

**OPERATION AND MAINTENANCE AGREEMENT
TULARE COUNTY AND THE CITY OF VISALIA
AVENUE 288**

This Operation and Maintenance Agreement (“AGREEMENT”) is entered into this ____ day of _____, 2020, by and between the COUNTY OF TULARE, hereinafter referred to as COUNTY, and the CITY OF VISALIA, hereinafter referred to as CITY, with reference to the following:

- A. WHEREAS, in order to maintain the CITY’S wastewater treatment facility, CITY desires to reconstruct Avenue 288, east of Road 68 to the alignment of Road 76 (All further reference to “Avenue 288” within this agreement shall have the limits shown on Exhibit “A” implied) with financial contribution from the COUNTY; and
- B. WHEREAS, the COUNTY desires to contribute \$200,000 towards the reconstruction of Avenue 288 scheduled for construction in fiscal year 20/21; and
- C. WHEREAS, CITY desires to maintain the roadway system including, but not limited to, roadway surface, drainage, traffic signing/striping and encroachment permitting responsibility; and
- D. WHEREAS, CITY desires to undertake such improvement at some time in the future and COUNTY is willing to allow the CITY to undertake such improvement; and
- E. WHEREAS, the COUNTY shall contribute funds in the future to pay for half of Avenue 288 reconstruction/rehabilitation (see definition below) work when deemed necessary based on CITY evaluation of roadway and concurrence from the COUNTY, but in no event less than twenty (20) years from completion of prior reconstruction/rehabilitation work of Avenue 288; and
- F. WHEREAS, Government Code section 54981 authorizes COUNTY and CITY to contract for the improvement, maintenance, repair and operation by CITY of streets and highways within COUNTY'S jurisdiction.

ACCORDINGLY, IT IS AGREED:

- 1. COUNTY hereby agrees to contribute to the reconstruction of Avenue 288 in an amount not to exceed \$200,000 (two hundred thousand dollars), work scheduled for construction in fiscal year 20/21.
- 2. Upon completion of the required public road improvements, the CITY shall invoice the COUNTY for COUNTY’S cost share within six (6) months from the recorded Notice of Completion date for

the improvements. The COUNTY shall pay the CITY its shared cost for the reconstruction/rehabilitation within 90 days of the invoice date.

3. COUNTY authorizes CITY to maintain, repair, operate and improve Avenue 288 with the COUNTY financial involvement as referenced above; located in unincorporated territory between Road 68 and the alignment of Road 76 (see Exhibit "A").
4. CITY agrees, at no further expense to the County, to repair, maintain, and operate Avenue 288 and to construct future improvements in accordance with all applicable Federal, State, and local laws, regulations and directives, and to apply CITY engineering standards in lieu of COUNTY road standards. CITY shall provide and administer all encroachment permits and other controls required by state and local laws, regulations and ordinances, provided that, in doing so, CITY need not require that said improvements be constructed to COUNTY'S road standards.
5. CITY agrees that no authorization, oversight, input or requirement other than the authority conferred by this AGREEMENT shall be necessary from the COUNTY.
6. The term of this AGREEMENT is indefinite and shall continue until such time as the referenced segment of Avenue 288 is annexed to CITY. The indemnity provisions contained in Paragraph 7 of this AGREEMENT shall continue in full force and effect beyond expiration by annexation or termination of this AGREEMENT by any other means.
7. CITY hereby agrees to pay all expenses arising out of the design, operation, and maintenance, of Avenue 288 with the exception of roadway reconstruction/rehabilitation; at which time the COUNTY will contribute funding for half the roadway reconstruction/rehabilitation construction cost (see Exhibit "A"). The CITY hereby waives any claim against the COUNTY for any cost of design, operation, maintenance, and/or upkeep of Avenue 288.
8. From and after the execution of this AGREEMENT, CITY shall have all responsibility and liability for all activities and omissions related to the upkeep, operation and maintenance of the section of Avenue 288, including any replacement or redesign of this segment by CITY, and CITY shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including, but not limited to court cost and attorney fees, death or injury to any person and/or damage to any property (including COUNTY property), arising out of or related to said upkeep, operation, maintenance or integration by CITY, including replacement or redesign of this segment by CITY, its agents, officers, independent contractors, developers and employees. CITY specifically agrees to hold harmless, defend and indemnify COUNTY for any and all claims arising out of COUNTY'S waiver of COUNTY'S road standards and any actions or omissions by CITY in connection with any

encroachment permit or other discretionary permit issued by CITY to facilitate this AGREEMENT. This indemnification obligation shall continue beyond the term of this AGREEMENT or any extension of this AGREEMENT. CITY shall maintain adequate insurance coverage, either through policies issued by insurance companies or through self-insurance reserves, to provide said indemnity to the COUNTY.

9. From and after the execution of this AGREEMENT, CITY shall enforce all traffic and pedestrian safety laws and ordinances on Avenue 288, and COUNTY shall have no responsibility or liability therefore.
10. CITY shall maintain complete and accurate records with respect to all works of improvement authorized by this AGREEMENT.
11. This AGREEMENT represents the entire AGREEMENT between CITY and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force of effect. No part of this AGREEMENT may be modified without the written consent of both parties.
12. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: RMA Director:
Government Plaza
5961 S Mooney Blvd
Visalia, CA 93277
(Fax No.: (559) 730-2653 / Phone No. (559) 624-7000)

CITY: City Manager:
707 West Acequia Ave.
Visalia, CA 93291
(Fax No.:(559) 713-4800 / Phone No.:(559) 713-4833)

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

13. This AGREEMENT reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
14. Unless specifically set forth, the parties to this AGREEMENT do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

15. This AGREEMENT shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this AGREEMENT shall be brought in Tulare County, California. CITY waives the removal provisions of California Code of Civil Procedure Section 394.
16. The failure of either party to insist on strict compliance with any provision of this AGREEMENT shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the AGREEMENT by the other party.
17. The Recitals and the Exhibits to this AGREEMENT are fully incorporated into and are integral parts of this AGREEMENT.
18. This AGREEMENT is subject to all applicable laws and regulations. If any provision of this AGREEMENT is found by any court of other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the AGREEMENT to either party is lost, the AGREEMENT may be terminated at the option of the affected party. In all other cases the remainder of the AGREEMENT shall continue in full force and effect.
19. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to effect the purposes of this AGREEMENT.
20. CITY expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.
21. This AGREEMENT becomes effective when executed by both parties.
22. The Parties may sign this AGREEMENT in counterparts, each of which is an original and all of which taken together form one single document. The counterparts of this AGREEMENT may be executed and delivered by facsimile or other electronic signature (including portable document format) by the Parties and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

DEFINITIONS:

REHABILITATION: *Necessary when the pavement exhibit distress beyond the effectiveness of maintenance and preservation techniques. This will require the grinding or potential removal of the asphalt surface, a means to stabilize the sub grade and then repave.*

RECONSTRUCTION: *Necessary when roadway deterioration reaches the point where rehabilitation becomes too expensive and will not perform well due to underlying pavement condition. This will require the removal of the asphalt surface and sub grade to rebuild the structural section based on the loading parameters for the roadway.*

THE PARTIES, having read and considered the above provisions, indicate their AGREEMENT by their authorized signatures below.

COUNTY OF TULARE

By: _____
Chair, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

BY: _____
Deputy Clerk

Approved as to Form
County Counsel

By: Jeffrey Kuhn
Deputy
Matter No. 2020379


CITY OF VISALIA

BY 
Randy Groom
City Manager

ATTEST: Michelle Nicholson
Chief Deputy City Clerk
of the City of Visalia

By: 

Approved as to Form

By: 
City Attorney

By: 
Risk Manager

Exhibit A

Operation and Maintenance Agreement Avenue 288

