

1 **AGREEMENT**

2 This Agreement is made and entered into this ____ day of _____,
3 2015, by and between the County of Fresno, a political subdivision of the State of California
4 (County), and City of Fresno, a municipal corporation (City), to define the responsibilities
5 and obligations of the aforementioned Parties for the installation of traffic signals and the
6 performance of other improvements at or in the immediate vicinity of the intersection of
7 Grantland Avenue and Shaw Avenue.

8 **RECITALS:**

9 WHEREAS, the Grantland Avenue and Shaw Avenue intersection is located across
10 County / City jurisdictional boundaries, with seventy-five percent (75%) within the
11 jurisdiction of County and twenty-five percent (25%) within the jurisdiction of City; and

12 WHEREAS, County and City recognize the need to install traffic signals and
13 perform other improvements at or in the immediate vicinity of the Grantland Avenue and
14 Shaw Avenue intersection (Project); and

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

18 WHEREAS, Project will be primarily funded through the federal Highway Safety
19 Improvement Program (HSIP); and

20 WHEREAS, City and County will each contribute, as a local share of cost, the
21 resources, financial or otherwise, necessary to fully fund the Project; and

22 WHEREAS, preliminary engineering (PE), construction engineering (CE), right of
23 way acquisition, and construction (CON), are necessary to complete the Project; and

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

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

- 28 1. The Project shall be performed and administered by the County or its agents

1 thereof and shall be constructed under a single construction contract.

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

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

9 a. Administering California Environmental Quality Act and National
10 Environmental Policy Act Environmental compliance.

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

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

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

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

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

22 5. City and County shall, at their own expense and in accordance with all
23 federal, state, and local laws, including the requirements for federally-funded projects,
24 acquire all right-of-way within their respective jurisdictions, necessary to construct and
25 maintain the Project improvements.

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

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

1 construction contract and furnishing all necessary field engineering, inspection, and testing
2 for performance of the construction work. City may, at its option, inspect the construction
3 contractor's work; provided, however, that any costs incurred by City for any such
4 inspection will be borne entirely by City, and those costs will not be included as part of the
5 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. City's share of cost for Project is twenty-five percent (25%) of total Project
8 costs not paid for by federal HSIP funding. Additionally, City's cost for the acquisition of
9 right-of-way within City's jurisdiction shall not be counted towards City's share of cost for
10 Project and shall be borne entirely by City in accordance with Section 5 of this agreement.

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

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

21 11. City shall prepare the timing cards for the new signals and provide all
22 technical assistance necessary, as determined by County, to facilitate the design and
23 construction of Project.

24 12. If the lowest responsible bid for Project's construction contract does not
25 exceed the engineer's estimate, including contingency, by more than ten percent (10%),
26 County's Department of Public Works and Planning shall recommend to County's Board of
27 Supervisors that the construction contract be awarded to that bidder. In the event that the
28 lowest responsible bid for Project's construction contract exceeds the engineer's estimate

1 by more than ten percent (10%), then County's Department of Public Works and Planning
2 will not recommend that County's Board of Supervisors award the construction contract,
3 unless mutually agreed upon in writing by City's Director of Public Works and County's
4 Director of Public Works and Planning.

5 13. If the lowest responsible bidder's proposal is more than ten percent (10%)
6 above the engineer's estimate, including contingency, and award of the project is mutually
7 agreed upon in accordance with Section 12 of this agreement, City's share of cost will be
8 adjusted to reflect the increased cost; however, City's share of cost shall not exceed the
9 share of cost percentage specified in this Agreement unless mutually agreed upon in
10 writing by City's and County's respective Directors of Public Works.

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

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

17 16. Following County's receipt of final payment from the funding agency, and
18 within forty-five (45) days of City's receipt of an invoice from County requesting City's
19 payment of the remaining balance of City's share of costs as adjusted (if necessary), in
20 accordance with actual costs and the terms of this Agreement, City shall deliver payment in
21 full of such remaining balance to County's Department of Public Works and Planning. In
22 the event the total amount paid by City in accordance with Section 14 of this Agreement is
23 greater than the total actual City share of cost, County shall, within forty-five (45) days of
24 County's receipt of final payment from the funding agency, deliver to City the amount in
25 excess of City's share of cost.

26 17. City agrees to indemnify, save, hold harmless, and at County's request,
27 defend County, its officers, agents, and employees from any and all costs and expenses,
28 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or

1 corporation who may be injured or damaged by the performance, or failure to perform, by
2 City, its officers, agents and employees, under this Agreement; provided, that nothing
3 herein shall constitute a waiver by City of governmental immunity that may be available as
4 a defense to any such third-party claim(s) under or pursuant to Government Code Section
5 810 et seq. This section shall survive expiration or termination of this Agreement.

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

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

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

23 21. This Agreement shall become effective immediately upon execution and shall
24 expire on June 30, 2018; provided, however, that its term may be extended by a maximum
25 of two additional one-year terms, upon mutual written consent of County's Director of Public
26 Works and Planning and City's Director of Public Works. This Agreement may be executed
27 in one or more counterparts, each of which when executed will be deemed to constitute
28 one and the same instrument and agreement.

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

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

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

9 [signatures on following page]

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

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CITY OF FRESNO:

COUNTY OF FRESNO

BY: _____
ANDREW BENELLI, ASSISTANT
DIRECTOR,
DEPARTMENT OF PUBLIC WORKS

BY: _____
DEBORAH A. POOCHIGIAN, CHAIRMAN
BOARD OF SUPERVISORS

APPROVED AS TO LEGAL FORM
CITY ATTORNEY

REVIEWED AND RECOMMENDED FOR
APPROVAL

BY: _____
RAJ SINGH BADHESHA, DEPUTY

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

ATTEST: YVONNE SPENCE, CMC.
CITY CLERK

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

BY: _____

BY: _____
DEPUTY

APPROVED AS TO ACCOUNTING FORM

BY: _____
VICKI, CROW, C.P.A.
AUDITOR-CONTROLLER/TREASURER-
TAX COLLECTOR