

1 **AGREEMENT**

2 This Agreement is made and entered into this ____ day of _____,
3 2016, by and between the City of Fresno, a municipal corporation, (City) and the County of
4 Fresno, a political subdivision of the State of California, (County) to define the
5 responsibilities and obligations of the aforementioned Parties for the placement of asphalt
6 concrete overlay and the performance of other improvements along Bullard Avenue.

7 **RECITALS:**

8 WHEREAS, segments of Bullard Avenue, specifically between Blackstone and
9 Nantucket Avenues, Palm and West Avenues, and Sequoia and Marks Avenues
10 (hereinafter the "Project Limits") are located across City / County jurisdictional boundaries,
11 with forty-eight percent (48%) within the jurisdiction of County and fifty-two percent (52%)
12 within the jurisdiction of City; and

13 WHEREAS, the contemplated improvements generally consist of milling the road
14 surface, placing a hot mix asphalt overlay, constructing Americans with Disabilities Act
15 (ADA) compliant curb ramps, and installing new signal loop detectors, all within the Project
16 Limits (hereinafter the "Project"); and,

17 WHEREAS, City and County, while maintaining their respective jurisdictions,
18 recognize it will be to their mutual benefit to complete the Project as a cooperative
19 endeavor; and

20 WHEREAS, Project will be primarily funded through local funding sources; and

21 WHEREAS, City and County will each contribute the resources, financial or
22 otherwise, necessary to fully fund the Project; and

23 WHEREAS, preliminary engineering (PE), construction engineering (CE), and
24 construction (CON), are necessary to complete the Project; and

25 WHEREAS, the parties intend, by entering into this Agreement, to establish the
26 terms and conditions of their cooperative approach regarding completion of this Project.

27 NOW, THEREFORE, in consideration of the mutual acknowledgments, covenants,
28 and conditions herein contained, it is hereby agreed as follows:

1 1. The Project shall be performed and administered by City or its agents thereof
2 and shall be constructed under a single construction contract.

3 2. Upon completion of Project, each Party's jurisdictional and maintenance
4 responsibilities shall remain unchanged from that which existed prior to completion of the
5 Project except as modified through any street maintenance agreement entered into
6 between City and County.

7 3. City shall, either with City staff or by contracting with a consultant, provide PE
8 in accordance with the requirements of the funding agencies and all federal, state, and
9 local laws, including:

10 a. Administering California Environmental Quality Act Environmental
11 compliance.

12 b. Oversight of any consultant(s) employed by City for the design of the
13 Project.

14 c. Preparation and administration of permits necessary for the
15 construction of the improvements.

16 d. Performing the administration for the advertisement, bidding, and
17 award of the Project construction contract.

18 e. Providing Design Engineering services; including preparation of plans,
19 specifications, and engineer's estimates and other Project documents necessary for the
20 bidding and construction of the Project.

21 4. City shall provide to County, for County's review and approval, plans and
22 specifications for the work to be performed within County's jurisdiction.

23 5. Acquisition of necessary right-of-way for the installation of ADA compliant
24 ramps shall be performed by City staff and the cost of acquisition shall be borne by the
25 appropriate jurisdiction.

26 6. County shall waive all County fees applicable to the Project including fees for
27 technical assistance, permits, plan checks, and inspections.

28 7. City shall provide CE, including general administration of the construction

1 contract and furnishing all necessary field engineering, inspection, and testing for
2 performance of the construction work. County may, at its option, inspect the construction
3 contractor's work; provided, however, that any costs incurred by County for any such
4 inspection will be borne entirely by County, and those costs will not be included as part of
5 the Project costs upon which the percentage allocation of cost sharing hereunder is
6 determined, nor will such inspection costs be reimbursable through project funding sources.

7 8. County and City shall each be responsible for the actual costs of the County
8 and City obligations identified in the Engineer's Estimates attached as Attachment 1 hereto.
9 The estimated cost for the County is \$1,422,700 and the cost for the City is \$1,058,500.

10 9. Any addenda or revisions to Project's approved construction documents for
11 improvements performed within County's jurisdiction (except for adjustments made to
12 account for actual quantities used in construction of the Project), resulting in an increase in
13 bid item quantity or cost of any bid item by more than ten percent (10%), shall be approved
14 by City's Director of Public Works, or designee, and County's Director of Public Works and
15 Planning, or designee.

16 10. County's share of cost as shown in the preliminary estimate of probable costs
17 (Exhibit A) shall not be increased by more than ten percent (10%) (except for adjustments
18 made to account for actual quantities used in construction of the Project), unless otherwise
19 approved in writing by County's Director of Public Works and Planning.

20 11. If the lowest responsible bid for Project's construction contract does not
21 exceed the engineer's estimate, including contingency, by more than ten percent (10%),
22 City's Department of Public Works shall recommend to the City Council that the
23 construction contract be awarded to that bidder. In the event that the lowest responsible
24 bid for Project's construction contract exceeds the engineer's estimate by more than ten
25 percent (10%), then City's Department of Public Works will not recommend that the City
26 Council award the construction contract, unless mutually agreed upon in writing by City's
27 Director of Public Works and County's Director of Public Works and Planning.

28 12. If the lowest responsible bidder's proposal is more than ten percent (10%)

1 above the engineer's estimate, including contingency, and award of the project is mutually
2 agreed upon in accordance with Section 11 of this agreement, County's share of cost will
3 be adjusted to reflect the increased cost; however, County's share of cost shall not exceed
4 the share of cost percentage specified in this Agreement unless mutually agreed upon in
5 writing by City's and County's respective Directors of Public Works.

6 13. Within forty-five (45) days after award of Project's construction contract by the
7 City Council, County shall deposit with City an amount equal to ninety percent (90%) of
8 County's estimated share of cost as shown in Exhibit A to this Agreement.

9 14. Final project costs and County's share thereof will not be determined until
10 construction is completed and the Project is accepted by both City and County and closed
11 out in accordance with the agency's policies.

12 15. Following final acceptance of the Project by City and County, and within forty-
13 five (45) days of County's receipt of an invoice from City requesting County's payment of
14 the remaining balance of County's share of costs as adjusted (if necessary), in accordance
15 with actual costs and the terms of this Agreement, County shall deliver payment in full of
16 such remaining balance to City's Department of Public Works

17 16. City agrees to indemnify, save, hold harmless, and at County's request,
18 defend County, its officers, agents, and employees from any and all costs and expenses,
19 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or
20 corporation who may be injured or damaged by the performance, or failure to perform, by
21 City, its officers, agents and employees, under this Agreement; provided, that nothing
22 herein shall constitute a waiver by City of governmental immunity that may be available as
23 a defense to any such third-party claim(s) under or pursuant to Government Code Section
24 810 et seq. This section shall survive expiration or termination of this Agreement.

25 17. County agrees to indemnify, save, hold harmless, and at City's request,
26 defend City, its officers, agents, and employees from any and all costs and expenses,
27 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or
28 corporation who may be injured or damaged by the performance, or failure to perform, by

1 County, its officers, agents and employees, under this Agreement; provided, that nothing
2 herein shall constitute a waiver by County of governmental immunity that may be available
3 as a defense to any such third-party claim(s) under or pursuant to Government Code
4 Section 810 et seq. This section shall survive expiration or termination of this Agreement.

5 18. Without limiting the applicability or scope of the indemnification provisions
6 contained in Sections 16 and 17; County and City shall maintain, at their sole expense,
7 insurance policies or self-insurance programs including, but not limited to, an insurance
8 pooling arrangement and/or Joint Powers Agreement sufficient to fund their respective
9 liabilities hereunder throughout the term of this Agreement. Coverage shall be provided for
10 comprehensive general liability, automobile liability, professional liability, and workers'
11 compensation.

12 19. Neither party shall assign, transfer, or sub-contract this Agreement, nor any of
13 its respective rights or duties hereunder without the written consent of the other party.

14 20. This Agreement shall become effective immediately upon execution and shall
15 expire on June 30, 2017; provided, however, that its term may be extended by a maximum
16 of two additional one-year terms, upon mutual written consent of City's Director of Public
17 Works and County's Director of Public Works and Planning. This Agreement may be
18 executed in one or more counterparts, each of which when executed will be deemed to
19 constitute one and the same instrument and agreement.

20 21. The provisions of this Agreement are severable. The invalidity or
21 unenforceability of any one provision of this Agreement shall not affect the other provisions.

22 22. This Agreement may be modified only by written instrument executed by duly
23 authorized representatives of both City and County.

24 23. Each party acknowledges that it has read and fully understands the contents
25 of this Agreement and represents that this entire Agreement between City and County with
26 respect to the subject matter contained herein and that this Agreement supersedes all prior
27 negotiations, representations, or agreements, either written or oral.

28 [signatures on following page]

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
2 and year first herein above written.

3
4 CITY OF FRESNO:

COUNTY OF FRESNO

5
6 BY: _____
7 ROBERT ANDERSEN, ASSISTANT
8 DIRECTOR,
9 DEPARTMENT OF PUBLIC WORKS

BY: _____
ERNEST BUDDY MENDES, CHAIRMAN
BOARD OF SUPERVISORS

10 APPROVED AS TO LEGAL FORM
CITY ATTORNEY

REVIEWED AND RECOMMENDED FOR
APPROVAL

11 BY: _____
12 RAJ SINGH BADHESHA, DEPUTY

BY: _____
ALAN WEAVER, DIRECTOR,
DEPARTMENT OF PUBLIC WORKS AND
PLANNING

13
14
15 ATTEST: YVONNE SPENCE, CMC,
16 CITY CLERK

APPROVED AS TO LEGAL FORM
DANIEL C. CEDERBORG, COUNTY
COUNSEL

17 BY: _____

BY: _____
DEPUTY

18
19 APPROVED AS TO ACCOUNTING FORM

20 BY: _____
21 VICKI CROW, C.P.A.
22 AUDITOR-CONTROLLER/TREASURER-
23 TAX COLLECTOR
24
25
26
27
28

CITY OF FRESNO - DEPARTMENT OF PUBLIC WORKS

BY: TG DATE: 04/27/16 ACCT. FILE NO Sheet 1 of 1
CHKD. DATE: DWG. REF.
SUBJECT **BULLARD OVERLAY - BLACKSTONE TO MARKS (CITY PORTION)**

PRELIMINARY BUDGET ESTIMATE

[illegible]

NOTES:

CITY OF FRESNO - DEPARTMENT OF PUBLIC WORKS

BY: TG DATE: 04/27/16 ACCT. _____ FILE NO _____ Sheet 1 of 1
CHKD. _____ DATE: _____ DWG. REF. _____
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[illegible]

NOTES: