

AGREEMENT FOR REPAIR OF COUNTY ROADS

This Agreement is effective _____, 2016 (Effective Date) between the CITY OF FRESNO, a municipal corporation in the State of California, (City), and the COUNTY OF FRESNO, a political subdivision of the State of California, (County).

RECITALS

The City proposes to install recycled water pipelines along Hughes Avenue (Belmont – Union Pacific Railroad), Cornelia Avenue (Belmont – University), Cornelia Avenue (Weldon – Harvard), Cornelia Avenue (Cornell – Shields), Valentine Avenue (Belmont to Franklin), Franklin Avenue (Belmont – approximately 325' east of Valentine), Clinton Avenue (Polk – Cornelia) , and Polk Avenue (Clinton – Yale) known as Southwest Quadrant Recycled Water Distribution System SW1D, SW1C2 & Pump Station Project (Project); and;

The City will repair or reconstruct roadways lying within the unincorporated area of the County as part of the Project encroachment permit conditions.

The parties therefore agree as follows:

1. The City shall assume financial responsibility for all road repairs required as a result of the installation or operation of the Project including, but not limited to, repairs to roadway and pavement, drainage facilities, signing, stenciling, striping, and pedestrian improvements. This obligation shall remain in effect until the Project pipeline is removed by the City and the City receives a written release from the County.

2. The City agrees that the terms and conditions of this agreement are subject to the encroachment permit to be issued by the County to the City, and all affecting riders, as may be issued to the City and its contractor, as provided in the award of contract by the City's Council.

3. Further, as previously agreed to and understood by all parties signatory to the encroachment permit issued by the County to the City and its contractor, the following terms of repair by the City are as follows:

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a. Road reconstruction performed as part of the restoration of Hughes, Cornelia, Valentine, Franklin, Clinton and Polk Avenues for the Project shall be under warranty by the City. Under that warranty, future blow-outs, sink holes, subsidence and the like, in the vicinity of the area disturbed by the Project will be restored by the City at no cost to the County provided they are causally related to the installation or operation of the Project.

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

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

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

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

f. All other conditions in the encroachment permit issued to the City for the Project shall be in effect under the terms of this Agreement. A form of the road encroachment permit issued to the City by the County for the Project is attached as **Exhibit A**.

4. The Director of the County Department of Public Works and Planning in concurrence with the Director of the City Department of Public Utilities may modify, from time-to-time and in a writing signed by both Directors, the road repairs covered by this Agreement. The Director of the County Department of Public Works and Planning and the Director of the City Department of Public Utilities shall mediate any disagreements before the parties to this Agreement before pursuing any legal action.

5. This Agreement may not be modified except in writing signed by both parties.

6. The County shall indemnify, hold harmless and defend the 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 the City, the 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 from or related to the negligent or intentional acts or omissions of the County or any of its officers, officials, employees, agents, or volunteers in the performance of this agreement. Nothing herein shall constitute a waiver by County of governmental immunities including California Government Code Section 810 et seq.

The City shall indemnify, hold harmless and defend the County 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 by not limited to personal injury, death at any time and property damage) incurred by the City, the 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 from or related to the negligent or intentional acts or omissions of the City or any of its officers, officials, employees, agents, or volunteers in the performance of this agreement. Nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

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

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

7. Both the County and the City represent that they maintain insurance policies or self-insurance programs to fund their respective liabilities in an amount not less than that described in section 8, below, under "Insurance." Those respective programs or policy

coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agent, employees and volunteers. Each party shall provide proof of self-insurance, or any other certificates of insurance that may be required if either party is not self-insured, including changing the policies described above to name the other party as an additional insured, or other similar documentation, as part of this agreement.

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

"Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, the Contractor shall indemnify, hold harmless, and defend the City of Fresno, the County of Fresno, and each of their respective 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 the City of Fresno, the County of Fresno, the Contractor, 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 from or related to the negligent or intentional acts or omissions of the Contractor or any of its officers, employees, or agents, in the performance of this Contract. The Contractor's obligations under the preceding sentence shall apply regardless of whether the City of Fresno, the County of Fresno, or any of their respective officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of the City of Fresno, the County of Fresno, or any of their respective officers, officials, employees, agents, or volunteers.

If the Contractor subcontracts all or any portion of the work to be performed under this Contract, the Contractor shall require each subcontractor to indemnify, hold

harmless and defend the City of Fresno and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section survives the termination or expiration of this Contract.

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

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

\$1,000,000 per occurrence for bodily injury and property damage

\$1,000,000 per occurrence for personal and advertising injury

\$2,000,000 per occurrence for products and completed operations

\$2,000,000 aggregate for products and completed operations

\$2,000,000 general aggregate applying separately to the work performed under the Contract.

- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be on the most current version of Insurance Service Office (ISO) Business Auto

Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 – Any Auto) with limits of not less than \$1,000,000 per accident for bodily injury and property damage.

- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

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

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

The General Liability and Automobile Liability Insurance policies shall be written on an occurrence form and shall name the City of Fresno, the County of Fresno, and their respective officers, officials, agents, employees and volunteers as additional insureds. Those policy(ies) of insurance shall be endorsed so that the Contractor's insurance is primary and no contribution is required of the City of Fresno or the County

of Fresno. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City of Fresno, the County of Fresno, and their respective officers, officials, agents, employees and volunteers. The Contractor shall furnish the City of Fresno with the certificate(s) and applicable endorsements for ALL required insurance before the commencement of work by the Contractor. The Contractor shall furnish the City with copies of the actual policies upon the request of the City of Fresno' Risk Manager at any time during the term of this Contract or any extension, and this requirement survives the termination or expiration of this Contract.

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

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

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

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

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

[Signatures appear on next page.]

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

CITY OF FRESNO,
A Municipal Corporation

COUNTY OF FRESNO,
FOR APPROVAL

By: _____
Thomas C. Esqueda, Director
Department of Public Utilities

By: _____
Chairperson
Board of Supervisors

ATTEST:
Yvonne Spence
City Clerk

ATTEST:
Bernice Seidel
Clerk to the Board of Supervisors

By: _____
Deputy Date

By: _____
Deputy Date

REVIEWED & RECOMMENDED
FOR APPROVAL:

REVIEWED & RECOMMENDED
FOR APPROVAL

By: _____
Scott Mozier, Date
Director of Public Works

By: _____
Steven E. White, Director Date
County Department of
Public Works and Planning

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

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

By: _____
Date

By: _____
Date

APPROVED AS TO
ACCOUNTING FORM:

By: _____
Oscar J. Garcia, CPA Date
Auditor-Controller/
Treasurer-Tax Collector

Attachment: Exhibit A

EXHIBIT A

SOUTHWEST QUADRANT RECYCLED WATER DISTRIBUTION SYSTEM PROJECT
SW1D, SW1C2 AND PUMP STATION

ALONG

HUGHES AVENUE FROM BELMONT TO UNION PACIFIC RAILROAD

CORNELIA AVENUE FROM BELMONT TO UNIVERSITY

CORNELIA AVENUE FROM WELDON TO HARVARD

CORNELIA AVENUE FROM CORNELL TO SHIELDS

VALENTINE AVENUE FROM BELMONT TO FRANKLIN

FRANKLIN AVENUE FROM VALENTINE TO APPROXIMATELY 325' EAST
OF VALENTINE

CLINTON AVENUE FROM POLK TO CORNELIA

AND

POLK AVENUE FROM CLINTON TO YALE

ROAD ENCROACHMENT PERMIT FOR THE CITY OF FRESNO

AS ISSUED BY

THE COUNTY OF FRESNO