

16-0954

A G R E E M E N T

THIS AGREEMENT is made this 23rd day of August, 2016,
by and between the COUNTY OF FRESNO, a political subdivision of the State of
California, hereinafter referred to as the "County", and the CITY OF KINGSBURG,
hereinafter referred to as the "City".

WITNESSETH

WHEREAS, the County has been designated as the sponsoring agency to
administer and implement the Community Development Block Grant (CDBG) Program
activities for the County, and its participating cities, in accordance with the provisions of
Title I of the Housing and Community Development Act of 1974, as amended, and the
laws of the State of California; and

WHEREAS, CDBG funding has been made available to the County for housing
and community development activities; and

WHEREAS, the City has submitted the Kingsburg Smith Street Revitalization
Project No. 16391 for CDBG funding; and

WHEREAS, the total cost of the Project is estimated to be \$355,383 and the City
has committed local funds to the Project in the amount of \$110,952 and is in need of
\$244,431 in CDBG funding to complete the Project; and

WHEREAS, the County can make available \$244,431 in CDBG funds needed for
the Project from the City's 2016-2017 CDBG allocation (\$233,977) and from the City's
remaining balance of CDBG funds (\$10,454); and

WHEREAS, the Project is consistent with the objectives of the Fresno County
Consolidated Plan, including the annual Action Plan.

NOW THEREFORE, in consideration of their mutual promises as hereinafter set
forth, the City and County agree as follows:

I. PROJECT DESCRIPTION, LOCATION AND BUDGET

A. The project involves the reconstruction of Smith Street from Gilroy
Street to Draper Street, including curb, gutter, sidewalk, and drainage improvements.

1 Curb ramps and sidewalk will be installed or reconstructed to meet Americans with
2 Disabilities (ADA) standards. Existing curb, gutter, sidewalk, pavement, pavement
3 striping, and storm drain inlets may be modified or reconstructed to accommodate the
4 proposed improvements. The improvements will provide an improved travelling surface
5 for vehicles and improve accessibility to pedestrians and those with mobility
6 impairments.

7 B. The Project site is within the City's existing easements or public
8 rights-of-way.

9 C. The work to be funded with CDBG funds is as follows:

10 1. Obtain all necessary permits.

11 2. Perform all necessary design engineering including, but not
12 limited to, surveying; testing; preparation of plans, specifications, and cost estimates; bid
13 documents and a cost or price analysis; review of bids and recommendation for award.

14 3. Prepare and advertise Project bid notices and award
15 construction contracts including, but not limited to, the printing of bid documents;
16 publishing of notices; and preparation of bid summary.

17 4. Perform all construction engineering including, but not limited
18 to, shop drawing review and approval; contract change order preparation; surveying;
19 staking; inspection; soil testing; materials testing; preparation of "as-built" drawings;
20 labor compliance; and contract administration.

21 5. Provide related eligible improvements.

22 D. The Project budget is estimated to be as follows:

23 Construction	\$ 280,463
24 Design & Construction Engineering	42,874
24 Contingency, Permits & Misc.	<u>32,046</u>
25 Total	\$ <u>355,383</u>

26 E. Notwithstanding the estimates described in the above preliminary
27 Project budget, payments for the Project from CDBG funds will be based on the actual
28 costs and shall not exceed the total amount of \$244,431.

F. The proposed funding for the Project will be provided from the following sources:

CDBG	\$ 244,431
Local Financial Contribution	<u>110,952</u>
Total	\$ 355,383

G. Prior to any changes that may occur which would modify the scope of the Project, the City shall submit a written request to the County. The City shall send its written request to:

Community Development Grants
County of Fresno
Department of Public Works and Planning
Community Development Division
2220 Tulare Street, 6th Floor
Fresno, CA 93721

If the Director of the County Department of Public Works and Planning determines the modified Project is still eligible under the Federal CDBG regulations, the Director is authorized to permit such modifications. The County shall specify in a letter to the City that any modifications to the scope of the Project are authorized and that the City may proceed.

II. OBLIGATIONS OF THE COUNTY

A. The County shall provide up to, but not more than, \$244,431 of CDBG funds to the City for the Project. All funds shall be paid to the City in accordance with Section V-A of this Agreement.

B. The County shall review, within thirty (30) calendar days of receipt from the City, the engineer selection process description and summary of the analysis as prepared by the City to verify that a competitive process was conducted in accordance with U.S. Department of Housing and Urban Development (HUD) procurement standards. The County shall specify in a letter to the City that these conditions have been met and that the engineering contract can be awarded.

C. The County shall review, within thirty (30) calendar days of receipt from the City, the design plans and specifications for the Project as prepared by the City

1 for compliance with Federal regulations, and the total Project cost estimate to ensure
2 sufficient funds are available to complete the Project. The County shall specify in a
3 letter to the City that these conditions have been met and that the Project can be
4 advertised.

5 D. The County shall also review, within twenty one (21) calendar days
6 of receipt from the City, the name of the low bidder and cost or price analysis of the low
7 bid proposal prepared by the City to determine whether the contractor will be reasonably
8 compensated in accordance with Federal requirements, and to verify the contractor is
9 bonded and has not been disbarred or suspended from participating in Federal projects.
10 The County shall specify in a letter to the City that the conditions of this Section have
11 been met and that the contract can be awarded.

12 E. The County shall attend the pre-construction meeting between the
13 City and the contractor to discuss labor compliance requirements for the Project, Project
14 monitoring, and to inform the City and contractor that the County will conduct field
15 reviews to ensure labor compliance and other conditions of the construction contract are
16 being met.

17 F. The County shall conduct periodic inspections of the Project, as
18 may be required, to ensure that the intended use and group of beneficiaries of the
19 Project have not changed. Upon completion of the Project, but prior to the City's
20 acceptance of the Project, the County shall conduct a final inspection of the Project.
21 The County shall specify in a letter to the City that the conditions of this Section have
22 been met.

23 III. OBLIGATIONS OF THE CITY

24 A. The City shall provide any and all sums of money in excess of
25 \$244,431 that may be necessary to complete the Project. For the purposes of awarding
26 the construction of the Project within the Agreement amount, the bid documents should
27 include any proposed additive or deduct alternatives.

28 B. The City shall perform, or cause to be performed, all engineering

1 work required for the Project.

2 C. In selecting an engineer to perform any engineering work required
3 for the Project, the City shall go through a competitive process in accordance with
4 County Policy and HUD procurement standards. Prior to selection of the engineer, the
5 City shall prepare a written description of the process, perform a cost or price analysis,
6 and submit the process description and summary of the analysis to the County
7 Community Development Division for review. The City shall obtain a letter from the
8 County specifying that the conditions of this Section have been met.

9 D. The City shall specify in agreements with its consultants that all
10 engineering work funded with CDBG funds shall become the property of the City upon
11 payment by the City for the cost of such engineering work.

12 E. The City shall furnish evidence that it has free and clear title to all
13 parcels of land on which Project improvements will be located, with any liens or
14 encumbrances noted, and/or that it has obtained or can obtain all necessary easements,
15 rights-of-way, licenses, permits and State and local approvals required for the
16 completion of the Project.

17 F. Upon completion of the design engineering, the City shall submit the
18 plans and specifications to the County Community Development Division. The County
19 will ensure Federal CDBG requirements have been adhered to and review cost
20 estimates to ensure sufficient funds are available. The City shall obtain a letter from the
21 County specifying these conditions have been met and that the City is approved to
22 advertise for bids to construct the Project.

23 G. The City shall advertise for bids and shall award the construction
24 contract to the lowest responsible bidder. At least ten (10) calendar days prior to the bid
25 opening, the City shall notify the County of the date, time, and location of the bid
26 opening.

27 H. Within seven (7) calendar days following the bid opening, the City
28 shall furnish the County Community Development Division with the name of the low

bidder and cost or price analysis of the low bid proposal prepared by the City so that the County can verify with the Labor Relations and Equal Opportunity Division of the HUD Area Office that the low bidder is bonded and has not been debarred or suspended from participating in Federal projects, and that the contractor will be reasonably compensated in accordance with Federal requirements. The City shall obtain a letter from the County specifying these conditions have been met and that the City is approved to award the Project for construction.

I. The City shall conduct a pre-construction meeting with the contractor and shall notify the County Community Development Division at least ten (10) calendar days prior to the meeting so a representative of the County can be in attendance to discuss CDBG labor compliance requirements for the Project.

J. Prior to the construction start date, the City shall give written notice thereof to the County Community Development Division.

K. All proposed construction contract change orders shall not proceed until prior written approval has been given by the County. Request for approval of a change order(s) shall include a narrative description of the work, a cost or price analysis in accordance with HUD requirements, a map depicting the location of the work addressed with the requested change order, and a written certification from the City that the approval of the change order is consistent with the final construction cost estimate approved by the County. In addition, the City shall certify that the change order is within the scope of the Project and is necessary to complete the Project.

L. The City shall send its written description of the engineer selection process, cost or price analyses, design plans, specifications, name of low bidder and low bid proposal, public notices, and all written correspondence to:

Community Development Grants
County of Fresno
Department of Public Works and Planning
Community Development Division
2220 Tulare Street, 6th Floor
Fresno, CA 93721

1
2 M. The City shall comply with the mitigation measures, conditions and
3 notes identified in Initial Study/Environmental Assessment No. 7149 (the "Assessment").
4 A copy of the Assessment will be provided to the City.

5 N. Upon completion of the Project, the City shall notify the County
6 Community Development Division thereof so a representative of the Division can
7 perform an inspection of the Project to determine that it was completed in accordance
8 with the scope of work approved and authorized pursuant to this executed Agreement.

9 O. Upon approval of Project completion by the County, the City shall
10 provide the County Community Development Division with a resolution of acceptance, or
11 similar documentation, demonstrating that the Project was completed in accordance with
12 the scope of work approved and authorized pursuant to this executed Agreement and
13 any approved subsequent amendments thereto and/or change orders, and that the City
14 has accepted the Project. Prior to the final request for payment, the City shall also
15 provide the County with a copy of the recorded Notice of Completion (NOC), a written
16 summary of all Project work completed with CDBG and other funds, and documentation
17 to demonstrate compliance with Section 3 of the Housing and Urban Development Act of
18 1968, as amended.

19 P. During the contract period, the City shall complete and submit
20 annually each June 1, and upon completion of the Project, a Project Outcome
21 Measurement Report (POM) form, a copy of which is attached hereto as Exhibit 1 and
22 incorporated herein by reference. The POM shall contain the following information for
23 the County's Federal reporting purposes to HUD:

- 24 1. Total number of households/persons assisted.
- 25 2. Number of total households/persons assisted that:
 - 26 a. Now have new access to this type of public facility or
 - 27 infrastructure improvement.
 - 28 b. Now have improved access to this type of public

1 facility or infrastructure improvement.

2 c. Now are served by a public facility or infrastructure
3 that is no longer substandard.

4 Q. The City shall be responsible for maintenance of the improvements
5 after construction is completed and shall do so from non-CDBG resources.

6 R. The City must inform the County in writing of any program income
7 generated by the expenditure of CDBG funds. Any program income generated as a
8 result of the Project must be paid to the County. For purposes of this Agreement,
9 program income is defined as proceeds from the disposition of CDBG-acquired real
10 property, and principal and interest on CDBG loans. If the City contributed financially to
11 the improvement Project, the City may retain a share of the program income in
12 proportion to the City's contribution to the Project, after the City has provided a written
13 accounting acceptable to the County.

14 S. The City must obtain prior written approval from the County
15 whenever there is any modification or change in the use of any real property improved,
16 in whole or in part, using CDBG funds. If any real property improved with CDBG funds is
17 sold and/or is utilized by the City for a use which does not qualify under the CDBG
18 Program, the City shall reimburse the County in an amount equal to the current fair
19 market value for the property, less any proportional share thereof attributable to
20 expenditures of non-CDBG funds. These requirements shall continue in effect for the
21 life of the improvements. In the event the CDBG Program is closed-out, the
22 requirements of this Section shall remain in effect for activities or property funded with
23 CDBG funds, unless action is taken by the Federal government to relieve the County of
24 these obligations.

25 T. The City acknowledges that the County may periodically inspect the
26 Project to ensure the property is being used as described in this Agreement. The City
27 agrees to provide any necessary information to the County to carry out such inspections.
28 Furthermore, the City agrees to take corrective action if the County determines that

1 modifications to the use and location of the Project have resulted in a violation of the
2 Federal CDBG regulations.

3 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

4 A. The City, its consultants, contractors, and subcontractors shall
5 comply with all applicable State and Federal laws and regulations governing projects
6 that utilize Federal funds.

7 B. Whenever the City uses the services of a contractor, the City shall
8 require that the contractor comply with all Federal, State and local laws, ordinances,
9 regulations and Fresno County Charter provisions applicable in the performance of their
10 work.

11 C. This Project is subject to the requirements of Section 3 of the
12 Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u).
13 Accordingly, the City shall require the prime contractor to complete and submit
14 documentation prior to award of the construction contract and upon Project completion
15 that compliance with the Section 3 clause has been met.

16 D. Whenever the City receives at least \$100,000 for a project from the
17 County's CDBG Program under this Agreement, the City shall complete and submit to
18 the County Community Development Division a "Certification of Payments to Influence
19 Federal Transactions" form and a "Standard Form LLL - Disclosure of Lobbying
20 Activities" form. Likewise, before the City awards a contract using at least \$100,000 of
21 such CDBG funds, the City shall require the consultant and/or contractor and all their
22 sub-consultants and/or subcontractors to complete and submit these two (2) forms
23 described hereinabove to both the City and the County.

24 V. PAYMENT FOR THE PROJECT

25 A. At monthly intervals, the City shall submit a written request to the
26 County for payment of specified costs incurred in the performance of this Agreement.
27 The request for payment shall be accompanied by a written certification from the City
28 that the request for payment is consistent with the amount of work that has been

1 completed, and that said work is in accordance with the contract documents and this
2 Agreement. The request for payment shall also be accompanied by documentation
3 acceptable to the County, such as invoices or vouchers for services or materials
4 purchased, contractor's costs, or other costs chargeable to the Project. After
5 appropriate review and inspection, the County shall make payment from CDBG funds
6 provided in this Agreement for all eligible costs specified herein.

7 B. Any savings realized in the final cost of the Project, due to Project
8 cost and/or scope of work reductions, liquidated damages, or any other reason, shall be
9 used to reduce the amount of this Project paid for with CDBG funds and shall be
10 credited to the City's CDBG allocation. However, if the City is required to provide any
11 funds toward the Project, any cost savings shall be first used to reimburse the City for its
12 contribution in excess of the total amount provided by this Agreement.

13 C. Payment for advertising and award shall be based on the actual
14 costs of printing and noticing.

15 D. The County will not be bound by any agreement between the City
16 and its agents.

17 E. Upon the completion of the Project, the City shall submit to the
18 County Community Development Division a written request for final payment of costs
19 which shall provide a detailed description of the Project pay items and costs. The
20 County shall not be obligated to make any payments under this Agreement if the request
21 for payment is submitted by the City more than sixty (60) days after the Notice of
22 Completion has been filed with the County Recorder's Office. An extension to the sixty
23 (60) day period may be granted by the Director of the County Department of Public
24 Works and Planning prior to the deadline if the City can demonstrate just cause for the
25 delay.

26 F. The County may withhold reimbursement to the City until a final
27 POM, recorded NOC, and written summary of all Project work completed with CDBG
28 and other funds, and evidence of compliance with the Section 3 clause as specified in

1 Sections III-O and IV-C, have been submitted to the County.

2 G. All requests for payment and supporting documentation shall be
3 sent to:

4 Business Manager
5 County of Fresno
6 Department of Public Works and Planning
7 Financial Services Division
8 2220 Tulare Street, 6th Floor
9 Fresno, CA 93721

10 H. The City shall establish accounting and bookkeeping procedures in
11 accordance with standard accounting and bookkeeping practices, including, but not
12 limited to, employee time cards, payrolls, and other records of all transactions to be paid
13 with CDBG funds in accordance with the performance of this Agreement. All records
14 and accounts shall be available for inspection by the County, the State of California, if
15 applicable, the Comptroller General of the United States, and HUD or any of their duly
16 authorized representatives, at all reasonable times, for a period of at least five (5) years
17 following final payment under this Agreement or the closure of all other pending matters,
18 whichever is later. The City shall certify accounts when required or requested by the
19 County.

20 I. The City, as a sub-recipient of Federal financial assistance, is
21 required to comply with the provisions of the Single Audit Act of 1984 (31 U.S.C.
22 Sections 7501 et seq.), as amended. Whenever the City expends and/or receives
23 CDBG funds from the County for the Project, a copy of any audit performed by the City
24 in accordance with said Act shall be forwarded to the County Community Development
25 Grants Program Manager within nine (9) months of the end of any City fiscal year in
26 which funds were expended and/or received for the Project. Failure to perform the
27 requisite audit functions as required by this paragraph may result in the County
28 performing any necessary audit tasks, or, at the County's option, the County contracting
with a public accountant to perform the audit. All audit costs related to the City's failure
to perform the requisite audit are the sole responsibility of the City and such audit work

costs incurred by the County shall be billed to the City as determined by County's Auditor-Controller/Treasurer-Tax Collector. In the event the City is only required to perform an audit under the provisions of the Act because the City is receiving CDBG funds, the County may perform, or cause to be performed, the required audit to determine whether funds provided through this Agreement have been expended in accordance with applicable laws and regulations. Any audit-related costs incurred by the County under this provision shall be charged to the County CDBG Program. The City agrees to take prompt and appropriate corrective action on any instance of material non-compliance with applicable laws and regulations.

J. The City shall send a copy of the audit to:

Community Development Grants
County of Fresno
Department of Public Works and Planning
Community Development Division
2220 Tulare Street, 6th Floor
Fresno, CA 93721

VI. INDEMNIFICATION

Each party to this Agreement shall indemnify, defend and hold harmless the other party, its officers, agents, employees and representatives, from any and all loss, liability, costs, expenses and damage to persons or property, and from any and all claims, demands and actions in law or equity (including attorney's fees and legal expenses) arising or alleged to have arisen directly from any wrongful acts caused by its respective activities pursuant to this Agreement.

VII. TIME OF PERFORMANCE

A. The following schedule shall commence on the date this Agreement is executed by the County.

1. Complete Consultant Engineer Selection Process – August 26, 2016.

2. Complete Design Engineering and Submit to the County for Review – October 30, 2016.

3. Complete County Review and Approval of Plans – January 23, 2017.

4. Begin Advertising for Bids – January 27, 2017.

5. Award Contract – April 5, 2017.

B. The Project's Notice of Completion shall be filed with the Fresno County Recorder's Office no later than July 19, 2017.

C. The final POM Report, written summary of all work completed, documentation demonstrating compliance with the Section 3 clause, and request for final payment shall be submitted to the County no later than September 19, 2017.

D. The City shall give immediate written notification to the County Community Development Division of any events that occur which may affect the above time schedule and completion date and the time schedule specified in the contract documents, or any event that may have significant impact upon the Project or affect the attainment of the Project's objectives. The Director of the County Department of Public Works and Planning is authorized to make adjustments in the above schedule if, in the Director's judgment, any delay is beyond the control of the parties involved.

VIII. BREACH OF AGREEMENT

In the event the City fails to comply with any of the terms of this Agreement, the County may, at its option, deem the City's failure a material breach of this Agreement and utilize any of the remedies set forth in 24 CFR 85.43 or that it deems appropriate. Should the County deem a breach of this Agreement material, the County shall immediately be relieved of its obligations to make further payment as provided herein. Termination of this Agreement due to breach shall not, in any way whatsoever, limit the rights of the County in seeking any other legal relief in a court of law or equity, including the recovery of damages. In addition to the Agreement being terminated by the County in accord with a material breach of this Agreement by the City, this Agreement may also be terminated for convenience by the County in accord with 24 CFR 85.44.

1 IX. TERMINATION OF PROJECT

2 A. If the City decides to cancel the Project covered by this Agreement,
3 the City shall submit a request in writing to the County Department of Public Works and
4 Planning, Community Development Division explaining just cause for the request. The
5 Director of the Department is authorized to approve such a request if, in the Director's
6 judgment, there is just cause for the Project's cancellation.

7 B. If the Director approves the City's request to cancel the Project, any
8 unexpended CDBG funds budgeted to the Project under this Agreement may be
9 credited to the City's CDBG allocation, as appropriate.

10 X. VENUE; GOVERNING LAW

11 Venue for any action arising out of or relating to this Agreement shall be
12 only in Fresno County, California. The rights and obligations of the parties and all
13 interpretation and performance of this Agreement shall be governed in all respects by
14 the laws of the State of California.

15 XI. ENTIRE AGREEMENT

16 This Agreement constitutes the entire agreement between the City and the
17 County with respect to the subject matter hereof and supersedes all previous
18 negotiations, proposals, commitments, writings, advertisements, publications, and
19 understandings of any nature whatsoever unless expressly included in this Agreement.

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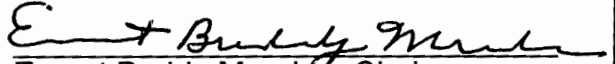
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1 IN WITNESS WHEREOF, the parties have executed this Agreement on the
2 date set forth above.

3 REVIEWED AND RECOMMENDED
4 FOR APPROVAL

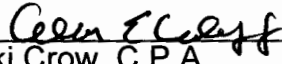
COUNTY OF FRESNO

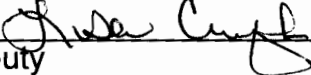
5
6 By: 
7 Steven E. White, Director
8 Department of Public Works
9 and Planning


Ernest Buddy Mendes, Chairman
Board of Supervisors

10 APPROVED AS TO ACCOUNTING
11 FORM:

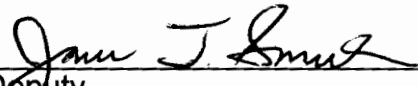
ATTEST: Bernice E. Seidel, Clerk
Board of Supervisors

12 By: 
13 Vicki Crow, C.P.A.
14 Auditor-Controller/ Treasurer-Tax
15 Collector

By: 
Deputy

16 APPROVED AS TO LEGAL FORM:
17 DANIEL C. CEDERBORG,
18 COUNTY COUNSEL

CITY OF _____

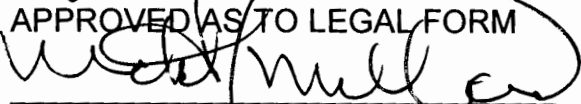
19 By: 
20 Deputy


Mayor Pro-Tem

ATTEST:


City Clerk, City of Kingsburg

APPROVED AS TO LEGAL FORM


City Attorney

REMIT TO:

24 FUND NO: 0001
25 SUBCLASS NO: 10000
26 ORG NO: 7205
27 ACCOUNT NO: 7885
28 PROJECT NO: N16391
ACTIVITY CODE: 7219

City of Kingsburg
Attn: Alex Henderson, City Manager
1401 Draper Street
Kingsburg, CA 93631

Telephone: (559) 897-5821

Exhibit 1
County of Fresno
Project Outcome Measurement Report

Project #: _____ Project Name: _____

The County of Fresno is required to submit information annually on each project funded with Community Development Block Grant (CDBG) funds, per U.S. Department of Housing and Urban Development (HUD) guidelines. As a recipient of CDBG funds from the County, we request that you provide the following information:

1. Years Reported: _____ through _____
2. Enter the number of persons assisted that:
 - a. Now have **new access** to this type of public facility or infrastructure improvement: _____ or N/A
(New access to a public facility or infrastructure is when the facility did not previously exist and is provided for the first time.)
 - b. Now have **improved access** to this type of public facility or infrastructure improvement: _____ or N/A
(Improved access to a public facility or infrastructure is when the facility or infrastructure is improved or expanded, enabling the grantee to expand the number of people or type of service the facility provides.)
 - c. Are served by this public facility or infrastructure improvement that **is no longer substandard**: _____ or N/A
(A public facility or infrastructure is no longer substandard when the CDBG funds were used to meet a quality standard, or measurably improve the quality of the facility or infrastructure.)

(Note: The numbers of persons entered in a, b, and c, above, must add up to the total number of persons entered in question 3.)

3. Total number of persons assisted: _____
4. Please describe the accomplishments made on this project in the past year (i.e. construction progress). If the project is complete, please describe the overall accomplishments made on the project.

Form Completed By: _____