



1 vicinity of the area disturbed by the Project will be restored by the City at no cost to  
2 the County provided they are causally related to the installation or operation of the  
3 Project.

4 b. Any traffic striping or pavement markings affected by any repair to the pavement  
5 by the City shall be restored by the City at no cost to the County.

6 c. Requests for pavement repairs from the County staff shall be attended to by City  
7 maintenance forces within 72 hours or less, upon forwarding by County staff via  
8 phone or other electronic messaging or communication.

9 d. The City shall pay all costs incurred by the County in performing any emergency  
10 repair measures necessitated by the City's Project that may have to be performed by  
11 the County before restoration by the City.

12 e. All permanent pavement placed shall be HMA (hot mix asphalt). Cold mix  
13 asphalt is allowed only as a temporary measure to make the road passable during  
14 the reasonable time that it takes to make a permanent repair.

15 f. All other conditions in the encroachment permit issued to the City for the Project  
16 shall be in effect under the terms of this Agreement. A form of the road  
17 encroachment permit issued to the City by the County for the Project is attached as  
18 Exhibit A.  
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20 4. The Director of the County Department of Public Works and Planning in  
21 concurrence with the Director of the City Department of Public Utilities may modify, from  
22 time-to-time and in a writing signed by both Directors, the road repairs covered by this  
23 Agreement. The Director of the County Department of Public Works and Planning and  
24 the Director of the City Department of Public Utilities shall mediate any disagreements  
25 before the parties to this Agreement before pursuing any legal action.

26 5. This Agreement may not be modified except in writing signed by both parties.  
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1           6.     The County shall indemnify, hold harmless and defend the City and each of its  
2 officers, officials, employees, agents and volunteers from any and all loss, liability, fines,  
3 penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,  
4 including but not limited to personal injury, death at any time and property damage)  
5 incurred by the City, the County or any other person, and from any and all claims,  
6 demands and actions in law or equity (including attorney's fees and litigation expenses),  
7 arising from or related to the negligent or intentional acts or omissions of the County or  
8 any of its officers, officials, employees, agents or volunteers in the performance of this  
9 agreement. Nothing herein shall constitute a waiver by County of governmental  
10 immunities including California Government Code Section 810 et seq.

11           The City shall indemnify, hold harmless and defend the County and each of its  
12 officers, officials, employees, agents and volunteers from any and all loss, liability, fines,  
13 penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,  
14 including by not limited to personal injury, death at any time and property damage)  
15 incurred by the City, the County or any other person, and from any and all claims,  
16 demands and actions in law or equity (including attorney's fees and litigation expenses),  
17 arising from or related to the negligent or intentional acts or omissions of the City or any  
18 of its officers, officials, employees, agents or volunteers in the performance of this  
19 agreement. Nothing herein shall constitute a waiver by City of governmental immunities  
20 including California Government Code Section 810 et seq.

21           If there is concurrent negligence by the County or any of its officers, officials,  
22 employees, agents or volunteers, and the City or any of its officers, officials, employees,  
23 agents or volunteers, the liability for any and all such claims, demands and actions in  
24 law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be  
25 apportioned under the State of California's theory of comparative negligence.

26           This section 6 survives the termination or expiration of this agreement.

27           7.     Both the County and the City represent that they maintain insurance policies or  
28 self-insurance programs to fund their respective liabilities in an amount not less than

1 that described in section 8, below, under "Insurance." Those respective programs or  
2 policy coverage for Workers' Compensation shall contain a waiver of subrogation as to  
3 the other party and each of its officers, officials, agent, employees and volunteers.  
4 Each party shall provide proof of self-insurance, or any other certificates of insurance  
5 that may be required if either party is not self-insured, including changing the policies  
6 described above to name the other party as an additional insured, or other similar  
7 documentation, as part of this agreement.

8 8. If the City contracts any part of its obligation for repair and reconstruction work  
9 under this agreement, the City shall include the following indemnification, insurance and  
10 third party beneficiary requirements in all contracts with each subcontractor:

11 "Indemnification. To the furthest extent allowed by law including California Civil  
12 Code Section 2782, the Contractor shall indemnify, hold harmless, and defend the City  
13 of Fresno, the County of Fresno, and each of their respective officers, officials,  
14 employees, agents and volunteers from any and all loss, liability, fines, penalties,  
15 forfeitures, costs and damages (whether in contract, tort or strict liability, including but  
16 not limited to personal injury, death at any time and property damage) incurred by the  
17 City of Fresno, the County of Fresno, the Contractor, or any other person, and from any  
18 and all claims, demands and actions in law or equity (including attorney's fees and  
19 litigation expenses), arising from or related to the negligent or intentional acts or  
20 omissions of the Contractor or any of its officers, employees, or agents in the  
21 performance of this Contract. The Contractor's obligations under the preceding  
22 sentence shall apply regardless of whether the City of Fresno, the County of Fresno, or  
23 any of their respective officers, officials, employees, agents or volunteers are passively  
24 negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or  
25 damages caused by the active or sole negligence, or willful misconduct, of the City of  
26 Fresno, the County of Fresno, or any of their respective officers, officials, employees,  
27 agents or volunteers.

1           If the Contractor subcontracts all or any portion of the work to be performed  
2 under this Contract, the Contractor shall require each subcontractor to indemnify, hold  
3 harmless and defend the City of Fresno and each of its officers, officials, employees,  
4 agents and volunteers in accordance with the terms of the preceding paragraph.

5           This section survives the termination or expiration of this Contract.

6           Insurance. During the term of this Contract, the Contractor shall pay for and  
7 maintain in full force and effect all policies of insurance described below with an  
8 insurance company(ies) either (i) admitted by the California Insurance Commissioner to  
9 do business in the State of California and rated not less than "A-VII" in Best's Insurance  
10 Rating Guide, or (ii) authorized by the City of Fresno' Risk Manager or his/her designee.  
11 Insurance limits available to the City, its officers, officials, employees, agents and  
12 volunteers as additional insureds, shall be the greater of the minimum limits specified  
13 herein or the full limit of any insurance proceeds available to the named insured. The  
14 following policies of insurance are required:

- 15           (i) COMMERCIAL GENERAL LIABILITY insurance, which shall be on the  
16 most current version of Insurance Services Office (ISO) Commercial  
17 General Liability Coverage Form CG 00 01 and include insurance for  
18 "bodily injury," "property damage" and "personal and advertising injury"  
19 with coverage for premises and operations (including the use of owned  
20 and non-owned equipment), products and completed operations, and  
21 contractual liability (including, without limitation, indemnity obligations  
22 under the Contract) with limits of not less than the following:

23           \$2,000,000 per occurrence for bodily injury and property damage

24           \$2,000,000 per occurrence for personal and advertising injury

25           \$4,000,000 per occurrence for products and completed operations

26           \$4,000,000 aggregate for products and completed operations

27           \$4,000,000 general aggregate applying separately to the work performed under the  
28 Contract.

- 1 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be on the  
2 most current version of Insurance Service Office (ISO) Business Auto  
3 Coverage Form CA 00 01, and include coverage for all owned, hired, and  
4 non-owned automobiles or other licensed vehicles (Code 1 – Any Auto)  
5 with limits of not less than \$1,000,000 per accident for bodily injury and  
6 property damage.
- 7 (iii) WORKERS' COMPENSATION insurance as required under the California  
8 Labor Code.
- 9 (iv) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000  
10 each accident for bodily injury, \$1,000,000 disease policy limit and  
11 \$1,000,000 disease each employee.

12 The Contractor is responsible to pay any deductibles contained in any insurance  
13 policies required under this Contract and the Contractor is also responsible to pay all  
14 self-insured retentions.

15 The policies of insurance described above shall be endorsed to provide an  
16 unrestricted 30-calendar-day written notice in favor of the City of Fresno of any policy  
17 cancellation, change or reduction or coverage, except for the Worker's Compensation  
18 policy which shall provide a 10-calendar-day written notice of any cancellation, change  
19 or reduction of coverage. If any policies are due to expire during the term of this  
20 Contract, the Contractor shall provide a new certificate and all applicable endorsements  
21 evidencing renewal of that policy not less than 15 calendar days before the expiration  
22 date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a  
23 notice of cancellation, change or reduction in coverage, Contractor shall file with the  
24 City of Fresno a new certificate and all applicable endorsements for that policy(ies).

25 The General Liability and Automobile Liability Insurance policies shall be written  
26 on an occurrence form and shall name the City of Fresno, the County of Fresno, and  
27 their respective officers, officials, agents, employees and volunteers as additional  
28 insureds. Those policy(ies) of insurance shall be endorsed so that the Contractor's

1 insurance is primary and no contribution is required of the City of Fresno or the County  
2 of Fresno. Any Workers' Compensation insurance policy shall contain a waiver of  
3 subrogation as to the City of Fresno, the County of Fresno, and their respective officers,  
4 officials, agents, employees and volunteers. The Contractor shall furnish the City of  
5 Fresno with the certificate(s) and applicable endorsements for ALL required insurance  
6 before the commencement of work by the Contractor. The Contractor shall furnish the  
7 City with copies of the actual policies upon the request of the City of Fresno' Risk  
8 Manager at any time during the term of this Contract or any extension, and this  
9 requirement survives the termination or expiration of this Contract.

10 If at any time during the term of the Contract or any extension, the Contractor  
11 fails to maintain the required insurance in full force and effect, all work under this  
12 Contract shall be discontinued immediately, and all payments due or that become due  
13 to Contractor shall be withheld until notice is received by the City of Fresno that the  
14 required insurance has been restored to full force and effect and that the premiums for  
15 that insurance have been paid for a period satisfactory to the City of Fresno. Any failure  
16 to maintain the required insurance is sufficient cause for the City of Fresno's termination  
17 of the Contract.

18 If the Contractor subcontracts all or any portion of the services to be performed  
19 under this Contract, the Contractor shall require each subcontractor to provide  
20 insurance protection in favor of the City of Fresno, the County of Fresno, and their  
21 respective officers, officials, employees, agents and volunteers in accordance with the  
22 terms of each of the preceding paragraphs, except that the subcontractors' certificates  
23 and endorsements shall be on file with Contractor and the City of Fresno before the  
24 commencement of any work by the subcontractor.

25 Third Party Beneficiary. The parties do intend for the City of Fresno to be a third  
26 party beneficiary under this Contract and all rights, interest, and benefits of this Contract  
27 accrue to the City of Fresno.”  
28

1 9. The provisions of this agreement are severable. The invalidity or unenforceability  
2 of any one provision in this agreement does not affect the other provisions.

3 10. Each party acknowledges that it has read and fully understands the content of  
4 this Agreement. This Agreement represents the entire and integrated agreement  
5 between the parties with respect to the subject matter covered by this agreement and  
6 this agreement supersedes all prior negotiations, representations, agreements  
7 (including, without limitation, any prior annexation and right-of-way maintenance  
8 agreements to the extent they address responsibility for the normal maintenance of any  
9 dual jurisdictional City-County roads), and communications, either written or oral.

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1 IN WITNESS WHEREOF, the parties have executed this Agreement on the date set  
2 forth above.

3  
4 CITY OF FRESNO,  
5 A Municipal Corporation

6 By: \_\_\_\_\_  
7 Thomas C. Esqueda,  
8 Director  
9 Department of Public Utilities

10 ATTEST: Yvonne Spence  
11 City Clerk

12 By: \_\_\_\_\_  
13 Deputy Date

14 REVIEWED & RECOMMENDED  
15 FOR APPROVAL:

16 By: \_\_\_\_\_  
17 Scott Mozier, Date  
18 Director  
19 Department of Public Works

20 APPROVED AS TO LEGAL FORM:  
21 Douglas T. Sloan, City Attorney

22 By: \_\_\_\_\_  
23 Date

COUNTY OF FRESNO,  
FOR APPROVAL

By: \_\_\_\_\_  
Chairperson  
Board of Supervisors

ATTEST: Bernice Seidel  
Clerk to the Board of Supervisors

By: \_\_\_\_\_  
Deputy Date

REVIEWED & RECOMMENDED  
FOR APPROVAL

By: \_\_\_\_\_  
Alan Weaver, Director Date  
County Department of  
Public Works and Planning

APPROVED AS TO LEGAL FORM:  
Daniel C. Cederborg, County Counsel

By: \_\_\_\_\_  
Date

APPROVED AS TO  
ACCOUNTING FORM:

By: \_\_\_\_\_  
Vicki Crow, CPA Date  
Auditor-Controller/  
Treasurer-Tax Collector

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EXHIBIT A  
SOUTH INDUSTRIAL AREA COLLECTION SYSTEM INFRASTRUCTURE PROJECT  
ALONG  
EAST AVENUE FROM MUSCAT TO CENTRAL  
ORANGE FROM CENTRAL TO MALAGA  
MALAGA AVENUE FROM ORANGE TO CEDAR  
CEDAR AVENUE FROM MALAGA TO CENTRAL  
ROAD ENCROACHMENT PERMIT FOR THE CITY OF FRESNO  
AS ISSUED BY  
THE COUNTY OF FRESNO