

1 **AGREEMENT**

2 This Agreement is made and entered into this \_\_\_\_ day of March, 2018, by and  
3 between the City of Fresno, a municipal corporation, (City) and the County of Fresno, a  
4 political subdivision of the State of California (County), to define the responsibilities and  
5 obligations of the aforementioned Parties for the placement of asphalt concrete overlay and  
6 the performance of other improvements along Orange Avenue.

7 **RECITALS:**

8 WHEREAS, segments of Orange Avenue, specifically between California and  
9 Jensen Avenues (hereinafter the Project Limits) are located across City/County  
10 jurisdictional boundaries as shown on Exhibit A hereto, with fifty-one percent (51%) within  
11 the jurisdiction of County and forty-nine percent (49%) within the jurisdiction of City; and

12 WHEREAS, the contemplated improvements generally consist of milling the road  
13 surface, placing a hot mix asphalt overlay, and constructing Americans with Disabilities Act  
14 (ADA) compliant curb ramps within the Project Limits (hereinafter the Project); and,

15 WHEREAS, City and County, 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, the Project will be primarily funded through federal and local funding  
19 sources; and

20 WHEREAS, City and County will each contribute the resources, financial or  
21 otherwise, necessary to fully fund the Project; and

22 WHEREAS, preliminary engineering (PE), construction engineering (CE), and  
23 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 City or its agents thereof

1 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 those 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. City shall, either with City staff or by contracting with a consultant, provide PE  
7 in accordance with the requirements of the funding agencies and all federal, state, and  
8 local laws, including:

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

11 b. Oversight of any consultant(s) employed by City for the design of the  
12 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. Providing Design Engineering services; including preparation of plans,  
18 specifications, and engineer's estimates and other Project documents necessary for  
19 the bidding and construction of the Project.

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

23 5. County shall waive all County fees applicable to the Project including fees for  
24 technical assistance, permits, plan checks, and inspections.

25 6. City shall provide CE, including general administration of the construction  
26 contract and furnishing all necessary field engineering, inspection, and testing for  
27 performance of the construction work. County may, at its option, inspect the construction  
28 contractor's work; provided, however, that any costs incurred by County for any such

1 inspection will be borne entirely by County, and those costs will not be included as part of  
2 the Project costs upon which the percentage allocation of cost sharing hereunder is  
3 determined, nor will such inspection costs be reimbursable through project funding sources.

4 7. County and City shall each be responsible for the actual costs of the County  
5 and City obligations identified in the Preliminary Engineer's Estimates attached as Exhibit B  
6 hereto. The estimated cost for the County is \$667,960.00 and the estimated cost for the  
7 City is \$632,424.00.

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

14 9. County's share of cost as shown in the preliminary estimate of probable costs  
15 (Exhibit B) shall not be increased by more than ten percent (10%) (except for adjustments  
16 made to account for actual quantities used in construction of the Project), unless otherwise  
17 approved in writing by County's Director of Public Works and Planning.

18 10. If the lowest responsible bid for Project's construction contract does not  
19 exceed the engineer's estimate, including contingency, as shown on the current version of  
20 Exhibit B, by more than ten percent (10%), City's Department of Public Works shall  
21 recommend to the City Council that the construction contract be awarded to that bidder. In  
22 the event that the lowest responsible bid for Project's construction contract exceeds the  
23 engineer's estimate, including contingency, as shown on the current version of Exhibit B, by  
24 more than ten percent (10%), then City's Department of Public Works will not recommend  
25 that the City Council award the construction contract, unless mutually agreed upon in  
26 writing by City's Director of Public Works and County's Director of Public Works and  
27 Planning.

28 11. If the lowest responsible bidder's proposal is more than ten percent (10%)

1 above the engineer's estimate, including contingency, and award of the project is mutually  
2 agreed upon in accordance with Section 10 of this Agreement, County's share of cost will  
3 be adjusted to reflect the increased cost; however, County's share of cost shall not exceed  
4 the share of cost percentage specified in this Agreement unless mutually agreed upon in  
5 writing by City's and County's respective Directors of Public Works.

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

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

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

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

25 16. County agrees to indemnify, save, hold harmless, and at City's request,  
26 defend City, its officers, agents, and employees from any and all costs and expenses,  
27 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or  
28 corporation who may be injured or damaged by the performance, or failure to perform, by

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

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

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

14 19. This Agreement shall become effective immediately upon execution and shall  
15 expire on June 30, 2019; provided, however, that its term may be extended by a maximum  
16 of two additional one-year terms, upon mutual written consent of City's Director of Public  
17 Works and County's Director of Public Works and Planning. This Agreement may be  
18 executed in one or more counterparts, each of which when executed will be deemed to  
19 constitute one and the same instrument and agreement.

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

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

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

28 [SIGNATURES ON FOLLOWING PAGE]

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

3  
4 CITY OF FRESNO:

COUNTY OF FRESNO

5  
6 BY: \_\_\_\_\_  
7 RANDALL MORRISON, ASSISTANT  
8 DIRECTOR,  
9 DEPARTMENT OF PUBLIC WORKS

BY: \_\_\_\_\_  
SAL QUINTERO, CHAIRMAN  
OF THE BOARD OF SUPERVISORS OF  
THE COUNTY OF FRESNO

10 **ATTEST:**  
11 BERNICE E. SEIDEL  
12 CLERK TO THE BOARD OF SUPERVISORS  
13 COUNTY OF FRESNO

14 APPROVED AS TO LEGAL FORM  
15 CITY ATTORNEY

BY: \_\_\_\_\_

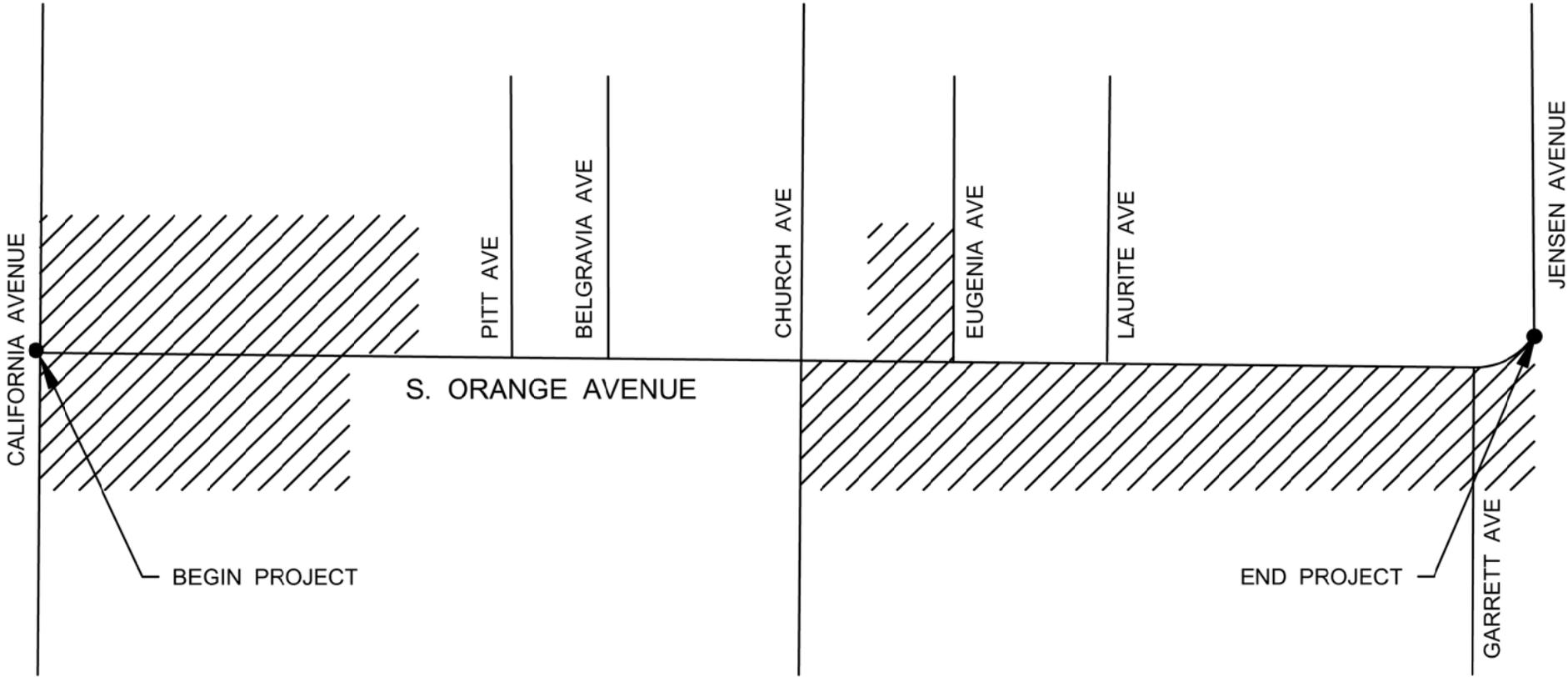
16 BY: \_\_\_\_\_  
17 RAJ SINGH BADHESHA  
18 Senior Deputy City Attorney

19 ATTEST: YVONNE SPENCE, MMC.  
20 CITY CLERK

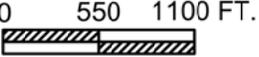
21 BY: \_\_\_\_\_  
22 Deputy

# EXHIBIT A ORANGE AVENUE

FROM CALIFORNIA AVENUE TO JENSEN AVENUE



-  CITY JURISDICTION 49%
-  COUNTY JURISDICTION 51%

		DATE:	SCALE IN FEET		DEPARTMENT OF PUBLIC WORKS AND PLANNING
DESIGNED:	S.G.	02/18			S. ORANGE AVENUE COOPERATIVE OVERLAY PROJECT
DRAWN:	S.G.	02/18			

**EXHIBIT B**

**CITY OF FRESNO - DEPARTMENT OF PUBLIC WORKS**

BY: Eric J. DATE \_\_\_\_\_ ACCT. \_\_\_\_\_ FILE SHEET 1 OF \_\_\_\_\_  
 CHKD. \_\_\_\_\_ DATE \_\_\_\_\_ DWG. REF. \_\_\_\_\_  
 SUBJECT ORANGE AVE. OVERLAY FROM CALIFORNIA TO JENSEN  
 49% CITY, 51% COUNTY

**PRELIMINARY ENGINEER'S ESTIMATE**

ITEM NO.	QUANTITY	UNIT	DESCRIPTION OF WORK	UNIT COST	TOTAL
<b>CITY PORTION</b>					
1	LUMP SUM	L.S.	MOBILIZATION	LUMP SUM	5000.00
2	LUMP SUM	L.S.	TRAFFIC CONTROL	LUMP SUM	18000.00
3	1,240	TONS	A.C. LANE REPAIR	<b>85.00</b>	105400.00
4	2,325	TONS	A.C. OVERLAY (ENTIRE LIMITS)	<b>85.00</b>	197625.00
5	15,600	S.Y.	COLD MILLING A.C.	1.75	27300.00
6	110	SF	WHEELCHAIR RAMP	20.00	2200.00
7	320	SF	A.C. RAMP	12.00	3840.00
8	25	EA	ADJUST WATER VALVES TO FINISHED GRADE	500.00	12500.00
9	15	EA	ADJUST MANHOLES TO FINISHED GRADE	1000.00	15000.00
10	LUMP SUM	L.S.	SIGNAGE AND STRIPING	LUMP SUM	12000.00
11	LUMP SUM	L.S.	WATER POLLUTION CONTROL	LUMP SUM	4000.00
12	LUMP SUM	L.S.	IMPLEMENT DUST CONTROL PLAN	LUMP SUM	1800.00
13	LUMP SUM	L.S.	MEDIATOR	LUMP SUM	6000.00
			SUBTOTAL		410,665.00
			CONTINGENCY	10%	41,066.50
			CONSTRUCTION ESTIMATE		451,731.50
			PRELIMINARY ENGINEERING	25%	112,932.88
			CONSTRUCTION ENGINEERING	15%	67,759.73
			TOTAL		<b>632,424.10</b>
<b>COUNTY PORTION</b>					
1	LUMP SUM	L.S.	MOBILIZATION	LUMP SUM	5000.00
2	LUMP SUM	L.S.	TRAFFIC CONTROL	LUMP SUM	18000.00
3	1,320	TONS	A.C. LANE REPAIR	<b>85.00</b>	112200.00
4	2,375	TONS	A.C. OVERLAY (ENTIRE LIMITS)	<b>85.00</b>	201875.00
5	13,580	S.Y.	COLD MILLING A.C.	1.75	23765.00
6	1,500	SF	WHEELCHAIR RAMP	20.00	30000.00
7	175	SF	A.C. RAMP	12.00	2100.00
8	18	EA	ADJUST WATER VALVES TO FINISHED GRADE	500.00	9000.00
9	8	EA	ADJUST MANHOLES TO FINISHED GRADE	1000.00	8000.00
10	LUMP SUM	L.S.	SIGNAGE AND STRIPING	LUMP SUM	12000.00
11	LUMP SUM	L.S.	WATER POLLUTION CONTROL	LUMP SUM	4000.00
12	LUMP SUM	L.S.	IMPLEMENT DUST CONTROL PLAN	LUMP SUM	1800.00
13	LUMP SUM	L.S.	MEDIATOR	LUMP SUM	6000.00
			SUBTOTAL		433,740.00
			CONTINGENCY	10%	43,374.00
			CONSTRUCTION ESTIMATE		477,114.00
			PRELIMINARY ENGINEERING	25%	119,278.50
			CONSTRUCTION ENGINEERING	15%	71,567.10
			SUBTOTAL		667,959.60
			VARIOUS COUNTY FEES <sup>1</sup>		25,000.00
			TOTAL		<b>692,959.60</b>
			Note 1: Fees are intially paid by City and City will bill County for the actual amount of the fees.		
			TOTAL PROJECT COST		<b>1,325,383.70</b>