

**MAINTENANCE AND OPERATIONS AGREEMENT  
TULARE COUNTY AND THE CITY OF DINUBA  
AVENUE 416/EL MONTE WAY  
ROAD 56 TO ROAD 60 ALIGNMENT  
ROAD 64 TO ROAD 70**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, between the COUNTY OF TULARE, referred to as COUNTY, and the CITY OF DINUBA, referred to as CITY, with reference to the following:

- A. WHEREAS, in order to accommodate orderly growth and development within its jurisdiction, CITY desires to improve Avenue 416/El Monte Way generally between Road 56 to the Road 60 alignment and between Road 64 to Road 70 (see Exhibit "A")
- B. WHEREAS, City desires to, control the use of the right of way, maintain, repair and operate the roadway system including but not limited to roadway surface, drainage, traffic signal/stripping, encroachment permitting responsibility, ingress and egress to parcels, and parking, stopping and use of the right of way; and
- C. WHEREAS, CITY desires to undertake such improvement, maintenance and operation at some time in the future and COUNTY is willing to allow CITY to undertake such improvement, maintenance and operation ; and
- D. 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 authorizes CITY to undertake, at no risk or expense to the COUNTY, the maintenance and improvement of that portion of Avenue 416/El Monte Way generally between Road 56 to the Road 60 alignment and between Road 64 to Road 70. The specific portion is more particularity identified in Exhibit "A" which is attached hereto and incorporated herein by this reference.
- 2. CITY agrees to maintain, repair and operate the roadway system including the use of the right of way and to construct future improvements in accordance with all applicable Federal, State, and local laws, regulations and directives, with the exception of

COUNTY'S road standards. CITY shall provide and administer all encroachment permits and other controls required by state and local laws, regulations and ordinances, in accordance with CITY's standards.

3. CITY agrees that no authorization, oversight, input or requirement other than the authority conferred by this Agreement shall be necessary from the COUNTY.
4. The term of this Agreement is indefinite and shall continue until such time as the referenced segment of Avenue 416/El Monte Way is annexed to CITY. The indemnity provisions contained in paragraph 6 of this Agreement shall continue in full force and effect beyond expiration by annexation or termination of this Agreement by any other means.
5. CITY hereby agrees to pay all expenses arising out of the design, repair, operation, maintenance, construction and/or upkeep of said portion of Avenue 416/El Monte Way and hereby waives any claim against the COUNTY for any cost of design, repair, operation, maintenance, construction and/or upkeep of said portion of Avenue 416/El Monte Way.
6. From and after the effective date of this Agreement, CITY shall have all responsibility and liability for all activities and omissions related to the design, construction, upkeep, repair, operation and maintenance of said portion of Avenue 416/El Monte Way, including its integration with any connecting roads and streets, 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 design, construction, upkeep, repair, operation, maintenance or integration 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.

7. From and after the effective date of this Agreement, CITY shall enforce all traffic and pedestrian safety laws and ordinances on said portion of Avenue 416/El Monte Way, and COUNTY shall have no responsibility or liability therefore.
8. CITY shall maintain complete and accurate records with respect to all works of improvement authorized by this Agreement.
9. 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.
10. 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) 733-6291)

CITY:

City Manager  
405 E. El Monte Way  
Dinuba, CA 93618

(Fax No.: (559) 591-5902 / Phone No. (559) 591-5945 ext. 102)

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.

11. 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.

12. 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.
13. 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.
14. 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.
15. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
16. 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.
17. 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.
18. 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.
19. This Agreement shall become effective upon the award of a contract by CITY for the construction of improvements for the project to widen Avenue 416/El Monte Way.

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

COUNTY OF TULARE

BY \_\_\_\_\_  
Philip A. Cox, Chairman

ATTEST: Jean M. Rousseau  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By \_\_\_\_\_  
Deputy Clerk

Approved as to Form

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

CITY OF DINUBA

BY \_\_\_\_\_  
J. Edward Todd, City Manager

ATTEST:

BY \_\_\_\_\_  
City Clerk

Approved as to Form

BY \_\_\_\_\_  
City Attorney