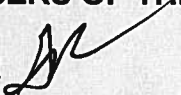



REPORT TO CITY COUNCIL

DATE: JUNE 22, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: LOUIS CELAYA, DEPUTY CITY MANAGER 

SUBJECT: APPROVE RESOLUTION NO. 16-1815 AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AGREEMENTS FOR LANDSCAPE MAINTENANCE ALONG REYES ADOBE ROAD (CEDARHAVEN DRIVE/JON DODSON DRIVE)

Under direction from the City Council, the City Manager initiated inquiries on the possibility of the City undertaking the maintenance responsibility of property areas adjacent to Reyes Adobe Road, between Cedarhaven Drive and Jon Dodson Drive (the "Project area"). The purpose was to continue the City's beautification efforts throughout the City. While some of the property frontage areas along Reyes Adobe Road are established and well-maintained, there are several locations that have no foliage or plants, minimal plantings with dead foliage present, or non-consistent maintenance qualities.

Having the City assume landscape maintenance responsibilities on Reyes Adobe Road in the Project area will support the City's efforts to beautify and enhance the City as a whole. The Reyes Adobe Road arterial is one of main entrance and egress points for the City. It is also the location where the Reyes Adobe Day parade travels down each year. Improving the area will provide a benefit to the community by highlighting the beauty of Agoura Hills for persons traversing in and out of the area, while also improving property values for the entire area.

There are currently 52 properties that abut Reyes Adobe Road that are in the Project area. To date, the City has received support of this concept from 65% of the affected owners. Three property owners have expressed non-interest. Of the remaining properties, three are currently on the real estate market. City staff will continue to reach out to those property owners who have not responded to the initial inquiry.

Staff has worked with the City Attorney's office to develop a Landscape Maintenance Agreement ("LMA"), whereby the City and each property owner in the Project area would enter into an agreement for the City to perform landscape maintenance services. The LMA will grant the City access to the Project area (sample photo attached) to perform the following maintenance activities:

- De-weeding
- Planting

- General landscape maintenance
- Removal of dead foliage

There is no intention to remove established trees or well-maintained vegetation.

The term of the LMA will be twenty years, however, it can be terminated by either party, in writing, within five years after the effective date. The five-year term time frame affords the City protection against newly installed landscape improvements being quickly transferred back to the property owner. The LMA also identifies Landscape Maintenance Responsibilities, whereby maintenance, landscape materials, access and irrigation parameters are defined.

Under the LMA, irrigation of the landscaped area and associated irrigation costs will be the responsibility of the property owner. However, recognizing that each property is unique, there are opportunities for the City and a property owner to work collaboratively to permit the City to install a drip irrigation system where none is present, or to allow the City to manually irrigate the area if property owner does not want the City to install an irrigation system in the area. These opportunities would require case-by-case review by the City Manager.

The LMA contains language that provides flexibility to allow the City to install a future reclaim water line to irrigate landscaping located in the Project area. This would allow for an irrigation system to be installed and/or connected to the City's water line, making irrigation more cost effective, and, thereby, allowing the City to assume all irrigation costs and removing that expense from the property owners.

Currently, staff has estimated a preliminary cost to undertake the maintenance endeavor to be an additional \$4,800 to the existing landscape maintenance budget, as this would simply be an additional area to maintain. The cost for the irrigation and planting improvements will be contingent upon the number of property owners that elect to sign the LMA, and the labor resources and materials that will be used. Staff has included approximately \$20,000 into the FY 2016-17 budget to undertake this work. The amount could be less, depending on the work that needs to be done. It could also increase with the introduction of new properties that have not currently responded.

Additionally, there will be cost associated with preparation of the legal descriptions of the property area required with the LMA. Staff is preliminarily estimating this amount to be approximately \$15,000. This number could decrease, depending on the number of property owner who elect to execute the agreement, as well as increase, depending on new properties that participate.

City staff has presented the landscape maintenance concept to the Public Works Subcommittee in April and May, and received their full support and desire for City staff to move forward with this endeavor. The City Attorney has reviewed and approved the LMA. Should the City Council approve the concept of moving forward with the LMAs, staff would then begin the process of sending out the LMAs to the responding property owners.

RECOMMENDATION

Staff respectfully recommends the City Council:

- 1) **Adopt Resolution No. 16-1815 Authorizing the City Manager to Negotiate and Execute Agreements for Landscape Maintenance Along Reyes Adobe Road.**
- 2) **Authorize the City Manager to modify the Landscape Maintenance Agreement as needed.**

Attachment: **Example of Projected Landscape Maintenance Area (photo)**
 Resolution No. 16-1815
 Agreement for Landscape Maintenance



Example of Projected Landscape Maintenance Area

RESOLUTION NO. 16-1815

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AGREEMENTS FOR LANDSCAPE MAINTENANCE ALONG REYES ADOBE ROAD

WHEREAS, the City of Agoura Hills desires to continue to perform beautification efforts throughout the City, particularly along major arterials entering and exiting the City; and

WHEREAS, Reyes Adobe Road, is one of the City's major arterials providing entrance into the City, and its visual appearance is a reflection on the City as a whole; and

WHEREAS, the City Council finds and determines that the landscape areas adjacent to Reyes Adobe Road, between Jon Dodson Drive to the west and Cedarhaven Drive to the east ("Project area"), either have no foliage or plants, minimal plantings with dead foliage present, or non-consistent maintenance qualities; and

WHEREAS, the City has received support from the affected property owners for the City to perform landscape maintenance in the Project area; and

WHEREAS, the City and the affected property owners desire to enter into agreements for landscape maintenance, authorizing the City to perform landscape maintenance in the Project area for a twenty-year term.

WHEREAS, each property is unique, and the City Council wants to allow flexibility regarding the specific landscape responsibilities that the City will undertake on each individual property;

NOW, THEREFORE, the City Council of the City of Agoura Hills hereby resolves and orders as follows:

- A. The City Council hereby authorizes the City Manager to negotiate and execute Agreements for Landscape Maintenance with the affected property owners, in substantially the same form as attached as Exhibit "A".
- B. The City Council hereby authorizes the City Manager to modify the Agreements for Landscape Maintenance as needed to address unique or different circumstances.

PASSED, APPROVED AND ADOPTED this 22nd day of June 2016, by the following vote to wit:

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

ATTEST:

Harry Schwarz, Mayor

Nathan Hamburger
Assistant City Manager

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California
91301
Attention: City Clerk

APN(s): [Insert number]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT

(FOR LANDSCAPE MAINTENANCE BETWEEN THE CITY OF AGOURA HILLS AND [INSERT PROPERTY OWNER NAME] REGARDING PORTIONS OF THE PROPERTY ADJACENT TO REYES ADOBE ROAD)

THIS AGREEMENT is made and entered into as of June ____, 2016 (“Effective Date”) by and between the City of Agoura Hills, a municipal corporation (the “City”) and [Insert Property Owner name] (“Owner”). The City and Owner are referred to collectively as “the Parties.” In consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. Recitals. The Parties agree that the following Recitals set forth the facts and purposes upon which this Agreement is based and are true and correct:

A. Owner is the record fee owner of the real property located at [insert address], in the City of Agoura Hills, also identified as Los Angeles County Tax Assessor’s Parcel Number [insert number] (“Property”).

B. The Parties desire to provide for the efficient maintenance of a portion of the Property that is adjacent to Reyes Adobe Road (referred to hereinafter as “Maintenance Portion”). The Maintenance Portion is more particularly described on Exhibit “A” and depicted on Exhibit “B.” Owner expressly warrants that no other person or entity has a possessory right to the Maintenance Portion of the Property.

2. Term. This Agreement shall commence on June ____, 2016, and shall remain and continue in effect until June ____, 2036, unless sooner terminated pursuant to the provisions of this Agreement.

3. Extension. This Agreement may be extended by mutual agreement of the Parties at any time prior to the expiration of the Agreement.

4. Landscape Maintenance Responsibilities; Cost.

A. Maintenance. The City agrees to maintain all landscaping in the Maintenance Portion of the Property, except for the maintenance of any trees and the watering of landscaping. Owner hereby agrees that Owner will not perform any landscape work in the Maintenance Portion of the Property, other than the maintenance of any trees and the watering of landscaping. Owner shall maintain all other landscaping on the Property. As part of its maintenance responsibilities, the City will perform the following tasks: de-weeding, removal of dead shrubs, and routine maintenance, including repairing any irrigation systems, located on the Maintenance Portion of the Property (referred to hereinafter as "Maintenance").

B. Landscape materials. The City will have the sole discretion to determine the landscape materials that will be used in the Maintenance Portion of the Property. The City will also bear the full cost of planting any landscaping in the Maintenance Portion of the Property. Possible landscape materials could include, but not be limited to, bushes, native plants, drought tolerant plants, as well as annuals. The City reserves the right to exercise its sole discretion in removing any existing landscaping that is located in the Maintenance Portion of the Property. Owner agrees that Owner will not, and will not cause anyone else to remove any of the landscaping or improvements installed by the City in the Maintenance Portion of the Property.

C. Irrigation. The Property Owner shall be responsible for watering any landscaping located on the Maintenance Portion of the Property. The Property Owner shall also be responsible for all costs associated with the Property Owner's irrigation responsibilities.

D. Future Irrigation Improvements. The City contemplates installing a reclaimed water line on the Maintenance Portion of the Property that will connect to the existing water supply line at Reyes Adobe Park through Cedarhaven and Jon Dodson. Owner agrees that the City may install a reclaimed water line on the Maintenance Portion of the Property at any point during the term of this Agreement. Owner further agrees that the City may install a drip irrigation system on the Maintenance Portion of the Property that will connect to the reclaimed water line. The City will be solely responsible for all costs associated with the installation of and any repairs to the water line and any drip irrigation system. If the City elects to connect the Maintenance Portion of the Property to the City's water supply line, the City will be solely responsible for the watering of any landscaping (other than trees) located on the Maintenance Portion of the Property.

5. Access.

A. Owner hereby grants to the City and its agents, employees, contractors, representatives, or other designees (referred to collectively as "City Designees"), a right to enter onto the Maintenance Portion of the Property to perform the Maintenance and install any landscape material. The City expressly agrees that any access to the Maintenance Portion of the Property by the City shall not permanently damage the Property, including the retaining wall adjacent to the Maintenance Portion of the Property.

B. Work. Owner further grants to the City and the City Designees a non-exclusive, revocable license to enter onto the Maintenance Portion of the Property for the purpose of installing an irrigation system, if the City elects to construct Future Irrigation Improvements as outlined in Section 4(D) above.

C. Notice. The City shall provide notice to Owner, in compliance with paragraph 11(A) below, before commencing the Work. The Work to be performed by the City shall last no longer than ___ working days. The City agrees to provide Owner with notice of the specific dates that the Work will be performed on the Property.

D. Hold Harmless. The City expressly agrees as follows: (i) any activities by or on behalf of the City including, without limitation, the entry by City or City's Designees onto the Maintenance Portion of the Property in connection with the Work shall not permanently damage the Property in any manner whatsoever, and (ii) the City, to the maximum extent allowed by law, shall indemnify, defend and hold Owner harmless from and against any and all claims, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees and expenses and court costs) suffered, incurred or sustained by Owner as a result of, by reason of, or in connection with the Work on the Maintenance Portion of the Property.

6. Termination of Agreement. Five Years from the Effective Date, either party may terminate this Agreement for any reason, with or without cause on thirty (30) days prior written notice to the other. Upon the effective date of the termination of the Agreement, any landscaping or improvements installed by the City shall become the property of Owner.

7. Run with the Land. This Agreement will run with the land and be binding on Owner's heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Maintenance Portion of the Property. Owner further agrees to provide any current or future tenant of the Property notice of this Agreement.

8. Indemnification.

A. City's Agreement to Indemnify. City agrees to defend, indemnify, protect and hold harmless Owner from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which Owner may sustain or incur or which may be imposed upon Owner for injury to or death of persons, or damage to property arising out of City's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the negligence or willful misconduct of the Owner.

B. Owner's Agreement to Indemnify. Owner has expressly warranted that no other person or entity has a possessory right to the Maintenance Portion of the Property. Owner agrees to defend, indemnify, protect and hold harmless the City, and its elected and appointed officials, officers, and City Designees from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature whatsoever brought by any person or entity with a possessory right to the Property as a result of any Maintenance or Work that the City performs on the Maintenance Portion of the Property.

9. Assignment. The City shall not assign this Agreement, nor any part thereof without prior written notice to Owner.

10. Insurance. Prior to entry onto the Maintenance Portion of the Property, the City shall, and shall cause all of City's Designees performing the Maintenance and/or Work to procure or

maintain a policy of commercial general liability insurance covering the Maintenance (and Work if the City elects to perform the Work) with a single limit of liability (per occurrence and aggregate) of not less than \$1,000,000.00, and to deliver to Owner a certificate of insurance and copy of additional insured endorsement naming Owner as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Owner has been named as an additional insured thereunder with respect to the Maintenance and/or Work. Such insurance shall be maintained in force throughout the term of this Agreement.

11. General Provisions.

A. Notices. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. If notice is by personal service, notice shall be deemed effective upon personal service at the address listed below. If notice is sent by mail, notice shall be deemed effective upon receipt, or two business days after deposit in the U.S. Mail, whichever is earlier.

To City: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attention: City Manager

To Owner: [Insert name and address]

B. Authority to Bind. The person executing this Agreement on behalf of City warrants and represents that he or she has the authority to execute this Agreement on behalf of the City and has the authority to bind the City to the performance of its obligations hereunder. The person executing this Agreement on behalf of Owner warrants and represents that he or she has the authority to execute this Agreement on behalf of Owner and has the authority to bind Owner to the performance of its obligations hereunder.

C. Governing Law. This Agreement is deemed to have been prepared by each of the parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

D. Amendment or Modification. This Agreement may be modified or amended only by a writing executed by all parties to this Agreement.

E. Partial Invalidity/Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any part, term or provision of this

Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

F. Successors-in-Interest and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and assigns of the parties hereto, and each of them.

G. Legal Representation. The Parties herein, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement they have each had the opportunity to be represented by independent counsel of their own choosing and the Parties executed the Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

H. Interpretation and Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The recitals and captions of the sections and subsections of this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

I. Counterparts, Facsimile & Electronic Signatures. This Agreement may be executed in whole or in counterparts which together shall constitute the entire Agreement.

J. Fees and Costs. Each of the parties herein shall bear its own attorneys' fees and costs, including, but not limited to, expert fees incurred in connection with negotiating this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY:

City of Agoura Hills,
a California municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

OWNER:

[Insert name]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Two signatures of corporate officers required)

By: _____
Name: Kimberly Rodrigues
Title: City Clerk

*for corporations under Corporations Code
Section 313, unless corporate documents
authorize only one person to sign this
Agreement on behalf of the corporation.)*

APPROVED AS TO FORM:

By: _____
Name: Candice K. Lee
Title: City Attorney

DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF MAINTENANCE PORTION OF PROPERTY

DRAFT

EXHIBIT B
MAP OF LEGAL DESCRIPTION

DRAFT

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.

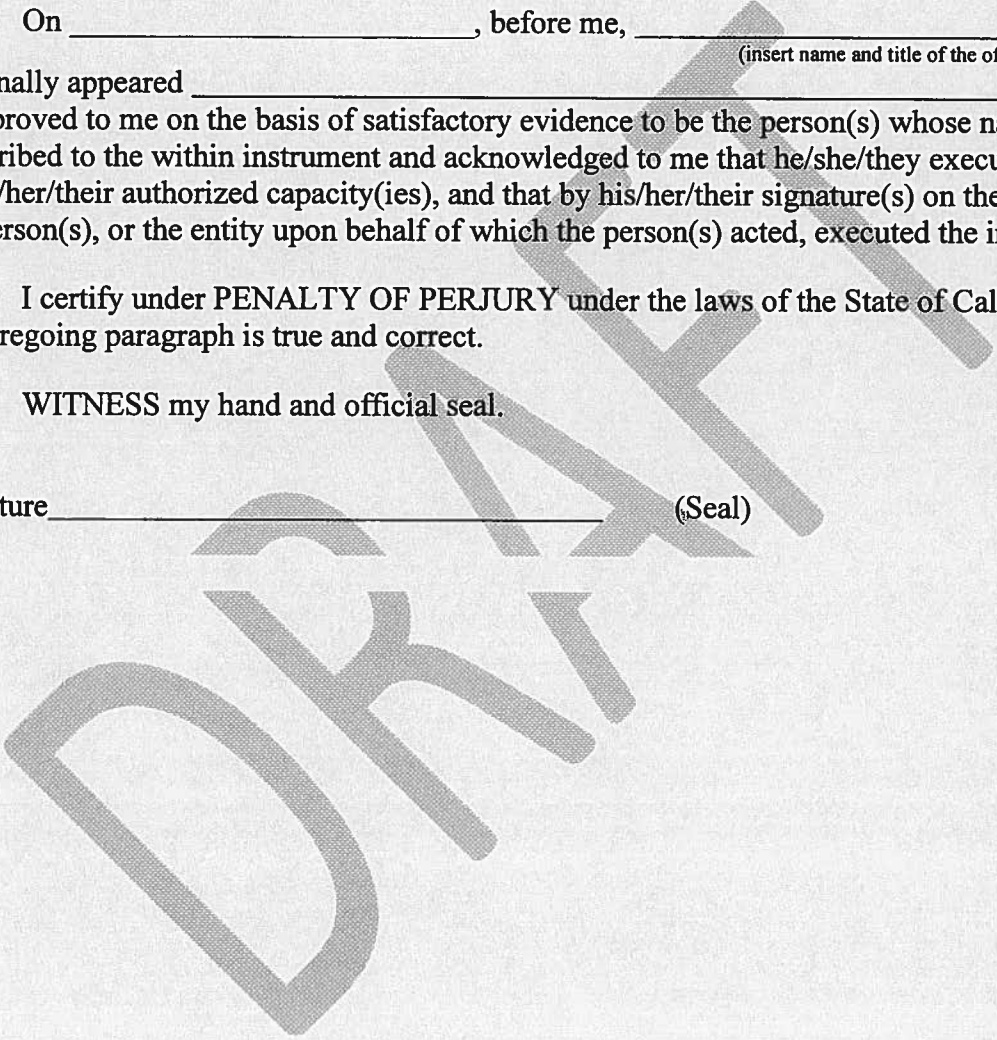
State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)
personally appeared _____,
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 _____ (Seal)



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 Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)
personally appeared _____,
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 _____ (Seal)