

16-1303

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA

IN THE MATTER OF	)	RESOLUTION APPROVING FORM OF
AGREEMENT REQUIRED BY	)	AGREEMENT AND AUTHORIZING
FRESNO COUNTY ORDINANCE	)	EXECUTION OF AGREEMENTS ON
<u>CODE SECTION 15.04.140</u>	)	BEHALF OF THE COUNTY OF FRESNO

WHEREAS, Title 15 of the Fresno County Ordinance Code is entitled "Building and Construction", and includes provisions regulating the building and construction of structures in the unincorporated territory of Fresno County, and

WHEREAS, Fresno County Ordinance Code section 15.04.140 authorizes an exemption from the requirements of Title 15 for certain construction activities and improvements on land that is in the process of annexation to a city, where the County Building Official has found that conditions stated in Section 15.04.140 are satisfied;

WHEREAS, Section 15.04.140, subdivision (A)(3) requires that the city, which has applied to annex the land, execute an agreement agreeing to the provisions of Chapter 15.04 and indemnify the County of Fresno, and,

WHEREAS, Government Code section 23004 authorizes the County, through the Board of Supervisors (the "Board"), to make contracts, and,

WHEREAS, the Board may delegate the authority to approve and execute a contract on behalf of the County to an officer or employee of the County, and

WHEREAS, to facilitate the implementation of Section 15.04.140, the Board of Supervisors desires to approve the form of the agreement required by Section 15.04.140, and authorize the Director of the Department of Public Works and Planning (hereafter, "Director"), or designee, to approve and execute agreements substantially in the form approved by the Board, on behalf of the County with cities situated in Fresno County, subject to prior review and approval as to legal form by County Counsel.

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**Resolution Approving Form of Agreement and Authorizing
Execution of Agreements on Behalf of the County Of Fresno**

1 NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Fresno
2 County that:

- 3 1. The document attached hereto and incorporated herein by reference as Exhibit
4 A, which is entitled "AGREEMENT BETWEEN COUNTY OF FRESNO AND
5 CITY OF _____ TO PERMIT LIMITED DEVELOPMENT OF PROPERTY
6 INPROCESS OF ANNEXATION TO CITY OF _____ [Fresno County
7 Ordinance Code section 15.04.140]", is hereby approved as the form of
8 agreement to be used by the County to satisfy the Ordinance Code Section
9 15.04.140, subdivision (A)(3); and
- 10 2. Subject to the prior review and approval of County Counsel as to legal form, the
11 Director, or his or her designee, is authorized to approve and execute
12 agreements on behalf of the County with cities situated in Fresno County,
13 substantially in the form of Exhibit "A" together with such additions thereto and
14 changes therein as the Director, or his or her designee, shall deem necessary,
15 desirable or appropriate, the execution of which by the Director, or his or her
16 designee, shall be conclusive evidence of the approval of the County of any
17 such additions and changes.

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1 THE FOREGOING was passed and adopted by the following vote of the Board
2 of Supervisors of the County of Fresno this 27th day of September 2016, to-wit:

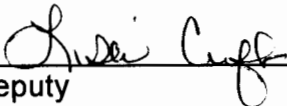
3 AYES: Supervisors Borgeas, Mendes, Pacheco, Perea, Poochigian

4 NOES: None

5 ABSENT: None

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7 ERNEST BUDDY MENDES, CHAIRMAN
Board of Supervisors

8 ATTEST:
9 BERNICE E. SEIDEL
Clerk to the Board of Supervisors

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11 By: 
12 Deputy

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**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF _____
TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF _____
[Fresno County Ordinance Code section 15.04.140]**

THIS AGREEMENT is entered into this _____ day of _____, 2016, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, (hereinafter "COUNTY") and the CITY OF _____, (hereinafter "CITY"), a municipal corporation of the State of California.

W I T N E S S E T H:

WHEREAS, on _____ [*insert date*] CITY approved Resolution Number _____ ("Resolution No. _____"), which approved _____, [*insert short description of development approval*] also referred to as the "Project." A true and correct copy of Resolution No. _____ is attached hereto and incorporated herein by reference as Exhibit "A".

WHEREAS, Resolution No. _____ also adopted a _____ [*Insert type of environmental document – i.e., MND or EIR*] for _____ [*development approval*], and City represents that it complied with the requirements of applicable law, including but not limited to the California Environmental Quality Act (CEQA) in approving _____ [*development approval*].

WHEREAS, the real property covered by _____ [*development approval*] (the "Property"), is located within the unincorporated territory of the Fresno County, but within the Sphere of Influence of the CITY. A true and correct copy of the legal description of the Property is attached hereto and incorporated herein by reference as Exhibit "B".

WHEREAS, on _____ [*insert date*] CITY adopted Resolution, No. _____ ("Resolution, No. _____") requesting a proposed reorganization that includes the annexation of the Property into the CITY. A true and correct copy of Resolution, No. _____

**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF _____
TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF _____
[Fresno County Ordinance Code section 15.04.140]**

_____ is attached hereto and incorporated herein by reference as Exhibit "C".

WHEREAS, on _____ [*insert date*] CITY filed a resolution of application "the
"Resolution of Application") with the Fresno County Local Agency Formation
Commission ("LAFCo"), requesting approval of a proposed reorganization to annex the
Property to the CITY. A true and correct copy of the Resolution of Application is
attached hereto and incorporated herein by reference as Exhibit "D".

WHEREAS, the owner of the Property is _____ (the "Owner").

WHEREAS, CITY has informed COUNTY that the Project to be constructed on
the Property, includes _____ [*e.g., residential lot subdivision*], the
precise, engineered plans for which have been submitted to the CITY's Planning and
Building Department; and

WHEREAS, section 15.04.140 of the Fresno County Ordinance Code, permits,
at the election of an owner or permittee, construction activities and improvements,
limited to underground utilities, grading, street improvements and model home
construction for residential development and/or underground utilities, grading and
street improvements for other than residential development on any parcel of land in
any zoning district within the unincorporated area of the COUNTY, to be exempted
from the provisions of Chapter 15.04 of the Fresno County Ordinance Code, when
certain conditions exist; and

WHEREAS, COUNTY and CITY desire to enter into a written agreement to
provide for the satisfaction of the requirements Section 15.04.140 of the Fresno
County Ordinance Code.

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NOW, THEREFORE, for good and value consideration the receipt of which is hereby acknowledged by the parties hereto, the COUNTY and CITY hereby agree as follows:

1. RECITALS.

The foregoing recitals are true and correct.

2. OWNER'S REQUEST THAT CITY ISSUE PERMITS.

The CITY represents that the Owner has requested that the CITY issue permits to allow the Owner to engage in the _____ [*choose one or more of the following, as applicable: underground utilities, grading, street improvements and model home construction for residential development and/or underground utilities, grading and street improvements for other than residential development*] (the "Improvements"), prior to annexation of the Property to the CITY.

3. EXERCISE OF JOINT POWERS.

It is the mutual intent of the CITY and COUNTY that, subject to the provisions of Section 15.04.140 of the Fresno County Ordinance Code, and the provisions of this Agreement, the CITY shall have the authority, and the sole obligation, to enforce each and every ordinance adopted by the CITY (the "Ordinances"), as well as State and Federal laws and regulations relating to construction of structures and division of land, to ensure that any and all Improvements constructed on, in, or about the Property prior to annexation of the Property to the CITY, shall comply with such Ordinances, laws, and regulations. To that end, the CITY and COUNTY acknowledge and agree that they each have the authority, under their respective police powers conferred upon each of them under California Constitution, Article XI, section 7, to enforce within their respective limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, and that under the Joint Exercise of Powers Act, Government Code section 6500

et seq., they may agree that the CITY shall be enabled and required to enforce such Ordinances, and State and Federal laws and regulation within such area proposed for annexation into the City pursuant to such police powers in such area, which such area is presently in the unincorporated area of Fresno County, and that such authority is hereby conferred upon the City under this Agreement.

4. CITY'S COMPLIANCE WITH APPLICABLE LAW

The CITY agrees to abide by the provisions of the Chapter 15.04 of the Fresno County Ordinance Code, including the provisions of Section 15.04.140 thereof, with respect to the Property. The CITY shall require in connection with the issuance of the aforementioned permits that the Owner or permittee shall comply with all CITY ordinances, State and Federal laws, and regulations relating to construction of structures and division of land, including the securement of permits as would be required as if the Property were within the incorporated area of the CITY. CITY shall also comply with the requirements of CEQA prior to the issuance of permits for Improvements allowed by this Agreement. For the purposes of compliance with CEQA prior to the issuance of such permits, CITY and COUNTY agree that CITY shall serve as the lead agency.

5. CERTIFICATION OF CITY BUILDING OFFICIAL.

Within five (5) CITY business days of the date this Agreement is signed by the authorized representative of the COUNTY on behalf of the COUNTY (hereafter referred to as the "Effective Date of this Agreement"), the CITY's building official shall certify in writing to COUNTY that each of the Improvements constructed on, in, or about the Property prior to annexation of the Property to the CITY will meet all CITY ordinances upon annexation of the Property into the City, and that the CITY will enforce the provisions thereof pursuant to the City's Ordinances, and applicable State and Federal laws and regulations relating to construction of structures and division of

land. The CITY agrees that the COUNTY may rely on the statements made in this Certification and is not required to independently investigate or verify the accuracy or completeness of the statements made by the CITY's Building Official in such written certification. The written certification shall be made by using the form attached hereto as Exhibit "E", which incorporated herein by reference.

6. STOP WORK ORDERS.

If the CITY issues permits for the Improvements prior to annexation of the Property to the CITY, the CITY's Building Official shall issue a stop work order for the work authorized by such permits if any of the following occur:

A. The annexation proceedings requested by CITY by the Resolution of Application, are not completed within one hundred twenty (120) days from the Effective Date of this Agreement, subject to the provisions of Section 7 of this Agreement.

B. Annexation of the Property to the CITY is denied by the LAFCo.

C. The construction of the Improvements does not comply with the CITY ordinances.

Within five (5) CITY business days of the issuance of a stop work order, the CITY shall deliver a true and correct copy of the stop work order to the COUNTY, accompanied by a notice referencing this Agreement.

If the Owner and other parties subject to the stop work order do not comply with the stop work order, CITY shall promptly take all actions necessary to ensure compliance with that order, including but not limited to initiating and prosecuting litigation against any person or persons in violation of the order to ensure compliance.

The CITY shall also promptly take all actions necessary to bring the Improvements constructed on the Property into compliance with the provisions of Chapter 15.04 of the Fresno County Ordinance Code. All expenses incurred to bring

the Property into compliance with the provisions of Chapter 15.04 of the Fresno County Ordinance Code shall be borne solely by the CITY. Thereafter, any further construction on the Property shall be in accordance with Title 15 of the Fresno County Ordinance Code.

7. EXTENSIONS OF TIME.

To the extent permitted by section 15.04.140 of the Fresno County Ordinance Code, the COUNTY's building official, upon receipt of a written request from the CITY building official prior to the expiration specified by Section 6.A, may grant up to two (2) individual extensions of time to complete annexation proceedings not to exceed thirty (30) days each. If the COUNTY building official grants two such thirty (30) day extensions to the CITY, and annexation proceedings are not completed within a total of a one hundred eighty (180) day period from the Effective Date of this Agreement, a request for additional time to complete the annexation may be made to, and may, in its sole and exclusive discretion, be approved by the Fresno County Board of Supervisors. A request for extension made to the Board of Supervisors must be made prior to the expiration a total of a one hundred eighty (180) day period from the Effective Date of this Agreement.

8. CERTIFICATE OF APPROVAL OF ANNEXATION.

Within five (5) CITY business days of approval by LAFCo of the annexation of the Property to the CITY, the CITY shall transmit a true and correct copy of the executed Certificate of Completion to the COUNTY.

9. CITY'S INDEMNIFICATION OF COUNTY.

The CITY hereby agrees to save, indemnify, hold harmless and, at COUNTY's request, defend COUNTY, its officers, agents, and employees, from and against all legal actions of whatever form, expenses, demands, liabilities, claims, costs (including but not limited to court costs and attorney's fees), or damages of any nature whatsoever occurring or resulting to COUNTY, including, but not limited to, an award

of attorney's fees and costs to the person, organization or entity bringing the cause of action, or their officers, agents, and employees, arising from, resulting from, or in connection the performance, or failure to perform, of CITY, its officers, agents, or employees under this Agreement.

When defending COUNTY, CITY shall pay all attorneys' fees and costs related to the defense in any action brought against the COUNTY. CITY shall defend COUNTY through counsel selected by CITY and shall keep the COUNTY fully informed as to the progress of such defense. COUNTY shall cooperate with CITY in the defense of the claim.

10. NOTIFICATIONS AND COOPERATION BY COUNTY.

COUNTY shall notify CITY within seven (7) COUNTY business days of its receipt of any demand, claim, action, proceeding, or litigation in which COUNTY is to be indemnified and held harmless by CITY. If COUNTY requests that CITY defend COUNTY, it shall notify CITY in writing within ten (10) COUNTY business days of its receipt of any such demand, claim, action, proceeding, or litigation. COUNTY shall cooperate in such defense.

11. COUNTY PARTICIPATION IN DEFENSE.

Nothing contained herein shall prohibit COUNTY, in its sole discretion, from participating in the defense of any demand, claim, action, proceeding, or litigation over and above representation by legal counsel hired by CITY, or from participating in the defense of any demand, claim, action, proceeding, or litigation. If COUNTY elects to also defend, it shall do so in good faith and COUNTY shall bear its attorney's fees and costs. Except as otherwise provided in this paragraph, in no event shall COUNTY's participation in the defense of any demand, claim, action, proceeding, or litigation affect the obligations imposed upon CITY in Section 9 of this Agreement.

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12. INSURANCE.

CITY agrees that, during the term of this Agreement, CITY shall ensure that its activities under this Agreement shall be covered by CITY's _____
[Insert type of insurance program, e.g., insurance and/or self-insurance program], applying to such activities such minimum coverages and amounts thereof, and maximum deductibles, as are required or provided for CITY's operations, and that CITY shall, if requested from time to time by COUNTY, provide written evidence of such _____ *[Insert type of insurance program, e.g., insurance and/or self-insurance program]*, to COUNTY in such form and manner that would be reasonably satisfactory to COUNTY.

13. NON-ASSIGNMENT.

Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

14. MODIFICATION.

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

15. NOTICES.

Any and all notices between COUNTY and the CITY provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party, at such addresses set forth below:

COUNTY

Department of Public Works and Planning

Attention: Chief Building Inspector

2220 Tulare Street, Suite 600

CITY

City of _____

Attention: City Manager

Fresno, California 93721 _____

16. NO THIRD PARTY BENEFICIARIES.

This Agreement has been entered into solely for the benefit of the parties hereto. Nothing in this Agreement is intended to benefit or confer any rights or remedies on any other person or parties.

17. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute together the same document.

18. APPLICABLE LAW AND VENUE.

This Agreement is made and entered into in the State of California and shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be governed by, and construed, and enforced in accordance with the laws of the State of California. Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California, unless otherwise agreed to in writing by both parties hereto.

19. LEGAL AUTHORITY

Each individual executing or attesting this Agreement hereby covenants, warrants, and represents: (1) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of their respective public agency in accordance with applicable law; and (2) that this Agreement is binding upon each public agency.

20. SEVERABILITY.

If any provision of this Agreement is determined to be illegal, invalid, void, or unenforceable in a final judgment by a court of competent jurisdiction, each and every other provision hereof shall remain in full force and effect, unless this severability provision would deny one or more of the parties to the Agreement of the material benefits of the Agreement, in which case the entire Agreement shall have no force and effect.

21. HEADINGS.

**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF
_____ TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF _____
[Fresno County Ordinance Code section 15.04.140]**

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other.

22. INTERPRETATION OF AGREEMENT.

The parties hereby acknowledge that they and their respective counsel have cooperated in the drafting and preparation of this Agreement, for which reason this Agreement shall not be construed against any party as the drafter thereof.

23. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the CITY and COUNTY with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement. In the event of any inconsistency in interpreting the documents which constitute this Agreement, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of this Agreement (excluding Exhibits "A", "B", "C", "D", and "E"), and (2) Exhibit "E", Exhibit "B", Exhibit "D", Exhibit "A", and Exhibit "C".

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IN WITNESS WHEREOF, CITY and COUNTY hereby execute this Agreement.

CITY OF _____:

COUNTY OF FRESNO

By _____

By _____
Chair, Board of Supervisors

Print Name: _____

Title: _____

Date: _____

Date: _____

BERNICE E. SEIDEL, Clerk
Board of Supervisors

APPROVED AS TO LEGAL FORM:

By _____

Date: _____

By _____

CITY ATTORNEY

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

By _____

REVIEWED AND RECOMMENDED
FOR APPROVAL:

STEVEN E. WHITE, Director
Department of Public Works and
Planning

By _____

EXHIBIT "A"

[City Resolution – Approval of Project]

**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF
_____ TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF _____
[Fresno County Ordinance Code section 15.04.140]**

EXHIBIT "B"

[Legal Description of the Property]

EXHIBIT “C”

[City Resolution – Request for Proposed Reorganization]

**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF
_____ TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF _____
[Fresno County Ordinance Code section 15.04.140]**

EXHIBIT “D”

[Resolution of Application to LAFCo]

**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF
_____ TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF _____
[Fresno County Ordinance Code section 15.04.140]**

EXHIBIT "E"

**CERTIFICATION OF CITY OF _____ BUILDING OFFICIAL
REGARDING SATISFACTION OF SECTION 15.04.140
OF FRESNO COUNTY ORDINANCE CODE**

I, _____ [*fill in name of CITY building official*], declare that the following facts are true and correct in my capacity as such [*fill in name of CITY building official*]:

1. I am employed by the City of _____ ("CITY") as _____ [*insert job title*]. In this position I serve as the City's Building Official.
2. As the CITY's building official I am familiar with the CITY's applicable grading requirements for residential development projects, including tentative subdivision maps approved by the CITY.
3. I am familiar with _____, [*insert short description of development approval*] also referred to as the "Project" approved by the CITY.
4. The real property covered by _____ [*development approval*] (the "Property"), is located within the unincorporated territory of the Fresno County, but within the Sphere of Influence of the CITY. A true and correct copy of the legal description of the Property is attached hereto and incorporated herein by reference as Attachment "1".
5. The Project to be constructed on the Property includes the planned construction of a _____ [*e.g., residential lot subdivision or commercial project*], the precise, engineered plans for which have been submitted to the CITY's Planning and Building Department; and
6. As the CITY's Building Official, on behalf of the CITY, I certify that the CITY will diligently take all necessary and appropriate actions to ensure that any improvements constructed on, under, or about the Property will satisfy all CITY ordinances and that the CITY will enforce the provisions thereof to the full extent permitted by law.
7. I am authorized to provide this written certification on behalf of the CITY to the COUNTY.
8. I acknowledge on behalf of the CITY that the COUNTY may rely on the statements made in this Certification for purposes of satisfying applicable COUNTY ordinances and the Agreement to Permit Limited Development of Property in Process of Annexation to City of _____ between the CITY and COUNTY, and the COUNTY is not required to independently investigate or verify the accuracy or completeness of the statements I make in this Certification.

DATED: _____

[PRINT NAME]

[PRINT TITLE]

**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF _____
TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF _____
[Fresno County Ordinance Code section 15.04.140]**