

## **JOINT PROJECT AGREEMENT**

This Joint Project Agreement is made and entered into August \_\_\_\_\_, 2023, by and between the CITY OF FRESNO, a municipal corporation and public entity, (City) and the FRESNO IRRIGATION DISTRICT, an irrigation district formed and operating pursuant to Division Eleven (11) of the California Water Code, and a public entity, (District), to define the responsibilities and obligations of the aforementioned Parties for the placement of an irrigation pipeline to replace the Fanning Ditch Canal.

### **RECITALS**

WHEREAS, the segment of the Fanning Ditch Canal, specifically between West California Avenue and South Fruit Avenue (hereinafter the Project Limits) is located within a parcel owned by the District per Document No. 33906, in Vol. 1872, Pg. 373, recorded November 15, 1940, Official Records Fresno County (District Property) and adjacent to Public Street Right-of-Way owned by the City; and

WHEREAS, the City has a funded capital improvement project to construct a Class I multipurpose trail from West California Avenue to South West Avenue adjacent to or atop the Fanning Ditch Canal alignment (hereinafter the Trail Project). The portion within the Project Limits was proposed along the South side of the District Property and would necessitate the vacation of the City's Public Street Right-of-Way; and

WHEREAS, the City and the District recognize the benefits of a joint-funded project to underground the existing open canal segment and to relocate the proposed trail to within the District's Property by way of a Common Use Agreement between the City and District; and

WHEREAS, the contemplated improvements generally consist of removing the existing open canal infrastructure and placing a new thirty-six inch (36") rubber gasket reinforced concrete pipe and the necessary appurtenances within the Project Limits (hereinafter the Project); and

WHEREAS, the City and the District, while maintaining their respective rights and facilities, recognize it will be to their mutual benefit to complete the Project as a cooperative endeavor; and

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

WHEREAS, the City and the District will each contribute the resources, financial or otherwise, necessary to fully fund construction of the Project on a Fifty Percent (50%) City and Fifty Percent (50%) District basis; and

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

### **AGREEMENT**

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

1. The Project shall be performed and administered by the District or its agents thereof and shall be constructed under a single construction contract and separate from the City's Trail Project.

2. Upon completion of the Project, each Party's jurisdictional and maintenance responsibilities shall remain unchanged from those which existed prior to completion of the Project except as modified by a separate Common Use Agreement entered into between City and District.

3. At its expense, the City shall, either with City staff or by contracting with a consultant, provide Project Engineering in accordance with the requirements of the funding agencies and all federal, state, and local laws, including:

- a. Oversight of any consultant(s) employed by the City for the design of the Project.
- b. Preparation and administration of permits necessary for the construction of the improvements.

c. Providing Design Engineering services; including preparation of plans necessary for the bidding and construction of the Project.

4. The City shall provide plans to District, for District's review and approval, for the work to be performed with Project.

5. The District shall provide specifications, engineer's estimate, and Construction Engineering, including general administration of the construction contract, administering California Environmental Quality Act (CEQA) compliance, and furnishing all necessary field engineering, inspection, and testing for the performance of the construction work. The City may, at its option, inspect the construction contractor's work; provided, however, that any costs incurred by the City for any such inspection will be borne entirely by the City, and those costs will not be included as part of the Project costs upon which the percentage allocation of cost-sharing hereunder is determined, nor will such inspection costs be reimbursable through project funding sources.

6. The District and the City shall each be responsible for the actual construction costs of the Project on a Fifty Percent (50%) City and Fifty Percent (50%) District cost share basis and as identified in the Preliminary Engineer's Estimate attached as Exhibit A hereto. The estimated cost for the District is \$225,543.75 and the estimated cost for the City is \$225,543.75.

7. Any addenda or revisions to the Project's approved construction documents for improvements resulting in an increase in bid item quantity or cost of any bid item by more than ten percent (10%), shall be approved in writing by the City's Director of Public Works, or designee, and District's District Engineer, or designee.

8. The City's share of cost as shown in the Preliminary Engineer's Estimate in Exhibit A shall not be increased by more than ten percent (10%) (except for adjustments made to account for actual quantities used in the construction of the Project), unless otherwise approved in writing by the City's Public Works Director, or designee.

9. If the lowest responsible bid for the Project's construction contract does not exceed the engineer's estimate, including contingency, as shown on the current version of

Exhibit A, by more than ten percent (10%), the District shall award construction of the Project to that bidder. If the lowest responsible bid for the Project's construction contract exceeds the engineer's estimate, including contingency, as shown on the current version of Exhibit A, by more than ten percent (10%), then District will not award the construction contract, unless mutually agreed upon in writing by the City's Director of Public Works and the District's District Engineer, or designee.

10. If the lowest responsible bidder's proposal is more than ten percent (10%) above the engineer's estimate, including contingency, and award of the project is mutually agreed upon in accordance with Sections 9 and 10 of this Agreement, the City's share of cost will be adjusted to reflect the increased cost. However, the City's share of cost shall not exceed the share of cost percentage specified in this Agreement unless mutually agreed upon in writing by the City's and the District's District Engineer, or designee.

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

12. Final project costs and the City's share thereof will not be determined until construction is completed and the Project is accepted by both the City and the District and closed out in accordance with each agency's policies.

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

14. City agrees to indemnify, save, hold harmless, and at District's request, defend District, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, by City, its officers, agents and employees, under this Agreement; provided, that nothing herein shall constitute

a waiver by City of governmental immunity that may be available as a defense to any such third-party claim(s) under or pursuant to Government Code Section 810 et seq. This section shall survive expiration or termination of this Agreement.

15. District agrees to indemnify, save, hold harmless, and at City's request, defend City, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, by District, its officers, agents and employees, under this Agreement; provided, that nothing herein shall constitute a waiver by District of governmental immunity that may be available as a defense to any such third-party claim(s) under or pursuant to Government Code Section 810 et seq. This section shall survive expiration or termination of this Agreement. If District should subcontract any portion of the work to be performed under this agreement, District shall require each subcontractor to indemnify, hold harmless and defend the City of Fresno, its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

16. Without limiting the applicability or scope of the indemnification provisions contained in Sections 14 and 15, the District and the City shall maintain, at their sole expense, insurance policies or self-insurance programs including, but not limited to, an insurance pooling arrangement and/or Joint Powers Agreement sufficient to fund their respective liabilities hereunder throughout the term of this Agreement. Coverage shall be provided for comprehensive general liability, automobile liability, professional liability, and workers' compensation. If the District should subcontract any portion of the work to be performed, the District shall require each subcontractor to add the City of Fresno, its officers, officials, employees, agents and volunteers as an Additional Insured under the General and Auto Liability policies. The General Liability and Auto Liability policies shall be endorsed so the coverage is Primary to the City of Fresno's insurance, and will not require contribution. The Worker's Compensation policy shall contain a Waiver of Subrogation in favor of the City of Fresno, its officers, officials, employees, agents and volunteers.

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

18. This Agreement shall become effective immediately upon execution and shall expire on December 31, 2025; provided, however, that its term may be extended by a maximum of two additional one-year terms, upon mutual written consent of the City's Director of Public Works and the District's District Engineer. This Agreement may be executed in one or more counterparts, each of which when executed will be deemed to constitute one and the same instrument and agreement.

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

20. This Agreement may be modified only by written instrument executed by duly authorized representatives of both the City and the District.

21. Neither Party shall assign, transfer, or subcontract this Agreement, nor any of its respective rights or duties without the written consent of the other Party.

22. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

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

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

CITY OF FRESNO,  
A California municipal corporation

## FRESNO IRRIGATION DISTRICT

By: Scott Mozier, PE  
Director  
Public Works Department

By:

Name: Ryan Jacobsen

Title: President

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

Name: Bill Stretch

Title: Secretary

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

By: Jennifer M. Quintanilla Date 8/9/23  
Senior Deputy City Attorney

APPROVED AS TO LEGAL FORM  
FRESNO IRRIGATION DISTRICT

ATTEST:  
TODD STERMER, CMC  
City Clerk

BY: \_\_\_\_\_  
Jeffrey G. Boswell, Esq.  
Attorney for Fresno Irrigation District

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

### Addresses:

CITY:  
City of Fresno  
Attention: Scott Mozier  
Director, Public Works Department  
2600 Fresno Street, Room 4064  
Fresno, CA 93721-3623  
Phone: (559) 621-8811

**FRESNO IRRIGATION DISTRICT:**  
Fresno Irrigation District  
Attention: Ryan Jacobsen  
President  
2907 S. Maple Avenue  
Fresno, CA 93725  
Phone: (559) 233-7161

## Exhibit A - Preliminary Engineer's Estimate

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Preliminary Cost Estimate - Fanning No. 76					
Item No.	Bid Item	Qunty	Unit	Unit Price	Cost
1	Mob and Demob	1	LS	\$10,000.00	\$10,000.00
2	Clearing and Grubbing	1	LS	\$2,000.00	\$2,000.00
3	DCP	1	LS	\$5,000.00	\$5,000.00
4	Demo	1	LS	\$15,000.00	\$15,000.00
5	Pipe Installation	950	LF	\$250.00	\$237,500.00
6	Surge Chamber	2	LS	\$25,000.00	\$50,000.00
7	Field Bends	3	LS	\$5,000.00	\$15,000.00
8	MacWrap	120	P	\$125.00	\$15,000.00
9	Traffic Control	1	LS	\$10,000.00	\$10,000.00
10	Permitting	1	LS	\$5,000.00	\$5,000.00
11	Vents	5	LS	\$1,500.00	\$7,500.00
12	Trace Wire	950	LS	\$5.00	\$4,750.00
13	F08 Christy Box	2	LS	\$250.00	\$500.00
14	Compaction Testing	1	LS	\$10,000.00	\$10,000.00
15	Survey Staking	1	LS	\$5,000.00	\$5,000.00
Subtotal					\$392,250.00
15% Contingency					<u>\$58,837.50</u>
Total					\$451,087.50
COF (50%)					\$225,543.75

\*City of Fresno and FID to handle each owns inspection costs

\*\*City of Fresno to handle Design costs and FID to handle Import costs