

AGREEMENT

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3 THIS AGREEMENT is made and entered into this 24th day of April,
4 2012, by and between the County of Fresno, a political subdivision of the State of
5 California, hereinafter called "COUNTY," and the City of Fresno, a municipal
6 corporation, hereinafter called "CITY".

RECITALS:

7
8 WHEREAS, COUNTY is presently planning a project for improvement of the
9 North Avenue and Maple Avenue Intersection located on the COUNTY-CITY boundary
10 line, which intersection is owned and maintained seventy-five percent by COUNTY and
11 twenty-five percent by CITY; and,

12 WHEREAS, COUNTY and CITY, while maintaining their respective jurisdictions,
13 recognize that it will be of mutual benefit for both COUNTY and CITY to perform the
14 work under a single construction contract (hereinafter referred to as PROJECT); and,

15 WHEREAS Federal funding in the amounts of, \$13,200, \$3,806, and \$101,400 is
16 available for preliminary engineering, right-of-way, and construction, respectively.

17 NOW, THEREFORE, it is mutually agreed as follows:

18 1. The parties hereto agree that COUNTY shall perform and administer
19 PROJECT under a single contract construction contract, with CITY to make certain
20 contributions toward PROJECT, as specified hereinafter;

21 1. Upon the completion of PROJECT, ownership of the intersection shall be
22 shared according to the percentages stated hereinabove.

23 2. COUNTY shall provide preliminary engineering and project Administration
24 (hereinafter referred to as "PE"), which includes but is not limited to the following:

25 a. Environmental oversight to ensure PROJECT complies with the
26 California Environmental Quality Act.

27 b. Contract administration to advertise and award the construction
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1 contract, in accordance with all governing federal, state and local laws, and all
2 requirements of funding agencies, including, without limitation, any applicable prevailing
3 wage and competitive bidding requirements.

4 c. Preparation of plans, specifications and other contract documents,
5 either with its staff or via a consultant retained by COUNTY, necessary for the award
6 of the contract.

7 3. COUNTY shall provide construction engineering services (hereinafter
8 referred to as "CE"), which include but are not limited to the furnishing of all necessary
9 field engineering, construction observation and testing for performance of the contract
10 construction work. CITY may, at its option and expense, provide periodic inspection of
11 work within CITY's jurisdiction being performed by COUNTY.

12 4. It is understood that necessary changes during construction of the
13 PROJECT within City's jurisdiction shall be approved by the Director of Public Works
14 of CITY or his designee (hereinafter called "CITY DIRECTOR") and the Director of
15 Public Works and Planning of COUNTY or his designee (hereinafter referred to as
16 "COUNTY DIRECTOR").

17 5. Prior to advertising and bidding the PROJECT, COUNTY shall provide to
18 CITY, for CITY's review and approval, plans and specifications for PROJECT. The
19 insurance requirements listed in said specifications shall be based upon COUNTY's
20 standard boilerplate therefor, and shall require the construction contractor to name
21 CITY as an "additional insured." During construction and through PROJECT closeout,
22 all progress payments to the construction contractor shall be approved in writing by
23 the CITY DIRECTOR; provided however that an approval e-mail from the CITY
24 DIRECTOR shall be deemed sufficient.

25 6. CITY shall waive all associated fees for permits, plan checks and
26 inspections for PROJECT.

27 7. Additional right-of-way is required for the construction of PROJECT.
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1 Both CITY and COUNTY shall acquire said right-of-way within their respective
2 jurisdictions in accordance with all applicable requirements, including requirements for
3 Federally-funded projects, at their own expense, subject to partial reimbursement
4 therefor as described hereinafter in this Article 7.

5 a. Total funding for right-of-way engineering and acquisition through
6 the CMAQ program is limited to eighty-eight point fifty-three percent (88.53%) of
7 eligible expenses incurred, and shall not exceed three thousand eight hundred six
8 dollars (\$3,806).

9 b. CITY shall be eligible for reimbursement for its acquisition of right
10 of way not to exceed the lesser of one thousand nine hundred three dollars (\$1,903)
11 and eighty-eight point fifty-three percent (88.53%) of eligible expenses incurred,
12 except as otherwise provided in accordance with Paragraph "d" of this Article 7, CITY
13 shall be solely responsible for payment of the required matching funds for its right-of-
14 way and shall also be responsible for payment of its right-of-way expenses in excess
15 of one thousand nine hundred three dollars (\$1,903) or any otherwise applicable
16 amount provided in Paragraph "d" in this Article 7.

17 c. COUNTY shall be eligible for reimbursement for its acquisition of
18 right of way not to exceed the lesser of one thousand, nine hundred and three dollars
19 (\$1,903) and eighty-eight point fifty-three percent (88.53%) of eligible expenses
20 incurred, except as otherwise provided in accordance with Paragraph "d" of this Article
21 7. COUNTY shall be solely responsible for payment of the required matching funds
22 for its right-of-way and shall also be responsible for payment of its right-of-way
23 expenses in excess of one thousand nine hundred three dollars (\$1,903) or any
24 otherwise applicable amount provided in Paragraph "d" in this Article 7.

25 d. In the event that either CITY or COUNTY does not require its
26 entire allocation for eligible right-of-way engineering and acquisition costs, the
27 allocations described in this Article 7, Paragraph b and Paragraph c , hereinabove,
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1 may be revised to reflect the actual need therefor upon mutual written consent of CITY
2 DIRECTOR and COUNTY DIRECTOR.

3 e. CITY shall invoice COUNTY for its right-of-way engineering and
4 acquisition costs and COUNTY shall pay such invoice and request reimbursement
5 therefor from the CMAQ program. All of CITY's right-of-way costs not reimbursed by
6 the CMAQ program will be added to the amount due to COUNTY from CITY on
7 COUNTY's final invoice to CITY for PROJECT.

8 8. Total funding available for the PE phase of PROJECT through the
9 CMAQ program is limited to eighty-eight point fifty-three percent (88.53%) of eligible
10 expenses incurred and shall not exceed thirteen thousand two hundred dollars
11 (\$13,200). CITY shall be responsible for payment of twenty-five percent (25%) of
12 COUNTY's actual PE costs which are not reimbursed by the CMAQ program;
13 provided, however, that CITY's payment for PE costs shall not exceed four hundred
14 twenty-seven dollars and fifty cents (\$427.50) unless otherwise approved in writing by
15 CITY DIRECTOR.

16 9. The estimated contract construction cost, including a 10% allowance for
17 contingencies, of PROJECT, is one hundred forty-one thousand eight hundred forty-
18 nine dollars and forty cents (\$141,849.40). For purposes of this AGREEMENT, it is
19 agreed that CE cost will be 15% of the actual contract construction cost. Thus, the
20 total estimated construction cost, including CE, is \$163,126.81.

21 10. Total funding available for the construction phase of PROJECT through
22 the CMAQ program, including contract construction cost, contingency, and CE, is
23 limited to eighty-eight point fifty-three percent (88.53%) of eligible expenses incurred
24 and shall not exceed one hundred one thousand four hundred dollars (\$101,400).

25 11. In the event the low bid for PROJECT does not exceed the estimated
26 contract construction cost, including contingency, of one hundred forty-one thousand
27 eight hundred forty-nine dollars and forty cents (\$141,849.40) by more than twenty
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1 percent (20%), it is mutually agreed that the contract for the work shall be
2 recommended for award by COUNTY's Board of Supervisors and CITY shall be
3 responsible for payment of twenty-five (25%) of actual contract construction costs
4 including contingency, which are not reimbursed by the CMAQ program.

5 12. In the event the low bid for PROJECT exceeds the estimated contract
6 construction cost including contingency, of one hundred forty-one thousand eight
7 hundred forty-nine dollars and forty cents (\$141,849.40) by more than twenty percent
8 (20%), no contract shall be recommended for award, except upon the mutual written
9 recommendation of both CITY DIRECTOR and COUNTY DIRECTOR. If awarded,
10 CITY shall be responsible for payment of twenty-five percent (25%) of actual contract
11 construction costs including contingency, which are not reimbursed by the CMAQ
12 program.

13 13. In the event the low bid exceeds the estimated contract construction
14 cost, including contingency, of one hundred forty-one thousand eight hundred forty-
15 nine dollars and forty cents (\$141,849.40) by more than twenty percent (20%), and the
16 construction contract is not awarded, COUNTY DIRECTOR may elect to alter the
17 design of the PROJECT and re-advertise the PROJECT for bids.

18 14. Upon award of a construction contract for PROJECT and receipt of
19 invoice from COUNTY, CITY shall promptly pay to COUNTY ninety percent (90%) of
20 CITY's share, as described hereinabove in Article 10, 11, 11, and 12 (as applicable)
21 of estimated contract construction cost including contingency, based on the awarded
22 construction contract and ninety percent (90%) of CITY's share, as described
23 hereinabove in Articles 8 and 9, of PE and CE costs respectively.

24 15. After filing of the Notice of Completion for PROJECT by COUNTY and
25 upon receipt of an invoice therefor from COUNTY, CITY shall promptly pay to
26 COUNTY the remaining balance of CITY's share of actual contract construction costs.
27 For the purpose of this AGREEMENT it is mutually agreed between parties that actual
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1 contract construction costs shall mean the total amount of money paid to the
2 contractor and expended on force account (if any) at the completion and acceptance
3 of PROJECT by both parties, subject to adjustment arising from change orders
4 approved by the CITY DIRECTOR as provided herein. CITY shall also pay, in
5 accordance with invoice from COUNTY the remaining balance (if any) of CITY's share
6 of right-of-way PE and CE costs, subject to credit for any amounts owed by COUNTY
7 to CITY.

8 16. CITY agrees to indemnify, save, hold harmless and at COUNTY's
9 request, defend COUNTY, its officers, agents and employees from any and all costs
10 and expenses, damages, liabilities, claims, and losses occurring or resulting to any
11 person firm or corporation who may be injured or damaged by the performance or
12 failure to perform, by CITY, its officers agents, and employees, under the
13 AGREEMENT. This section shall survive expiration or termination of this
14 AGREEMENT.

15 17. COUNTY agrees to indemnify, save, hold harmless and at CITY's
16 request, defend CITY, its officers, agents and employees from any and all costs and
17 expenses, damages, liabilities, claims, and losses occurring or resulting to any person
18 firm or corporation who may be injured or damaged by the performance or failure to
19 perform, by COUNTY, its officers agents, and employees, under the AGREEMENT.
20 This section shall survive expiration or termination of this AGREEMENT.

21 18. Without limiting the right of either party to obtain indemnification from the
22 other party, it is understood that CITY and COUNTY shall each maintain, at their sole
23 expense, insurance policies or self-insurance programs including, but not limited to, an
24 insurance pooling arrangement and/or Joint Powers agreement to fund their
25 respective liabilities throughout the term of this AGREEMENT. Coverage shall be
26 provided for comprehensive general liability, automobile liability, professional liability,
27 and workers' compensation exposure. Evidence of Insurance, Certificates of
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1 Insurance or other similar documentation shall not be required of either party under
2 this AGREEMENT.

3 19. Neither party shall assign, transfer or sub-contract this AGREEMENT nor
4 their rights or duties under this AGREEMENT without the written consent of the other
5 party.

6 20. The provisions of this AGREEMENT are severable. The invalidity or
7 unenforceability of any one provision of this AGREEMENT shall not affect the other
8 provisions.

9 21. This AGREEMENT shall become effective immediately upon execution
10 hereof by all of the parties and shall remain in effect until December 31, 2016, unless
11 extended by mutual written concurrence of CITY DIRECTOR and COUNTY
12 DIRECTOR.

13 22. This AGREEMENT may be executed in one or more counterparts, each
14 of which when executed will be deemed to constitute one and the same instrument
15 and agreement.

16 23. Each party acknowledges that it has read and fully understands the
17 content of this AGREEMENT. This AGREEMENT represents the entire and integrated
18 agreement between the parties with respect to the subject matter hereof and
19 supersedes all prior negotiations, representations or agreements, either written or oral.

20 24. This AGREEMENT may be modified only by written instrument
21 executed by duly authorized representatives of both CITY and COUNTY. Except to
22 the limited extent provided in Article 7 above, any such modification shall require a
23 formal written amendment hereto, approved by each of the PARTIES in the same
24 procedural manner followed with respect to its initial approval of this Agreement.

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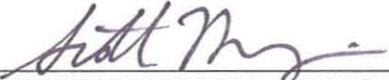
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1 IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of
2 the day and year first herein above written.

3
4 CITY OF FRESNO:

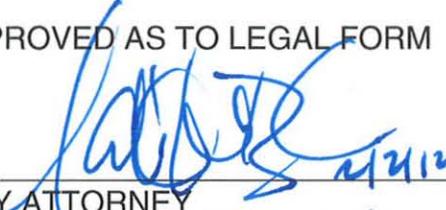
COUNTY OF FRESNO:

5
6 BY: 
7 PATRICK WIEMILLER, DIRECTOR,
8 DEPARTMENT OF PUBLIC WORKS

BY: 
DEBORAH A. POOCHIGIAN, CHAIRMAN
BOARD OF SUPERVISORS

9 APPROVED AS TO LEGAL FORM

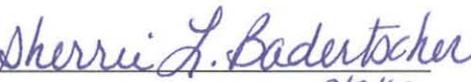
REVIEWED AND RECOMMENDED FOR
APPROVAL

10
11 BY:  2/21/12
12 CITY ATTORNEY
13 Deputy Travis Kamm
14 BRIBICH

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

15 ATTEST: YVONNE SPENCE, CMC
16 CITY CLERK

APPROVED AS TO LEGAL FORM
KEVIN BRIGGS, COUNTY COUNSEL

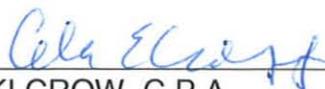
17 BY:  3/2/12

BY: 
DEPUTY

20 ATTEST: BERNICE E. SEIDEL,
21 CLERK, BOARD OF SUPERVISORS

APPROVED AS TO ACCOUNTING FORM

22 BY: 
23 DEPUTY

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

25 FOR ACCOUNTING USE ONLY:
26 FUND/SUBCLASS/ORG/ACCOUNT
27 0010/11000/4510/4985
28 PROJECT NO.:112195
PAYMENT: 0010/11000/4510/7400

AGENDA ITEM NO.	1A
COUNCIL MEETING:	03/01/12
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

March 1, 2012

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer/Assistant Director
Public Works Department, Traffic and Engineering Services Division 

SUBJECT: APPROVE A COST SHARING AGREEMENT IN THE AMOUNT OF \$17,876.82 WITH THE COUNTY OF FRESNO FOR THE INSTALLATION OF A LEFT TURN LANE AT THE INTERSECTION OF NORTH AVENUE AND MAPLE AVENUE (LOCATED IN COUNCIL DISTRICT 5)

RECOMMENDATION

Staff recommends that the City Council approve the cost sharing agreement with the County of Fresno, in substantially the form attached, for the installation of a left turn lane at the intersection of North Avenue and Maple Avenue being designed and constructed by the County of Fresno through a Federal Congestion Mitigation and Air Quality (CMAQ) Grant.

EXECUTIVE SUMMARY

The Congestion Mitigation and Air Quality (CMAQ) program provides funding for local and state governments to support transportation projects and programs that help improve air quality and reduce traffic congestion. The County was awarded \$118,406 of CMAQ funds through the Fresno Council of Governments (Fresno COG) to install a left turn lane in the east bound direction of North Avenue at the intersection of North Avenue and Maple Avenue. The intersection is 75% within the jurisdiction of the County of Fresno and 25% within the jurisdiction of the City of Fresno. The City's adopted budget includes the necessary amount of City matching funds for the joint project. Staff provided a letter of support to the County on the application, as the City and County have historically provided mutual support and cost-sharing agreements to maximize the number of grants in the Fresno area benefiting both City and County residents alike. Staff is recommending the Council approve the cost sharing agreement with the County of Fresno, in substantially the form attached, for the installation of a left turn lane at the intersection of North Avenue and Maple Avenue being designed and constructed by the County of Fresno through a CMAQ Grant.

BACKGROUND

A wide range of transportation projects and programs are eligible for CMAQ funds, including traffic flow improvements, bicycle and pedestrian pathways, and idle reduction technology, among others. The CMAQ program was established under the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, and reauthorized under the Transportation Equity Act for the 21st Century (TEA-2) in 1997. Since its inception, the CMAQ program has provided more than \$13 billion in funding for more than 16,000 projects across the country.

Presented to City Council
Date 3/1/12
Disposition Approved

Each year, local agencies compete for CMAQ funds by submitting projects for review and analysis. The application for this left turn traffic lane at the intersection of North Avenue and Maple Avenue submitted by Fresno County and supported by the City of Fresno was approved in 2007 and accepted for grant funding. The ongoing City and County partnership maximizes the number of grants in the Fresno area benefiting both City and County residents alike.

The project will consist of the installation of a left turn traffic lane at the intersection of North Avenue and Maple Avenue.

The total cost of the project was estimated to be \$182,326 in 2007. The CMAQ Program grant will provide funds in the amount of \$118,406 or 65% of the expected total project cost. The City's 25% share of cost of the local match is \$17,876.82. Due to the highly competitive construction bidding this past year, staff considers any potential excess cost for Construction, Construction Engineering, or Preliminary Engineering highly unlikely. If the project experienced a cost overrun, the County would notify the City and staff would in turn need to return to Council to request an appropriation of funds to cover the City's share of the additional project cost. Staff would again emphasize the very low probability of requiring any additional City funds for the design and construction of this County project.

The agreement has been reviewed and approved by the City Attorney's Office as to form.

ENVIRONMENTAL FINDING

The County of Fresno has previously performed an environmental assessment of this project and by its Environmental Review No. 5719, dated February 9, 2007, has determined this project to be within the CEQA Guidelines Section 15301 Categorical Exemption for Existing Facilities and Section 15303 Categorical Exemption for New Construction, form attached.

FISCAL IMPACT

There will be no impact to the general Fund. The City's share of the project's local match is included in the adopted capitol budget for the Public Works Department.

PNW/SLM/DC/CMAQ
Apprv Cost Sharing Agrmt with Fr C o

Attachments: Cost Sharing Agreement with Fresno County
County Project Environmental Review No. ER 5719