

## FIRST AMENDMENT TO MAINTENANCE AGREEMENT

THIS FIRST AMENDMENT TO MAINTENANCE AGREEMENT (First Amendment) is effective as of January 1, 2019, and amends the Traffic Control Signal Maintenance Agreement No. A-81-170, dated June 16, 1981, entered into between the City of Fresno, a municipal corporation (CITY), and the County of Fresno, a political subdivision of the State of California (COUNTY).

### RECITALS

- A. CITY and COUNTY entered into Maintenance Agreement No. A-81-170, dated June 16, 1981, (the Maintenance Agreement), whereby the CITY agreed to provide maintenance of certain County-owned or partially County-owned traffic control signals, as more specifically provided therein.
- B. CITY and COUNTY now desire to amend the Maintenance Agreement to clarify COUNTY's financial obligations and to specifically limit the CITY's liability to third parties caused solely by the gross negligence, or caused by the willful misconduct of CITY.

### AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree that the aforesaid agreement be amended as follows:

- 1. Section 2 of the Maintenance Agreement is deleted in its entirety and replaced with the following:

Modification of Traffic Signal List. This Agreement shall be subject to modification by reason of annexation or by mutual written consent of the City of Fresno Public Works Director or his/her designee and County Director of Public Works and Planning or his/her designee for the purpose of deleting or adding additional traffic signals. The City of Fresno Public Works Director or his/her designee shall submit the original copy of the written consent to the City Clerk, and the Clerk of the Board of Supervisors to be kept along with an executed copy of this Agreement.

- 2. Section 5 of the Maintenance Agreement is deleted in its entirety and replaced with the following:

Preventive Maintenance. For purposes of this Agreement, "preventive

maintenance” shall mean maintenance performed on predetermined schedule. The frequency and description of preventive maintenance to be performed is attached hereto as Appendix “B” and incorporated by reference herein. Modifications to Appendix “B” must be jointly approved in writing by the City of Fresno Director of Public Works or his/her designee and the County Director of Public Works and Planning or his/her designee for signals owned jointly by the CITY and COUNTY. Modifications to Appendix “B” may be made by the County Director of Public Works and Planning or his/her designee for those locations that are totally within the unincorporated area of the COUNTY. The City of Fresno Public Works Director or his/her designee shall submit the written modifications to the City Clerk, and the Clerk of the Board of Supervisors to be kept along with an executed copy of this Agreement.

3. Section 7 of the Maintenance Agreement is deleted in its entirety and replaced with the following:

Extraordinary Work. For purposes of this Agreement, “extraordinary work” shall mean work to repair major damage, replace obsolete equipment, make modifications to original design, review future signal plans and specifications, project inspection or other work necessary to restore signals of non-emergency nature to a permanent operable condition, but shall not include routine or emergency repair on 100% COUNTY signals and signals jointly owned by CITY and COUNTY. The CITY shall perform extraordinary work, provided the County Public Works and Planning Director or his/her designee approves such work in writing prior to performance of such work by the CITY.

4. Section 8 of the Maintenance Agreement is deleted in its entirety and replaced with the following:

Reimbursement. The COUNTY shall reimburse the CITY for all the CITY's costs associated with maintaining and repairing 100% COUNTY-owned traffic control signals. With respect to traffic control signals owned jointly by the CITY and COUNTY, the COUNTY shall reimburse the CITY for the COUNTY's proportionate share of the total cost associated with maintaining and repairing such jointly-owned signals. The COUNTY's share of the total cost shall be in the same proportion as the total number of approach legs under the jurisdiction that the County bears to the total number of approach legs under the jurisdiction of both the CITY and COUNTY. For each fiscal year, and no later than June 30<sup>th</sup> of the preceding fiscal year year, CITY will provide COUNTY with a list of costs, including rates, descriptions, and other information as may be requested by COUNTY, for which CITY intends to seek reimbursement from COUNTY in regard to maintenance and repair services under this Agreement. For the respective fiscal year, CITY may not charges for costs not identified in list without the express written consent of COUNTY, which may be provided by the Director of Public Works and

Planning, or his/her designee.

5. Section 9 of the Maintenance Agreement is deleted in its entirety and replaced with the following:

Billing. The CITY shall bill the COUNTY for reimbursement of the CITY's costs on a quarterly basis. Said bill shall itemize the CITY's cost of labor and overhead, materials, equipment and electrical service. Standard CITY equipment rental rates, where applicable, shall be used to determine equipment costs.

6. Section 12 of the Maintenance Agreement is deleted in its entirety and replaced with the following:

Indemnification. To the furthest extent allowed by law, COUNTY shall indemnify, hold harmless and defend CITY 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 CITY, COUNTY 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 out of performance of this Agreement. COUNTY'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers; provided nothing herein shall constitute a waiver by COUNTY of governmental immunities including California Government Code section 810 et seq.

This section shall survive termination or expiration of this Agreement.

7. APPENDIX "A" and "B" of the Maintenance Agreement is deleted in its entirety and replaced with APPENDIX "A" and "A" B as attached to this amendment.
8. COUNTY and CITY agree that this First Amendment is sufficient to amend the Agreement; and that upon execution of this First Amendment , the Agreement and First Amendment together shall be considered the Agreement.

The Agreement, as hereby amended, is ratified and continued. All provisions, terms, covenants, conditions and promises contained in the Agreement, and not amended herein, shall remain in full force and effect.

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

CITY OF FRESNO,  
a California municipal corporation

COUNTY OF FRESNO,  
a political subdivision of the State of California

By: \_\_\_\_\_  
Scott Mozier, Director  
Department of Public Works

By: \_\_\_\_\_  
Ernest Buddy Mendez, Chairman  
Board of Supervisors of  
the County of Fresno

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Raj Singh Badhesha                      Date  
Senior Deputy City Attorney

ATTEST:  
YVONNE SPENCE, MMC  
City Clerk

ATTEST:  
BERNICE E. SEIDEL  
Clerk to the Board of Supervisors  
County of Fresno

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

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

FOR ACCOUNTING USE ONLY

ORG No            0010  
Account No.    4510  
Fund No.        7295  
Subclass No.   11000