



MASTER LANDSCAPE MAINTENANCE AGREEMENT

THIS MASTER LANDSCAPE MAINTENANCE AGREEMENT (“Agreement”) is made and entered to be effective as of _____ (the “**Effective Date**”), by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, an agency of the State of Utah (“**UDOT**”) and _____ **CITY**, a Utah municipal corporation (the “**Local Government**”).

RECITALS

- A. When UDOT places landscaping vegetation for its own work, UDOT’s baseline involves placing seed with natural, self-sustaining grass and shrub species that do not require any irrigation. UDOT applies this baseline under UDOT manuals and specifications.
- B. Local jurisdictions are responsible for decorative landscaping in the UDOT right-of-way when required by Utah Administrative Code R918-6-4 (“**Section R918-6-4**”) or other applicable law, or when a local jurisdiction has assumed landscape responsibilities under a UDOT contract or permit, or when a local jurisdiction has granted a permission or issued a permit to a third party that allows an installation by the third party (which requires compliance with Utah Code §§ 72-3-109 and 72-7-102), (collectively a “**Landscape Improvement**”). These laws, contracts, and permits may impose requirements for more than just vegetation in the UDOT right-of-way.
- C. UDOT first must authorize the installation of a Landscape Improvement. UDOT does this through a UDOT agreement (such as a Betterment Agreement or Cooperative Agreement), or pursuant to a UDOT permit, or by giving an approval so a local jurisdiction can grant permission to, or issue a permit to, a third party.
- D. When UDOT authorizes the installation of a Landscape Improvement, UDOT also requires a local jurisdiction to enter this Agreement. This is a master agreement that applies to all Landscape Improvement sites that involve vegetation within the local jurisdiction (except as stated herein). The purpose of this Agreement is to implement uniform requirements that: (i) address long-term maintenance responsibilities and requirements for Landscape Improvements that involve vegetation; and (ii) provide for their ongoing care and upkeep.

AGREEMENT

NOW THEREFORE, in consideration of the forgoing recitals, which by this reference are incorporated into this Agreement, and the following terms and conditions, the parties agree as follows:

- 1. Agreement Applicability. This Agreement applies to each Landscape Improvement (as defined in Recital B) within the Local Government’s jurisdiction once each installation is complete, and it takes priority over any conflicting terms in other agreements or permits, except as follows:
 - a. UDOT-Owned Improvements. UDOT-owned landscaping is not subject to this Agreement.

- b. **Conflicting Prior Authorizations.** If a Landscape Improvement existed in the Local Government’s jurisdiction before the Effective Date of this Agreement, and its long-term care is subject to terms stated in a different UDOT agreement, permit or other authorization, then the different UDOT agreement, permit or other authorization governs that site.
2. **Landscape Improvement Requirements.** The Local Government shall comply with the following requirements and shall also require the Local Government’s permittees to comply with the following requirements. Compliance is a condition of UDOT’s consent to a Landscape Improvement.
 - a. **Effect of Consent.** The owner of a Landscape Improvement, which may be either the Local Government or a Local Government permittee (an “**Improvement Owner**”), only owns the Landscape Improvement. UDOT’s consent only authorizes the Improvement Owner to make a non-exclusive use of the surface of a UDOT right-of-way in the manner stated in the document that authorized installation for the Landscape Improvement. UDOT’s property ownership interests are not affected in any manner by a Landscape Improvement.
 - b. **Standard of Care.** The Local Government or other Improvement Owner must provide all reasonable and routine care that may be required to maintain the Landscape Improvement, for the duration of its installation, substantially in the condition that UDOT consented to. The reasonable and routine care that is necessary to meet this standard requires complying with all of the requirements stated in Section R918-6-4. That may include, but is not limited to, actions such as the following: maintaining irrigation systems, inspecting, removing trash and dead plant materials, replenishing approved installations, controlling weeds and pests, repairing damage, remedying hazardous conditions, complying with applicable local codes, and other measures.
 - c. **Safety.** Landscape Improvements must be maintained in a manner that is consistent with the safe and efficient use of the UDOT roadway. Among other things, the Local Government or other Improvement Owner must prevent elements from blocking signs or intruding onto paved surfaces within the UDOT right-of-way. Any intrusions, impairments, or other safety and efficiency concerns must be promptly remedied.
 - d. **Protection of UDOT Property.** The Local Government or other Improvement Owner shall use reasonable care to protect UDOT’s property from damage. Among other things, maintenance work shall not damage UDOT’s paved surfaces, signs, or other roadway appurtenances, and no substances that are regulated as hazardous (as such term is defined by applicable law) shall be placed on UDOT’s property. The Local Government or other Improvement Owner shall also use reasonable care to protect improvements owned by others that are present at the site of the Landscape Improvement.
 - e. **Roadway Access.** If any maintenance work requires traffic control or lane closures, that access requires obtaining an encroachment permit from UDOT. All persons who work in a UDOT right-of-way must wear approved DOT Personal Protective Equipment and Safety Clothing (see UDOT Policy 06E-02, or its successor, on UDOT’s website). Volunteers working in a UDOT right-of-way must be at least 16 years old, and if they are between the ages of 16 and 18, they must have adult supervision at all times. Contact a UDOT permit official to ensure compliance with safety requirements.
 - f. **Substantial Changes.** UDOT must issue a new, written authorization before a Local Government or other Improvement Owner can make substantial changes to what UDOT

approved for a Landscape Improvement. If so authorized, once the changes have been installed, this Agreement continues to apply.

- g. **Responsibility and Enforcement.** If the Local Government issues a permit that allows a permittee to install a Landscape Improvement, the Local Government (under Sections 72-3-109, 72-7-102, and R918-6-4) and the permittee (under the permit) are both responsible for that Landscape Improvement under applicable law and this Agreement. If the Local Government makes the permittee primarily responsible for the Landscape Improvement, the Local Government will take reasonable enforcement actions to require Local Government permittees to comply with the requirements of this Agreement. Reasonable actions include, but are not limited to, the following: the Local Government will make the requirements of this Agreement applicable to its permittees (as stated below); and reasonable enforcement actions may include, but are not required to include, taking legal action against a permittee.
3. **Remedies.** If a Landscape Improvement is not maintained as required by Section 2, UDOT and the Local Government shall have remedies as follows:
 - a. **UDOT Remedies.** UDOT has all remedies available by law, and the following remedies are not exclusive:
 - i. UDOT shall not bear any cost for, or have any obligation to maintain, a Landscape Improvement that the Local Government is responsible for (whether it responsible by law or pursuant to a UDOT agreement, permit or other approval). The parties acknowledge that this Agreement does not change applicable law, which includes, but is not limited to, Utah Code §§ 72-3-109 and 72-7-102, and Section R918-6-4.
 - ii. UDOT is the owner of the right-of-way, and UDOT can enter a Landscape Improvement at any time for any reason.
 - iii. UDOT has the right, but not the obligation, to remedy any violation of this Agreement at the expense of the Local Government or other Improvement Owner after providing reasonable notice to them. If they fail to remedy the violation as provided in the notice, UDOT may, but is not obligated to, take remedial action at the expense of the Local Government and other Improvement Owner. Any action or inaction by UDOT in connection with a Landscape Improvement does not constitute an assumption of any responsibility or liability by UDOT, and it does not constitute a waiver of any requirement of this Agreement.
 - iv. If UDOT has sent two written notices to an Improvement Owner (whether the Improvement Owner is the Local Government or its permittee) concerning a violation of this Agreement, and if thereafter the violation is remedied and UDOT agrees to allow the Landscape Improvement to remain on UDOT property, UDOT also may require the Improvement Owner to file a bond with UDOT in an amount not to exceed \$10,000 to protect UDOT against the cost of future violations. The Improvement Owner shall maintain the bond for a 24-month period at a minimum. If the Improvement Owner is a permittee of the Local Government, UDOT agrees that the Local Government can also take this action in addition to UDOT.
 - v. An Improvement Owner may remedy a violation of this Agreement through work provided by a third party, such as a contractor with warranty obligations.

But the Local Government and its permittees remain responsible for all costs and obligations that relate to a Landscape Improvement for which they have responsibilities under statutes, regulations, or permits.

- vi. Landscape uses of UDOT's right-of-way are subordinate to UDOT's transportation purposes. An Improvement Owner places plants and improvements in UDOT's right-of-way at its own risk. If UDOT takes any action in connection with its right-of-way, UDOT may remove a Landscape Improvement without compensating an Improvement Owner. UDOT also may, but is not obligated to, provide replacement landscaping as UDOT may determine.
- v. UDOT hereby advises the Local Government that UDOT considers compliance with this Agreement and with Section R918-6-4 and other applicable law when determining whether UDOT will consent to the Local Government's Landscape Improvements, or whether UDOT will consent to a Local Government permit pursuant to Utah Code §§ 72-3-109 and 72-7-102.
- b. Cooperation. The Local Government and UDOT agree to the following:
 - i. The parties agree to cooperate and work together in good faith.
 - ii. If any object is installed in a UDOT right-of-way without authorization by UDOT or by the Local Government, the object is in UDOT's right-of-way unlawfully. UDOT and the Local Government each may remove such installation under their legal authority. UDOT and the Local Government each may also require the object's owner to obtain proper authorizations for such improvement at such owner's expense.
 - iii. If the parties dispute what constitutes a violation of this Agreement, or whether a specific Landscape Improvement was properly authorized, or whether any maintenance is subject to Section R918-6-4 or other applicable requirements, or other matters, the parties agree to do the following before pursuing any other remedy that they may have:
 - 1. UDOT and the Local Government agree that they will first send a decision maker from each party to a dispute resolution meeting to discuss the disagreement in good faith, present information in support of each party's position, and attempt to reach a resolution.
 - 2. If the dispute resolution meeting does not fully resolve the matter, the Local Government agrees to submit full information concerning its dispute to a UDOT Region Director to obtain a decision by UDOT.
 - iv. For Local Government permits issued after the Effective Date of this Agreement, the Local Government agrees to require its Landscape Improvement permittees to: (1) comply with the terms of, and assume the Local Government's obligations under, this Agreement as if it had been entered between UDOT and the permittee in connection with the permittee's Landscape Improvement; and (2) agree that both UDOT and the Local Government may enforce the terms of this Agreement directly against the permittee. Among other things, UDOT and the Local Government shall each have the right, but not the obligation, to enforce the indemnity and other obligations contained in Section 5 of this Agreement directly against a permittee.

- v. If utility owners or others with a right to be present in the UDOT right-of-way pursue work within a Landscape Improvement, the Improvement Owner is solely responsible to coordinate work to address any impacts to the Landscape Improvement.
 - c. Site Addendum. If ongoing maintenance needs for a specific Landscape Improvement site require terms in addition to those contained in this Agreement, the parties may address them in a Site Addendum to this Agreement that is substantially in the form attached at Exhibit A and incorporated herein.
- 4. Term. This Agreement shall remain in effect while any Landscape Improvement that is subject to this Agreement remains within the Local Government's jurisdiction. From time to time, UDOT may update this Agreement consistent with then-applicable requirements.
- 5. Indemnity and Insurance. The following shall apply:
 - a. Indemnity. The Local Government agrees to indemnify, defend, and save harmless UDOT and its commissioners and employees from and against all losses of every kind (including but not limited to any claims, suits, costs, environmental contamination damages and penalties, and loss from personal injuries and property damage) that arise from or relate to (i) the Local Government's use of UDOT property in connection with this Agreement; or (ii) any wrongful or negligent act or omission of the Local Government or its employees, agents, contractors or consultants in connection with entering or performing this Agreement. The Local Government is a governmental entity subject to the Utah Governmental Immunity Act, and nothing in this paragraph is intended to waive any provision of the Utah Governmental Immunity Act provided said Act applies to the loss in question. This Agreement does not require the Local Government to indemnify UDOT against UDOT's sole negligence.
 - b. Damage to UDOT Property. In addition to the indemnification obligation set forth above, the Local Government, at its cost, shall repair or replace (to UDOT's reasonable satisfaction) any property that belongs to UDOT that is damaged in connection with a Landscape Improvement to the extent that such damage arises from or relates to an act or omission (negligent or otherwise) of the Local Government or its employees, agents, contractors, consultants, or permittees. The Local Government shall promptly notify UDOT of any such damage.
 - c. Notification. The parties agree to promptly notify each other of any potential claims or losses that may affect the other party that relate to a Landscape Improvement.
 - d. Insurance. Each party agrees to require its contractors and consultants working in connection with this Agreement to maintain insurance in amounts reasonably sufficient to pay for loss arising from the contractor's or consultant's acts or omissions (negligent or otherwise). In addition, the Local Government hereby represents that it is a member of the Utah Local Governments Trust or is adequately self-insured, and it agrees that it will remain so for as long as it has any Landscape Improvements located on UDOT's property.
- 6. Miscellaneous. The following terms apply to this Agreement:
 - a. Any party may give a written notice under this Agreement by delivering it to the following physical address (an email may be used in addition as a courtesy), and notice is effective upon delivery when delivered by hand or by overnight delivery service with confirmation

of delivery (or, if placed in the U.S. mail, notice is effective three days after such notice receives a postmark):

<p>To UDOT:</p> <p>UDOT 4501 South 2700 West Box 143600 Salt Lake City, UT 84114 Attention: Director of Preconstruction</p> <p>With a copy to:</p> <p>Assistant Attorney General (UDOT) 4501 South 2700 West Box 143600 Salt Lake City, UT 84114</p>	<p>To Local Government:</p>
--	-----------------------------

- b. The parties agree to undertake and perform all further acts that are reasonably necessary (except when expressly prohibited by law) to carry out the intent and purpose of the Agreement and to assist UDOT with maintaining compliance with the legal requirements applicable to UDOT after receiving a written notice that explains the need for such action.
- c. UDOT's action or inaction when providing a consent, review, acceptance, or approval or when taking other action hereunder, for any conditions, inspections, plans, specifications, or work, is for purposes of administering this Agreement only, and it does not constitute an assumption by UDOT of any responsibility or liability for the same.
- d. No part of this Agreement may be waived, whether by a party's failure to insist on strict performance of this Agreement or otherwise, except in a writing signed by an authorized representative of the party waiving. No party may assign this Agreement without the other parties' prior written authorization, and any purported assignment to the contrary is void. This Agreement does not create any agency, joint venture, partnership, or other relationship among the parties, and it is intended only for the parties hereto and does not create any third-party beneficiaries. This Agreement is governed by Utah law without reference to choice or conflict of law provisions. Jurisdiction for any judicial action brought in connection with this Agreement shall be brought in a court in Salt Lake County, Utah, and ALL PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO A JURY TRIAL. Time is of the essence. This Agreement (or, if any part hereof is invalidated by law, this Agreement's remaining provisions) shall be construed to enforce its terms to the fullest extent allowed under applicable law to give effect to the intent of the parties. This Agreement will not be construed to have a drafter or be construed against a drafter. This Agreement's headings are for convenience only and do not alter the meaning of its text. All rights and remedies in this Agreement are cumulative and nonexclusive and do not limit any other rights and remedies of the parties. The indemnity provision, remedies, and other terms that by their nature are intended to survive a termination of this Agreement

shall survive a termination. Nothing in this Agreement shall be construed to limit UDOT’s governmental powers and authority. This Agreement may only be amended in a written document that is signed by an authorized representative of each party. This is the entire agreement of the parties with respect to the subject matter hereof and it shall supersede all prior negotiations, understandings, and agreements with respect to such subject matter. Each party warrants that all of its representatives who are necessary to make this Agreement fully binding against the party (and its successors and assigns, if any) have signed below with the party’s authorization, and that this Agreement’s terms do not violate other contracts and commitments of the party. This Agreement may be signed in counterparts and signed electronically.

IN WITNESS WHEREOF, the parties hereto have each caused an authorized representative to execute this Agreement as of the Effective Date first written above.

<p>Utah Department of Transportation, an agency of the State of Utah Region Director:</p> <p>By: _____ Title: _____</p>	<p>UDOT Comptroller’s Office:</p> <p>By: _____ Title: _____</p>
<p>Recommended By:</p> <p>By: _____ Title: _____</p>	

<p>INSERT LOCAL GOVERNMENT’S NAME AND ENTITY TYPE HERE</p> <p>By: _____ Title: _____</p>	<p>By: _____ Title: _____</p> <p>“SEAL”</p>
---	---

EXHIBIT A

MLMA SITE ADDENDUM FORM

An MLMA Site Addendum is used when it is necessary to state terms in addition to those in the MLMA to address the ongoing maintenance and care needs of a particular Landscape Improvement Site.

(See next page)



<p style="text-align: center;">MLMA Site Addendum to Current Master Landscape Maintenance Agreement Addendum to UDOT Finance Number xxxxx</p>	<p>Project Name:</p> <p>Local Government Agency:</p>	<p>Finance Number:</p> <p>Tracking Number:</p>
<p>Project #: PIN: Or Permit #:</p>	<p>Site of the Landscape Improvement that requires additional ongoing maintenance terms: <i>(Enter Route, Street Name, Name of City, Name of County, Utah):</i></p>	<p>Date Executed:</p>

THIS MLMA SITE ADDENDUM (“Addendum”) is made and entered to be effective as of the “Date Executed” which is stated above, by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, an agency of the State of Utah (“**UDOT**”), and **TOWN/CITY**, a Utah municipal corporation (the “**Local Government**”).

RECITALS

WHEREAS, the Parties hereto entered into a Master Landscape Maintenance Agreement, which may have been amended or restated from time to time (the “**Agreement**”), and the current Agreement’s finance number is _____ with an Effective Date of _____, as shown in Exhibit “A” attached hereto for reference; and

WHEREAS, this Addendum is a part of and is governed by the Agreement (including, but not limited to, the Agreement’s defined terms); and

WHEREAS, the Parties are entering this Addendum to address ongoing maintenance and care needs at the site which is stated above (the “**Site**”) in addition to the terms stated in the Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the forgoing recitals, which by this reference are incorporated into this Supplemental Agreement, and the following terms and conditions, it is agreed by and between the parties as follows:

1. Nature of Addendum. This Addendum is a part of and is governed by the Agreement, and all of the Agreement’s terms and conditions (including, but not limited to, definitions for capitalized terms) fully apply to this Addendum, except to the extent that paragraph 4 of this Addendum expressly modifies the Agreement for this Site only.

2. **Landscape Improvement Site Conditions.** [INSTRUCTIONS (DELETE THESE INSTRUCTIONS WHEN FINALIZING): IN THIS SECTION, DESCRIBE SPECIFIC SITE CONDITIONS THAT NEED ADDITIONAL TERMS TO ADDRESS ONGOING MAINTENANCE AND CARE RESPONSIBILITIES, AND STATE THE NEEDED TERMS. FOR EXAMPLE, IF UDOT HAS AGREED TO ALLOW DRAINAGE FROM THE SITE TO ENTER UDOT’S STORM DRAIN SYSTEM (WHICH NORMALLY IS NOT THE CASE), EXPLAIN THAT CONDITION HERE AND STATE THE TERMS FOR ALLOWING THE DRAINAGE. DO NOT ALTER THE MASTER AGREEMENT IN THIS SECTION. IF THIS SECTION IS NOT APPLICABLE, WRITE “N/A” AFTER THE TITLE OF THIS PARAGRAPH. IF YOU NEED TO ATTACH A MAP EXHIBIT FOR THIS PARAGRAPH, INCLUDE THIS LANGUAGE HERE: The Landscape Improvement for this Site is shown in Exhibit ___ to this Addendum, which is attached hereto and made a part hereof.]

3. **Access.** [INSTRUCTIONS (DELETE THESE INSTRUCTIONS WHEN FINALIZING): IN THIS SECTION, IF NEEDED, INCLUDE ANY ADDITIONAL TERMS ABOUT ACCESS. FOR EXAMPLE, NORMALLY UDOT REQUIRES AN ENCROACHMENT PERMIT TO OBTAIN ACCESS, BUT IN UNUSUAL CIRCUMSTANCES, A LICENSE MIGHT BE APPROPRIATE. THAT WOULD BE INCLUDED HERE. DO NOT ALTER THE MASTER AGREEMENT IN THIS SECTION. IF THIS SECTION IS NOT APPLICABLE, WRITE “N/A” AFTER THE TITLE OF THIS PARAGRAPH. IF YOU NEED TO ATTACH AN EXHIBIT FOR THIS PARAGRAPH, INCLUDE THIS LANGUAGE HERE: Access for the Landscape Improvement for this Site is shown in Exhibit ___ to this Addendum, which is attached hereto and made a part hereof.]

4. **Changes to Agreement for This Site Only.** The Agreement is hereby modified as follows for this Site only: [INSTRUCTIONS (DELETE THESE INSTRUCTIONS WHEN FINALIZING): IN THIS SECTION, IF NEEDED, STATE IN DETAIL ANY MODIFICATIONS TO THE MASTER AGREEMENT THAT WILL APPLY TO THIS SITE ONLY. IDENTIFY THE AGREEMENT PARAGRAPH THAT IS BEING MODIFIED, AND THEN STATE THE MODIFICATION. AN ADDENDUM CAN ONLY BE USED TO MAKE A SITE-SPECIFIC CHANGE TO THE MASTER AGREEMENT, NOT A GENERAL AMENDMENT TO THE MASTER AGREEMENT. ALSO, AN ADDENDUM CAN ONLY CHANGE ONGOING MAINTENANCE AND CARE RESPONSIBILITIES. IF THE LOCAL GOVERNMENT IS PROPOSING A NEW INSTALLATION OR A MAJOR CHANGE TO AN EXISTING INSTALLATION, THAT MUST BE AUTHORIZED THROUGH AN AGREEMENT, SUCH AS A BETTERMENT AGREEMENT OR A COOPERATIVE AGREEMENT, OR A PERMIT, OR A LOCAL PERMIT APPROVAL PURSUANT TO UTAH CODE § 72-3-109. SEEK LEGAL ASSISTANCE WHEN NEEDED. IF THIS SECTION IS NOT APPLICABLE, WRITE “N/A” AFTER THE TITLE OF THIS PARAGRAPH. IF YOU NEED TO ATTACH AN EXHIBIT FOR THIS PARAGRAPH, INCLUDE THIS LANGUAGE HERE: Changes for the Landscape Improvement for this Site are shown in Exhibit ___ to this Addendum, which is attached hereto and made a part hereof.]

IN WITNESS WHEREOF, the parties hereto have each caused an authorized representative to execute this Addendum to be a part of the Agreement, effective as of the date executed that is first stated above.

Add - Local Government Name				Utah Department of Transportation			
By		Date		By		Date	

<i>Title/Signature of Official</i>				Landscape Architect			
By		Date		By		Date	
<i>Title/Signature of additional official if required</i>				Region Director			
By		Date		By		Date	
<i>Title/Signature of additional official if required</i>				Comptroller's Office			

EXHIBIT A TO MLMA SITE ADDENDUM

CURRENT MASTER LANDSCAPE MAINTENANCE AGREEMENT

[ATTACH A COPY OF THE CURRENT MASTER AGREEMENT HERE AND DELETE THIS SENTENCE]

EXHIBIT ____ TO MLMA SITE ADDENDUM

[THIS IS A COVER SHEET IF YOU NEED TO INCLUDE ADDITIONAL EXHIBITS. FILL OUT THE EXHIBIT LETTER AND GIVE IT A NAME FOR EACH EXHIBIT. DELETE THIS PAGE IF THERE ARE NO OTHER EXHIBITS AFTER EXHIBIT A. REMOVE THE TEXT IN THESE BRACKETS BEFORE FINALIZING THE DOCUMENT.]