

**IMPROVEMENT AND REIMBURSEMENT AGREEMENT
FOR TRAFFIC SIGNAL AND CROSSWALK CONSTRUCTION AT THE
INTERSECTION OF
NORTH ANGUS ST. & EAST CLINTON AVE.**

This Agreement is made and entered into at Fresno, California, and is effective this _____ day of June _____, 2020, (the "Effective Date"), by and between the CITY OF FRESNO, a municipal corporation ("City"), and the U.S. Department of Veterans Affairs, Veterans Health Administration or ("VA"). City and VA are sometimes also referred to in this Agreement collectively as "Parties" or individually as a "Party."

RECITALS

- A. VA owns a hospital (the VA Hospital) at the northwest corner of the intersection of North Angus Street and East Clinton Avenue (the "Intersection") and leases a parking lot (the Parking Lot) across the street at 2243 North Angus Street.
- B. VA desires to install a new traffic signal and crosswalk at the Intersection for the safety of veterans, visitors, and VA employees who travel between the VA Hospital and the Parking Lot.
- C. VA has requested the City to design and construct a traffic signal and crosswalk at the Intersection to allow for protected pedestrian crossings and include left turn phasing, as more particularly set forth in Paragraph 2 below (Signal Construction). The implementation of the traffic signal and crosswalk includes the components and any associated roadwork, including but not limited to, the installation of curb ramps compliant with the American with Disabilities Act ("ACT"), sidewalks, as well as signs and pavement markings (collectively the "Improvements").
- D. The City has determined that a traffic signal and crosswalk is necessary for the safety of the pedestrians between the VA Hospital and the Parking Lot.
- E. City and VA would like to share the costs associated with the Improvements as set forth herein. City is undertaking construction of the Improvements subject to financial contribution by VA pursuant to 38 U.S.C. § 8108.
- F. VA intends to be financially responsible for its share of design, construction, and inspection costs associated with the Improvements up to a maximum of Three Hundred Twenty Thousand Dollars (\$320,000).
- G. The Parties desire to enter into this Agreement for the purpose of setting forth their respective performance responsibilities and financial obligations for the Improvements.

AGREEMENT

THEREFORE, IN CONSIDERATION of the foregoing recitals and the agreement by the City to construct the Signal Construction as described below, VA agrees:

- 1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.

2. City's Obligations. The City shall perform the following work (Signal Construction) upon the execution of this Agreement:
 - a. North Angus Avenue & East Clinton Avenue. Design, construct, and inspect a new traffic signal and crosswalk at the intersection, as set forth in Exhibit "A," which is attached and made part of this agreement, and any ancillary surface or utility relocation work and necessary improvements related thereto.
3. Improvement Cost Obligation. Pursuant to 38 U.S.C. § 8108, VA shall make a contribution to City, of 50% of the total actual cost of the Improvements (including all associated engineering, inspection, testing, surveying, staking, and construction costs, etc.), up to a maximum contribution by VA of Three Hundred Twenty Thousand Dollars (\$320,000); City shall be responsible for the remainder of the costs. City may elect to submit progress invoices to VA during the design and construction phases. A final accounting of costs, when confirmed by the Director of Public Works, shall be used to determine VA's final cost share obligation. After VA inspects and confirms the completion of the Improvements, City shall submit an invoice electronically to Tungsten for actual costs incurred. The total amount invoiced by City shall not exceed Three Hundred Twenty Thousand Dollars (\$320,000). VA shall reimburse City in full within thirty (30) days (Due Date) of the date after the Director submits an invoice electronically of such costs. Interest shall accrue on the unpaid balance at the maximum legal rate from the Due Date.
 - a. Electronic Invoicing. Electronic invoicing (e-invoicing) utilizes the internet to allow VA to receive invoice data and image directly from vendors. VA uses a third-party contractor, Tungsten, for its electronic invoicing. Please go to this website: <http://www.tungsten-network.com/US/en/veterans-affairs/> to begin submitting electronic invoices, free of charge. The VA is doing business with the US subsidiary Tungsten, Inc. based in Atlanta GA.
 - b. System for Award Management (SAM). City must be registered in SAM to receive reimbursement of costs associated with the construction of the Improvements. Please go to this website to register: <https://www.sam.gov/SAM/> .
4. Maintenance of Improvements. Upon completion City shall be responsible for maintenance of the improvements; VA shall have no maintenance obligation related to the Improvements.
5. Cost Reimbursement. The Signal Construction is not eligible for reimbursement from the City's Development Impact Fee Program.
6. Binding. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of respective Parties hereto.
7. Gender. Whenever the context requires, the neuter shall include the masculine or feminine, or both, and the singular shall include the plural.
8. Time of the Essence. Time is of the essence of this Agreement.

9. Independence of Parties. It is understood by and between the Parties that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between the VA and City, or as constituting City as the representative or general agent of the VA for any purpose whatsoever.
10. Assignment. The VA shall make no assignment of this Agreement or of any duty or obligation of performance hereunder, in whole or in part, without the prior written consent of the City, which shall not be unreasonably withheld.
11. Indemnification. City shall indemnify, hold harmless and defend VA and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by VA, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.
12. Liability. The liability, if any, of VA for injury or loss of property, or personal injury or death in connection with this License, shall be governed exclusively by the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680).
13. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered in person, e-mail or deposited into the United States mail, with postage prepaid, addressed to the Party to which notice is to be given at the Party's address set forth below or on the signature page of this Agreement or at such other address as the Parties may from time to time designate by written notice.

If the City:

Title: Scott Mozier, Director, Department of Public Works

Address: 2600 Fresno Street, Room 4016

Phone: (559) 621-8650

E-Mail: scott.mozier@fresno.gov

If the VA:

Title: Alexander Ortiz

Phone: (559) 241-6447

E-Mail: alexander.ortiz@va.gov

14. Interpretation. The Parties acknowledge that this Agreement in its final form is the result of the combined efforts of the Parties and that, should any provision of this

Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of, or against any Party, but rather by construing the terms in accordance with their generally accepted meaning.

15. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with Federal law.
16. Extent of Agreement. Each Party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both Parties.
17. Severability. The provisions of this Improvement Agreement are severable. The invalidity or unenforceability of any one provision or part thereof shall not affect the validity or invalidity of any other provisions.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, the day and year first above written.

City:
City of Fresno,

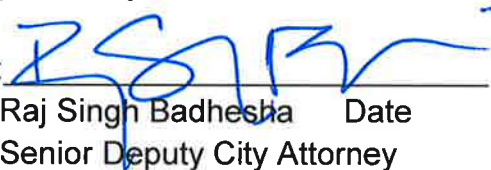
a California municipal corporation

VA:
U.S. Department of Veterans Affairs
Veterans Health Administration

By: _____
Scott L. Mozier, P.E
Public Works Director

By: _____
John Paul Niega
Contracting Officer

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ 7.1.20
Raj Singh Badhessa Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy