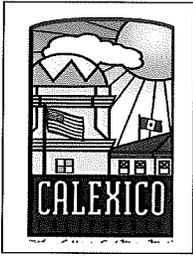


**AGENDA
ITEM**

9



AGENDA STAFF REPORT

DATE: April 17, 2019

TO: Mayor and City Council

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: Lilliana Falomir, Public Works Manager *L Falomir*

SUBJECT: Resolution of the City Council of the City of Calexico Authorizing the Mayor to Endorse the Agreement for Landscape Maintenance within State Highway Right of Way on Route 98 within the City of Calexico.

=====

Recommendation:

Adopt a Resolution of the City Council of the City of Calexico authorizing the Mayor to endorse the Agreement for Landscape Maintenance within State Highway Right of Way on Route 98 within the City of Calexico.

Background:

The Department of Transportation (Caltrans) is proposing to widen State Route 98 from Ollie Avenue and Rockwood Avenue. The goal of widening State Route 98 is to improve motorist and pedestrian safety, increase capacity and relieve congestion on State Route 98 in the City of Calexico, and facilitate international and interregional movement of people, goods and services.

Discussion & Analysis:

When Caltrans widen State Route 98 between Eady Avenue and Ollie Avenue, City staff received feedback from Council Members and the community on the lack of landscape in the median. City staff provided the feedback to Caltrans and they have agreed to install landscape in the proposed median of State Route 98 between Ollie Avenue and Rockwood Avenue as well as in areas within Caltrans right-of-way (Exhibit A) if the City agrees to perform maintenance in these locations.

In order to continue beautifying the City of Calexico, City staff is recommending that the City Council authorize the Mayor to execute the Agreement for Landscape Maintenance within State Highway Right-of-Way on Route 98 with the City of Calexico.



Fiscal Impact:

No fiscal impact at this time.

Coordinated With:

Department of Transportation.
Public Works Department.

Attachment(s):

1. Resolution of the City Council of the City of Calexico authorizing the Mayor to endorse the Agreement for Landscape Maintenance within State Highway Right of Way on Route 98 within the City of Calexico.
2. Landscape Maintenance Agreement No. 11-8454.

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO AUTHORIZING THE MAYOR TO ENDORSE THE AGREEMENT FOR LANDSCAPE MAINTENANCE WITHIN STATE HIGHWAY RIGHT OF WAY ON ROUTE 98 WITHIN THE CITY OF CALEXICO

WHEREAS, the Department of Transportation will widen Route 98 between Ollie Avenue and Rockwood Avenue in the City of Calexico; and

WHEREAS, the Department of Transportation will install a landscape median and well as landscape within Department of Transportation right-of-way as described in Exhibit A on Route 98 between Ollie Avenue and Rockwood Avenue in the City of Calexico; and

WHEREAS, it will be the City of Calexico responsibility to maintain and perform maintenance with the Department of Transportation right-of-way as described in Exhibit A; and

WHEREAS, the City of Calexico wishes to delegate authorization to execute the Agreement for Landscape Maintenance within State Highway Right of Way on Route 98 within the City of Calexico thereto to the Mayor of the City of Calexico.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AND ORDER AS FOLLOWS:

1. The Mayor of the City of Calexico is authorized to execute the Agreement for Landscape Maintenance within State Highway Right of Way on Route 98 within the City of Calexico.

PASSED, APPROVED AND ADOPTED this 17th day of April, 2019.

Lewis Pacheco, Mayor

Attest:

Gabriela Garcia, Deputy City Clerk

Approved as to Form:

Carlos Campos, City Attorney

State of California)
County of Imperial) ss.
City of Calexico)

I, Gabriela Garcia, Deputy City Clerk of the City of Calexico do hereby certify the above Resolution No. 2019-__ was approved at a regular City Council meeting held on the 17th day of April, 2019, by the following vote to-wit:

AYES:

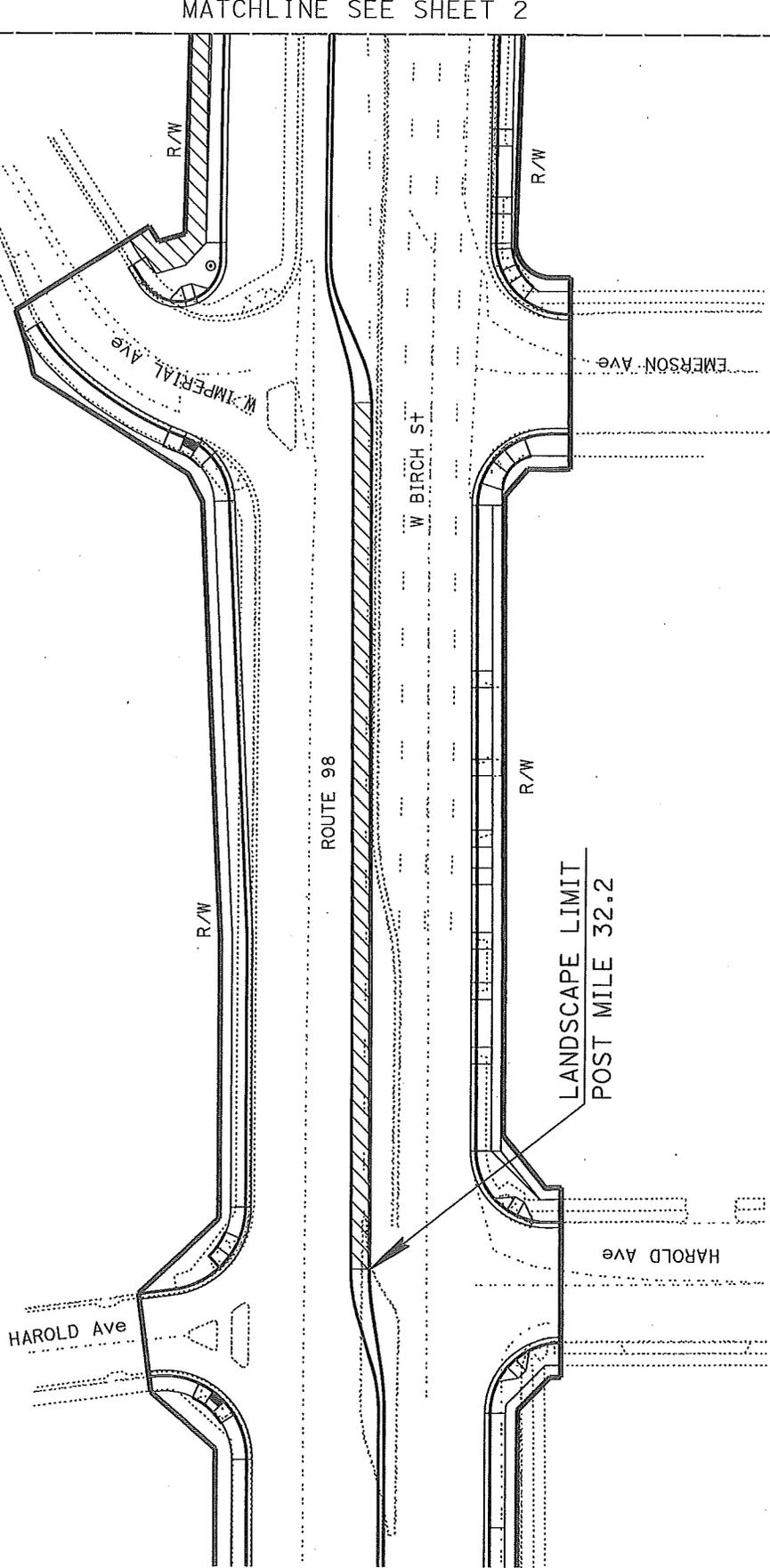
NOES:

ABSTAIN:

Gabriela Garcia, Deputy City Clerk

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT
11	Imp	98	32.1
LMA 11-8454			9/10/18

CALEXICO

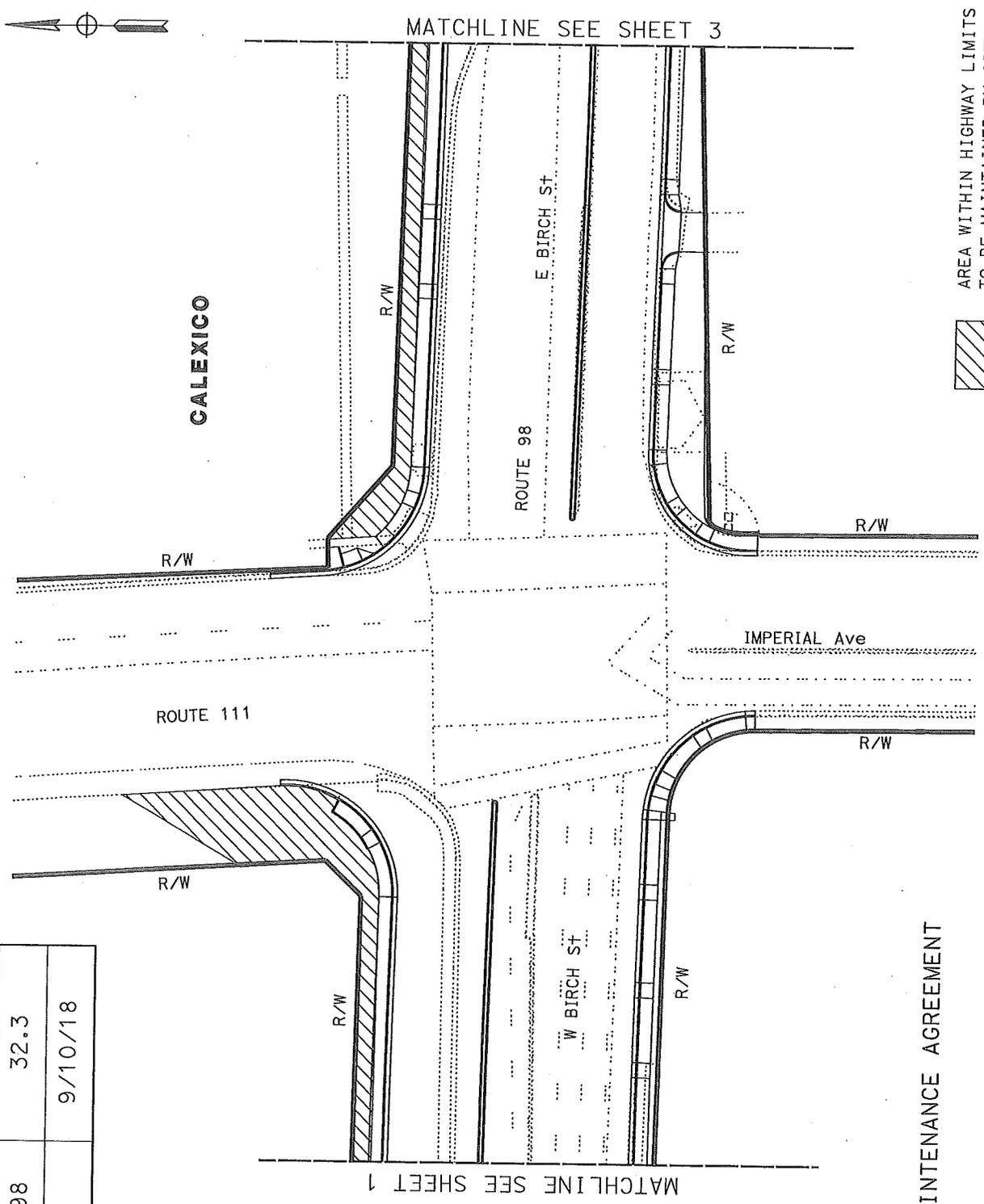


AREA WITHIN HIGHWAY LIMITS
TO BE MAINTAINED BY CITY



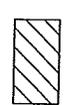
LANDSCAPE MAINTENANCE AGREEMENT
EXHIBIT "A"
SHEET 1 OF 3

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT
11	Imp	98	32.3
LMA 11-8454			9/10/18



LANDSCAPE MAINTENANCE AGREEMENT
 EXHIBIT "A"
 SHEET 2 OF 3

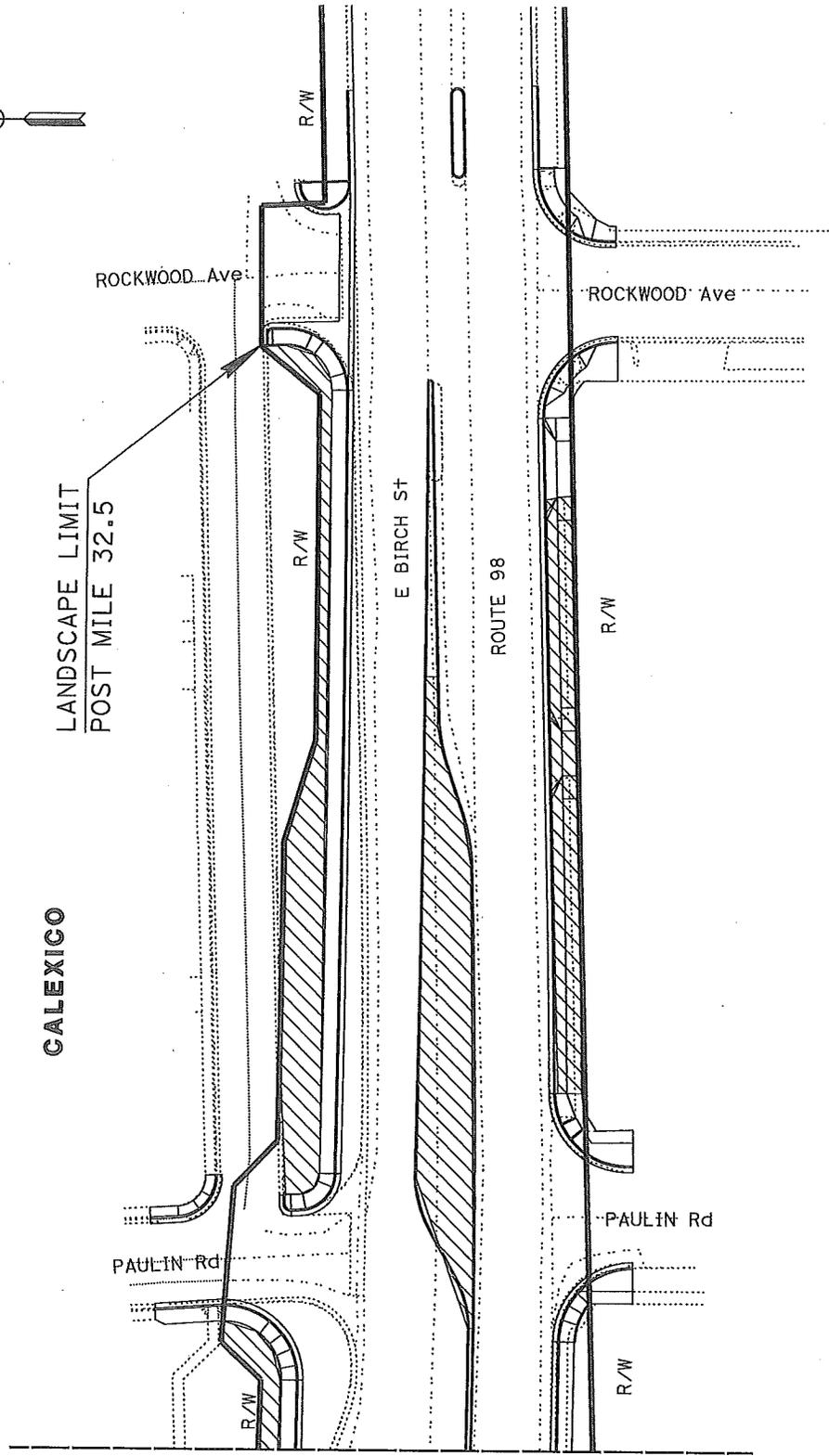
AREA WITHIN HIGHWAY LIMITS
 TO BE MAINTAINED BY CITY



MATCHLINE SEE SHEET 3

MATCHLINE SEE SHEET 1

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT
11	Imp	98	32.5
LIMA 11-8454			9/10/18



MATCHLINE SEE SHEET 2

LANDSCAPE MAINTENANCE AGREEMENT
EXHIBIT "A"
SHEET 3 OF 3

AREA WITHIN HIGHWAY LIMITS
TO BE MAINTAINED BY CITY



**AGREEMENT FOR LANDSCAPE MAINTENANCE
WITHIN STATE HIGHWAY RIGHT OF WAY
ON ROUTE 98 WITHIN THE CITY OF CALEXICO**

THIS AGREEMENT is made and executed effective this ____ day of _____, 201__ by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the City of Calexico, hereinafter referred to as "CITY," together referred to as "PARTIES."

WITNESSETH

RECITALS:

1. PARTIES desire to work together to allocate their respective obligations relative to improvements newly constructed or revised within STATE's Right of Way (R/W) by Caltrans Expenditure Authorization (EA) number 080280.
2. This Agreement addresses CITY responsibility for the landscaping, planting, irrigation systems, mulches, pest control, fertilization, pruning, litter and weed removal, as well as any hardscaping (collectively the "IMPROVEMENTS") placed within STATE Highway Right of Way on Route 98 (SR-98), as shown on Exhibit "A," attached to and made a part of this Agreement.

Section I

In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:

- a) PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, emergency repair, replacement, restoration, and/or general maintenance (collectively hereinafter "MAINTAIN / MAINTENANCE") of the IMPROVEMENTS in the area(s) shown on said Exhibit "A."
- b) When a planned future improvement is constructed and/or a minor revision has been effected with STATE's consent or initiation within the limits of the STATE's right of way herein described which affects PARTIES' division of maintenance responsibility as described herein, PARTIES will agree upon and execute a new

dated and revised Exhibit 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.

- c) CITY may contract with another entity that shall undertake the performance of the MAINTENANCE obligations. In no event shall performance of the obligations by another party, or any contract therefore, relieve the CITY of its duty to perform the MAINTENANCE obligations in accordance with the terms and conditions of this Agreement or relieve the CITY of any liability associated therewith.

Section II

CITY agrees, at CITY expense, to do the following:

- a) 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 the IMPROVEMENTS conforming to those plans and specifications (PS&E) pre-approved by STATE.
- b) The degree, extent, and standards of IMPROVEMENTS installed and MAINTENANCE work to be performed must meet STATE's applicable standards and shall be in accordance with the provisions of Section 27 of the Streets and Highways Code.
- c) Ensure that IMPROVEMENTS areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- d) Obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE's right of way. CITY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
- e) 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.
- f) Ensure functioning irrigation system controls, water service, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement. This includes

supplying electricity and water for irrigation system, along with appropriate materials.

- g) Replace unhealthy or dead plantings when observed or within 30 days when notified in writing by STATE that plant replacement is required.
- h) Prune shrubs, trees, and/or plantings to control extraneous growth and ensure STATE standard lines of sight to signs and corner sight distances are always maintained for the safety of the public.
- i) MAINTAIN, repair, and operate the irrigation systems in a manner that prevents water from flooding or spraying onto STATE highway, spraying parked or moving automobiles, spraying pedestrians or bicyclists on public sidewalks / bike paths, and/or leaving surface water that becomes a hazard to vehicular or pedestrian / bicyclist travel.
- j) 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. All chemical spray operations shall be reported quarterly (form LA17) to STATE via the Landscape Specialist, Maintenance Support, Caltrans District Office, 4050 Taylor Street (MS-220), San Diego, CA 92110.
- k) Expeditiously repair any STATE facility damage ensuing from CITY'S IMPROVEMENTS presence and activities including, but not limited to, damage caused by plants and plant roots and to reimburse STATE for its costs to repair the STATE facility damage ensuing from CITY's IMPROVEMENTS presence and activities should STATE be required to cure a CITY default.
- l) Prevent materials related to IMPROVEMENTS maintenance operations and other deleterious materials from entering STATE's drainage gutters, drainage outlets, or storm drain pipes.
- m) Remove IMPROVEMENTS and appurtenances and restore STATE-owned areas to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- n) Furnish electricity and MAINTAIN lighting system and controls for all street lighting systems installed by and for CITY.

- o) 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 grinding / patching vertical variations in elevation of sidewalks / bike paths for an acceptable walking and riding surface, along with the removal of dirt, debris, graffiti, weeds, and any deleterious item or material on or about sidewalks / bike paths or IMPROVEMENTS in an expeditious manner.
- p) MAINTAIN all parking or use restrictions signs encompassed within the area of the IMPROVEMENTS.
- q) Inspect IMPROVEMENTS on a regular monthly or weekly basis to ensure the safe operation and condition of the IMPROVEMENTS.
- r) Expeditiously MAINTAIN, replace, repair, or remove from service any IMPROVEMENTS system component that has become unsafe or unsightly.
- s) Allow random inspection of IMPROVEMENTS by a STATE representative.
- t) Keep the entire landscaped and/or hardscaped area policed and free of litter and deleterious material.
- u) All work by or on behalf of CITY will be done at no cost to STATE.

Section III

STATE agrees to do the following:

- a) Provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from maintenance responsibilities assumed under this Agreement.
- b) Issue encroachment permits to CITY and CITY contractors at no cost to them.

Section IV

Legal Relations and Responsibilities:

- a) 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.
- b) If during the term of this Agreement, CITY should cease to MAINTAIN the IMPROVEMENTS 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 IMPROVEMENTS 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 IMPROVEMENTS, STATE will provide written notice to CITY to cure the default, and CITY will have thirty (30) days within which to effect that cure.
- c) Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement with the exception of those actions of STATE necessary to cure a noticed default on the part of CITY.
- d) Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

e) Labor Code Compliance / Prevailing Wage Requirements

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, 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 regulations (e.g., CCR 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.

f) Prevailing Wage 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). Subcontracts shall include all prevailing wage requirements set forth in CITY’s contracts.

g) Insurance

CITY and their contractors shall maintain in force during the term of this agreement a policy of general liability insurance, including coverage of bodily injury liability and property damage liability naming the State of California, its officers, agents, and employees as the additional insured in an amount of \$1 million per occurrence, \$2 million in aggregate, and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to STATE that shall be delivered to STATE with a signed copy of this Agreement.

h) 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.

i) 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.

CITY OF CALEXICO

STATE OF CALIFORNIA
DEPARTMENT OF
TRANSPORTATION

By: _____
Mayor

LAURIE BERMAN
Director of Transportation

Attest:

By: _____
CITY Clerk

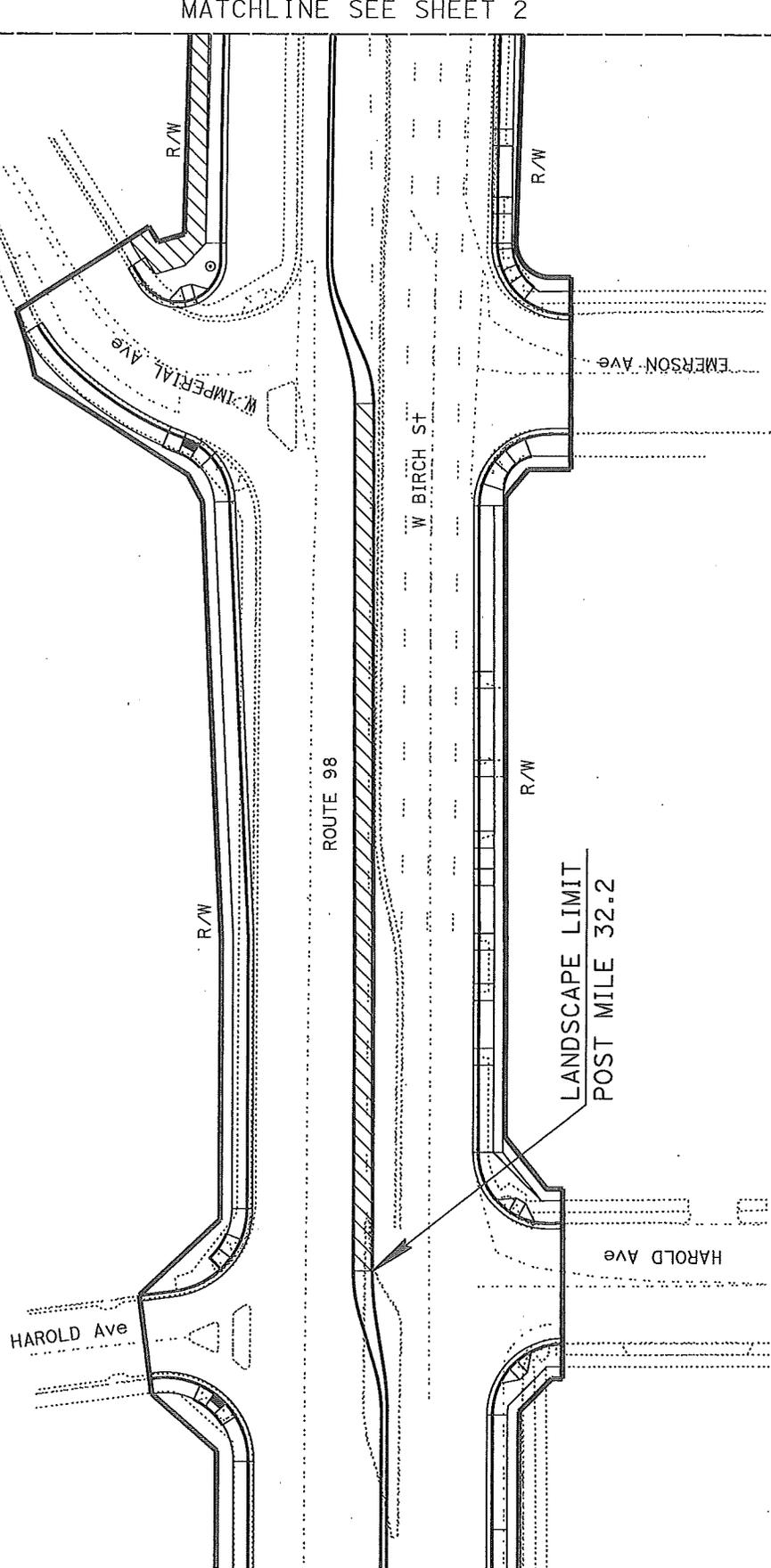
By: _____
District Division Chief
Maintenance

Approved as to Form:

By: _____
CITY Attorney

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT
11	Imp	98	32.1
LIMA 11-8454			9/10/18

CALEXICO



LANDSCAPE MAINTENANCE AGREEMENT
 EXHIBIT "A"
 SHEET 1 OF 3

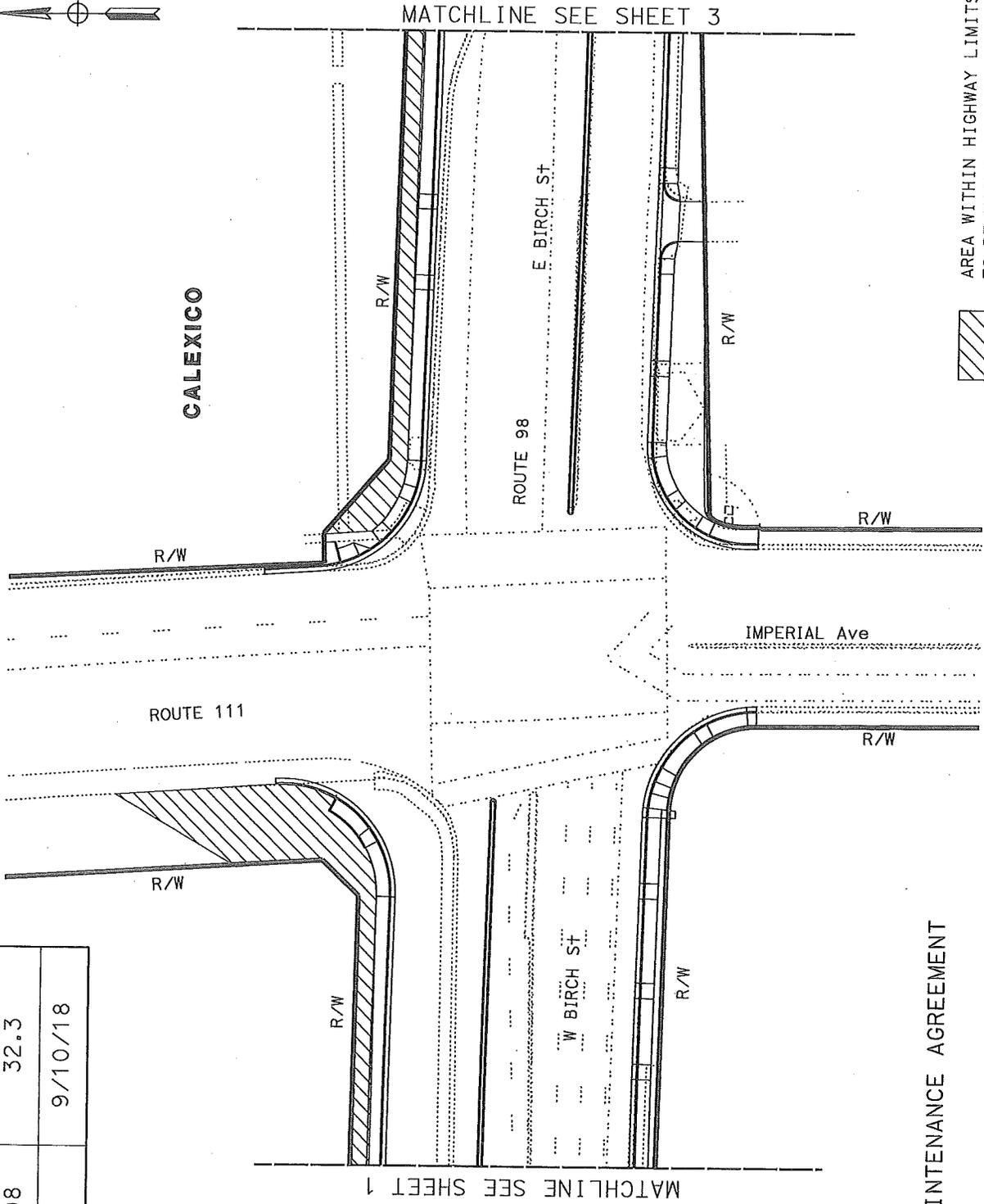


AREA WITHIN HIGHWAY LIMITS
 TO BE MAINTAINED BY CITY

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT
11	Imp	98	32.3
LMA 11-8454			9/10/18

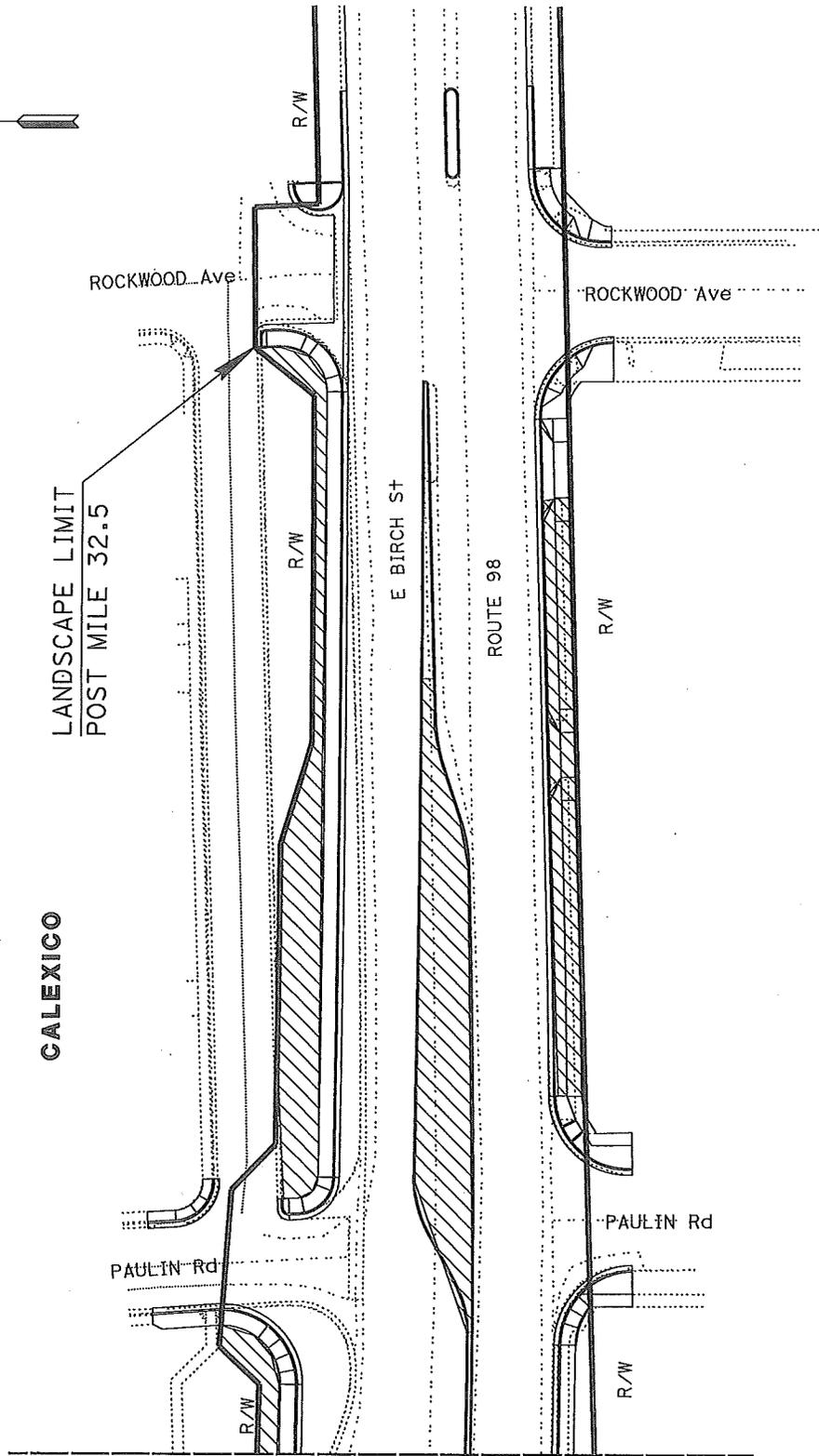
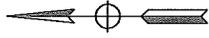


CALEXICO



LANDSCAPE MAINTENANCE AGREEMENT
 EXHIBIT "A"
 SHEET 2 OF 3

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT
11	Imp	98	32.5
LMA 11-8454			9/10/18



MATCHLINE SEE SHEET 2

LANDSCAPE MAINTENANCE AGREEMENT
EXHIBIT "A"
SHEET 3 OF 3

AREA WITHIN HIGHWAY LIMITS
TO BE MAINTAINED BY CITY



CALEXICO