

**REIMBURSEMENT AGREEMENT FOR INSTALLATION OF LANDSCAPING AT THE
SUGARPINE TRAIL UNDERCROSSINGS**

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON the 10th day of September, 2009, is between the CITY OF FRESNO a California Municipal Corporation, (referred to herein as "CITY"), and the CLOVIS UNIFIED SCHOOL DISTRICT, (referred to herein as "DISTRICT").

RECITALS

1. CITY, has received Measure C funds for use in completing the Sugar Pine Trail improvements along Willow Avenue between Shepherd and Copper Avenues for the CITY, referred to herein as "PROJECT". Within the Sugar Pine Trail Improvements there are two tunnel under crossings currently located adjacent to Clovis Unified and State Community College facilities along Willow Avenue in need of landscape improvements (referred to herein as the "IMPROVEMENTS").
2. IMPROVEMENTS include installation of all landscape Plant Material and modification of existing irrigation system as needed at the two pedestrian under crossings along Willow Avenue north of Behymer and north of International. CITY as the lead agency will perform the design, solicitation of a contractor, and completion of the installation of the IMPROVEMENTS; while the DISTRICT provides cash reimbursement in the amount of \$19,384 to offset costs. These funds were originally included in the contract to construct and landscape the tunnel under crossings associated with DISTRICT project # 7770850036 3rd Ed ,IT&L- site improvements. Per request by the CITY, the installation of the landscaping plant material portion was deleted from the contract due to long term maintenance concerns by the CITY. Irrigation was installed as part of the above noted DISTRICT project and is assumed to be installed per plan and specifications for said project. Any modification or repair to the existing irrigation not so installed will be the responsibility of the DISTRICT.
3. The parties hereto intend to define herein the terms and conditions under which IMPROVEMENTS are to be installed, financed, and maintained.

SECTION I

CITY AGREES:

1. To include IMPROVEMENTS as part of PROJECT and to accept the DISTRICT funds of \$19,384.00 towards the design and installation of IMPROVEMENTS, CITY will install said IMPROVEMENTS.

2. To install the IMPROVEMENTS in accordance with plans and specifications of the CITY, to the satisfaction of the City Engineer.
3. To maintain landscape IMPROVEMENTS and irrigation system.
4. To retain or cause to be retained for audit by government auditors for a period of three (3) years from date of payment of final voucher, or four (4) years from date of final payment under the contract, whichever is longer, all records and accounts relating to installation of the IMPROVEMENTS.

SECTION II

DISTRICT AGREES:

1. The total financial obligation of the DISTRICT for the improvements shall be a lump sum cost of \$19,384 to be paid by DISTRICT to CITY on or before the date of award of contract. The DISTRICT'S share shall be payable to the City of Fresno Public Works.
2. To facilitate construction of the IMPROVEMENTS, DISTRICT shall reasonably cooperate with the City's contractor.
3. It shall be the responsibility of the DISTRICT to verify the irrigation system installed by the DISTRICT is in good working condition. If the irrigation system is in need of repair it shall be the responsibility of the DISTRICT to correct before the CITY commences with the IMPROVEMENTS.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of CITY under the terms of this Agreement are subject to constitutional and local law requirements and the allocation of sufficient funding in each fiscal year by CITY, and grant requirements.
2. Prior to award of the contract for the IMPROVEMENTS, CITY may terminate this Agreement by written notice. In the event of termination following CITY'S receipt of DISTRICT'S reimbursement payment, CITY shall return payment to DISTRICT.
3. In the pursuit of the installation of IMPROVEMENTS, said representatives of CITY and DISTRICT will cooperate and consult with each other.
4. 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 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 directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement. This section shall survive termination or expiration of this Agreement.

5. 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 DISTRICT, CITY, any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of DISTRICT or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement. This section shall survive termination or expiration of this Agreement.
6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing, authorized by and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
7. This Agreement shall terminate upon completion of construction of and the City's acceptance of IMPROVEMENTS installed under the installation contract.
8. 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, 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.
9. Binding. Subject to the Assignment Section below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
10. Assignment. No party to the Agreement may assign or transfer by operation of law or otherwise, any or all of its rights, duties or obligations hereunder without the prior written consent of the other party.
11. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
12. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. 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 County, California.

13. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
14. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.
15. 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 either party, but rather by construing the terms in accordance with their generally accepted meaning.
16. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
17. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
18. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, and shall be null and void.
19. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
20. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties. Parties are acting as independent agencies in pursuit hereof.
21. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement and the grant documents incorporated herein and exhibits hereto, 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 CITY and DISTRICT.

CLOVIS UNIFIED SCHOOL DISTRICT

CITY OF FRESNO, a municipal corporation

By: 

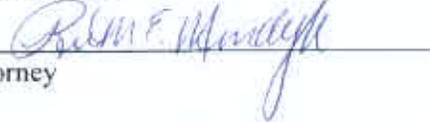
By: 
for Director of Public Works

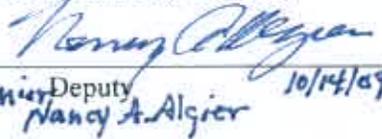
Approved as to form and procedure:

Approved as to form:

Lozano Smith

James C. Sanchez, City Attorney

By: 
Attorney

By: 
Senior Deputy Nancy A. Algier 10/14/09

Certified as to procedure:

Attest:

Rebecca E. Klisch, City clerk

By: 
Accounting Administrator

By: *Cindy Bruer 10/29/09*
Deputy

Clovis Unified School District:
Attention: Don Ulrich
1500 Herndon Avenue
Clovis, Ca 93611

City of Fresno
Attention: Scott Mozier
Department of Public Works
2600 Fresno Street
Fresno, California 93721