEL 1's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

4.2.4. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents,

employees, and volunteers.

4.2.5. LEVEL 1's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY.

4.4. Certificates of Insurance. LEVEL 1 shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any work or services under this Agreement.

4.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this Agreement.

5. GENERAL PROVISIONS

5.1. Entire Agreement. This Agreement constitutes the entire agreement between the PARTIES with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the PARTIES in interest at the time of such modification.

5.2. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile or by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO LEVEL 1:

Level 1 Community Association
100 Spectrum Center Dr., Ste. 1450
Irvine, CA 92618

Tel: (949) 341-1210

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5183
Attn: Pritam Deshmukh

5.3. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to

conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California.

- 5.4. Assignment. LEVEL 1 shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of LEVEL 1's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall release LEVEL 1 of LEVEL 1's obligation to perform all other obligations to be performed by LEVEL 1 hereunder for the term of this Agreement.
- 5.5. Indemnification and Hold Harmless. LEVEL 1 agrees to defend, indemnify, hold free and harmless the CITY, its elected and appointed officials, officers, agents and employees, and STATE, its elected and appointed officials, officers, agents and employees, at LEVEL 1's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the CITY and/or STATE, their elected and appointed officials, officers, agents and employees arising out of the performance of LEVEL 1, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by LEVEL 1, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of LEVEL 1, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY and/or STATE, their elected and appointed officials, officers, agents and employees based upon the work performed by LEVEL 1, its employees, and/or authorized subcontractors under this Agreement, whether or not LEVEL 1, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, LEVEL 1 shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the CITY.
- 5.6. Independent Contractor. LEVEL 1 is and shall be acting at all times as an independent contractors and not as employees of CITY. LEVEL 1 shall have no power to incur any debt, obligation, or liability on behalf of CITY or otherwise act on behalf of CITY as an agent. Neither CITY nor any of its agents shall have control over the conduct of LEVEL 1 or any of LEVEL 1's employees, except as set forth in this Agreement. LEVEL 1 shall not, at any time, or in any manner, represent that they or any of their or employees are in any manner agents or employees of CITY.
- 5.7. Cooperation. In the event any claim or action is brought against CITY relating to LEVEL 1's performance or work rendered under this Agreement, LEVEL 1 shall render any reasonable assistance and cooperation which CITY might require.
- 5.8. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such

provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, including those of the LMA, this Agreement shall govern over the document referenced.

- 5.9. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and LEVEL 1 and no other parties are intended to be direct or incidental beneficiaries of this Agreement, other than STATE as specifically provided for herein, and no third party shall have any right in, under or to this Agreement, other than STATE.
- 5.10. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.
- 5.11. Construction. The PARTIES have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the PARTIES and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 5.12. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.
- 5.13. Termination. This Agreement may be terminated by timely mutual written consent by PARTIES, and LEVEL 1's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by CITY.
- 5.14. Term of Agreement. This Agreement shall become effective on the date first shown on the date written above 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 CITY for cause.
- 5.15. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other

occurrence or event, nor shall any waiver constitute a continuing waiver.

5.16. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

5.17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

5.18. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

5.19. Binding on Successors and Assigns. The provisions of this Agreement shall be binding on the PARTIES successors and assigns.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation


Chief Executive Officer


Date: 11/9/15

LEVEL 1 COMMUNITY ASSOCIATION,
A California nonprofit mutual benefit corporation


Yvonne Benshop, Vice President

Date: 10/5/15

ATTEST:


City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:


City Attorney

Date:

11/09/15

APPROVED AS TO INSURANCE:


Risk Management

Date:

11/6/15

APPROVED AS TO CONTENT:


Project Manager

Date:

10/23/15

DEPARTMENT HEAD APPROVAL


Ernesto Munoz, Public Services Director

Date:

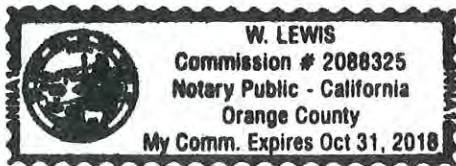
10.28.15

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)
On October 5, 2015 before me, W. Lewis, notary public,
Date Here Insert Name and Title of the Officer
personally appeared Yvonne Benschop
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

EXHIBIT A
LANDSCAPE MAINTENANCE AGREEMENT
(LMA)

**LANDSCAPE MAINTENANCE AGREEMENT
WITHIN STATE HIGHWAY RIGHT OF WAY
ON ROUTE 55 WITHIN THE CITY OF COSTA MESA**

THIS AGREEMENT is made effective this 10 day of November, 2015, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the City of Costa Mesa hereinafter referred to as "CITY" and collectively referred to as "PARTIES".

SECTION I

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 1214-6MC-0282.
2. This Agreement addresses CITY responsibility for the landscaping improvements which include, but is not limited to, planting, litter and weed removal, and irrigation systems improvements (collectively the "LANDSCAPING") placed within State Highway right of way on State Route 55, as shown on Exhibit A, attached to and made a part of this Agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

3. In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:
 - 3.1. 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."
 - 3.2. 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 the 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 "A" 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.

4. CITY agrees, at CITY expense, to do the following:
 - 4.1. CITY 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.
 - 4.2. 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.
 - 4.3. 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.
 - 4.4. 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.
 - 4.5. CITY contractors will be required to obtain an encroachment permit prior to the start of any work within STATE's right of way.
 - 4.6. To furnish electricity for irrigation system controls, water, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement.
 - 4.7. To replace unhealthy or dead plantings when observed or within 30 days when notified in writing by STATE that plant replacement is required.
 - 4.8. 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.
 - 4.9. 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.
 - 4.10. To control weeds at a level acceptable to the 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. CITY shall report all chemical spray operations quarterly (using Form LA17) to the STATE at the address below:

Department of Transportation
District 12, Maintenance
Maintenance Manager
3347 Michelson Drive, Suite 100
Irvine CA 92612

- 4.11. 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.
- 4.12. To furnish electricity and MAINTAIN lighting system and controls for all street lighting systems installed by and for CITY.
- 4.13. To inspect LANDSCAPING on a regular monthly or weekly basis to ensure the safe operation and condition of the LANDSCAPING.
- 4.14. To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING system component that has become unsafe or unsightly.
- 4.15. 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.
- 4.16. To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.
- 4.17. To allow random inspection of LANDSCAPING, street lighting systems, sidewalks/bike paths and signs by a STATE representative.
- 4.18. To keep the entire landscaped area policed and free of litter and deleterious material.
- 4.19. The CITY shall repair any damage to STATE facilities resulting from the CITY's LANDSCAPING, including, but not limited to damage caused by plants/trees roots. That repair shall be performed in a timely manner, so as not to cause damage to property or harm to the health and safety of the public. If the CITY does not perform such repairs in a timely manner, the STATE will perform such repairs and the CITY will reimburse the STATE for its costs.
- 4.20. All work by or on behalf of CITY will be done at no cost to STATE.

5. STATE agrees to do the following:

5.1. May provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from maintenance responsibilities assumed under this Agreement.

5.2. Issue encroachment permits to CITY and CITY contractors at no cost to them.

6. LEGAL RELATIONS AND RESPONSIBILITIES:

6.1. 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 CITY facilities different from the standard of care imposed by law.

6.2. 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. 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 affect that cure.

6.3. 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.

7. PREVAILING WAGES:

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

- 7.2. Requirements in Subcontracts - CITY 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 CITY's contracts.

8. INSURANCE

- 8.1. SELF-INSURED - CITY is self insured. CITY agrees to deliver evidence of self-insured coverage in a form satisfactory to STATE, along with a signed copy of the Agreement.

- 8.2. SELF-INSURED using Contractor - If the work performed on this Project is done under contract CITY 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.

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

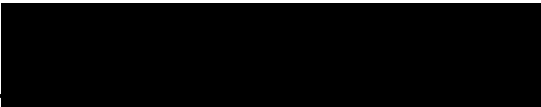
10. TERM OF AGREEMENT- This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES or until terminated by STATE for cause.

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 CITY OF COSTA MESA


STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: 
City Manager/CEO

MALCOLM DOUGHERTY
Director of Transportation

ATTEST:

By: 
CITY Clerk

By: 
James Pinheiro
Deputy District Director
Operations and Maintenance
District 12

Approv

By: 
CITY Attorney

Additional information

ADA Notice

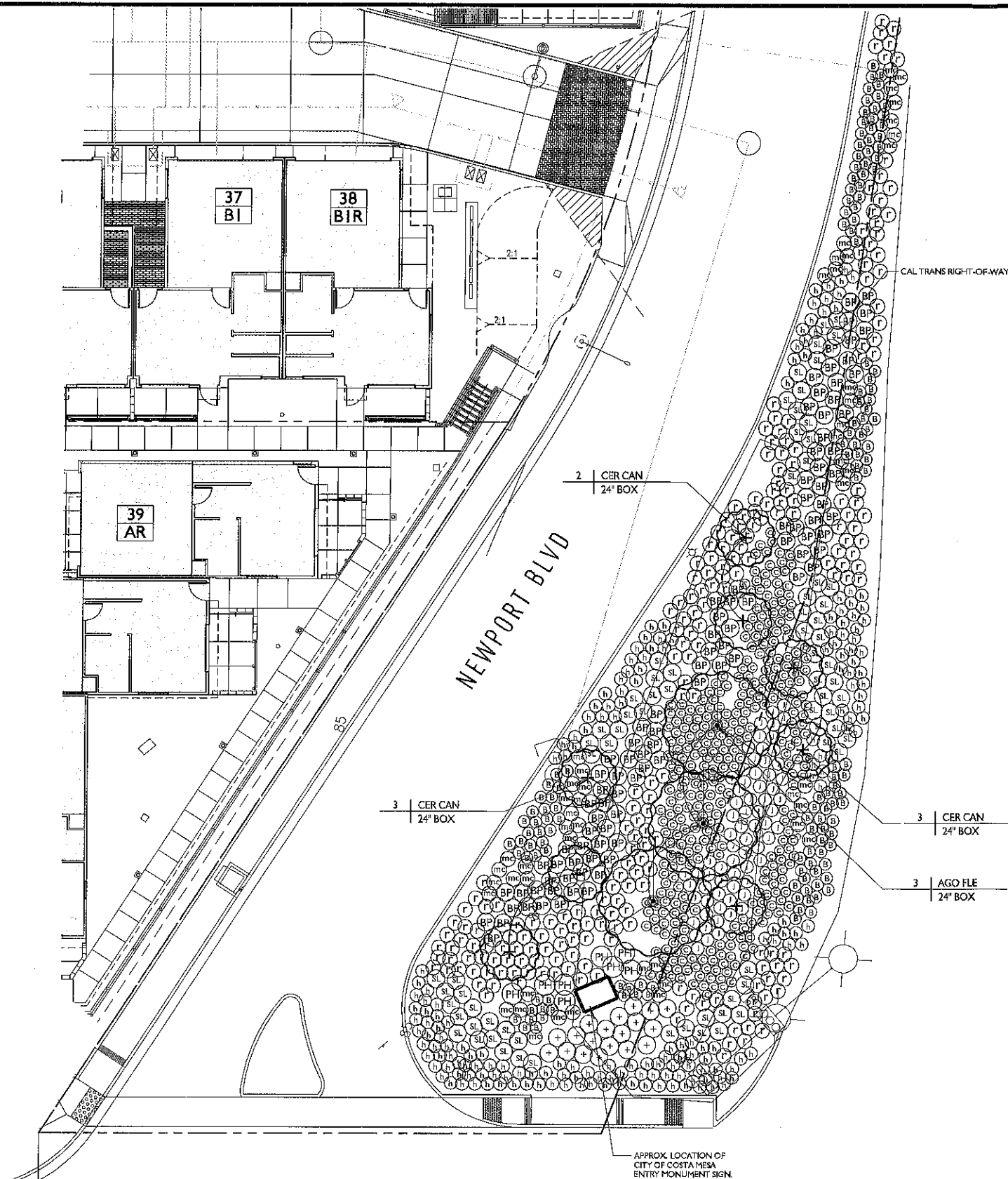
For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

REPORT OF CHEMICAL SPRAY OPERATIONS

CONTRACTOR	WEEK ENDING DATE	PROJECT DESCRIPTION			PROEJCT NUMBER
CHEMICAL MIXTURE AND PERCENT ACTIVE MATERIAL	A	B	C	D	
WATER RATE					
APPLICATION PER SQUARE FOOT OR ACRE					

CHECK PROPER BOX							PLANTING SPRAYED					PEST KILLED					DESCRIPTION OF AREA (STA., LOOP, ETC.)					
DAY	WINDY	CALM	A.M.	P.M.	CLOUDY	SUNNY	CHEMICAL USED				TREES	SHRUBS	IVY	ICE PLANT	P.M.	GROUND COVER		GRASS	BROADLEAF	STOLONS	SCALE, MOTH, ETC.	DISEASE
MON							A	B	C	D												
TUE																						
WED																						
THU																						
FRI																						
SAT																						

RESIDENT ENGINEER COMMENTS:	CONTRACTOR'S REPRESENTATIVE
	COPY TO: DISTRICT _____ MAINTENANCE FOR FILE



TREE LEGEND:					
SYMBOL	NAME	SIZE	COMMENTS	QTY	WUCOLS
TREES:					
AGO FLE	AGONIS FLEXUOSA PEPPERMINT TREE	24\" BOX	STANDARD	3	Medium
CER CAN	CERCIS CANADENSIS 'FOREST PANSY' FOREST PANSY EASTERN REDBUD	24\" BOX	STANDARD	8	Medium

SHRUB LEGEND:					
SYMBOL	NAME	SIZE	COMMENTS	QTY	WUCOLS
BP	BACCHARIS PILULARIS 'PIGEON POINT' DWARF COYOTE BRUSH	5 GAL.	-	97	LOW
B	BOUGAINVILLEA ROSENKA BOUGAINVILLEA	5 GAL.	-	142	LOW
C	CAREX DIVULSA BERKELEY SEDGE	5 GAL.	-	330	LOW
+	CARISSA MACROCARPA 'BOXWOOD BEAUTY' BOXWOOD BEAUTY NATAL PLUM	5 GAL.	-	19	LOW
PH	PHORMIUM T. ATROPURPUREUM NEW ZEALAND FLAX	15 GAL.	-	8	MED
H	HELIOTRICHON SEMPERVIRENS 'SAPPHIRE' BLUE OAT GRASS	1 GAL.	-	193	LOW
J	JUNCUS PATENS GREY CAPE RUSH	5 GAL.	-	71	LOW
MC	MUHLENBURGIA CAPILLARIS 'REGAL MIST' PINK MUHLY	5 GAL.	GRASS	51	MED
F	ROSMARINUS OFFICINALIS 'HUNTINGTON CARPET' PROSTRATE ROSEMARY	5 GAL.	-	223	LOW
SL	SALVIA LEUCANTHA 'SANTA BARBARA' DWARF MEXICAN SAGE BUSH	5 GAL.	-	82	LOW

REFERENCE NOTES:
FOR PLANTING DETAILS SEE SHEET LP.2
FOR PLANTING SPECIFICATIONS SEE SHEET LP.3

QUANTITIES NOTE:
CONTRACTOR TO NOTE THAT THE QUANTITIES ON LEGEND AND PLANT CALLOUTS HAVE BEEN PROVIDED FOR QUICK REFERENCE ONLY. IT IS RECOMMENDED THAT THE CONTRACTOR NOT RELY ON THE ACCURACY OF THESE QUANTITIES AND PROVIDE THEIR OWN PLANT MATERIAL COUNTS AT THE TIME OF PREPARING BID. ANY DISCREPANCY IN THE PLANT QUANTITIES AND SIZES SHOULD BE BROUGHT TO THE IMMEDIATE ATTENTION OF THE LANDSCAPE ARCHITECT.

LINE-OF-SIGHT NOTE
LANDSCAPE ELEMENTS OVER 36\"/>

WUCOLS NOTE:
WUCOLS, WATER USE CLASSIFICATION OF LANDSCAPE SPECIES, IS A UNIVERSITY OF CALIFORNIA COOPERATIVE EXTENSION PUBLICATION AND IS A GUIDE TO THE WATER NEEDS OF LANDSCAPE PLANTS.

PLANTING AREA DRAINAGE NOTE:
ALL PLANTING AREAS TO SLOPE MINIMUM 2% INTO AN APPROVED DRAINAGE SYSTEM. SEE PRECISE GRADING PLAN PREPARED BY CIVIL ENGINEER.

UTILITY SCREENING NOTE:
CONTRACTOR SHALL CONTACT LANDSCAPE ARCHITECT PRIOR TO BEGINNING LANDSCAPE WORK SO THAT THE LANDSCAPE ARCHITECT CAN REVIEW THE PROJECT UTILITY LOCATIONS AND REVISE PLANS ACCORDINGLY TO FULLY SCREEN ALL UTILITIES FROM VIEW.

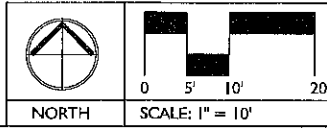


EXHIBIT "B"

CITY OF COSTA MESA
DEPARTMENT OF PUBLIC SERVICES / ENGINEERING DIVISION

TRACT 17554 AND TRACT 17501
132, 134, 140 INDUSTRIAL WAY
AND 1527 NEWPORT BLVD
LANDSCAPE IMPROVEMENT PLAN

SHEET
2
OF
2

DIAL TOLL FREE
1-800-227-2600
TWO WORKING DAYS
BEFORE YOU DIG

BENCHMARK: NO. NBS-11-70 EL.: 74.78' (PER NAD83)
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CITY JOB NO. TRACT 014	1	LANDSCAPE REVISIONS	2-4-14
DRAWN BY:	2	LANDSCAPE REVISIONS	4-21-14
DESIGNED BY:	3	LANDSCAPE REVISIONS	3-10-15
CHECKED BY:			
	NO.	REVISIONS	APP'D DATE

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