

**FENCE MAINTENANCE AGREEMENT  
ADJACENT TO STATE HIGHWAY RIGHT OF WAY  
ON ROUTE 405 WITHIN THE CITY OF CARSON**

THIS AGREEMENT is made effective this \_\_\_\_\_ day of March, 2016, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the CITY of CARSON, hereinafter referred to as "CITY" and collectively referred to as "PARTIES."

**SECTION I**

**RECITALS**

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE's right of way by Permit Number 715-6FN-1955.
2. This Agreement addresses CITY responsibility for the Fencing placed within the land adjacent to the State Highway right of way on State Route 405, as shown on Exhibit A, attached to and made a part of this Agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

**SECTION II**

**AGREEMENT**

1. In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:
  - 1.1. PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, and maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of FENCING as shown on said Exhibit "A."
  - 1.2. In the event of the need for construction of future improvements and/or revisions to the FENCING that would be 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 "A" 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.

2. CITY agrees, at CITY expense, to do the following:
  - 2.1. 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 FENCING conforming to those plans and specifications (PS&E) pre-approved by STATE.
  - 2.2. The degree or extent of maintenance work to be performed, and the standards therefore, shall be in accordance with the provisions of Section 27 of the Streets and Highways Code and the then current edition of the State Maintenance Manual.
  - 2.3. CITY will submit the final form of the PS&E, prepared, stamped and signed by a licensed landscape architect, for FENCING to STATE's District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way. All proposed FENCING must meet STATE's applicable standards.
  - 2.4. CITY shall ensure that FENCING designated on Exhibit "A" is provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
  - 2.5. 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.
  - 2.6. CITY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
  - 2.7. To remove FENCING from STATE owned areas 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.
  - 2.8. To inspect FENCING on a regular monthly basis to ensure the safe condition of the FENCING
  - 2.9. To expeditiously MAINTAIN, replace, repair or remove from service any FENCING system component that has become unsafe or unsightly.
  - 2.10. To allow random inspection of FENCING, by a STATE representative.
  - 2.11. All work by or on behalf of CITY will be done at no cost to STATE.
3. STATE agrees to do the following:
  - 3.1. May 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.

3.2. Issue encroachment permits to CITY and CITY contractors at no cost to them.

#### 4. LEGAL RELATIONS AND RESPONSIBILITIES:

4.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not party 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.

4.2. If during the term of this Agreement, CITY should cease to MAINTAIN the FENCING 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 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, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) days within which to affect that cure, or such longer period as is reasonably necessary to effect such cure, so long as CITY has commenced, and is diligently pursuing such cure within the thirty (30) day period.

4.3. 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.

4.4. 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.

5. PREVAILING WAGES:

- 5.1. Labor Code Compliance- 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, or 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 provisions of California Code of Regulations found in 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.
  - 5.2. 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) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in CITY's contracts
6. INSURANCE - CITY and its 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, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.
- 6.1. SELF-INSURED - CITY is self-insured. CITY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming the STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement in a form satisfactory to STATE, along with a signed copy of the Agreement.
  - 6.2. SELF-INSURED using Contractor - If the work performed on this Project is done under contract CITY shall require its contractors to 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, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.

7. 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.
8. 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.

THE CITY OF CARSON

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Mayor

MALCOLM DOUGHERTY  
Director of Transportation

Initiated and Approved

By: \_\_\_\_\_  
CITY Manager

By: \_\_\_\_\_  
Deputy District Director  
Maintenance District

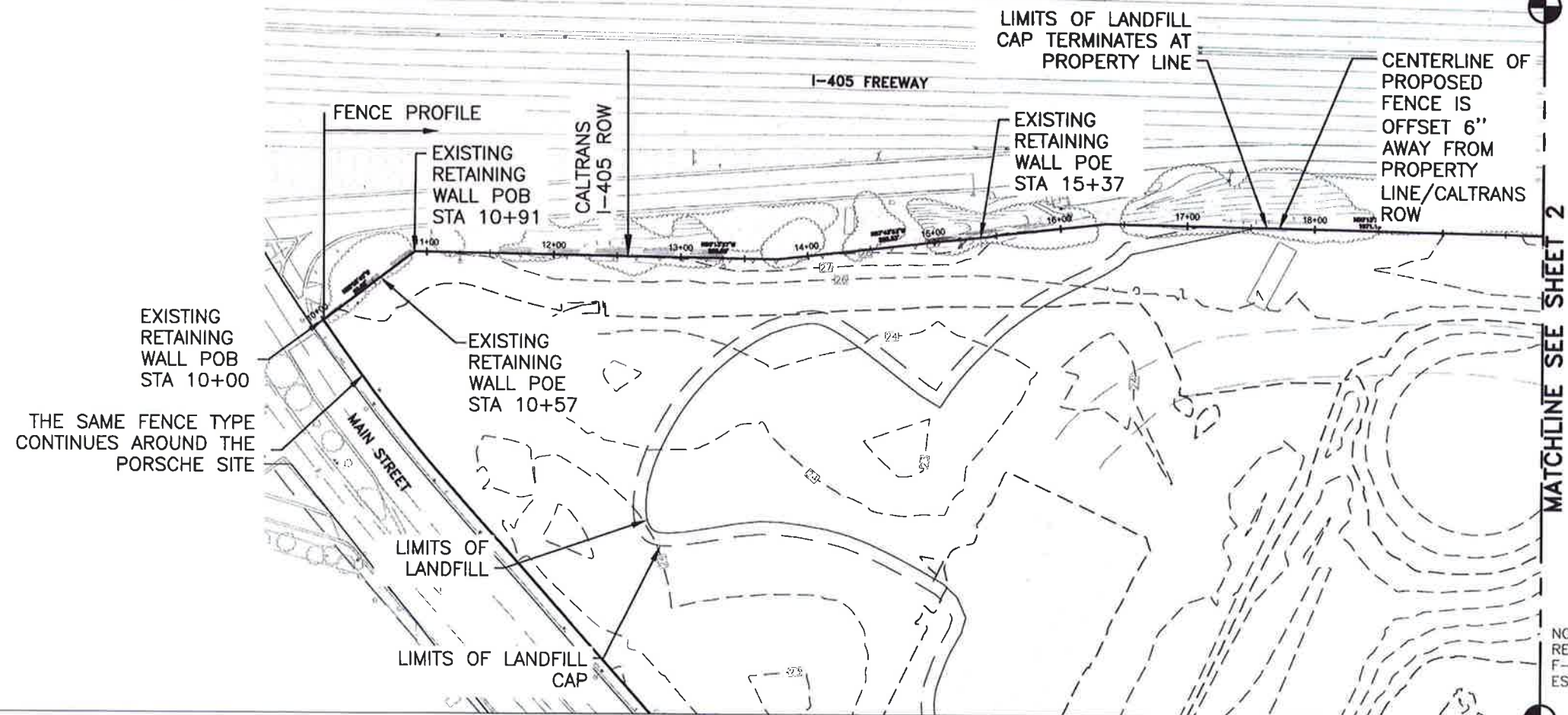
ATTEST:

By: \_\_\_\_\_  
City Clerk

As to Form and Procedure:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Attorney  
Department of Transportation



PLAN  
1" = 50'

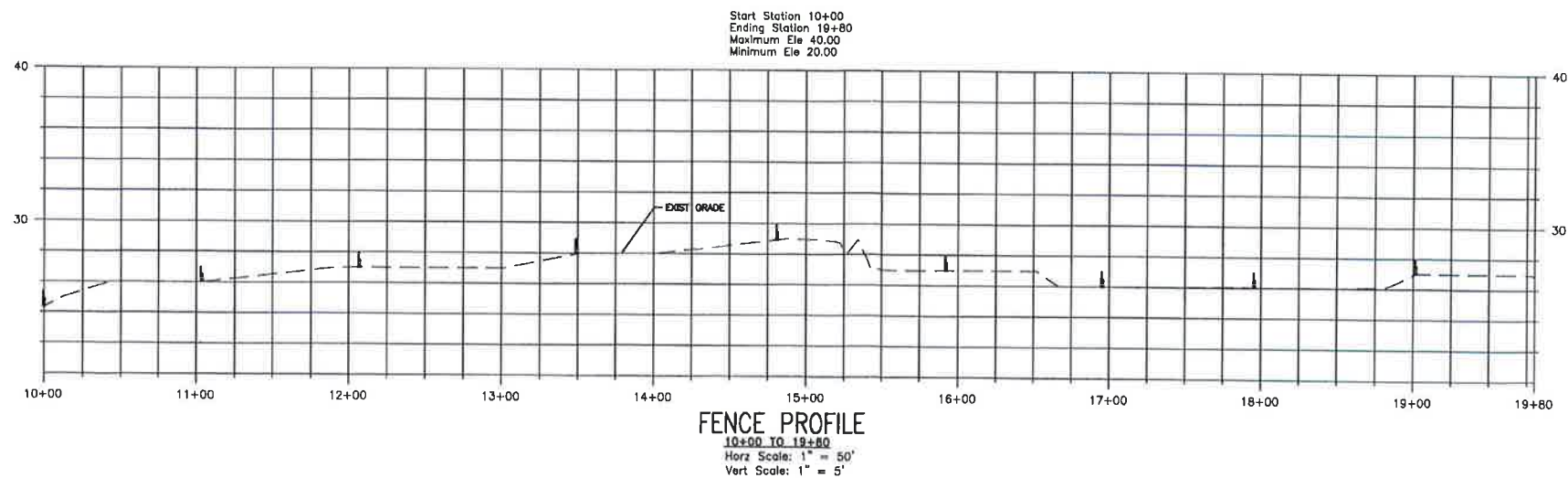


EXHIBIT "A"

DATE	ISSUED FOR	REV
07-21-2010	BALCON 1	C
02-04-2010	CALTRANS PERMIT	D
03-31-2010	CALTRANS PERMIT	E
04-16-2010	CALTRANS PERMIT	F
05-16-2010	CALTRANS PERMIT	G

Key Plan

Consultants

**IBI GROUP** Giffels Consulting, Inc.  
25200 Telegraph Road,  
Suite 200  
Southfield, Michigan 48033 USA  
Tel: 248-936-8000 Fax: 248-936-8111

Seal

License Expiration Date: 09/30/17

This drawing has been prepared solely for the use of the project and no representations of any kind made by Giffels Consulting, Inc./IBI Group to any party with whom Giffels Consulting, Inc./IBI Group has not entered into a contract.

This drawing shall not be used for construction purposes until the seal and signature of the responsible registrant appears on the drawing, and proper permit forms and related fees are transmitted by the Owner, Owner's Agent, or Contractor to the Authority Having Jurisdiction.

Project North	Detail Symbol

Project Manager <b>Ivan Petrovic</b>	Drawn <b>Matt Hudson</b>
Project Leader <b>Timothy Zimmer</b>	Checked <b>Robert McAnon Jr.</b>
Date <b>10-09-2014</b>	Dept Mgr Approval <b>Fred Leone</b>

Client

**PORSCHE**  
Porsche Cars North America, Inc.  
Atlanta, Georgia

Project

**PORSCHE EXPERIENCE CENTER  
CARSON, CALIFORNIA**

Drawing Title

**I-405 FENCE PLAN & PROFILE  
1 OF 4**

Check Scale (may be photo reduced) Scale

0 1" = 50'

Project No.  
**25ST11033000**

Drawing No.  
**USA-2-10-LP-54-SF-0050-AA-B**