

2/27/14

Reso # 2014-42

**AGREEMENT TO FUND  
The Fulton Mall Reconstruction Project**

THIS AGREEMENT is made and entered into the 16th day of March, 2015 by and between the Downtown Fresno Partnership, a [California Partnership] ("DFP") and the City of Fresno, a California municipal corporation ("CITY"). DFP and CITY are sometimes hereinafter referred to individually as a Party and collectively as Parties.

RECITALS

City has received a grant commitment from the United States Department of Transportation ("DOT") to administer and implement the Transportation Investment Generating Economic Recovery ("TIGER") grant program.

The TIGER grant will be used to fund construction work in the Fulton Corridor in Downtown Fresno, California (the "Project").

DFP represents the property owners of Downtown Fresno and has committed to provide Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) of matching funds to City in an effort to revitalize the Downtown Fresno area through support of this Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions and premises hereinafter combined to be kept and performed by the respective Parties, it is mutually agreed as follows:

1. Scope of Services. CITY shall perform those services necessary to complete the Project.
  2. Effective Date. It is the intent of the Parties that this Agreement be effective as of the date first set forth above as to all terms and conditions of the Agreement.
  3. Compensation and Method of Payment. DFP shall pay CITY the aggregate sum of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) for satisfactory performance of the services rendered, or construction costs incurred, for the Project. Compensation is based on continued progression of the project by CITY. CITY shall use the funds provided by DFP solely for the Project.
- Payments shall be made by the DFP to CITY per the payment schedule detailed in **Attachment "A"**, attached hereto and incorporated herein by reference. Such payments by DFP shall be made in the normal course of business, generally within thirty (30) days of the dates specified in Attachment "A".
4. Loss of Third Party Funding: In the event that TIGER grant funding to CITY is suspended, reduced or withdrawn, then DFP may suspend this Agreement immediately upon its receipt of notice thereof, or terminate this Agreement as provided in

CITY OF FRESNO  
City Clerk's Office (Original)

Section 6 below. CITY shall notify DFP in writing within seven (7) days of any suspension, reduction or withdrawal of CITY'S TIGER grant.

5. Events of Default. When there is an occurrence of any one or more of the following provisions, it will represent an "Event of Default" for purposes of this Agreement:

- (a) An illegal or improper use of funds;
- (b) A failure to comply with any material term, covenant or condition of this Agreement;
- (c) Report(s) are submitted to DFP which are incorrect or incomplete in any material respect;
- (d) The services required hereunder are being improperly performed by City.

6. Termination and Remedies.

Upon the occurrence of an Event of Default, DFP shall give written notice to CITY of the Event of Default by specifying: (1) the nature of the event or deficiency giving rise to the Event of Default; (2) the action required to cure the deficiency, if any action to cure is possible; and (3) if the Event of Default is curable, a date, which shall not be less than thirty (30) calendar days from the date of the notice, by which such deficiency must be cured, provided, however that if such failure cannot be remedied in such time, CITY shall have an additional thirty (30) days to remedy such failure so long as CITY is diligently and in good faith pursuing such remedy.

(a) This Agreement shall terminate without any liability of DFP to CITY upon the earlier of: (i) the happening of an Event of Default by CITY and a failure to cure said Event of Default within the time specified in the notice of Event of Default; (ii) seven (7) calendar days prior written notice without cause by DFP to CITY; or (iii) expiration of this Agreement.

(b) Subject to the terms of this Agreement, CITY shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CITY shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

7. Records, Reports and Inspection.

(a) CITY shall establish and maintain records in accordance with generally accepted accounting principles with respect to all matters covered by this Agreement.

(b) CITY shall submit to DFP, quarterly progress reports on the first day of each quarter starting on the date of issuance of the Notice to Proceed to the Fulton Mall Reconstruction Project Contractor. The quarterly reports shall provide a general project status update and highlight key achievements of the previous quarter and upcoming tasks in the following quarter. All quarterly reports are to be submitted to DFP at the address given for notices on the signature page hereof or at such address the DFP may from time to time designate by written notice.

(c) During the life of this Agreement and for a period of five (5) years after receipt of the final payment under this Agreement or the earlier termination of this Agreement, whichever occurs later, CITY shall, at any time during normal business hours, make available to DFP such statements, records, reports, data and information as they may request pertaining to matters covered by this Agreement and permit them or any one of them to audit and inspect all records, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement. CITY shall also permit and cooperate with on-site monitoring and personal interviews of CITY's staff and employees.

8. Independent Contractor.

(a) In the furnishing of the Services provided for herein, CITY is acting as an independent contractor. Neither CITY, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of DFP for any purpose. DFP shall have no right to control or supervise or direct the manner or method by which CITY shall perform its work and functions. However, DFP shall retain the right to administer this Agreement so as to verify that CITY is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CITY and DFP. CITY shall have no authority to bind DFP absent DFP'S express written consent. Except to the extent otherwise provided in this Agreement, CITY shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CITY and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to DFP employees. CITY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, CITY shall be solely responsible and save DFP harmless from all matters relating to payment of CITY'S employees, including, without limitation, compliance with Social Security withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CITY may be providing services to others unrelated to DFP or to this Agreement.

9. 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.

10. Binding. 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.

11. Assignment.

(a) This Agreement is personal to CITY and there shall be no assignment by CITY of its rights or obligations under this Agreement without the prior written approval of DFP. Any attempted assignment by CITY, its successors or assigns, shall be null and void unless approved in writing by DFP.

(b) CITY hereby agrees not to assign the payment of any monies due CITY from DFP under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). DFP retains the right to pay any and all monies due CITY directly to CITY.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 any Party, but rather by construing the terms in accordance with their generally accepted meaning.

17. 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.

18. Extent of Agreement. Each Party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, the day and year first above written.

City of Fresno,  
a municipal corporation

By:   
Bruce Rudd  
City Manager

Date: 4/6/15

Downtown Fresno Partnership,  
a [California partnership]

By:   
Aaron Blair  
President & CEO

(Attach Notary Certificate of Acknowledgement)

Date: 3/15/15

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By:   
Deputy

Date: 4/8/15

By: \_\_\_\_\_

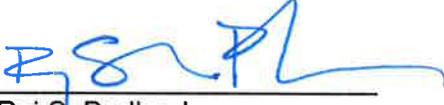
Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Attach Notary Certificate of Acknowledgement)

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
DOUG SLOAN  
City Attorney

By:   
Raj S. Badhesha  
Deputy City Attorney

Date: 4.3.15

Addresses:

CITY:  
City of Fresno  
Attention: Randall Morrison  
Special Projects Engineer  
2600 Fresno Street Room 3076  
Fresno, CA 93721  
Phone: (559) 621-8703  
FAX: (559) 457-1277

DFP:  
Downtown Fresno Partnership  
Attention: Aaron Blair  
845 Fulton Mall  
Fresno, CA 93721  
Phone: (559) 490-9966  
FAX: (559) 490-9968

Attachment A

PAYMENT SCHEDULE  
For Fulton Mall Reconstruction Project

<b>PAYMENT SCHEDULE</b>	
<b><u>Payment Due Date</u></b>	<b><u>Amount (\$)</u></b>
Date of Notice to Proceed	\$75,000
March 31, 2016	\$125,000
March 31, 2017	\$50,000
	TOTAL: \$250,000