



ADMINISTRATION MEMORANDUM
16-07

DATE: May 9, 2016

TO: Honorable Mayor Joyce Downing & City Council Members

FROM: James A. Hayes, AICP, City Manager 
Debbie Tuttle, Economic Development Manager & NURA Executive Director 

SUBJECT: CR-36 – I-25 and 104th Landscape Maintenance Agreement

STAFF RECOMMENDATION

Staff recommends approval of CR-36 to enter into a landscape maintenance agreement with the Colorado Department of Transportation (CDOT) for the City of Northglenn staff and/or its contractors to maintain the landscaping and other related maintenance activities as described in **Exhibit A** of the agreement for all four medians/ramps located in the CDOT right of ways at I-25 and 104th.

BACKGROUND

On December 7, 2015, the conceptual plans for design and construction of landscaping, signage, lighting and irrigation improvements to the four medians/ramps on I-25 and 104th Avenue were presented to Council for review and comments. The goal of this project is to construct a quality gateway into the city.

BUDGET/TIME IMPLICATIONS

NURA has approved funding up to \$1 million for the design and construction of this project. Upon completion and approval of the work, the construction contractor will be responsible for maintenance and warranty for one year. The city costs associated with this project will be requested from the general fund through the annual budget process. The costs to maintain the landscaping and related maintenance activities through a third party contractor is estimated at \$10,000 - \$13,000 annually.

STAFF REFERENCE:

If you have any comments or questions, please contact Debbie Tuttle at 303-450-8743 or dtuttle@northglenn.org.

I-25 and 104th Landscape Maintenance
City of Northglenn/Region 1/ (jh)

Contract Routing # 16-HA1-XC-00053
ID# 331001472

MAINTENANCE AGREEMENT

THIS CONTRACT, made this _____ day of _____, 20__, by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "State" or "CDOT", and the CITY OF NORTHGLENN, STATE OF COLORADO, 11701 Community Center Drive, Northglenn, Colorado 80233, CDOT Vendor #: 2000004, hereinafter referred to as the "Local Agency" or "City", the State and the Local Agency shall be collectively referred to as the "Parties."

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
2. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are a part of the State (or Local Agency) highway system.
3. The Local Agency desires to provide and perform the Landscape Maintenance Services within the I-25 right of way ("SH ROW") at no cost to the State as described in the Scope of Work, **Exhibit A** and Map, **Exhibit A-1**, attached hereto.
4. The Parties agree that there are no funds to be transferred between the Parties and that the Local Agency desires to perform the Work under this Agreement at no cost to the State. Such Work will be performed in Northglenn, Colorado, specifically described in Exhibit A.
5. It is understood that all costs shall be borne by the Local Agency at 100%.
6. The Local Agency desires to comply with all federal and State provisions and other applicable requirements, including the State's general administration and supervision of the maintenance to be performed within CDOT's ROW under this Agreement.
7. The Local Agency and CDOT have estimated the total cost of the Work and authorizes the Local Agency to enter into this Agreement and extend its funds for the Work under this project.
8. This Agreement is executed under the authority of §§ 29-1-203, 43-1-116, 43-2-101(4)(c), C.R.S.
9. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
10. The Local Agency can more advantageously perform the Work.

11. This Agreement is executed by the City under the authority of an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the City, which also establishes the authority under which the City enters into this Agreement and is attached hereto as **Exhibit B**.

NOW, THEREFORE, it is hereby agreed that:

Section 1. Scope of Work

12. The Work under this Agreement shall consist of the Local Agency providing Landscape Maintenance Services for the I-25 ROW in Northglenn, Colorado, as described in **Exhibit A** and Map, **Exhibit A-1**, attached hereto;

Section 2. Order of Precedence

In the event there is a conflict or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This Agreement
2. Exhibit A and Exhibit A-1(Scope of Work)

Section 3. Term

This Agreement shall be effective upon the date made and shall remain in effect throughout the useful life of the project elements of this Agreement or until the date of a written termination of this Agreement by the Parties hereto.

Section 4. Project Funding Provisions

The Local Agency and CDOT agree there are no funding provisions or requirements for this landscaping Maintenance Agreement.

Section 5. Utilities

If necessary, the Local Agency will be responsible for obtaining the proper clearance or approval from any utility company which may become involved in this Project. Prior to this Project being advertised for bids, the Local Agency will certify in writing to the State that all such clearances have been obtained.

Section 6. Representative and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 1 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from

time to time designate in writing new or substitute representatives.

If to the State:
Andy Stratton
CDOT Region 1
4670 Holly Street
Denver, Colorado 80216
(303) 945-9547

If to the Local Agency:
Debbie Tuttle
City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233
(303) 450-8743

Section 7. Environmental Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 8. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit the project records.

Section 9. Specific Areas of Responsibility

The Local Agency shall be responsible to perform all tasks, as are identified herein that are needed to complete the Landscaping Activities, as described in Exhibit A. The Local Agency agrees to comply with: 1) applicable requirements and standards in applicable laws, regulations, policies, procedures and guidelines; and 2) applicable terms and conditions of this Agreement, including those process and task requirements and standards addressed below.

Section 10. Landscape Maintenance

- A. The Local Agency shall be responsible for the maintenance of landscaped features within the (SH ROW, as indicated in Exhibit A. Said maintenance responsibilities shall include, but not be limited to irrigation, replacement of dead or diseased sod or other plants, mowing both native and irrigated grasses for aesthetics and weed control purposes, pruning, spraying of insecticides and fungicides and trash removal. The Local Agency shall provide all personnel, equipment and other services necessary to satisfactorily perform such maintenance responsibilities at no cost to the State.

- B. The Local Agency shall provide water and power for irrigation purposes within the SH ROW for the landscaped features under this Agreement, at no cost to the State.
- C. The Local Agency shall provide standard maintenance, including but not limited to, repairs, replacement, painting and graffiti removal, if necessary, to any new decorative landscape retaining walls and City/County signs at no cost to the State.
- D. The State reserves the right to determine the conformance of the Landscape Maintenance by the Local Agency under this Agreement. The criteria shall be the State's current Level of Service Standard for this type of work. The State will notify the Local Agency in writing of any deficiency of work. Upon notice of any deficiency in the Landscape Maintenance, either: a) by the State; or b) by its own observation; or c) by any other means; the Local Agency shall take action as soon as possible, but not later than thirty (30) working days after such notice to correct the deficiency and to protect the safety of the traveling public. In the event the Local Agency, for any reason, does not, or cannot correct the deficiency within thirty (30) working days, or does not demonstrate that action satisfactory to cure such default has been commenced and will be completed in a timely manner, or does not otherwise demonstrate that no deficiency exists, the State reserves the right to correct the deficiency and to bill the Local Agency for such work.
- E. The Local Agency shall, during the term of this Agreement, be permitted to enter upon the Interchange for the purpose of performing the maintenance activities. The Local Agency shall use its reasonable efforts to restrict access to the SH ROW to only those persons and equipment necessary to perform the Work described in this Agreement. The Local Agency and its agents, employees and assigns shall not use the mainline roadway of I-25 or any portion of the shoulder thereof as a means of ingress or egress to and from the SH ROW with respect to any task to be performed by the Local Agency pursuant to the terms of this Agreement. In lieu thereof, the Local Agency, its agents, employees and assigns shall access the SH ROW from the city street when possible, and from the Interstate 25 interchange ramps.
- F. The Local Agency shall require any contractors, consultants or agents performing Landscape Maintenance for the Local Agency under this Agreement (hereafter referred to collectively as "contractor(s)") to maintain at all times and at such contractors sole expense, general liability insurance, in the amount of at least \$1,000,000.00 per occurrence, which amount may be in effect as of the date of execution of any contract, but which amount shall be adjusted from time to time to take into consideration the changes in the value of money and the changes in the financial risk for which the insurance is being carried. Such insurance shall be written by companies of recognized financial standing which are authorized to do insurance business in the State of Colorado. All insurance maintained pursuant to this paragraph shall name the State of Colorado as additional insured, and shall provide that no cancellation or reduction thereof shall be effective until at least thirty (30) days after receipt by the State of written notice thereof. The Local Agency shall, upon request, furnish the State with certificates of such

insurance.

- G. In the event that the Local Agency defaults on its landscape maintenance responsibilities, the State, at its discretion, may continue to maintain the landscape in accordance with the normal standards of the State or may allow the landscaped area to revert to its original (native) condition. In the event of such default by the Local Agency, the State reserves the right to bill the Local Agency for its work to cure the default.
- H. The Local Agency acknowledges and agrees that the State may, in the future, expand the SH corridor, and in the event of such expansion, the landscaped features and other improvements being maintained by the Local Agency may be modified by the State, at the State's expense. In the event of such modification, addition to or demolition of the I-25 corridor by the State, the State shall provide to the Local Agency, at least 180 days prior to the commencement of such activities, written notice which shall include specific descriptions of the impact of such activities upon the landscaped features. The State and Local Agency mutually agree to fully cooperate with one another and to take all steps necessary to coordinate the activities to be performed by the State so as to minimize the impact upon and damage to the landscaped features and other improvements installed in the SH ROW and to maximize the salvage and preservation of the landscaping and other improvements to the Interchange during such work to be done by the State. At the Local Agency's option, the Local Agency may remove any materials or growing stock located in such landscaped areas, provided that such removal is during the 180 day notice period.
- I. The Local Agency shall be entitled to terminate this agreement at any time by giving the State ninety (90) days prior written notice. In the event that funds sufficient to enable the Local Agency's performance of its obligations here under are not appropriated by the Local Agency's governing body, this agreement may be terminated upon thirty (30) days written notice. The State shall be entitled to terminate this agreement at any time that the Local Agency defaults upon this agreement and fails to cure such default within the cure Period set forth in Section 11 hereof. In the event of termination of this agreement by either party, the appearance of the SH ROW shall, at the State's discretion, be maintained in accordance with the normal standards of the State or revert to and thereafter be allowed to return to its original (native) condition.
- J. The State shall maintain the storm sewer system including the gutter pans, clearing of debris at water quality outlets, and removal of sediment from water quality ponds and gutters within the area indicated in Exhibit A

Section 11. General Provisions

- A. This IGA may be terminated as follows:
 - (1) Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving

written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Agreement by the Local Agency.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

- (2) Termination for Convenience. The State may terminate this Agreement at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- (3) Termination Due to Loss of Funding. In the event that such funds or any part thereof are not available to the Local Agency, the Local Agency may immediately terminate or amend this Agreement.

- B. Notwithstanding the above, the terminating Party shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of the terminating Party's termination of the Agreement.
- C. Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and attachments hereto which may require continued performance or compliance beyond termination date of the Agreement shall survive such termination date and shall be enforceable by CDOT as provided herein in the event of such failure to perform or comply by the Local Agency.
- D. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be a part of this Agreement on the effective date of such changes as if fully set forth herein. Except as specifically provided otherwise herein, no modification of this Agreement shall be effective unless agreed to in writing by all Parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.
- E. To the extent that this Agreement may be executed and performance of the obligation of the Parties may be accomplished within the intent of the Agreement, the terms on this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect any other terms or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

- F. This Agreement is intended as the complete integration of all understandings among the Parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing.
- G. Except as herein otherwise provided, this Agreement shall inure to the benefit of, and be binding upon the Parties hereto and their respective successors and assigns.
- H. The Local Agency represents and warrants that it currently has no interest, and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement, and it will not employ any person or firm having any such known interests.
- I. This Agreement shall become “effective” only upon the date it is executed by CDOT. The terms of this Agreement shall begin on the date first written above and shall continue through the completion and final acceptance of this Project by CDOT and the Local Agency.
- J. If a conflict occurs between the provisions of this Agreement proper and the attachments hereto, the priority to be used to resolve such conflicts shall be as follows:
 - (1) This Agreement proper;
 - (2) Other Agreement attachments and exhibits, and amendments in their respective order.
- K. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third party. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed to be an incidental beneficiary only.
- L. Each Party assures and guarantees that it possesses the legal authority to enter into this Agreement. Each Party warrants that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its signatory to execute this Agreement and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrant(s) that they have full authorization to execute this Agreement.

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

LOCAL AGENCY:

STATE OF COLORADO:
John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Shailen P. Bhatt, Executive Director

City of Northglenn, Colorado
Legal Name of Contracting Entity

By: Joshua Laipply, P.E., Chief Engineer

2000004
CDOT Vendor Number

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____ (Place corporate seal here, if available)

APPROVED AS TO FORM:

EXHIBIT A

I-25 and 104th Interchange Landscape Maintenance Responsibilities

Landscape Maintenance

1. The Local Agency (defined as the City of Northglenn) shall be responsible for design, construction, and maintenance of landscaped features within the Project within the Interstate highway right of way (SH ROW), as indicated in Exhibit A. Said maintenance responsibilities shall include, but not be limited to irrigation, replacement of dead or diseased sod or other plants, mowing both native and irrigated grasses for aesthetics and weed control purposes, pruning, spraying of insecticides and fungicides, and trash removal, hereinafter referred to as “maintenance activities”. The Local Agency shall provide all personnel, equipment and other services necessary to satisfactorily perform such maintenance activities.
2. The State will maintain the storm sewer system including the gutter pans, clearing of debris at water quality outlets, and removal of sediment from water quality ponds and gutters, within the area indicated in Exhibit A.
3. The Local Agency shall provide water and power for irrigation purposes in SH ROW landscaped features under this agreement, at no cost to the State.
4. The Local Agency shall provide standard maintenance, including, but not limited to repairs, replacement, painting and graffiti removal, if necessary, to any new decorative landscape retaining walls and City/County signs, at not cost to the State.
5. The State reserves the right to determine the quality and adequacy of the work by the Local Agency under this agreement. The criteria shall be the State’s current Level of Service Standard for this type of work. The State will notify the Local Agency in writing of any deficiency in the work. Upon notice of any deficiency in the work, either: a) by the State; or b) by its own observation; or c) by any other means, the Local Agency shall take action as soon as possible, but not later

than 30 working days after such notice to correct the deficiency and to protect the safety of the traveling public. In the event the Local Agency, for any reason, does not or cannot correct the deficiency within 30 working days, or demonstrate that action satisfactory to cure such default has been commenced and will be completed in a timely manner or otherwise demonstrated that no deficiency exists, the State reserves the right to correct the deficiency and to bill the Local Agency for such work.

6. The Local Agency shall, during the term of this agreement, be permitted to enter upon the SH ROW for the purpose of performing the maintenance activities. Local Agency shall use its reasonable efforts to restrict access to the SH ROW to only those persons and equipment necessary to perform the work described in this agreement. The Local Agency and its agents, employees and assigns shall not use the mainline roadway of Interstate 25 or any portion of the shoulder thereof as means of ingress or egress to and from the SH ROW with respect to any task to be performed by the Local Agency pursuant to the terms of this agreement. In lieu thereof, the Local Agency, its agents, employees, and assigns shall access the SH ROW from the city street, when possible, and from Interstate 25 interchange ramps.
7. The Local Agency shall require any subcontractors, consultants or agents performing any work for the Local Agency under this agreement (hereinafter referred to collectively as “subcontractor(s)”) to maintain at all times and at such subcontractor’s sole expense commercial general liability insurance, in the amount of at least \$1,000,000.00 per occurrence, which amount may be in effect as of the date of execution of any subcontract, but which amount shall be adjusted from time to time to take into consideration the changes in the value of money and the changes in the financial risks for which the insurance is being carried. Such insurance shall be written by companies of recognized financial standing which are authorized to do insurance business in the State of Colorado. All insurance maintained pursuant to this paragraph shall name the State as an additional insured, and shall provide that no cancellation or reduction thereof shall be effective until at least thirty (30) days after receipt by the State of written

notice thereof. The Local Agency shall, upon request, furnish the State with certificates of such insurance.

8. The Local Agency acknowledges and agrees that the State may, in the future, expand the SH corridor and or the SH corridor, and in the event of such expansion, the landscaped features and other improvements being maintained by the Local Agency may be modified by the State at the State's expense. In the event of such modification, addition to or demolition of the Interstate 25 corridor, by the State, the State shall provide to the Local Agency, at least 180 calendar days prior to the commencement of any such activities, written notice which shall include specific descriptions of the impact of such activities upon the landscaped features. The State and Local Agency, mutually agree to fully cooperate with one another and to take all steps necessary to coordinate the activities to be performed by the State so as to minimize the impact upon and damage to the landscaped features and other improvements installed in the SH ROW and to maximize the salvage and preservation of the landscaping and other improvements to the Interstate ROW during such work to be performed by the State. At the Local Agency's option, the Local Agency may remove any materials, or growing stock located in such landscaped areas, provided that such removal occurs during the 180 calendar day notice period.
9. The Local Agency shall be entitled to terminate this agreement at any time by giving the State ninety (90) days prior written notice. In the event that funds sufficient to enable the Local Agency's performance of its obligations here under are not appropriated by the Local Agency's governing body, this agreement may be terminated upon thirty (30) days written notice. The State shall be entitled to terminate this agreement at any time that the Local Agency defaults upon this agreement and fails to cure such default within the cure period set forth in Section 11 hereof. In the event of termination of this agreement by either party, the appearance of the SH ROW shall, at the State's discretion, be maintained in accordance with the normal standards of the State or revert to and thereafter be allowed to return to its original (native) condition.

CITY OF NORTHGLENN LANDSCAPE MAINTENANCE IGA
EXHIBIT A

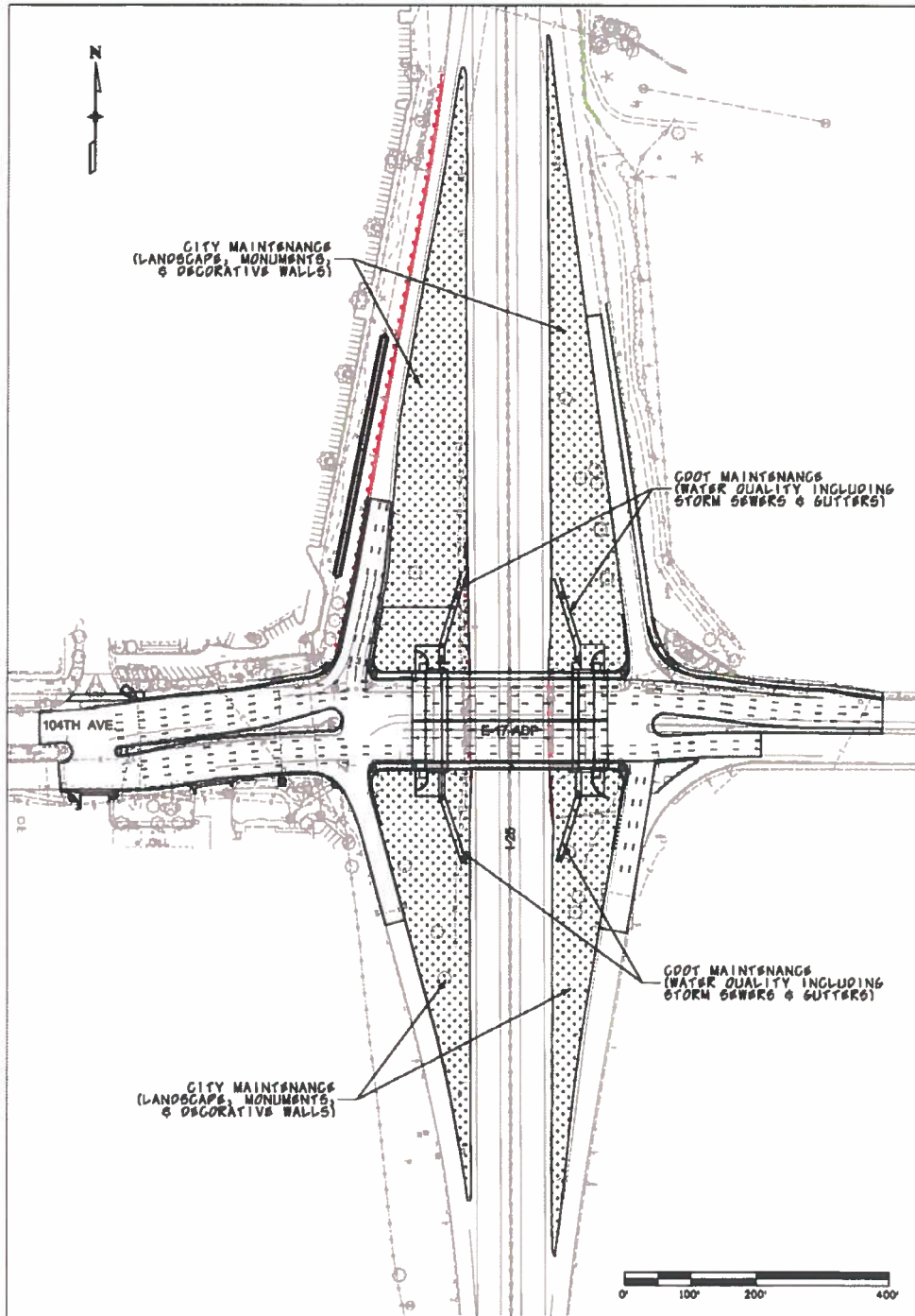


Exhibit A-1

EXHIBIT B

Local Agency Ordinance or Resolution