

AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of July, 2010, by and between the County of Fresno, a political subdivision of the State of California, hereinafter called "COUNTY" and the City of Fresno, a municipal corporation, hereinafter called "CITY".

RECITALS:

WHEREAS, COUNTY, and CITY desire the installation of Flashing Beacons at the intersection of Maple Avenue and Weldon Avenue near Norseman Elementary, by means of a construction project, funded primarily by a grant from the federal Safe Routes To School ("SRTS") Program, Federal Project No. SRTS-5942 (180), incorporated herein, and

WHEREAS, the intersection of Maple Avenue and Weldon Avenue is 50% within the jurisdiction of CITY and 50% within the jurisdiction of COUNTY, and

WHEREAS, COUNTY and CITY, while maintaining their respective jurisdictions, recognize it would be of mutual benefit to COUNTY and CITY and promote efficiency by performing the work under a single construction contract, (hereinafter referred to as "PROJECT"), upon the terms and conditions set forth below.

NOW, THEREFORE, it is mutually agreed as follows:

1. The installation of Flashing Beacons at this intersection shall be performed and administered by COUNTY as lead agency, with COUNTY and CITY making certain contributions toward PROJECT, as specified hereinafter.
2. Upon the completion of PROJECT, ownership of the Flashing Beacons shall be shared according to the percentages stated hereinabove, and it is hereby acknowledged by the parties that CITY is and shall be responsible for maintenance of the Flashing Beacons, consistent with the provisions of a separate agreement previously executed by the parties hereto, under which CITY maintains all COUNTY traffic signals within the Fresno metropolitan area.

CITY OF FRESNO
City Clerk's Office (Original)

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- 1 3. Pursuant to an agreement between Fresno Unified School District and CITY,
2 Fresno Unified School District will be the operator of the Flashing Beacons,
3 and will provide initial safety training including familiarization with the Flashing
4 Beacon facilities.
- 5 4. COUNTY shall provide PROJECT Administration, which includes but is not
6 limited to the following:
- 7 a. Environmental oversight to ensure PROJECT complies with the California
8 Environmental Quality Act and National Environmental Policy Act.
- 9 b. Contract administration to advertise and award the contract, in accordance
10 with all governing federal, state and local laws, and all requirements of
11 funding agencies, including, without limitation, any applicable prevailing
12 wage and competitive bidding requirements.
- 13 5. COUNTY shall provide Preliminary Engineering (hereinafter referred to as
14 "PE"), which includes but is not limited to the preparation of plans,
15 specifications, and other contract documents necessary for the award of the
16 contract; and which also includes Project Administration as defined
17 hereinabove.
- 18 6. COUNTY shall provide Construction Engineering (hereinafter referred to as
19 "CE",) which includes but is not limited to the furnishing of all necessary field
20 engineering, construction observation and testing for performance of the
21 contract construction work. CITY may, at its option, provide periodic
22 inspection of work within CITY's jurisdiction being performed by COUNTY.
- 23 7. It is understood that necessary changes during construction of the PROJECT
24 within CITY's jurisdiction shall be approved by the Director of Public Works of
25 CITY or his designee (hereinafter called "CITY DIRECTOR") and the Director
26 of Public Works and Planning of COUNTY or his designee (hereinafter called
27 "COUNTY DIRECTOR").
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- 1 8. COUNTY shall provide to CITY, for CITY's review and approval, appropriate
2 plan information concerning that portion of work to be performed by
3 COUNTY's contractor that lies within CITY's jurisdiction. Prior to advertising
4 and bidding the PROJECT, COUNTY shall provide to CITY, for CITY's review
5 and approval, all traffic signal plans and complete specifications for the
6 project. Insurance requirements within said specifications shall be based on
7 COUNTY's standard boilerplate therefor, and shall require the Contractor to
8 name CITY as "additional insured."
- 9 9. CITY shall waive all associated fees for permits, plan checks and electrical
10 inspections for PROJECT.
- 11 10. Funding for the contract construction cost for PROJECT through the SRTS
12 program is \$86,680. Each of the parties hereto shall share equal
13 responsibility for the actual contract construction costs of PROJECT in excess
14 of \$86,680. Provided, however, that, in the event that SRTS funding for
15 contract construction of PROJECT is increased, each of the parties hereto
16 shall share equal responsibility for the actual contract construction costs of
17 PROJECT in excess of such increased funding amount. Hereinafter, \$86,680
18 shall be referred to as "SRTS CONTRACT CONSTRUCTION FUNDING,"
19 unless such funding is increased, in which case "SRTS CONTRACT
20 CONSTRUCTION FUNDING," shall be taken to refer to such increased
21 funding amount.
- 22 11. In the event the low bid for PROJECT exceeds the SRTS CONTRACT
23 CONSTRUCTION FUNDING by less than twenty percent (20%), it is mutually
24 agreed that the contract for the work shall be recommended for award by
25 COUNTY's Board of Supervisors and that CITY and COUNTY shall equally
26 share the balance of contract construction costs in excess of the SRTS
27 CONTRACT CONSTRUCTION FUNDING.
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1 12. In the event the low bid for PROJECT exceeds the SRTS CONTRACT
2 CONSTRUCTION FUNDING by twenty percent (20%) or more, no contract
3 shall recommended for awarded, except upon the mutual written
4 recommendation of both CITY DIRECTOR and COUNTY DIRECTOR. In the
5 event that, based upon such mutual written recommendation, a contract for
6 construction is awarded, CITY and COUNTY shall equally share the balance
7 of contract construction costs in excess of the SRTS CONTRACT
8 CONSTRUCTION FUNDING.

9 13. In the event the low bid exceeds the SRTS CONTRACT CONSTRUCTION
10 FUNDING by twenty percent (20%) or more, and the construction contract is
11 not awarded; with the written consent of CITY DIRECTOR, COUNTY
12 DIRECTOR may elect to alter the design of the PROJECT and re-advertise
13 the PROJECT for bids.

14 14. Funding for Preliminary Engineering (PE), as defined hereinabove, of
15 PROJECT through the SRTS program is \$19,700. Each of the parties hereto
16 shall share equal responsibility for the actual PE costs of PROJECT in excess
17 of \$19,700. Provided, however, that, in the event that SRTS funding for PE
18 for PROJECT is increased, each of the parties hereto shall share equal
19 responsibility for the actual PE costs of PROJECT in excess of such
20 increased funding amount. Hereinafter, \$19,700 shall be referred to as
21 "SRTS PE FUNDING," unless such funding is increased, in which case
22 "SRTS PE Funding," shall be taken to refer to such increased funding amount
23 for PE. CITY's share of PE costs in excess of SRTS PE FUNDING shall not
24 exceed \$10,000, unless otherwise approved by CITY DIRECTOR.

25 15. Funding for the Construction Engineering (CE) of PROJECT through the
26 SRTS program is \$13,002. Each of the parties hereto shall share equal
27 responsibility for the actual CE costs of PROJECT in excess of \$13,002.
28 Provided, however, that, in the event that SRTS funding for contract

1 construction of PROJECT is increased, each of the parties hereto shall share
2 equal responsibility for the actual CE costs of PROJECT in excess of such
3 increased funding amount. Hereinafter, \$13,002 shall be referred to as
4 "SRTS CE FUNDING," unless such funding for CE is increased, in which
5 case "SRTS CE Funding," shall be taken to refer to such increased funding
6 amount. CITY's share of CE costs in excess of SRTS CE FUNDING shall not
7 exceed \$3,000, unless otherwise approved by CITY DIRECTOR.

8 16. Upon award of a construction contract for PROJECT and receipt of invoice
9 from COUNTY, CITY shall promptly pay to COUNTY ninety percent (90%) of
10 CITY's share of costs in excess of SRTS CONTRACT CONSTRUCTION
11 FUNDING, ninety percent (90%) of CITY's share of costs SRTS PE
12 FUNDING, and 90% of CITY's share of SRTS CE FUNDING; in accordance
13 with the requirements hereinabove.

14 17. Within thirty (30) days after filing of the Notice of Completion for PROJECT by
15 COUNTY, CITY shall promptly pay to COUNTY, upon receipt of an invoice
16 therefor, from COUNTY the remaining balance of its share of costs due in
17 accordance with the terms of this Agreement. The expected completion date
18 of the PROJECT is June 30, 2011.

19 18. CITY shall indemnify, hold harmless and defend COUNTY and each of its
20 officers, officials, employees, agents and authorized volunteers from any and
21 all loss, liability, fines, penalties, forfeitures, costs and damages (whether in
22 contract, tort or strict liability, including but not limited to personal injury, death
23 at any time and property damage) incurred by CITY, COUNTY or any other
24 person, and from any and all claims, demands and actions in law or equity
25 (including attorney's fees and litigation expenses), arising or alleged to have
26 arisen directly or indirectly from the negligent or intentional acts or omissions,
27 or willful misconduct of CITY or any of its officers, officials, employees, agents
28 or authorized volunteers in the performance of this Agreement; provided

1 nothing herein shall constitute a waiver by CITY of governmental immunities
2 including California Government Code Section 810 et seq. This section shall
3 survive expiration or termination of this Agreement.

4 19. COUNTY shall indemnify, hold harmless and defend CITY and each of its
5 officers, officials, employees, agents and authorized volunteers from any and
6 all loss, liability, fines, penalties, forfeitures, costs and damages (whether in
7 contract, tort or strict liability, including but not limited to personal injury, death
8 at any time and property damage) incurred by the CITY, COUNTY or any
9 other person, and from any and all claims, demands and actions in law or
10 equity (including attorney's fees and litigation expenses), arising or alleged to
11 have arisen directly or indirectly from the negligent or intentional acts or
12 omissions, or willful misconduct of COUNTY or any of its officers, officials,
13 employees, agents or authorized volunteers in the performance of this
14 Agreement; provided nothing herein shall constitute a waiver by COUNTY of
15 governmental immunities including California Government Code Section 810
16 et seq. This section shall survive expiration or termination of this Agreement.

17 20. Without limiting the indemnification of each party as stated in Sections 18 and
18 19 above, it is understood and agreed that CITY and COUNTY shall each
19 maintain, at their sole expense, insurance policies or self-insurance programs
20 including, but not limited to, an insurance pooling arrangement and/or Joint
21 Powers Agreement to fund their respective liabilities throughout the term of
22 this agreement. Coverage shall be provided for general liability, automobile
23 liability, and workers' compensation exposure. Evidence of Insurance, e.g.,
24 Certificates of Insurance or other similar documentation, shall not be required
25 of either party under this Agreement.

26 21. In the event of concurrent negligence on the part of COUNTY or any of its
27 officers, employees, agents or authorized volunteers, and CITY or any of its
28 officers, employees, agents or authorized volunteers, the liability for any and

1 all such claims, demands and actions in law or equity for such losses, fines,
2 penalties, forfeitures, costs and damages shall be apportions under the State
3 of California's theory of comparative negligence as presented established or
4 as may be modified hereinafter. This section shall survive termination or
5 expiration of this Agreement.

6 22. Neither party shall assign, transfer or sub-contract this Agreement nor their
7 rights or duties under this Agreement without the written consent of the other
8 party. This agreement does not confer any third party rights, or rights to
9 subrogation or action by a third party. Each party shall bear their own costs
10 and attorney fees in connection with any legal proceedings hereinafter.

11 23. The provisions of this Agreement are severable. The invalidity or
12 unenforceability of any one provision of this Agreement shall not affect the
13 other provisions.

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14 23. Each party acknowledges that it has read and fully understands the content of
15 this agreement. This agreement represents the entire and integrated
16 agreement between the parties with respect to the subject matter herein and
17 supersedes all prior negotiations, representations or agreements, either
18 written or oral. This Agreement may be modified only by written instrument
19 duly authorized and executed by both CITY and COUNTY.

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

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4 CITY OF FRESNO:

COUNTY OF FRESNO:

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6 BY: *Patrick Wiemiller*
PATRICK WIEMILLER, DIRECTOR,
7 DEPARTMENT OF PUBLIC WORKS

BY: *Judith G. Case*
JUDITH G. CASE, CHAIRMAN
8 BOARD OF SUPERVISORS

JUL 13 2010

9 APPROVED AS TO LEGAL FORM

REVIEWED AND RECOMMENDED FOR
10 APPROVAL

11 BY: *R* *6-16-10*
CITY ATTORNEY *Gayla*

BY: *Alan Weaver*
ALAN WEAVER, DIRECTOR
12 DEPARTMENT OF PUBLIC WORKS AND
13 PLANNING

14
15 ATTEST: REBECCA E. KLISCH
CITY CLERK

APPROVED AS TO LEGAL FORM
16 KEVIN BRIGGS, COUNTY COUNSEL

17
18 BY: *Cindy Bauer* *6/10/10*
Deputy

BY: *Kevin Briggs*
19 DEPUTY

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

APPROVED AS TO ACCOUNTING FORM

22
23 BY: *Shirley Egan*
DEPUTY

BY: *Vicki Crow*
24 VICKI CROW, C.P.A.
AUDITOR-CONTROLLER/TREASURER
25 TAX COLLECTOR

26 FOR ACCOUNTING USE ONLY:

FUND/SUBCLASS/ORG/ACCOUNT/MEMO
27 0010/11000/4510/7370
PROJECT NO. H12901
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REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1 E
COUNCIL MEETING:	6/10/10
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

June 10, 2010

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

Presented to City Council
Date 6/10/10
Disposition Rec. Approved

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

SUBJECT: APPROVE A COST SHARING AGREEMENT WITH THE COUNTY OF FRESNO FOR THE INSTALLATION OF FLASHING BEACONS AT THE INTERSECTION OF MAPLE AVENUE AND WELDON AVENUE – COUNCIL DISTRICT 4

RECOMMENDATION

Staff recommends that the City Council approve the cost sharing agreement with the County of Fresno, in the form attached, for the installation of flashing beacons at the intersection of Maple and Weldon Avenues being designed and constructed by the County of Fresno through a Federal Safe Routes To School Grant located at the intersection of Maple Avenue and Weldon Avenue.

EXECUTIVE SUMMARY

The State of California currently administers two (2) separate Safe Routes To School Programs and they are identified as the State - legislated Program (SR2S) and the Federal - authorized Program (SRTS). The County received \$119,760.00 Federal SRTS Grant from the Cycle 2 SAFETEA-LU funded program to install a new flashing beacon at the intersection of Maple and Weldon Avenues near Norseman Elementary School. The intersection is half within the jurisdiction of the City of Fresno and half within the jurisdiction of Fresno County. 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 benefitting both City and County residents alike. Staff is recommending the Council approve the cost sharing agreement with the County of Fresno, in the form attached, for the installation of a flashing beacon at the intersection of Maple and Weldon Avenues being designed and constructed by the County of Fresno through a Federal Safe Routes to School Grant.

BACKGROUND

Due to the success from California's legislated Safe Routes To School Program (SR2S) since 1999, the federal program was authorized by Section 1404 of SAFETEA-LU (the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) which came into effect in August of 2005. Congress authorized this 5 year funding program nationwide for the following purpose 1) to enable and encourage children in kindergarten through eighth grade (K-8), including children with disabilities, to safely walk and bicycle to school; 2) to make walking and bicycling to school a more

appealing mode choice; and 3) to facilitate the planning, design, and implementation of projects that will improve safety, environment, and overall quality of life. The programs require community participation in the development and implementation of projects to be successful in acquiring program funding. The programs consist of 5 key elements – Evaluation, Education, Encouragement, Engineering and Enforcement. Therefore, City staff conducts outreach and develops collaborative partnerships with the school district, school site administration, staff and students, law enforcement, parents and the other community groups to develop and implement Safe Routes to School projects.

Each year, local agencies compete for Safe Routes to School funds by submitting projects for review and analysis. The application for this flashing beacon at the intersection of Maple Avenue and Weldon, near Norseman Elementary School project submitted by Fresno County and supported by the City of Fresno has been approved and accepted for grant funding. The ongoing City and County partnership maximizes the number of grants in the Fresno area benefitting both City and County residents alike.

The project will consist of the installation of flashing beacons at the intersection of Maple and Weldon Avenues. Necessary ADA (*The Americans with Disabilities Act of 1990*) compliant curb returns, signage and striping, and electrical service are also included in the project.

The total cost of the project was estimated to be \$111,973.55 in 2008. The Safe Routes to School Program grant will provide funds in the amount of \$119,760, or 100% of the expected total project cost. The City and County's share of the local match is \$0 each. The City has identified a contingency, mutually shared by both agencies up to an additional \$17,336 toward the cost of construction of the project, should construction bids received exceed the Engineer's Estimate by up to 20%. The Engineer's Estimate for the project is \$111,973.55. 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 project cost. Staff would again emphasize the very low probability of requiring any City funds for the design and construction of this County project.

The agreement has been reviewed and approved by the Fresno City Attorney as to form.

FISCAL IMPACT

The typical annual operating and maintenance cost for a flashing beacon is \$2,500. The City and County would share this cost 50/50. The installation would result in \$1,250 of annual maintenance expenditures by the City of Fresno Public Works Department. Eligible funding sources would be General Fund, Gas Tax, Prop 111 Special Gas Tax or Measure C Flexible revenues.