

06-Fre-41-KP 53.6/53.8 (PM 33.3/33.4)  
Bridge #42-0112 on SR 41  
EA 06-45310  
District Agreement No. 06-1367

## RELINQUISHMENT AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON July 31 2007, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

CITY OF FRESNO, a body politic and a municipal corporation of the State of California, referred to herein as "CITY".

### RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code sections 73 and 130, are authorized to enter into a Cooperative Agreement in order to relinquish to CITY a portion of a state highway within CITY's jurisdiction.
2. STATE intends to relinquish to CITY a portion of Bridge # 42-0112 (BRIDGE) located on State Route (SR) 41, referred to hereinafter as "RELINQUISHED FACILITIES", as shown in Exhibit A, attached to and made a part of this Agreement. The CITY/Madera County line is located on BRIDGE therefore, only that portion of BRIDGE lying within CITY limits, between PM 33.3/33.4, will be relinquished to CITY upon completion of seismic retrofit, scour repair work and rail replacement to be performed by STATE in accordance with current Standards, approval by California Transportation Commission (CTC) of a Resolution of Relinquishment and STATE's recording of said Resolution in the County Recorder's Office.
3. STATE and CITY have agreed that, with the sole exception of seismic retrofit, rail and scour work on BRIDGE, said portion of SR 41 is in a good state of repair and STATE will continue to maintain the proposed RELINQUISHED FACILITIES in a state of good repair until the dates of said relinquishment.
4. STATE and CITY agree that RELINQUISHED FACILITIES shall be re-evaluated to confirm that all portions included in this Relinquishment Agreement are in a state of good repair, as defined in Section 27 of the Streets and Highway Code, upon completion of the STATE's repair work identified in Article 1 of this Section II of this Agreement and prior to acceptance of ownership by CITY in writing of RELINQUISHED FACILITIES.
5. The parties hereto intend to define herein the terms and conditions under which relinquishment is to be accomplished.

**SECTION I**

**CITY AGREES:**

1. That STATE will submit to CTC for Resolutions of Relinquishment of RELINQUISHED FACILITIES upon completion and acceptance in writing by the CITY of STATE's seismic retrofit, rail and scour project.
2. Execution of this Agreement constitutes CITY's waiver of STATE's obligation to provide ninety (90) days prior notice of STATE's "Intention to Relinquish" as set forth in section 73 of the Streets and Highways Code.
3. To accept ownership, including all of STATE's current obligations, rights, title and interest in RELINQUISHED FACILITIES, upon completion and acceptance in writing of STATE's seismic retrofit, rail replacement and scour repair project on BRIDGE and recordation of the CTC's Resolution of Relinquishment in the County Recorder's Office and to thereafter operate, maintain, and be liable for RELINQUISHED FACILITIES at no additional cost to STATE.

**SECTION II**

**STATE AGREES:**

1. To perform seismic retrofit, scour repair and rail replacement on BRIDGE. Relinquishment of BRIDGE to CITY shall be subject to completion of all repair work and acceptance in writing by CITY, which shall not be unreasonably delayed by CITY.
2. To submit to CTC for Resolutions of Relinquishment of RELINQUISHED FACILITIES upon completion of STATE's seismic retrofit, rail and scour repair project.
3. To relinquish RELINQUISHED FACILITIES upon the approval of the CTC's Resolution of Relinquishment.
4. To transfer to CITY, within sixty (60) days of the recordation of the CTC's Resolution of Relinquishment, copies of all available STATE records and files for RELINQUISHED FACILITIES, including, but not limited to, plans, survey data and right of way information and reports related to the seismic retrofit, scour survey and repair and bridge railing replacement reports.

**SECTION III**

**IT IS MUTUALLY AGREED:**

1. All obligations of STATE for seismic retrofit, scour repair and rail replacement work on bridge under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. RELINQUISHED FACILITIES may be recaptured by STATE for a future transportation project at no cost to STATE and CITY agrees to reconvey property when so requested.
3. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred to CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and its officers and employees from any and all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
4. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred by STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and its officers and employees from any and all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of occurring by reason of anything done or omitted to be done by STATE under this Agreement.
5. No alteration of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
6. This Agreement shall terminate upon recordation of the CTC's Resolution of Relinquishment for RELINQUISHED FACILITIES in the County Recorder's Office, or on June 30, 2012, whichever is earlier in time except for those provisions which relate to a indemnification, ownership, property recapture, operation, and maintenance, which shall remain in effect until terminated or modified in writing by mutual agreement.

**STATE OF CALIFORNIA**  
Department of Transportation

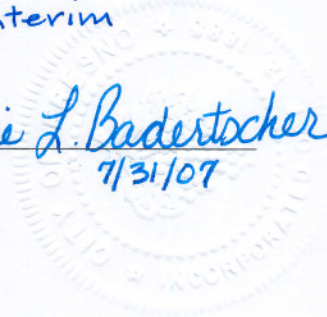
**CITY OF FRESNO**

WILL KEMPTON  
Director

By: Scott L. Mozier  
~~Michael Kim~~ Scott Mozier  
City Engineer, Interim

By: Malcolm X. Dougherty  
MALCOLM X. DOUGHERTY  
District 6 Director

Attest: Sherrie L. Badestocher  
Deputy  
7/31/07



Approved as to form and procedure:

Approved as to form:

By: [Signature]  
Attorney  
Department of Transportation

By: R 6-13-07  
Deputy City Attorney Coyle

Certified as to procedure:

By: [Signature]  
Headquarters Accounting Office

Certified as to funds:

By: [Signature]  
ROBERT J. JOHNSON, Chief  
District 6 Office of Budgets

DATE 9/20/05  
 NAME Jeff Prigmore  
 Drawn by  
 Checked by Glenn Medina

NOTE:  
 THE STATE LANDS COMMISSION HAS DESIGNATED THE SANJOAQUIN RIVER AS NAVIGABLE AND HAS LOCATED THE "LOW WATER LINES". THE STATE ASSERTS FEE OWNERSHIP BETWEEN THE LOW WATER LINES AS LOCATED ON BOTH SIDES OF THE RIVER. BY CALIFORNIA CIVIL CODE (SEC. 830), THE LOW WATER LINE IS THE PROPERTY LINE OF THE UPLAND OWNER.

SEE:  
 ADMINISTRATIVE MAP  
 SAN JOAQUIN RIVER  
 APRIL 1992  
 STATE OF CALIFORNIA  
 STATE LANDS COMMISSION

THESE MAPS ARE ON FILE IN THE OFFICES OF MADERA AND FRESNO COUNTIES.

T.13 S., R.20 E., M.D.B. & M.  
 Section 21

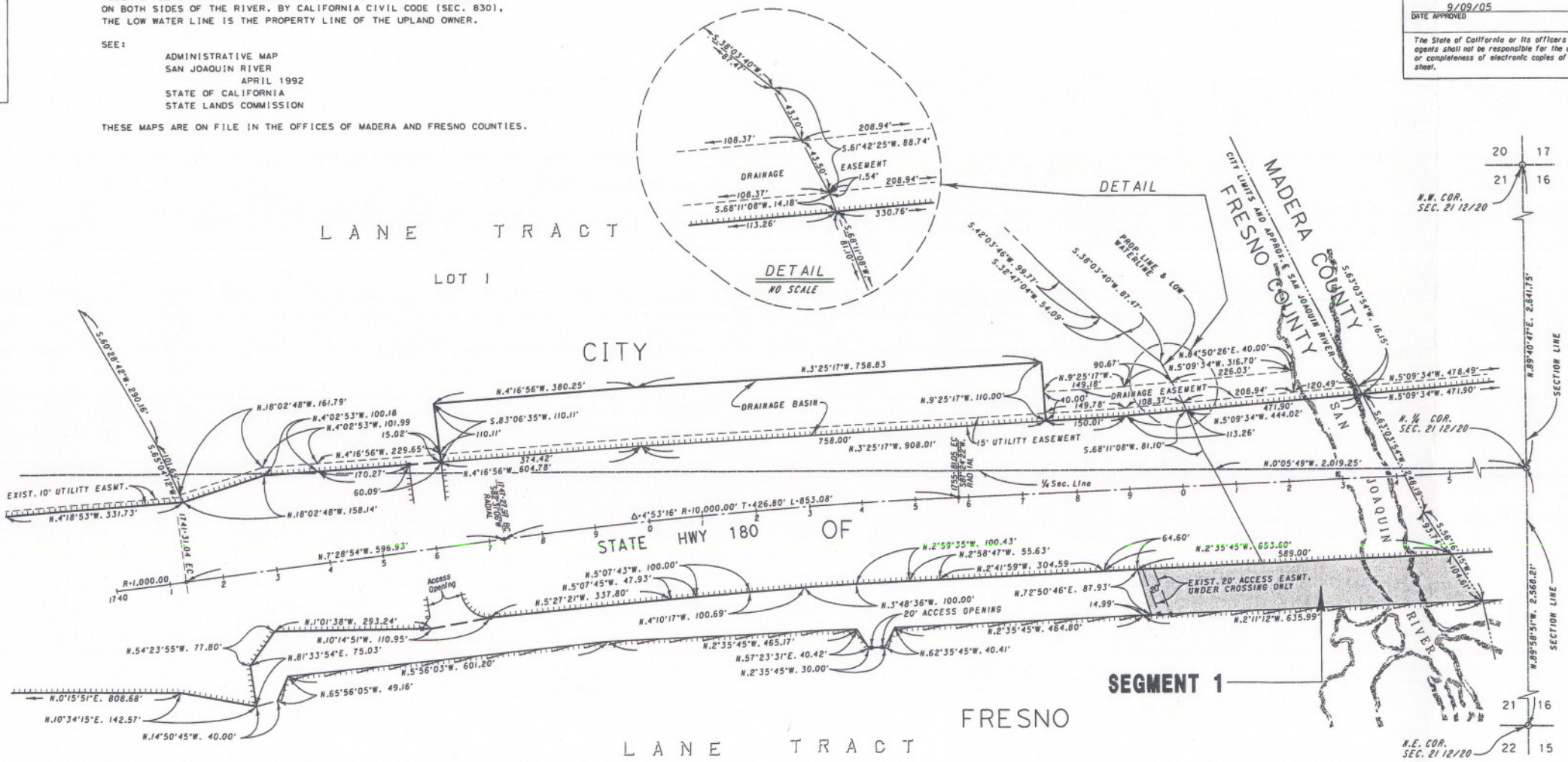
DIST.	COUNTY	ROUTE	POST MILE	SHEET NO.	TOTAL SHEETS
6	Fre	41	R33.3	1	1

Glenn R. Medina  
 PROFESSIONAL LAND SURVEYOR

9/09/05  
 DATE APPROVED

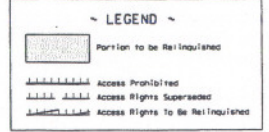
Glenn R. Medina  
 Exp. 9/30/08  
 No. 6275

The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this plan sheet.



Instrument No.  
 Filed for record this day of  
 In State Highway Map Book at page  
 Fresno County Records at the request of the  
 California Department of Transportation.  
 Fee Note (Filed In Compliance with Sections 126 & 129  
 of the Streets and Highways Code.)

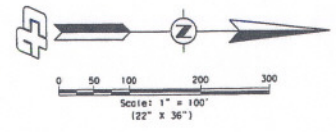
Robert C. Warner  
 County Recorder  
 By: Conita Gilman  
 Deputy Recorder



NOTES:  
 STATE'S RIGHTS ARE NOT EXTINGUISHED UNTIL  
 RECORDATION OF RELATED CTC RESOLUTION.

THIS SURVEY IS BASED ON THE CALIFORNIA COORDINATE  
 SYSTEM OF 1983, ZONE 3. THE BEARINGS SHOWN ARE ON  
 GRID DISTANCES ARE GRID DISTANCES. MULTIPLY BY  
 0.99998715 TO CONVERT TO GROUND.

FOR MORE DETAILED INFORMATION AS TO THE ESTABLISHMENT  
 OF THE VARIOUS HIGH AND LOW WATER LINES,  
 SEE MAON FILE IN THE SURVEYS DEPARTMENT  
 CALTRANS DISTRICT 6.



RELINQUISHMENT MAP

STATE OF CALIFORNIA  
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
 DEPARTMENT OF TRANSPORTATION

PROPOSED RELINQUISHMENT NO. 85775  
 CONSISTING OF 1 SEGMENT TO THE  
 CITY OF FRESNO



Rebecca E. Klisch  
City Clerk

**CLERK'S CERTIFICATION**

I, **REBECCA E. KLISCH**, City Clerk of the City of Fresno, California, hereby certify the foregoing to be a full, true and correct copy of CITY COUNCIL AGENDA ITEM NO. 1F. AND RESOLUTION NO. 2007-254; DATED AND APPROVED ON JULY 24, 2007; REGARDING APPROVING A RELINQUISHMENT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND (2) AUTHORIZING THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN THE AGREEMENT ON BEHALF OF THE CITY OF FRESNO; now on file in my office.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the City of Fresno, California, this 31st day of JULY, 2007.

Rebecca E. Klisch,, CMC  
City Clerk, City of Fresno

By Sherrie L. Badertscher  
Deputy



RESOLUTION NO. 2007-254.

A RESOLUTION OF FRESNO CITY COUNCIL (1) APPROVING A RELINQUISHMENT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND (2) AUTHORIZING THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN THE AGREEMENT ON BEHALF OF THE CITY OF FRESNO

WHEREAS, the State and City, pursuant to Street and Highways Code Sections 73 and 130, are authorized to enter into this Relinquishment Agreement in order to relinquish to the City, a portion of the old State Route 41 bridge at the San Joaquin River, within the City's jurisdiction; and

WHEREAS, the State intends to relinquish to the City only that portion of the Bridge Number 42-0112, which straddles the Fresno/Madera County line at the San Joaquin River, lying within the Fresno City Limits; and

WHEREAS, at City's insistence, the State agrees to perform and complete seismic retrofit, railing replacement and scour repair work on the subject bridge prior to submitting to the California Transportation Commission for Resolutions of Relinquishment; and

WHEREAS, the City agrees to accept ownership of the subject bridge upon completion by the State of seismic retrofit, bridge railing replacement, and scour repair work and City Council acceptance/approval thereof, and recordation of the California Transportation Commission's Resolution of Relinquishment in the Fresno County Recorder's Office.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF FRESNO HEREBY:

1. The above recitals are true and correct and adopted as part of this resolution.
2. The City Council approves Relinquishment Agreement No. 06-1367 with the California Department of Transportation for a portion of the old Route 41 bridge (Bridge No. 42-0112) lying within the Fresno City Limits, provided that City Council approval of the State's seismic retrofit, bridge railing replacement, and scour repair work shall be an express condition precedent to the City's acceptance of ownership.
3. The City Council authorizes the Public Works Director or his designee to sign the Relinquishment Agreement No. 06-1367 on behalf of the City of Fresno, consistent with the resolution.

Certified Copy J.B.  
City Clerk's Office  
Date 7/31/07

Adopted \_\_\_\_\_  
Approved 7-24-07  
Effective \_\_\_\_\_



\*\*\*\*\*

CLERK'S CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the 24<sup>th</sup> day of July, 2007.

AYES: Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong, Perea

NOES: None

ABSTAIN: None

ABSENT: None

REBECCA E. KLISCH  
City Clerk

By Rebecca E. Klisch  
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ  
City Attorney

By R  
Robert R. Coyle, Deputy

Date 7-24, 2007

Certified Copy S.B.  
City Clerk's Office

Date 7/31/07