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AGREEMENT

THIS AGREEMENT ("Agreement") is made this 2nd day of November, 2021 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("County"), and the BIOLA COMMUNITY SERVICES DISTRICT, ("District").

WITNESSETH

WHEREAS, the County has been awarded Active Transportation Program ("ATP") funding to administer and implement the Biola Community Sidewalk Project ("Project") in accordance with the laws of the State of California; and

WHEREAS, the improvements included in the Project are consistent with the objectives of the Fresno County General Plan and the Fresno Council of Governments ("FCOG") Regional Transportation Plan; and

WHEREAS, The District has agreed to maintain said improvements upon completion of the Project in perpetuity per signed commitment letter dated September 19, 2020.

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

I. PROJECT DESCRIPTION, LOCATION AND BUDGET

A. The Project consists of the widening of the road, construction of curb and gutter, sidewalk, and curb ramps on the east side of Biola Avenue between Shaw Avenue and F/G Street Alley, and the north side of C Street between Biola Avenue and the existing Sidewalk at Biola Community Center ("Project Area"). The Project is located in the unincorporated community of Biola. The improvements will improve pedestrian safety for the residents of Biola.

B. The Project Site locations are in public rights-of-way.

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

1. Obtain all necessary permits.
2. Administer California Environmental Quality Act (CEQA) and National Environmental Policy Act as required
3. Perform Right-of-Way Engineering and Right-of-Way acquisition as/if required

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

4 5. Prepare and advertise Project bid notices and award construction
5 contracts including, but not limited to, the printing of bid documents, publishing of notices, and
6 preparation of bid summary.

7 6. Perform all construction engineering including, but not limited to,
8 shop drawing review and approval, contract change order preparation, surveying, staking,
9 inspection, soil testing, materials testing, preparation of "as-built" drawings, labor compliance, and
10 contract administration.

11 7. Construct related eligible improvements.

12 D. The Project budget as awarded by the ATP is as follows:

13	PA & ED	\$15,000
14	PS&E	230,000
14	Construction .	<u>1,255,000</u>
15		Total \$1,498,000

16 II. *OBLIGATIONS OF THE COUNTY*

17 A. The County shall serve as the Project's lead agency, administering and
18 managing all activities related to environmental, preliminary engineering, right of way, construction
19 engineering, advertising, and bidding prior to project construction. Any and all project elements
20 will be determined according to Caltrans 2015 Standard Specifications and the ATP guidelines.

21 B. The County shall inform the District of the status of the project quarterly. The
22 County shall give the opportunity to the District to review project plans and specification; however
23 District's comments related to the project, other than District utilities relocation, will be considered
24 informational only and the County shall not be obligated to implement them.

25 C. The County shall conduct construction management of the Project, as may
26 be required, in the determination of the County, to ensure that the Project is constructed per plans
27 and specifications. Upon completion of the Project, but prior to the County's acceptance of the
28 Project, the County shall conduct a final inspection of the Project.

1 III. OBLIGATIONS OF THE DISTRICT

2 A. The District is responsible for maintaining the functional condition of the
3 project improvements

4 B. District shall take the operation and maintenance liability of the newly
5 constructed concrete work (i.e. sidewalk, curb, gutter, ADA ramps, etc) in perpetuity.

6 C. District shall take the operation and maintenance liability of the newly
7 constructed storm drainage improvements as well as continue the operating the existing storm
8 drainage system in perpetuity.

9 D. Existing District utilities (i.e. water, sewer, lighting, etc) are not installed
10 within a dedicated utility easement. Utilities are under encroachment. Relocations are not
11 reimbursed by ATP and will not be covered by County funds. The District shall pay for all
12 utilities relocation in conflict with the Project

13 E. If District elects to install decorative lighting along Biola Ave, all costs
14 associated with installation of the lighting, including but not limited to, design, permits,
15 construction shall be paid with District's funds. District understands that County will have a
16 strict deadline for delivery of the project. Any additional improvement(s) that District may desire
17 to add will need to be constructed prior to the commencement of County's construction of the
18 project and will not be able to delay ATP Project.

19 F. If District elects to install trees and irrigation system along Biola Ave, the
20 installation of such trees and irrigation shall be paid with District's funds. District understands
21 and will not delay County's construction of the project. District shall take full maintenance
22 responsibility, including but not limited to irrigation, trimming, repair any damage caused by the
23 roots (concrete improvements as well as damage to the road).

24 G. The District shall demonstrate in writing, and to the County's satisfaction,
25 that it has the authority, operational ability, and financial resources for maintaining the
26 improvements constructed with ATP funds under this Agreement prior to award of construction
27 of the Project.

28 H. All such maintenance, repair, and/or replacement shall be at the sole cost

1 and expense of the District. This commitment shall be recorded and made binding throughout the
2 life of the project improvements.

3 I. The District must obtain prior written approval from the County before
4 making any modification or change in the use of any of the project improvements, in whole or in
5 part. The modification or adjustment of any utility facilities within the Project Area shall be the
6 financial liability of the District at no cost to the County.

7 J. The District acknowledges that the County may periodically inspect the
8 Project to ensure that the property is being used as described in this Agreement. The District
9 agrees to provide any necessary information to the County to carry out such inspections.
10 Furthermore, the District agrees to take corrective action if the County determines that
11 modifications to the use and location of the Project have resulted in a violation of ATP regulations.

12 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

13 A. The County shall, and shall cause its consultants, contractors, and
14 subcontractors to, comply with all applicable State and Federal laws and regulations governing the
15 Project.

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

19 V. PAYMENT FOR THE PROJECT

20 A. Any savings realized in the final cost of the Project, due to Project cost
21 and/or scope of work reductions, liquidated damages, or any other reason, shall be used to reduce
22 the amount of this Project paid for with ATP funds.

23 B. The County will not be bound by any agreement between the District and its
24 agents.

25 VI. INDEMNIFICATION

26 The District shall indemnify, defend, and save harmless the County, its officers,
27 agents, and employees from and against any and all damages, claims, and losses whatsoever
28 (including attorney's fees and costs) occurring or resulting to persons, firms, or corporations

1 furnishing or supplying work, services, materials, or supplies in connection with the performance
2 of this Agreement, and from any and all damages, claims, and losses (including attorney's fees
3 and costs) occurring or resulting to any person, firm, or corporation for damage, injury, or death
4 arising out of or connected with the District's performance of, or failure to perform, its obligations
5 under this Agreement. The provisions of this Section VI shall survive the termination of this
6 Agreement.

7 VII. BREACH OF AGREEMENT

8 In the event the District fails to comply with any of the terms of this Agreement, the
9 County may, at its option, deem the District's failure a material breach of this Agreement, and utilize
10 any remedies permitted by law, that the County deems appropriate. Should the County deem a
11 breach of this Agreement material, the County shall immediately be relieved of its obligations to
12 make further payment as provided herein. Termination of this Agreement due to breach shall not,
13 in any way whatsoever, limit the rights of the County in seeking any other legal relief in a court of
14 law or equity, including the recovery of damages. In addition to the Agreement being terminated
15 by the County in accordance with a material breach of this Agreement by the District, this
16 Agreement may also be terminated for convenience by the County in accordance with state and
17 federal law.

18 VIII. TERMINATION OF AGREEMENT

19 A. If the District decides to terminate this Agreement, the County, at its solely
20 discretion may or may not decide to deliver the Project. If County decides to cancel the Project as
21 a consequence of the termination of this Agreement, then the County will be obliged to promptly
22 return to Caltrans all ATP funds reimbursed for costs incurred by activities performed by County
23 staff related to the project improvements and District shall be responsible for any cost associated
24 to the project returned to Caltrans.

25 IX. TERMINATION OF PROJECT

26 A. The County is not obligated to deliver the Project. If County decides to
27 cancel the Project, then the County will be responsible and obliged to promptly return to Caltrans
28 all ATP funds reimbursed for costs incurred by activities performed by County staff related to the

1 project improvements

2 X. VENUE; GOVERNING LAW

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

7 XI. ENTIRE AGREEMENT

8 This Agreement constitutes the entire agreement between the District and the
9 County, with respect to the subject matter hereof and supersedes all previous negotiations,
10 proposals, commitments, writings, advertisements, publications, and understandings of any nature
11 whatsoever unless expressly included in this Agreement.

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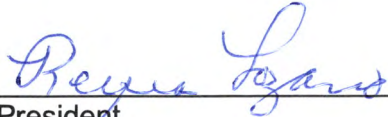
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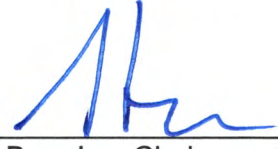
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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth on page 1 of this Agreement.

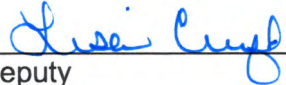
BIOLA COMMUNITY SERVICES DISTRICT

COUNTY OF FRESNO

By: 
President


Steve Brandau, Chairman of the
Board of Supervisors of the
County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

ATTACHMENT A

4925 N. SEVENTH STREET - PO BOX 57 BIOLA CA 93606
Office (559) 843-2657 Fax (559) 843-2275



Rudy Hernandez – President
Monique Dolores – Vice President
Mercedes Ramos – Treasurer
Rey Lozano – Board Member
Inez Jimenez – Board Member
Eduardo Antunez – Interim Manager
Pete Cerna – Customer Service

9/17/2020

To: Fresno County Board of Supervisors

Subject: Fresno County/Biola CSD Cycle 5 ATP Application Commitment to Ongoing Maintenance

In order to support the Cycle 5 Application submitted on September 15, 2020 Biola CSD is committed to partner with Fresno County and agrees to assume the responsibility for the ongoing operations and maintenance of the facility should the application be awarded funding and upon completion by Fresno County. Biola CSD is also committed to documenting this intent further in an agreement per CTC guidelines.

This commitment will include but not be limited to the following:

- Biola CSD will take the maintenance liability of the proposed concrete work (i.e. sidewalk, curb, gutter, ADA ramps, etc) in perpetuity.
- Biola CSD will take the operation and maintenance liability of the proposed storm drainage system in perpetuity.
- Existing Biola CSD utilities (i.e. water, sewer, lighting, etc) are not installed within a dedicated utility easement. Utilities are under encroachment. Relocations are not reimbursed by ATP program and will not be covered by County funds.
- If Biola CSD elects to install decorative lighting along Biola Ave, funding for the installation (including conduits and wiring) will be paid with Biola CSD's funds. Biola understands that Fresno County will have a strict deadline for delivery of the project. Any additional improvement(s) that Biola CSD may desire to add will need to be constructed prior to the commencement of Fresno County's construction of the project and will not be able to delay ATP Project.
- If Biola CSD elects to install trees and irrigation system along Biola Ave, the installation of such trees and irrigation will be paid with Biola CSD's funds. Biola understand and will not delay Fresno County's construction of the project. Biola CSD will take full maintenance responsibility, including but not limited to irrigation, trimming, repair any damage caused by the roots (concrete improvements as well as damage to the road).

Respectfully,

A handwritten signature in blue ink that reads "Rudy Hernandez". The signature is fluid and cursive.

Rudy Hernandez

President

Biola Community Services District