

1 **MASTER DUAL JURISDICTION COOPERATIVE AGREEMENT**

2 This Master Dual Jurisdiction Cooperative Agreement ("Agreement") is made and
3 entered into this ____ day of _____, 2019, by and between the City of
4 Fresno, a municipal corporation (City), and the County of Fresno, a political subdivision
5 of the State of California (County) (collectively, the Parties) with respect to Projects
6 (defined below) performed cooperatively by the Parties.
7

8 **RECITALS:**

- 9 A. City and County recognize that it will be to their mutual benefit to perform, as a
10 cooperative endeavor, certain construction projects for the improvement, repair
11 or maintenance of roads and associated traffic signals, bridges, and facilities
12 located across City/County jurisdictional boundaries, as to which the City and
13 County share jurisdictional responsibility ("Projects").
14
15 B. It is the intent of the Parties that they shall enter into a sub-agreement or a
16 Project Specific Supplement Agreement ("PSS") for any such Project and that
17 this Agreement shall be incorporated therein by reference and provide the
18 general terms governing such dual jurisdictional projects.
19
20 C. The Parties now desire to enter into this Agreement to govern such dual joint
21 jurisdiction projects.
22

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

- 25 1. **Recitals.** Each and all of the foregoing recitals of background facts are
26 incorporated herein by this reference as though set forth herein verbatim.
27
28 2. **Purpose.** The purpose of this Agreement is to set forth each Party's general

obligations governing projects which fall within the scope of this Agreement, subject to the terms of a subsequently executed PSS between the Parties.

3. **Scope.** This Agreement shall govern the following types of collaborations:

a. **Dual Jurisdiction Projects.** Projects (as defined hereinabove) located within both City and County jurisdictions as to which a separate PSS has been executed between the Parties, including, but not limited to, road pavement overlay projects.

b. **Limitations.** This Agreement shall not govern projects which are occasioned by conditions imposed upon private development projects.

4. **Term.** This Agreement shall expire on December 31, 2024 (the "Expiration Date"), unless otherwise terminated hereunder, provided, that this Agreement shall continue in effect beyond the Expiration Date as to those Projects for which a PSS is executed prior to the Expiration Date. The term of this Agreement may be extended by mutual agreement of the Parties.

5. **Project Priority and Selection.** Projects performed hereunder shall be prioritized as follows:

a. **Individual Project Priority Lists.** Each Party shall prepare a list of its twenty (20) highest priority projects ("Priority List"). Rankings shall take into consideration traffic volumes, pedestrian and vehicle safety, development, funding availability, utility requirements, and the applicable Pavement Condition Index ("PCI") assigned to a roadway in that Party's Pavement Management System ("PMS").

b. **Determination of Priority List.** Following submittal by each Party of its

1 Priority List, the Parties shall consult and together shall prepare, upon
2 approval of City's Director of Public Works and County's Director of Public
3 Works and Planning, a joint list of up to twenty (20) Projects (selected
4 from projects listed on each individual Priority List), ranked from highest to
5 lowest priority, which shall be the Tier 1 Priority List. As used hereinafter,
6 either City's Director or County's Director may be referred to as "Director"
7 as appropriate; any reference thereto shall include a reference to any
8 authorized designee of said Director.
9

- 10 c. **Modification of Priority List.** The Tier I Priority List shall remain in effect
11 until such time as one of the Directors requests modification by submitting
12 a revised Priority List for that Party. Such request shall initiate the same
13 protocol for the Parties' joint preparation of an updated Tier 1 Priority List.
14

- 15 6. **Project Specific Supplemental Agreements.** For each Project hereunder, the
16 Parties shall enter into a Project Specific Supplement Agreement substantially in
17 the form attached hereto as Exhibit A. Each PSS shall:
18

- 19 a. Identify the location and boundaries of the Project;
20 b. Set forth each Party's jurisdictional share (the percentage of the estimated
21 Project cost for which each Party is responsible, which generally shall be
22 based upon the percentage of the Project scope that lies within each
23 Party's jurisdiction);
24 c. Identify the anticipated funding source(s) for the Project and any specific
25 requirements attached thereto; and
26 d. Identify the Lead Agency for Project coordination and completion.
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1 7. **Project Execution Obligations.**

2 a. **Construction Contract.** Each Project shall be performed and
3 administered by the Lead Agency, or its agents thereof, and shall be
4 constructed under a single construction contract.

5 b. **Project Engineering.** Lead Agency, either with its own staff or by
6 contracting with a consultant, shall provide Project Engineering in
7 accordance with the requirements of the funding agencies and all federal,
8 state, and local laws, including:

9 i. Administering California Environmental Quality Act Environmental
10 and National Environmental Policy Act compliance, as applicable.

11 ii. Providing Design Engineering services; including preparation of
12 plans, specifications, and engineer's estimates and other Project
13 documents necessary for the bidding and construction of the
14 Project.

15 iii. Oversight of consultant(s) employed by Lead Agency for Project
16 design.

17 iv. Ensuring that the Project design complies with all applicable design
18 standards, including, but not limited to, standards associated with
19 the Americans with Disabilities Act.

20 v. Preparation and administration of applicable permits.

21 vi. Advertisement, bidding, and award of the Project construction
22 contract.

23 vii. Public outreach.

- 1 c. **Plan Review and Approval.** Lead Agency shall provide Participating
2 Agency the plans, specifications, and engineer's estimates for each
3 Project for review and approval. Participating Agency shall indicate its
4 approval via the signatures of its Director upon the title sheet of the
5 Project plans.
6
- 7 d. **Right-of-Way Engineering.** Lead Agency shall perform Right-of-Way
8 Engineering and identify all rights-of-way needed to construct the Project,
9 within all applicable jurisdictions. Right-of-Way Engineering shall include,
10 but not be limited to, preparation of legal descriptions and drawings. Each
11 jurisdiction shall be responsible for review and approval of deeds for
12 property within its boundaries.
13
- 14 e. **Right-of-Way Acquisition.** Unless otherwise agreed upon pursuant to a
15 specific Project PSS, the agency within whose jurisdiction the right-of-way
16 to be acquired is situated shall be responsible for acquisition of such right-
17 of-way. ROW Acquisition includes, but is not limited to, obtaining title
18 reports, performing appraisals, and conducting negotiations and such
19 legal proceedings as subsequently may become necessary.
20
- 21 f. **Construction Engineering.** Lead Agency shall be responsible for
22 Construction Engineering, including general administration of the
23 construction contract and furnishing all necessary field engineering,
24 inspection, and testing for performance of the construction work.
25 Participating Agency may, at its option and at its sole and independent
26 cost, inspect the construction contractor's work.
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- 1 g. **Permits.** If allowed by the provisions of Participating Agency's applicable
2 ordinances and the applicable PSS, Participating Agency shall issue a "no
3 fee" encroachment permit for Project work done within Participating
4 Agency's jurisdiction.

5 8. **Award of Construction Contact.**

- 6
7 a. If the lowest responsive and responsible bid for Project's construction
8 contract does not exceed the engineer's estimate, including contingency,
9 by more than ten percent (10%), Lead Agency's Director shall recommend
10 to its governing body that the construction contract be awarded to that
11 bidder.
12
13 b. In the event that the lowest responsive and responsible bid for Project's
14 construction contract exceeds the engineer's estimate by more than ten
15 percent (10%), then Lead Agency's Director will not recommend that its
16 governing body award the construction contract, unless mutually agreed
17 upon in writing by both Lead Agency's Director and Participating Agency's
18 Director.
19
20 c. If the lowest responsible bidder's proposal is more than ten percent (10%)
21 above the engineer's estimate, including contingency, and award of the
22 Project is mutually agreed upon in accordance with Subsection 8(b)
23 above, then in such event, Participating Agency's percentage share of
24 cost will be adjusted to reflect the increased cost; however, Participating
25 Agency's share of cost shall not exceed the percentage share of cost
26 specified in the applicable PSS unless mutually agreed upon in writing by
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City's and County's respective Directors.

- d. All recommendations by Lead Agency's Director involving bids over the engineer's estimate shall consider the availability of funding or budgetary appropriations.

9. **Cost Allocation.**

- a. **Cost Share.** Generally, unless otherwise agreed in the PSS for that Project or as specifically provided in Subsection 11(c) below, each Party shall be responsible for costs in proportion to the percentage of Project located within the party's jurisdiction. Participating Agency and Lead Agency shall each be responsible for the actual costs of the Participating Agency and Lead Agency obligations identified in the Preliminary Engineer's Estimates attached as an Exhibit to the applicable PSS.
- b. **Revisions to Participating Agency's Project Costs.** Any addenda or revisions to Project's approved construction documents for improvements performed within Participating Agency's jurisdiction (except for adjustments made to account for actual quantities used in construction of the Project), resulting in an increase in bid item quantity or cost of any bid item by more than ten percent (10%), shall be approved by both Directors.
- c. **Cost Increases.** Participating Agency's share of costs, as shown in the Preliminary Engineer's Estimate of probable costs (an Exhibit to the applicable PSS), shall not be increased by more than ten percent (10%) (except for adjustments made to account for actual quantities used in construction of the Project), unless otherwise approved in writing by

Participating Agency's Director.

10. **Deposit by Participating Agency.** Within sixty (60) days after award of Project's construction contract by Lead Agency's governing body, Participating Agency shall deposit with Lead Agency an amount equal to ninety percent (90%) of Participating Agency's estimated cost share as determined in accordance with the PSS.

11. **Reconciliation of Costs.**

a. Final Project costs and Participating Agency's share thereof will not be determined until construction is completed and the Project is accepted by both Lead Agency and Participating Agency and closed out in accordance with each agency's policies.

b. Following final acceptance of the Project by Lead Agency and Participating Agency, and within sixty (60) days of Participating Agency's receipt of an invoice from Lead Agency requesting Participating Agency's payment of the remaining balance of Participating Agency's share of costs as adjusted (if necessary), in accordance with actual costs and the terms of this Agreement, Participating Agency shall deliver payment in full of such remaining balance to Lead Agency.

c. **Modifications to City Utilities.** Notwithstanding the provisions of Subsection 9(a) above and unless otherwise agreed upon in writing, the adjustment or modification of any utility facilities owned and operated by City shall be the financial liability of City at no cost to County, regardless of which Party has jurisdiction over the location within which such facilities

are situated. The performance of the modifications shall be defined in the PSS for each Project and may include City-performed, Contractor-performed or any combination thereof.

d. **Change Orders.** Following the award of a construction contract, any change order within either Party's jurisdiction (except for adjustments made to account for actual quantities used in construction of the Project), resulting in an increase by more than ten percent (10%) of that agency's cost share, shall be approved by the Director of said agency.

12. **Project Acceptance.** Unless otherwise noted, each Party may, at its own discretion and expense, conduct final inspection of the work prior to accepting ownership of facilities. Either Party may reject work that is a material deviation from the approved plans. To the extent necessary, Lead Agency shall work with Participating Agency to compile a punch list of all work which (1) deviates from approved plans and (2) is unacceptable to the either Party. Lead Agency shall coordinate the completion of punch list items.

13. **Post Construction Obligations.** Upon completion of Project, each Party's jurisdictional and maintenance responsibilities shall remain unchanged from those which existed prior to completion of the Project except as modified through any street maintenance agreement entered into between City and County.

14. **Dispute Resolution.** The Parties agree to implement the provisions of this Agreement in a reasonable, good faith manner. In the event of a dispute the Parties shall engage in informal good faith negotiations at the staff level, which shall be escalated to Directors. Should no resolution be attainable, the Parties

1 agree to engage in mediation through a mutually acceptable mediator prior to
2 institution of legal proceedings to resolve any issues pertaining to the provisions
3 of this Master Dual Jurisdiction Cooperative Agreement. The Parties shall each
4 pay fifty percent (50%) of all fees and costs charged by such mediator.

- 5
6 15. **Indemnification.** City agrees to indemnify, save, hold harmless, and at County's
7 request, defend County, its officers, agents, and employees from any and all
8 costs and expenses, damages, liabilities, claims, and losses occurring or
9 resulting to any person, firm, or corporation who may be injured or damaged by
10 the performance, or failure to perform, by City, its officers, agents and
11 employees, under this Agreement; provided, that nothing herein shall constitute a
12 waiver by City of governmental immunity that may be available as a defense to
13 any such third-party claim(s) under or pursuant to Government Code Section 810
14 et seq. This section shall survive expiration or termination of this Agreement.
15
16 County agrees to indemnify, save, hold harmless, and at City's request, defend
17 City, its officers, agents, and employees from any and all costs and expenses,
18 damages, liabilities, claims, and losses occurring or resulting to any person, firm,
19 or corporation who may be injured or damaged by the performance, or failure to
20 perform, by County, its officers, agents and employees, under this Agreement;
21 provided, that nothing herein shall constitute a waiver by County of governmental
22 immunity that may be available as a defense to any such third-party claim(s)
23 under or pursuant to Government Code Section 810 et seq. This section shall
24 survive expiration or termination of this Agreement.

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27 16. **Insurance.** Without limiting the applicability or scope of the indemnification
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1 provisions contained in Section 15, County and City shall maintain, at their sole
2 expense, insurance policies or self-insurance programs including, but not limited
3 to, an insurance pooling arrangement and/or Joint Powers Agreement sufficient
4 to fund their respective liabilities hereunder throughout the term of this
5 Agreement. Coverage shall be provided for comprehensive general liability,
6 automobile liability, professional liability, and workers' compensation.
7

8 17. **Assignment.** Neither Party shall assign, transfer, or sub-contract this
9 Agreement, nor any of its respective rights or duties hereunder without the
10 written consent of the other Party.

11 18. **Approvals.** All approvals authorized hereunder shall be in writing.
12

13 19. **Notices.** All required notices may be sent by first class United States Mail,
14 facsimile transmission, hand delivery, or express mail, and for time calculations
15 purposes shall be deemed to have been received by the end of five (5) business
16 days from the proper sending thereof unless proof of prior actual receipt is
17 provided. Unless otherwise notified in writing, notices shall be sent to the
18 following addresses:
19

20 If to the City:

21 City of Fresno
22 Scott Mozier, Director Department of Public Works
23 2600 Fresno Street, 4th Floor
24 Fresno, CA 93721
Facsimile: (559) 488-1045

25 If to the County:

26 County of Fresno
27 Steven E. White, Director of Public Works and Planning
28 2220 Tulare Street, Seventh Floor
Fresno, CA 93721

- 1 20. **Counterparts.** This Agreement may be executed in one or more counterparts,
2 each of which when executed will be deemed to constitute one and the same
3 instrument and agreement.
- 4 21. **Severable.** The provisions of this Agreement are severable. The invalidity or
5 unenforceability of any one provision of this Agreement shall not affect the other
6 provisions.
7
- 8 22. **Amendment.** This Agreement may be modified only by written instrument
9 executed by duly authorized representatives of both City and County.
- 10 23. **Entire Agreement.** Each Party acknowledges that it has read and fully
11 understands the contents of this Agreement and represents that this entire
12 Agreement between City and County with respect to the subject matter contained
13 herein and that this Agreement supersedes all prior negotiations,
14 representations, or agreements, either written or oral.
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16 [SIGNATURES ON FOLLOWING PAGE]
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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

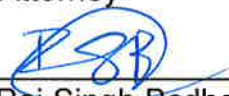
CITY OF FRESNO,
A California municipal corporation

COUNTY OF FRESNO,

By: _____
Scott Mozier, Director
Department of Public Works

By: _____
Nathan Magsig
Chairman of the Board of Supervisors
of the County of Fresno

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  7.12.19
Raj Singh Badhesha Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: _____
Deputy

EXHIBIT A

PROJECT SPECIFIC SUPPLEMENT AGREEMENT
(Pursuant to Master Dual Jurisdiction Cooperative Agreement)

This Project Specific Supplement Agreement (“PSS”) is made and entered into this ____ day of _____, 20__, by and between the City of Fresno, a municipal corporation (City), and the County of Fresno, a political subdivision of the State of California (County) (collectively, the Parties), pursuant to that certain Master Dual Jurisdiction Cooperative Agreement dated _____, 2019, (the “Master Agreement”).

RECITALS:

- A. City and County are parties to the Master Agreement, which is incorporated herein by this reference. All defined terms not otherwise defined herein, shall have the same meaning provided in the Master Dual Jurisdiction Cooperative Agreement.
- B. Pursuant to the Master Agreement, the Parties are to enter into a Project Specific Supplement Agreement for each individual discrete dual jurisdictional Project.
- C. [INSERT SPECIFIC LOCATION] (hereinafter the “Project Limits”) are located across City/County jurisdictional boundaries, with _____ percent (___%) within the jurisdiction of County and _____ percent (___%) within the jurisdiction of City as shown on “Exhibit A” hereto.
- D. City and County desire to complete the following improvements and work within the Project Limits, which collectively constitutes the Project: [INSERT MORE SPECIFIC DESCRIPTION OF WORK TO BE PERFORMED].

1 E. City and County now wish to establish the conditions specifically applicable to the
2 Project under which the Project will be completed.

3 NOW, THEREFORE, in consideration of the mutual acknowledgments,
4 covenants, and conditions herein contained, it is hereby agreed as follows:
5

6 1. **Recitals.** Each and all of the foregoing recitals of background facts are
7 incorporated herein by this reference as though set forth herein verbatim.
8

9 2. **Master Agreement.** Unless otherwise noted herein, all applicable terms and
10 provisions contained in the Master Agreement shall apply to the Project.

11 3. **Lead Agency.** The Lead Agency for the Project shall be _____.
12

13 4. **Participating Agency.** The Participating Agency for the Project shall be
14 _____.

15 5. **Engineer's Estimate.** A Preliminary Engineer's Estimate is attached hereto as
16 Exhibit B and is incorporated herein by this reference. Exhibit B may be revised
17 by the Parties at any time, by written approval of both respective Directors, to
18 reflect the estimated costs of modifications and refinements to the Project.
19

20 6. **Jurisdictional Cost Share.** [The primary anticipated funding source for the
21 Project is _____.] Each Party
22 shall be responsible for the actual costs of its respective obligations, as initially
23 identified in the Preliminary Engineer's Estimate, and as revised pursuant to
24 Section 5 above once the actual construction costs have been finally determined.
25 Generally, unless otherwise provided either in the Master Agreement or herein,
26 each Party shall be responsible for costs in proportion to the percentage of the
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1 Project located within its jurisdiction as set forth in Recital C. The estimated cost
2 for the City is _____ and the estimated cost for County is

3 _____

- 4
5 7. **Special Terms.** The parties agree that the following special or specific terms
6 shall apply to the performance of the Project:

7 _____
8 _____
9 _____
10 _____
11 _____

- 12 8. **Assignment.** Neither Party shall assign, transfer, or sub-contract this
13 Agreement, nor any of its respective rights or duties hereunder without the
14 written consent of the other Party.

- 15
16 9. **Waiver.** Waiver of any breach of this Agreement by any party hereto shall not
17 constitute a continuing waiver or a waiver of any breach of the same or another
18 provision of this Agreement.

- 19
20 10. **Counterparts.** This Agreement may be executed in one or more counterparts,
21 each of which when executed will be deemed to constitute one and the same
22 instrument and agreement.

- 23
24 11. **Severable.** The provisions of this Agreement are severable. The invalidity or
25 unenforceability of any one provision of this Agreement shall not affect the other
26 provisions.

- 27
28 12. **Amendment.** This Agreement may be modified only by written instrument

executed by duly authorized representatives of both City and County.

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

[SIGNATURE PAGE TO FOLLOW]

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

3 CITY OF FRESNO,
4 A California municipal corporation

COUNTY OF FRESNO

5
6 By: _____
7 Scott Mozier, Director
8 Department of Public Works

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

8 APPROVED AS TO FORM:
9 DOUGLAS T. SLOAN
10 City Attorney

APPROVED AS TO LEGAL FORM
DANIEL C. CEDERBORG
County Counsel

11 By: _____
12 Raj Singh Badhesha
13 Senior Deputy City Attorney

13 ATTEST:
14 YVONNE SPENCE, MMC CRM
15 City Clerk

By: _____

16 By: _____
17 Deputy

APPROVED AS TO ACCOUNTING
FORM
OSCAR J. GARCIA, CPA
Auditor-Controller/Treasurer-Tax Collector

By: _____