

MASTER DUAL JURISDICTION COOPERATIVE AGREEMENT

This Master Dual Jurisdiction Cooperative Agreement ("Agreement") is made and entered into this 7th day of January, 2020, by and between the City of Reedley, a municipal corporation (City), and the County of Fresno, a political subdivision of the State of California (County) (collectively, the Parties) with respect to Projects (defined below) performed cooperatively by the Parties.

RECITALS:

A. City and County recognize that it will be to their mutual benefit to perform, as a cooperative endeavor, certain construction projects for the improvement, repair or maintenance of roads and associated traffic signals, bridges, and facilities located across City/County jurisdictional boundaries, as to which the City and County share jurisdictional responsibility ("Project").

B. It is the intent of the Parties that they may enter into a sub-agreement or a Project Specific Supplement Agreement ("PSS") for any such Project and that this Agreement shall be incorporated therein by reference and provide the general terms governing such dual jurisdictional projects.

C. The Parties now desire to enter into this Agreement to govern such dual joint jurisdiction projects.

NOW, THEREFORE, in consideration of the mutual acknowledgments, covenants, and conditions herein contained, it is hereby agreed as follows:

1. **Recitals.** Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.

2. **Purpose.** The purpose of this Agreement is to set forth each Party's general obligations governing projects which fall within the scope of this Agreement,

1 subject to the terms of a subsequently executed PSS between the Parties.

2 3. **Scope.** This Agreement shall govern the following types of collaborations:

3 a. **Dual Jurisdiction Projects.** Projects located within both City and County
4 jurisdictions as to which a separate PSS has been executed between the
5 Parties, including, but not limited to, road pavement overlay projects.

6 b. **Limitations.** This Agreement shall not govern projects which are
7 occasioned by conditions imposed upon private development projects.
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9 4. **Term.** This Agreement shall expire on December 31, 2025 (the "Expiration Date"),
10 unless otherwise terminated hereunder, provided, that this Agreement shall
11 continue in effect beyond the Expiration Date as to those Projects for which a PSS
12 is executed prior to the Expiration Date. The term of this Agreement may be
13 extended by mutual agreement of the Parties.
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15 5. **Initiation of Process and Selection of Projects.**

16 a. Either of the Parties may propose to the other the undertaking of a specific
17 cooperative project pursuant to the provisions hereof.
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19 b. Upon approval of City's Engineer and/or Director of Public Works and
20 County's Director of Public Works and Planning, a PSS will be prepared for
21 execution by the authorized representatives of each of the Parties with
22 respect to that Project. (As used hereinafter, either City's Engineer or
23 Director of Public Works, or County's Director, may be referred to as
24 "Director" as appropriate, and any reference thereto shall be deemed to
25 include a reference to any authorized designee of said Director.)
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27 6. **Project Specific Supplemental Agreements.** For each Project hereunder, the
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1 Parties shall enter into a Project Specific Supplement Agreement substantially in
2 the form attached hereto as Exhibit A. Each PSS shall:

- 3 a. Identify location and boundaries of the Project;
- 4 b. Set forth each Party's jurisdictional share (the percentage of the estimated
5 project cost for which each Party is responsible, which shall be based upon
6 the percentage of the Project scope that lies within each Party's jurisdiction);
- 7 c. Identify the anticipated funding source(s) for the Project and any specific
8 requirements attached thereto; and
- 9 d. Identify the Lead Agency for Project coordination and completion. The other
10 party to the PSS will be the Participating Agency.

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13 7. **Project Execution Obligations.**

- 14 a. **Construction Contract.** Each Project shall be performed and administered
15 by the Lead Agency, or its agents thereof, and shall be constructed under
16 a single construction contract.
- 17 b. **Project Engineering.** Lead Agency, either with its own staff or by
18 contracting with a consultant, shall provide Project Engineering in
19 accordance with the requirements of the funding agencies and all federal,
20 state, and local laws, including:
 - 21 i. Administering California Environmental Quality Act Environmental
22 and National Environmental Policy Act compliance, as applicable.
 - 23 ii. Providing Design Engineering services; including preparation of
24 plans, specifications, and engineer's estimates and other Project
25 documents necessary for the bidding and construction of the Project.

- 1 iii. Oversight of consultant(s) employed by Lead Agency for Project
2 design,
3 iv. Ensuring that the project design complies with all applicable design
4 standards, including, but not limited to, standards associated with the
5 Americans with Disabilities Act.
6 v. Preparation and administration of applicable permits.
7 vi. Advertisement, bidding, and award of the Project construction
8 contract.
9 vii. Public outreach.
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12 c. **Plan Review and Approval.** Lead Agency shall provide Participating
13 Agency the plans, specifications, and engineer's estimates for each Project
14 for review and approval. Participating Agency shall indicate its approval via
15 the signature of its Director upon the title sheet of the Project plans.
16
17 d. **Right-of-Way Engineering.** Lead Agency or a consultant contracted by
18 Lead Agency to perform right of way services, shall perform Right-of-Way
19 Engineering and identify all rights-of-way needed to construct the Project,
20 within all applicable jurisdictions. Right-of-Way Engineering shall include,
21 but not be limited to, preparation of legal descriptions and drawings. Each
22 Party shall be responsible for review and approval of deeds for property
23 within its boundaries.
24
25 e. **Right-of-Way Acquisition.** Unless otherwise agreed upon pursuant to a
26 specific Project PSS, the Party within whose jurisdiction the right-of-way to
27 be acquired is situated shall be responsible for acquisition of such right-of-
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1 way. ROW Acquisition includes, but is not limited to, obtaining title reports,
2 performing appraisals, and conducting negotiations and such legal
3 proceedings as subsequently may become necessary.

4 f. **Construction Engineering.** Lead Agency shall be responsible for
5 Construction Engineering, including general administration of the
6 construction contract and furnishing all necessary field engineering,
7 inspection, and testing for performance of the construction work.
8 Participating Agency may, at its option and at its sole and independent cost,
9 inspect the construction contractor's work.

10 g. **Permits.** If allowed by the provisions of the Participating Agency's
11 applicable ordinances and the applicable PSS, the Participating Agency
12 shall issue a "no fee" encroachment permit for Project work done within the
13 Participating Agency's jurisdiction.

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17 8. **Award of Construction Contract.**

18 a. If the lowest responsive and responsible bid for Project's construction
19 contract does not exceed the engineer's estimate, including contingency,
20 by more than ten percent (10%), Lead Agency's Director shall recommend
21 to its governing body that the construction contract be awarded to that
22 bidder.

23
24 b. In the event that the lowest responsive and responsible bid for Project's
25 construction contract exceeds the engineer's estimate by more than ten
26 percent (10%), then Lead Agency's Director will not recommend that its
27 governing body award the construction contract, unless mutually agreed
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1 upon in writing by both Lead Agency's Director and Participating Agency's
2 Director.

- 3 c. If the lowest responsible bidder's proposal is more than ten percent (10%)
4 above the engineer's estimate, including contingency, and award of the
5 Project is mutually agreed upon in accordance with Subsection 8(b) above,
6 then in such event, Participating Agency's percentage share of cost will be
7 adjusted to reflect the increased cost; however, Participating Agency's
8 share of cost shall not exceed the percentage share of cost specified in the
9 applicable PSS unless mutually agreed upon in writing by City's and
10 County's respective Directors.
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12 d. All recommendations by Lead Agency's Director involving bids over the
13 engineer's estimate shall consider the availability of funding or budgetary
14 appropriations.
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17 **9. Cost Allocation.**

- 18 a. **Cost Share.** Generally, unless otherwise agreed in the PSS for that Project
19 or as specifically provided in Subsection 11(c) below, each party shall be
20 responsible for costs in proportion to the percentage of the Project located
21 within the party's jurisdiction. Participating Agency and Lead Agency shall
22 each be responsible for the actual costs of the Participating Agency and
23 Lead Agency obligations identified in the Preliminary Engineer's Estimates
24 attached as an Exhibit to the applicable PSS.
25
26 b. **Revisions to Participating Agency's Project Costs.** Any addenda or
27 revisions to the Project's approved construction documents for
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improvements performed within Participating Agency's jurisdiction, resulting in an increase in bid item quantity or cost of any bid item by more than ten percent (10%), shall be approved by both Directors.

- c. **Cost Increases.** Participating Agency's share of costs, as shown in the Preliminary Engineer's Estimate of probable costs (an Exhibit to the applicable PSS), or as adjusted (if applicable) pursuant to Subsection 8(c) above, shall not be increased by more than ten percent (10%), unless otherwise approved in writing by Participating Agency's Director.

10. **Deposit by Participating Agency.** Unless otherwise agreed in the PSS for a specific Project, within sixty (60) days after award of Project's construction contract by the Lead Agency's governing body, Participating Agency shall deposit with Lead Agency an amount equal to ninety percent (90%) of Participating Agency's estimated cost share as determined in accordance with the PSS.

11. **Reconciliation of Costs.**

- a. Final Project costs and Participating Agency's share thereof will not be determined until construction is completed and the Project is accepted by both Lead Agency and Participating Agency and closed out in accordance with each agency's policies.
- b. Following final acceptance of the Project by Lead Agency and Participating Agency, and within sixty (60) days of Participating Agency's receipt of an invoice from Lead Agency requesting Participating Agency's payment of the remaining balance of Participating Agency's share of costs as adjusted (if necessary), in accordance with actual costs and the terms of this

1 Agreement, Participating Agency shall deliver payment in full of such
2 remaining balance to Lead Agency.

3 c. **Modifications to City Utilities.** Notwithstanding the provisions of
4 Subsection 9(a) above, the adjustment or modification of any utility facilities
5 owned and operated by City shall be performed by City at no cost to County,
6 regardless of which Party has jurisdiction over the location within which
7 such facilities are situated.

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9 d. **Change Orders.** Following the award of a construction contract, any
10 change order within either Party's jurisdiction (except for adjustments made
11 to account for actual quantities used in construction of the Project), resulting
12 in an increase by more than ten percent (10%) of that agency's cost share,
13 shall be approved by the Director of said agency.
14

15 12. **Project Acceptance.** Unless otherwise noted, each Party may, at its own
16 discretion and expense, conduct final inspection of the work prior to accepting
17 ownership of facilities. Either Party may reject work that is a material deviation
18 from the approved plans. To the extent necessary, Lead Agency shall work with
19 Participating Agency to compile a punch list of all work which (1) deviates from
20 approved plans and (2) is unacceptable to the either Party. Lead Agency shall
21 coordinate the completion of punch list items.
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24 13. **Post Construction Obligations.** Upon completion of the Project, each Party's
25 jurisdictional and maintenance responsibilities shall remain unchanged from those
26 which existed prior to completion of the Project except as modified through any
27 maintenance agreement entered into between City and County.
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1 14. **Dispute Resolution.** The Parties agree to implement the provisions of this
2 Agreement in a reasonable, good faith manner. In the event of a dispute the
3 Parties shall engage in informal good faith negotiations at the staff level, which
4 shall be escalated to Directors. Should no resolution be attainable, the Parties
5 agree to engage in mediation through a mutually acceptable mediator prior to
6 institution of legal proceedings to resolve any issues pertaining to the provisions
7 of this Agreement. The Parties shall each pay fifty percent (50%) of all fees and
8 costs charged by such mediator.
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11 15. **Indemnification.** City agrees to indemnify, save, hold harmless, and at County's
12 request, defend County, its officers, agents, and employees from any and all costs
13 and expenses, damages, liabilities, claims, and losses occurring or resulting to any
14 person, firm, or corporation who may be injured or damaged by the performance,
15 or failure to perform, by City, its officers, agents and employees, under this
16 Agreement; provided, that nothing herein shall constitute a waiver by City of
17 governmental immunity that may be available as a defense to any such third-party
18 claim(s) under or pursuant to Government Code Section 810 et seq. This section
19 shall survive expiration or termination of this Agreement.
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21
22 County agrees to indemnify, save, hold harmless, and at City's request, defend
23 City, its officers, agents, and employees from any and all costs and expenses,
24 damages, liabilities, claims, and losses occurring or resulting to any person, firm,
25 or corporation who may be injured or damaged by the performance, or failure to
26 perform, by County, its officers, agents and employees, under this Agreement;
27 provided, that nothing herein shall constitute a waiver by County of governmental
28

1 immunity that may be available as a defense to any such third-party claim(s) under
2 or pursuant to Government Code Section 810 et seq. This section shall survive
3 expiration or termination of this Agreement.

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

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

14 18. **Approvals.** All approvals authorized hereunder shall be in writing.

15 19. **Notices.** All required notices may be sent by first class United States Mail,
16 facsimile transmission, hand delivery, or express mail, and for time calculations
17 purposes shall be deemed to have been received by the end of five (5) business
18 days from the proper sending thereof unless proof of prior actual receipt is
19 provided. Unless otherwise notified in writing, notices shall be sent to the following
20 addresses:
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22 If to the City:

23 City of Reedley
24 Attention: City Engineer
25 1733 Ninth Street
26 Reedley, CA 93654
27
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Facsimile: (559) 637-2139

If to the County:

County of Fresno
Steven E. White, Director of Public Works and Planning


20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when executed will be deemed to constitute one and the same instrument and agreement.
21. **Severable.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision of this Agreement shall not affect the other provisions.
22. **Amendment.** This Agreement may be modified only by written instrument executed by duly authorized representatives of both City and County.
23. **Entire Agreement.** Each party acknowledges that it has read and fully understands the contents of this Agreement and represents that this entire Agreement between City and County with respect to the subject matter contained herein and that this Agreement supersedes all prior negotiations, representations, or agreements, either written or oral.

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

[SIGNATURES ON FOLLOWING PAGE]

1 CITY OF REEDLEY

2 A California municipal corporation

3 By: 
4 Nicole Zieba, City Manager


5
6 APPROVED AS TO FORM:

7 By: 
8 Scott G. Cross
9 City Attorney

10 ATTEST:

11 By: 
12 Sylvia Plata, City Clerk

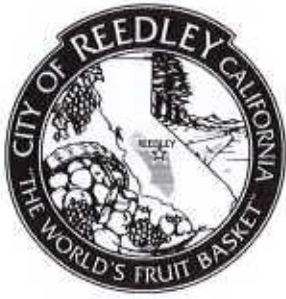
COUNTY OF FRESNO

By: 
Ernest Buddy Mendes, Chairman
Board of Supervisors of the County of Fresno

ATTEST:

BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 



REEDLEY CITY COUNCIL

- ☒ **Consent**
- ☐ **Regular Item**
- ☐ **Workshop**
- ☐ **Closed Session**
- ☐ **Public Hearing**

ITEM NO: 2

DATE: October 22, 2019

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO ENTER INTO AND SIGN A MASTER DUAL JURISDICTION COOPERATIVE AGREEMENT BETWEEN THE CITY OF REEDLEY AND COUNTY OF FRESNO FOR ROADWAY AND RELATED INFRASTRUCTURE PROJECTS THAT FALL WITHIN AND IMPACT BOTH JURISDICTIONS

SUBMITTED: John S. Robertson, P.E. *JSR*
City Engineer

APPROVED: Nicole R. Zieba *NZ*
City Manager

RECOMMENDATION

Approve and authorize the City Manager to enter into and sign a Master Dual Jurisdiction Cooperative Agreement between the City of Reedley and County of Fresno for roadway and related infrastructure projects that fall within and impact both jurisdictions.

BACKGROUND

Many of the City's roadways at the edges of City limits will have one side of the roadway within the City of Reedley (City) city limits and other side fall within the County of Fresno's (County) jurisdiction. Both agencies are responsible for the sections of roadway within their boundaries and typically do not want to spend their limited roadway funds within another jurisdictions limits. Both the City and County recognize that it will be to their mutual benefit to perform, as a cooperative endeavor, certain construction projects for the improvement, repair or maintenance of roads and associated traffic signals, bridges, and facilities located across City/County jurisdictional boundaries, as to which the City and County share jurisdictional responsibility.

Additionally, from a roadway preservation standpoint and from the users perspective it makes constructability and fiscal sense to improve both sections of roadway at the same time. This master agreement (Agreement) sets the framework and each agency's obligations to a specific identified project, provides agreement regarding cost allocations and required share of cost, guidelines for each agency's responsibility during design and construction, indemnification requirements, and post construction obligations.

The Agreement identifies the agency representatives allowed to enter into these supplemental project

specific agreements. By granting this authority the agencies will have flexibility to enter into these agreements in a timely manner in order to keep the projects moving forward. Regardless, all City funds to be used for these projects will either be identified in the annual budget documents or brought before City Council for approval as a budget amendment. These steps allow Council to maintain authority and approval for the use of any funds spent on these specific projects.

FISCAL IMPACT

There is no fiscal impact to the City for entering into the Master Agreement with the County of Fresno. All projects subject to the Master Agreement require the creation of a Project Specific Agreement to be entered into. These projects will either be included in the annual budget document process or will come before the Council as a budget amendment for approval.

ATTACHMENTS

1. Master Dual Jurisdiction Agreement
2. Draft Project Specific Agreement

Motion: _____
Second: _____