

**TRANSPORTATION ART MAINTENANCE AGREEMENT
WITH
CITY OF SAN LEANDRO**

This Transportation Art Maintenance Agreement ("AGREEMENT") executed on and effective from _____, is made by and between the State of California, acting by and through the California Department of Transportation ("STATE"), and the City of San Leandro ("LOCAL AGENCY"); each may be referred to individually as a "PARTY," and jointly as "PARTIES."

RECITALS

1. The PARTIES desire to work together to allocate their respective obligations to the Transportation Utility Box Art Project, The Birth of Lime Rickey painted within STATE Right of Way by Encroachment Permit No. _____ . PARTIES acknowledge the Encroachment Permit Number will be added after this AGREEMENT is executed.
2. This AGREEMENT will set forth the LOCAL AGENCY's maintenance responsibilities for the Transportation Art ("ARTWORK") that is painted within the STATE Right of Way at Washington Plaza on State Route 185 near Davis Street, as shown on Exhibit A, attached hereto.
3. Prior to execution of this AGREEMENT, the author(s) of ARTWORK executed a written agreement conveying to STATE a) a waiver of any and all rights in the ARTWORK under 17 U.S.C. section 106A and related laws, b) physical ownership of and right to possess the ARTWORK, and c) a nonexclusive license to reproduce and use the ARTWORK for non-commercial purposes. This written agreement between STATE and the author(s) of ARTWORK was executed on June 28, 2024.

TERMS

1. Definitions.
 - A. "AGREEMENT" means this AGREEMENT between STATE and LOCAL AGENCY along with exhibits and attachments attached during the execution of this AGREEMENT or in the future by mutual written consent of the PARTIES.
 - B. "ARTWORK" means the entire Transportation Art painted within the STATE Right of Way depicted or described in Exhibit A attached to this AGREEMENT."

2. Agreements with Creators of ARTWORK. LOCAL AGENCY agrees, represents, and warrants that the author or authors of ARTWORK executed a written agreement, in a form approved by STATE, conveying to STATE a) a waiver of any and all rights in the ARTWORK under 17 U.S.C. section 106A and related laws, b) physical ownership of and right to possess the ARTWORK, and c) a nonexclusive license to reproduce and use the ARTWORK for non-commercial purposes. LOCAL AGENCY shall be solely responsible for any damages (including exemplary and punitive damages) arising from its breach of and/or failure to fully comply with this provision of the AGREEMENT.

3. Maintenance Obligation and Standards. LOCAL AGENCY shall have the obligation to maintain the ARTWORK in accordance with this AGREEMENT so long as the ARTWORK exists in any form and in any condition. LOCAL AGENCY shall perform all maintenance of the ARTWORK in compliance with terms of the AGREEMENT, the standards set forth in California Streets and Highways Code section 27, and in accordance with all other applicable California laws, regulations, and standards, including the STATE's Project Development Procedures Manual (PDPM), Chapter 29, Transportation Art, STATE's Maintenance Manual, policies, procedures, and specifications in effect as of the execution of this AGREEMENT and as subsequently amended. The obligation to maintain the ARTWORK shall include routine inspections of the ARTWORK and the maintenance, repair, and cleaning of the ARTWORK, as well as the restoration of damaged ARTWORK, graffiti removal (in accordance with the terms of this AGREEMENT), and the removal of dirt, debris, vegetation growth, and weeds surrounding or obscuring the ARTWORK (hereafter collectively referred to as "MAINTAIN/MAINTENANCE"). LOCAL AGENCY's obligation to MAINTAIN the ARTWORK is until the ARTWORK is removed consistent with terms of this AGREEMENT.

4. Encroachment Permits. Before LOCAL AGENCY, or any of its employees or agents, may enter STATE right of way to perform MAINTENANCE of the ARTWORK, or any MAINTENANCE within STATE's right of way in which the ARTWORK is located, LOCAL AGENCY shall have applied for and obtained, from the applicable STATE District, an Encroachment Permit in accordance with the STATE Encroachment Permit process. For the term of this AGREEMENT, LOCAL AGENCY shall obtain any encroachment permits required by law to perform the obligations under this AGREEMENT. STATE shall issue any and all encroachment permits at no cost to LOCAL AGENCY. LOCAL AGENCY's contractors and subcontractors, including the artist who creates the ARTWORK, shall apply for, and be issued encroachment permits to perform work within STATE's right of way, to the extent required by law. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.

5. Graffiti Removal. LOCAL AGENCY, at LOCAL AGENCY's sole cost and expense, shall remove all graffiti from the ARTWORK. LOCAL AGENCY is solely responsible for ensuring that any graffiti that in any way resembles a mural, artwork, paintings, or other similar elements shall not be removed without the written authorization of STATE. Graffiti removal must protect air and water quality as required by law. LOCAL AGENCY shall conform to the terms stated in STATE's Maintenance Manual, Volume 1, Family D Chapter, D1.06.
6. Restoration of ARTWORK. LOCAL AGENCY, at LOCAL AGENCY's expense, shall restore damaged ARTWORK to its original condition as set forth in Exhibit A either within thirty (30) calendar days of discovery of such damage or within thirty (30) calendar days of being notified in writing by STATE, whichever is sooner. If LOCAL AGENCY is unable to or otherwise fails to restore the damaged ARTWORK by this time, STATE may provide a plan to LOCAL AGENCY which is reasonable and in good faith to perform the required operation.
7. Routine MAINTENANCE. LOCAL AGENCY shall ensure the ARTWORK is provided with adequate routine MAINTENANCE necessary to maintain a neat and attractive appearance in accordance with a schedule mutually agreed to by PARTIES. LOCAL AGENCY shall coordinate said MAINTENANCE with STATE prior to the start of any work.
8. Failure to Perform MAINTENANCE. If during the term of this AGREEMENT, LOCAL AGENCY ceases to perform the MAINTENANCE of the ARTWORK to the satisfaction of STATE as provided by this AGREEMENT, STATE will provide written notice to LOCAL AGENCY to cure the default and LOCAL AGENCY will have thirty (30) calendar days within which to effect that cure. If LOCAL AGENCY does not MAINTAIN the ARTWORK or establish a plan and schedule to do so that is acceptable to STATE, STATE may either perform the MAINTENANCE on behalf of LOCAL AGENCY at LOCAL AGENCY's expense, remove the ARTWORK at LOCAL AGENCY's sole cost and expense and restore STATE's right of way to its prior condition, or direct the LOCAL AGENCY to do so at LOCAL AGENCY's expense. LOCAL AGENCY hereby agrees to pay said STATE costs and expenses, within thirty (30) calendar days of receipt of billing by STATE.
9. Duties Upon Termination. In the event this AGREEMENT is terminated, LOCAL AGENCY shall remove the ARTWORK if STATE provides written consent for such removal, and restore STATE's right of way to a safe and attractive condition compliant with all applicable laws and regulations and acceptable to STATE.
10. Additional LOCAL AGENCY Duties. During any MAINTENANCE work under this AGREEMENT, LOCAL AGENCY shall be responsible for MAINTAINING traffic operations and traffic control, including traffic lane closures as needed, to perform the MAINTENANCE in a safe and lawful manner. LOCAL AGENCY shall

be responsible for obtaining any encroachment permits required by STATE or under this AGREEMENT. LOCAL AGENCY shall be responsible for complying with any and all state laws and regulations in the performance of its MAINTENANCE duties. LOCAL AGENCY shall provide STATE's District 4 Regional Manager, David Despain, at least twenty-four (24) hours prior telephone or email notice before performing any maintenance services under this AGREEMENT. MAINTENANCE services shall be performed between the hours of 9:00 AM and 3:00 PM or a time otherwise authorized by STATE and may be performed on weekends and holidays if necessary.

11. Location Impacts. Except as expressly authorized in writing by STATE, LOCAL AGENCY, in performing its obligations under this AGREEMENT, shall not alter any existing freeway or highway structure or facility, nor shall it remove any landscaping within the STATE's right of way to MAINTAIN or alter the ARTWORK.
12. Costs and Expenses Borne by LOCAL AGENCY. The cost and expense of all work by or on behalf of LOCAL AGENCY as required by this AGREEMENT shall be borne solely by LOCAL AGENCY, and no cost or expense shall be borne by STATE. STATE will not be responsible for the cost or expense of any MAINTENANCE, or any other maintenance, graffiti removal, repair, or restoration of the ARTWORK. STATE will not be responsible for any damages caused by any vandalism or accidents on the roadway. STATE shall only be responsible for its own direct actions.
13. Obligation to Remove ARTWORK. LOCAL AGENCY shall remove the ARTWORK upon written request by STATE whenever, in the opinion of STATE, it creates a maintenance, safety, or operational concern. In the event LOCAL AGENCY fails to remove the ARTWORK in a timely manner, STATE may remove the ARTWORK thirty (30) calendar days following written notification to LOCAL AGENCY, and STATE will bill LOCAL AGENCY for, and LOCAL AGENCY shall pay, all costs and expenses arising from its removal and for the restoration of STATE's right of way to their original condition. STATE reserves the right to remove the ARTWORK or alter parts thereof due to any emergency, such as, but not limited to, an immediate safety hazard to the public as determined by STATE. Removal activities may include any construction, rehabilitation, or other necessary activities affecting transportation facilities without any obligation, compensation to, or approval of LOCAL AGENCY.
14. Unsatisfactory Conditions. STATE may provide LOCAL AGENCY with timely written notice of unsatisfactory conditions that require correction by the LOCAL AGENCY. However, the non-receipt of notice does not excuse LOCAL AGENCY from performing maintenance responsibilities assumed under this AGREEMENT. STATE shall notify LOCAL AGENCY at least thirty (30) calendar days in advance of any planned work that may impact the ARTWORK. If the work required is due to a safety hazard, this notification period does not apply, and STATE will notify LOCAL AGENCY as soon as practicable of the planned or performed work.

15. Acknowledgement of Title. LOCAL AGENCY, and its agents, recognize that STATE owns the exclusive title to the ARTWORK, including but not limited to, the right physically to possess, transfer, sell, dispose of, or destroy the ARTWORK.
16. Effect on Prior Maintenance Agreements. This AGREEMENT does not supersede or replace any prior maintenance agreements between LOCAL AGENCY and STATE concerning the highways, freeways, or other STATE facilities within the STATE right of way in which the ARTWORK is placed, except to the extent those agreements concern or effect the ARTWORK or the purposes of this AGREEMENT.
17. Encampments. If encampments belonging to Persons Experiencing Homelessness (PEH) are encountered by LOCAL AGENCY during MAINTENANCE of the ARTWORK, the LOCAL AGENCY will inform the STATE and comply with any existing agreements between STATE and LOCAL AGENCY regarding the removal of the PEH and any structures, personal property, debris, and/or other items related to the encampment that covers the location(s) shown in Exhibit A, subject to applicable State and Federal law. In the absence of any such agreements, STATE will determine how to proceed with the PEH and encampment(s) and communicate with LOCAL AGENCY on how to proceed with MAINTENANCE under this AGREEMENT.
18. No Third-Party Beneficiaries. This AGREEMENT is not intended to create duties, obligations, or rights of third parties beyond the PARTIES to this AGREEMENT. Nor does this AGREEMENT affect a PARTY's legal liability by imposing any standard of care for the operation and maintenance of STATE highways and LOCAL AGENCY facilities different from the standard of care imposed by law.
19. Indemnification.
 - A. Neither LOCAL AGENCY nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE in connection with any work, authority or jurisdiction conferred upon STATE pursuant to this AGREEMENT. To the extent permitted by law, STATE shall fully defend, indemnify, and save harmless LOCAL AGENCY and its officers, employees from all claims, suits or actions of every kind occurring by reason of anything done or omitted to be done by STATE, its contractors, sub- contractors, and/or its agents pursuant to this AGREEMENT.
 - B. Neither STATE nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by LOCAL AGENCY in connection with any work, authority or jurisdiction conferred upon LOCAL AGENCY pursuant to this AGREEMENT. To the extent permitted by law, LOCAL AGENCY shall fully defend, indemnify, and save harmless STATE and its officers and employees from all claims, suits or actions of every kind occurring by reason of anything done or omitted to be done by

LOCAL AGENCY, its contractors, sub-contractors, and/or its agents pursuant to this AGREEMENT.

20. Prevailing Wages and Labor Code Compliance. LOCAL AGENCY shall comply with any and all applicable labor and prevailing wage requirements in Labor Code Sections 1720 through 1815 and implementing regulations for any public works or maintenance contracts and subcontracts executed for the LOCAL AGENCY's work under this AGREEMENT.
21. **Insurance**

Self-Insured. LOCAL AGENCY is self-insured. LOCAL AGENCY shall deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury and property damage liability, in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess by delivering a Letter Certifying Self-Insurance. The Letter of Self-Insurance must identify the AGREEMENT number, and location as depicted in Exhibit A. LOCAL AGENCY shall provide the original Letter Certifying Self-Insurance as a condition to STATE's execution of this AGREEMENT. A copy of the original letter shall be attached to this AGREEMENT as Exhibit B.

Self-Insured using Contractor. If the MAINTENANCE performed under this AGREEMENT is done by LOCAL AGENCY's contractor(s), LOCAL AGENCY shall require its contractor(s) to maintain in force, during the term of this AGREEMENT, a policy of general liability insurance, including coverage of bodily injury and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. LOCAL AGENCY shall provide a certificate of insurance evidencing this insurance in a form satisfactory to STATE.
22. Termination. This AGREEMENT may be terminated by the mutual written consent of each PARTY. STATE may terminate this AGREEMENT upon written notice to LOCAL AGENCY at any time with or without cause.
23. Successors. This AGREEMENT shall be binding upon and inure to the benefit of each of the PARTIES and their respective successors-in-interest including, any subsequently incorporated LOCAL AGENCY or other municipality established within the LOCAL AGENCY's jurisdictional limits. If the successor LOCAL AGENCY or municipality fails to accept the obligations of the LOCAL AGENCY by entering into a new agreement with STATE, LOCAL AGENCY shall continue to be contractually bound by the terms of this AGREEMENT.
24. Authority. Each individual executing this AGREEMENT on behalf of each PARTY represents and warrants that the individual is duly authorized to execute this

AGREEMENT. LOCAL AGENCY represents and certifies that it has, through its regular political process, authorized the execution of this AGREEMENT by appropriate resolution, delegation, or plenary authority, as required. Further, on __[DATE], the Council of the _____[LOCAL AGENCY] through Resolution No. __ approved a recommendation to accept MAINTENANCE responsibilities for the ARTWORK.

- 25. Amendment to Agreement. The terms of this AGREEMENT can be changed only by a formal written amendment executed by all PARTIES.
- 26. Counterparts. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- 27. Electronic Signatures. Electronic signatures of the PARTIES, whether digital or encrypted, are intended to authenticate this written AGREEMENT, and shall have the same force and effect as manual signatures for this AGREEMENT.

THE CITY OF SAN LEANDRO

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Dated: _____
JUAN GONZALES III
Mayor

INITIATED AND APPROVED:

Dated: _____
JANELLE T.
CAMERON
City Manager

Dated: _____
LEAH BUDU
Deputy District
Director
Maintenance District
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