

**IMPROVEMENT AND REIMBURSEMENT AGREEMENT
FOR TRAFFIC SIGNAL MODIFICATION AT THE INTERSECTION OF
E. PERRIN AVE. & LIBERTY HILL RD.**

This Agreement is made and entered into at Fresno, California, and is effective this 13th day of November, 2018, (the Effective Date), by and between the CITY OF FRESNO, a municipal corporation (City), and Clovis Unified School District, a California public school district (District).

RECITALS

- A. District operates Liberty Elementary School on the northeast corner of the intersection of East Perrin Avenue and Liberty Hill Road (the Intersection), which intersection has a traffic signal.
- B. District has requested the City to modify the existing signal at the Intersection to allow for left turn phasing, as more particularly set forth in Paragraph 2 below (Signal Modification).
- C. City and District would like to share the costs associated with the Signal Modification as set forth herein.

AGREEMENT

THEREFORE, IN CONSIDERATION of the foregoing recitals and the agreement by the City to construct the Signal Modification as described below, District agrees:

- 1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
- 2. City's Obligations. The City shall perform the following work (Signal Modification) upon the execution of this Agreement:
 - a. East Perrin/ Liberty Hill Traffic Signal. Modification of existing traffic signal at the Intersection and any ancillary surface or utility relocation work and necessary improvements related thereto. Protected left turn phasing will be added to the east and west bound approaches of East Perrin Avenue.
- 3. Improvement Cost Obligation. District shall pay to City 25% of the total actual cost of the Signal Modification (including all associated engineering, inspection, testing, surveying, staking, and construction costs, etc.), up to a maximum contribution by District of One Hundred Thousand Dollars (\$100,000); City shall be responsible for the remainder of the costs. A final accounting of costs, when confirmed by the Director of Public Works, shall be used to determine District's cost share obligation. District shall pay City in full within thirty (30) days (Due Date) after the date the Director mails notice of such costs, interest shall accrue on the unpaid balance at the maximum legal rate from the Due Date.
- 4. District's Additional Obligations. City shall be entitled to costs and reasonable expenses and fees, including reasonable attorney's fees, which may be incurred in successfully enforcing this Agreement against the District.

5. Cost Reimbursement. The Signal Modification is not eligible for reimbursement from the City's Development Impact Fee Program.
6. Binding. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of respective parties hereto.
7. Gender. Whenever the context requires, the neuter shall include the masculine or feminine, or both, and the singular shall include the plural.
8. Time of the Essence. Time is of the essence of this Agreement.
9. Assignment. The District shall make no assignment of this Agreement or of any duty or obligation of performance hereunder, in whole or in part, without the prior written consent of the City, which shall not be unreasonably withheld.
10. Indemnification. City shall indemnify, hold harmless and defend District 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 District, City 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 or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

District shall indemnify, hold harmless and defend 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, District 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 or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of District or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by District of governmental immunities including California Government Code section 810 et seq.

In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or volunteers, and District 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 as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

11. Notices. 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 or deposited into the United States mail, with postage prepaid, 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.
12. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of, or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
13. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.
14. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both parties.
15. Severability. The provisions of this Improvement Agreement are severable. The invalidity or unenforceability of any one provision or part thereof shall not affect the validity or invalidity of any other provisions.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

City:
City of Fresno,
a California municipal corporation

District:
Clovis Unified School District,
a California public school district

By: _____
Randall Morrison, P.E.
Assistant Public Works Director

By:  _____
Michael Johnston
Associate Superintendent, Admin. Services

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ 1.17.19
Raj Singh Badhesha Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy