

**COOPERATIVE AGREEMENT  
TULARE COUNTY AND THE CITY OF DINUBA  
AVENUE 416 WIDENING PROJECT  
GENERALLY BETWEEN ROAD 56 AND ROAD 92**

This Cooperative Agreement ("AGREEMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between the COUNTY OF TULARE, hereinafter referred to as COUNTY, and the CITY OF DINUBA, hereinafter referred to as CITY, with reference to the following:

WHEREAS, the COUNTY is lead agency to prepare the Project Approval/Environmental Document (PA/ED) for a project to widen Mountain View Avenue/Avenue 416/El Monte Way from Bethel Avenue in Fresno County to Road 92 in the city of Dinuba; and

WHEREAS, COUNTY on October 21, 2008, by way of Resolution No. 2008-0803, adopted an Environmental Impact Report (EIR) (State Clearinghouse Number 200411084) in accordance with the California Environmental Quality Act (CEQA) and Caltrans, on April 28, 2009, approved an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA). This combined document is hereinafter referred to as ENVIRONMENTAL DOCUMENT and is incorporated herein by reference; and

WHEREAS, CITY, on May 12, 2009 ratified ENVIRONMENTAL DOCUMENT; and

WHEREAS, the CITY is requesting to be responsible for the preparation of plans, specifications and estimates (PS&E) and right of way acquisition, on the segment of Avenue 416 generally from Road 56 to Road 92, hereinafter referred to as PROJECT, using funds from the 2006 Half-Cent Transportation Sales Tax Measure Expenditure Plan and Use Tax Ordinance hereinafter referred to as MEASURE R; and

WHEREAS, a portion of the PROJECT is within the county of Tulare and COUNTY desires CITY to acquire right of way for the PROJECT in conformance with the preferred alignment selected for this PROJECT and ENVIRONMENTAL DOCUMENT; and

WHEREAS, CITY has received authorization and allocation from the Tulare County Transportation Authority for funding from Measure R; and

WHEREAS, CITY is willing to perform right of way activities required for the PROJECT; and

WHEREAS, COUNTY and CITY intend to define the terms and conditions under which the right of way and utility relocations are to be handled; and

WHEREAS, CITY is willing to maintain said improvements within COUNTY's jurisdiction following the completion of construction activities; and

WHEREAS, this AGREEMENT is entered into pursuant to Government Code Section 6500 et. seq.

NOW, THEREFORE, it is agreed as follows:

1. Activities of CITY. CITY agrees to provide all necessary right of way support activities to acquire PROJECT right of way located within the county of Tulare. Said right of way support activities shall include, but not be limited to, the following:

- a. Preparing maps, deeds and descriptions.
- b. Making fair market value appraisals and relocation valuations.
- c. Acquiring private property for public purposes in CITY'S name by negotiation.
- d. Initiate any activities necessary to acquire by condemnation private property for a public purpose in COUNTY'S name if COUNTY issues a Resolution of Necessity.
- e. Carry out activities that support COUNTY efforts to proceed with the condemnation process, including initiate and control the eminent domain proceedings, if necessary, for the acquisition of any right of way required for the PROJECT upon the issuance of a valid Resolution of Necessity pursuant to Code of Civil Procedure Section 1245.220.
- f. CITY will follow the Eminent Domain process pursuant to Code of Civil Procedure Section 1230.10 et. seq.
- g. Providing required relocation assistance payments and services to affected landowners.
- h. Opening escrow, obtaining title reports, making arrangements to convey title and close escrow.
- i. Completing acquisitions through disbursement of funds, close of escrow and satisfaction of judgments or settlement of condemnation actions initiated on behalf of the PROJECT.
- j. Providing oversight and paying for utility relocations within existing or proposed COUNTY right of way to ensure relocations will not conflict with the PROJECT.
- k. Relinquish to COUNTY legal title to property acquired by CITY in COUNTY within 180 days following the filing of the Notice of Completion for PROJECT by CITY.
- l. Perform all activities necessary to design said PROJECT and to prepare it for implementation including but not limited to the preparation of all required plans, specifications, estimates and bid documents.
- m. Perform all activities necessary to manage all construction activities to implement said PROJECT.
- n. Perform all activities necessary to maintain said PROJECT following the cessation of construction activities.

2. Activities of COUNTY. COUNTY shall support the efforts of CITY to acquire right of way and utility relocations for the project by actions including, but not limited to, the following:

a. Minor changes in the PROJECT alignment or description that may affect right of way to be obtained by CITY shall be subject to the approval of the Resource Management Agency Director and said approval is hereby delegated by COUNTY to the Resource Management Agency Director and shall not be unreasonably withheld.

b. COUNTY shall make available to CITY all records, maps, drawings and permits involving installation of utilities in COUNTY right of way including but not limited to any and all paper and electronic files related to the preliminary design of said PROJECT.

c. If any public, private or COUNTY-owned utility or public facility conflicts with the PROJECT, COUNTY shall cooperate with the CITY to make all necessary arrangements with the owners of such utilities and facilities for their protection, relocation or removal in accordance with COUNTY policy for those utilities and facilities located within the limits of work within the county of Tulare.

d. Accept from CITY relinquished property within 90 days of the relinquishment documents being presented to COUNTY.

e. Support activities by CITY to annex properties adjacent to the PROJECT provided CITY has the ability to provide services to said properties in a manner consistent with the city of Dinuba General Plan and West Dinuba Specific Plan (to be adopted in fall 2008). COUNTY does not forfeit its right to oppose CITY annexation proposals that COUNTY considers to be detrimental to the health, safety or welfare of Tulare County and/or its residents.

3. Project Description. The complete description of the PROJECT is contained in the ENVIRONMENTAL DOCUMENT and supporting technical studies indicated by reference in the ENVIRONMENTAL DOCUMENT. As the final engineering for the PROJECT is completed by CITY, further refinement of the right of way to be obtained may be necessary, but will be generally consistent with approved PROJECT description.

4. Acquisition of Rights-of-Way. CITY shall comply with all State right of way laws, the Federal Uniform Acquisition and Relocation Assistance Act, and any other federal laws applicable to CITY or the PROJECT.

5. Funding. All obligations of CITY under the terms of this AGREEMENT will be funded using MEASURE R funds through the Tulare County Transportation Authority. Neither party is required to use its funds to support this PROJECT.

6. No Rights in Third Parties. Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this AGREEMENT or to affect the legal liability of either party to the AGREEMENT by imposing any standard of care with respect to the maintenance of the COUNTY's property different from the standard of care imposed by law.

7. COUNTY Indemnification. Neither COUNTY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT. It is understood and agreed that, pursuant to Government

Code Section 895.4, CITY shall fully defend, indemnify and save harmless COUNTY and its officers and employees from all claims, suits, actions or eminent domain proceedings of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction delegated to CITY under this AGREEMENT, including any claims for attorney fees, private attorney general fees and/or costs by or awarded to any party from COUNTY. To the extent that COUNTY is required to use COUNTY staff or resources in responding to any such claim, suit, action or eminent domain proceeding, CITY will reimburse COUNTY upon appropriate documentation of these expenditures. COUNTY resources include, but are not limited to staff time, duplication costs, record preparation costs and time and/or any other or indirect cost associated with responding to the claim, suit, action or eminent domain proceeding. CITY shall maintain adequate insurance coverage, either through policies issued by insurance companies or through self-insurance reserves to provide said indemnity.

- a) Furthermore, CITY agrees to vigorously defend the County, and in the absence of that defense, CITY and its counsel will:
  - 1) Promptly notify COUNTY of any eminent domain proceedings initiated pursuant to this agreement in COUNTY's name;
  - 2) Make no settlement of any claim, suit, action or eminent domain proceeding in COUNTY's name which would abrogate the County's discretionary authority or require the County to delegate any discretionary authority;
  - 3) Submit, at least three (3) working days prior to any filing deadline, or as otherwise agreed by counsel, to County Counsel drafts of all pleadings and briefs to be filed on behalf of County for review and approval. County Counsel shall approve any draft pleading or brief within (1) working day of receipt, or as otherwise agreed by counsel, and if it fails to do so, then the pleading or brief may be filed with the court as if it had been approved by County Counsel.
  - 4) Provide to County Counsel no later than the date such pleadings are due to be filed with the Court, copies of all pleadings and briefs filed on behalf of CITY and the COUNTY.
- b) COUNTY will promptly notify CITY of any such claim, suit, action which comes to COUNTY's attention.
- c) COUNTY may, within its unlimited discretion, and at City's expense, participate in the defense or litigation of any such claim, suit, action or eminent domain proceeding in COUNTY's name, if COUNTY elects to defend or litigate the claim, suit, action or eminent domain proceeding in good faith.
- d) Neither the COUNTY nor the CITY shall be required to pay or perform any settlement of such claim, suit, action or eminent domain proceeding in COUNTY's name unless the settlement is approved in writing by each of them.

8. CITY Indemnification. Neither CITY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully defend, indemnify and save harmless CITY and its officers and employees from all claims, suits, or actions of every name, kind and

description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority, or jurisdiction delegated to COUNTY under this AGREEMENT, including any claims for attorney fees, private attorney general fees and/or costs by or awarded to any party from CITY. To the extent that CITY is required to use CITY staff or resources in responding to any such claim, suit, action or proceeding, COUNTY will reimburse CITY upon appropriate documentation of these expenditures. CITY resources include, but are not limited to staff time, duplication costs, record preparation costs and time and/or any other or indirect cost associated with responding to the claim, suit, action or eminent domain proceeding. COUNTY shall maintain adequate insurance coverage, either through policies issued by insurance companies or through self-insurance reserves to provide said indemnity.

- a) Furthermore, COUNTY agrees to vigorously defend the City, and in the absence of that defense, COUNTY and its counsel will:
  - 1) Make no settlement of any claim, suit, action or proceeding in CITY's name which would abrogate the City's discretionary authority or require the City to delegate any discretionary authority;
  - 2) Submit, at least three (3) working days prior to any filing deadline, or as otherwise agreed by counsel, to the City Attorney drafts of all pleadings and briefs to be filed on behalf of City for review and approval. The City Attorney shall approve any draft pleading or brief within (1) working day of receipt, or as otherwise agreed by counsel, and if it fails to do so, then the pleading or brief may be filed with the court as if it had been approved by the City Attorney.
  - 3) Provide to the City Attorney no later than the date such pleadings are due to be filed with the Court, copies of all pleadings and briefs filed on behalf of CITY and the COUNTY.
- b) CITY will promptly notify COUNTY of any such claim, suit, action which comes to CITY's attention.
- c) CITY may, within its unlimited discretion, and at County's expense, participate in the defense or litigation of any such claim, suit, action or proceeding in CITY's name, if CITY elects to defend or litigate the claim, suit, action or eminent domain proceeding in good faith.
- d) Neither the COUNTY nor the CITY shall be required to pay or perform any settlement of such claim, suit, action or proceeding in CITY's name unless the settlement is approved in writing by each of them.

9. Amendment. No alteration or variation of the terms to this AGREEMENT shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

10. Termination. This AGREEMENT shall terminate upon the completion of the right of way acquisition and utility relocation by CITY for the PROJECT, or on December 31, 2012, whichever is earlier in time, unless both parties agree by amendment to this AGREEMENT to an extension of time.

11. Final Integrated Agreement. This AGREEMENT constitutes the entire, final and

binding understanding between the parties hereto with respect to the terms of this AGREEMENT; that no other statement or representation, written or oral, express or implied, has been received or relied upon by any other party hereto in entering into this AGREEMENT, and that all prior discussions, statements, and negotiations made or which have occurred prior to the date of this AGREEMENT shall be deemed merged into this AGREEMENT and the documents referred to herein, and shall not be used for any other purpose whatsoever.

12. Severability and Construction. If any provision of this AGREEMENT is held to be illegal, invalid, or unenforceable under present or future laws, such provisions shall be fully severable. This AGREEMENT shall be construed and enforced as though such illegal, invalid, or unenforceable provision had never comprised a part of this AGREEMENT and the remaining provisions of this AGREEMENT shall remain in full force and effect.

13. Venue. This AGREEMENT shall be construed in accordance with the laws of the State of California. The parties agree to submit themselves to the jurisdiction of the court venue in Tulare County (or in the case of exclusive federal jurisdiction, the U.S. District Court for the Eastern District of California in Fresno) in any action relating to this AGREEMENT or the enforcement of interpretation thereof.

14. Attorneys' Fees and Costs. Each party will bear their own costs, including attorneys' fees, in connection with enforcing the terms and conditions of this AGREEMENT, unless indemnified by the other party pursuant to Sections 7 and 8 of this AGREEMENT.

15. Headings. Headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

16. Notices. Except as may be otherwise required by law, any notice to be given shall be written and shall be personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and address as follows:

County: RMA Director  
Government Plaza  
5961 S. Mooney Blvd.  
Visalia, CA 93277  
(Phone No. (559) 733-6291 / Fax No. (559) 730-2653)

City: City Manager  
405 E. El Monte Way  
Dinuba, CA 93618  
(Phone No. (559) 591-5945 ext. 102 / Fax No. (559) 591-5902)

17. Construction. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 will not apply to address and interpret any uncertainty.

18. Waivers. The failure of either party to insist on strict compliance with any

provision of this Agreement will 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 will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

19. Exhibits and Recitals. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

CITY COUNCIL  
CITY OF DINUBA  
STATE OF CALIFORNIA

BOARD OF SUPERVISORS  
COUNTY OF TULARE  
STATE OF CALIFORNIA

By: \_\_\_\_\_  
MARK WALLACE,  
Mayor

By: \_\_\_\_\_  
PHILIP A. COX,  
Chairman

ATTEST: \_\_\_\_\_  
City Clerk

ATTEST: \_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
County Counsel  
Matter Id. 20081757