

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A G R E E M E N T

THIS AGREEMENT is made this 26th day of September, 2017, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as the "County", and the FRESNO COUNTY FIRE PROTECTION DISTRICT, hereinafter referred to as the "District".

WITNESSETH

WHEREAS, the County has been designated as the sponsoring agency to administer and implement the program for the Community Development Block Grant (CDBG) Program activities of 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 District has submitted the Station 90 (Caruthers/Lanare/Raisin City) Water Tender Refurbish, Project No. 17731 (the "Project"), for CDBG funding; and

WHEREAS, the total cost of the Project is estimated at \$291,000 and the District has committed local funds to the Project in the amount of \$51,000 and has requested the sum of \$240,000 from the County's allocation of CDBG funds to complete the Project; and

WHEREAS, the County Board of Supervisors, at a public hearing conducted on August 8, 2017, approved as part of the County's 2017-2018 Action Plan, the usage of \$240,000 in CDBG funds for the Project as requested by the District; and

WHEREAS, there is \$240,000 in CDBG funds that can be made available to the District for the Project this fiscal year; 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 District and County agree as follows:

///

1 I. PROJECT DESCRIPTION, LOCATION AND BUDGET

2 A. The Project consists of refurbishing an existing water tender located at Fire
3 Station 90 in Caruthers. The Project will improve fire protection services by providing a mobile
4 water supply with firefighting capability. The Project will primarily benefit the communities of
5 Caruthers, Lanare, Raisin City, and the surrounding areas.

6 B. The Project site is owned by the District.

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

8 1. Obtain all necessary permits.

9 2. Perform all necessary design work, including, but not limited to,
10 preparation of specifications, and cost estimates; bid documents and a cost or price analysis;
11 review of bids and recommendation for award.

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

15 4. Perform all design work including, but not limited to, shop drawing
16 review and approval; contract change order preparation; preparation of "as-built" drawings; labor
17 compliance; and contract administration.

18 5. Provide related eligible improvements.

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

20	Refurbishing of Water Tender	<u>\$291,000</u>
21	Total	\$291,000

22 E. Notwithstanding the estimates described in the above preliminary Project
23 budget, payments for the Project from CDBG funds will be based on the actual costs and shall not
24 exceed the total amount of \$240,000.

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

27	CDBG	\$240,000
28	Local Financial Contribution	<u>\$ 51,000</u>
	Total	\$291,000

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

4 Community Development Grants
5 County of Fresno
6 Department of Public Works and Planning
7 Community Development Division
8 2220 Tulare Street, 6th Floor
9 Fresno, CA 93721

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

14 II. OBLIGATIONS OF THE COUNTY

15 A. The County shall provide up to, but not more than, \$240,000 from available
16 CDBG funds for the Project. All funds shall be paid in accordance with Section V of this Agreement.

17 B. The County shall review, within thirty (30) calendar days of receipt from the
18 District, the specifications for the Project as prepared by the District for compliance with Federal
19 regulations, conformance with applicable code requirements sufficient to allow for construction-
20 related permit issuance, and the total Project cost estimate to ensure sufficient funds are available
21 to complete the Project. The County shall specify in a letter to the District that these conditions
22 have been met and that the Project can be advertised.

23 C. The County shall also review, within twenty-one (21) calendar days of
24 receipt from the District, the name of the low bidder and cost or price analysis of the low bid
25 proposal prepared by the District to determine whether the vendor will be reasonably compensated
26 in accordance with Federal requirements, and to verify that the vendor is bonded and has not been
27 disbarred or suspended from participating in Federal projects. The County shall specify in a letter
28 to the District that the conditions of this Section have been met and that the contract can be
awarded.

D. The County may, upon request by the District, allow alternate procurement

procedures permitted under 24 CFR Part 84, provided the District submits satisfactory documentation and justification.

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

III. OBLIGATIONS OF THE DISTRICT

A. The District shall provide any and all sums of money in excess of \$240,000 that may be necessary to complete the Project. For the purposes of awarding the Project within the Agreement amount, the bid documents shall include any proposed additive or deduct alternatives.

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

C. The District shall perform, or cause to be performed, all design work required for the Project.

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

E. Upon completion of the design, the District shall submit the specifications to the County Community Development Division. The County will ensure Federal CDBG requirements have been adhered to and review cost estimates to ensure sufficient funds are available. The District shall obtain a letter from the County specifying these conditions have been met and that the District is approved to advertise for bids for the Project.

F. The District may request to utilize alternate procurement procedures

1 allowed under 24 CFR Part 84, subject to prior approval by the County Community Development
2 Division.

3 G. The District shall advertise for bids and shall award the contract to the lowest
4 responsible bidder. At least ten (10) calendar days prior to the bid opening, the District shall notify
5 the County of the date, time, and location of the bid opening.

6 H. Within seven (7) calendar days following the bid opening, the District shall
7 furnish the Community Development Division with the name of the low bidder and cost or price
8 analysis of the low bid proposal prepared by the District so that the County can verify with the
9 Labor Relations and Equal Opportunity Division of the U.S. Department of Housing and Urban
10 Development (HUD) Area Office that the low bidder has not been debarred or suspended from
11 participating in Federal projects, and that the vendor will be reasonably compensated in
12 accordance with Federal requirements. The District shall obtain a letter from the County specifying
13 these conditions have been met and that the District is approved to award the Project.

14 I. The District shall give written notice thereof, to include a copy of the
15 executed contract between the District and the vendor to the County Community Development
16 Division.

17 J. All proposed contract change orders shall not proceed until prior written
18 approval has been given by the County. Request for approval of a change order(s) shall include
19 a narrative description of the work, a cost or price analysis in accordance with HUD requirements,
20 and a written certification from the District that the approval of the change order is consistent with
21 the final cost estimate approved by the County. In addition, the District shall certify that the change
22 order is within the scope of the Project and is necessary to complete the Project.

23 K. The District shall send its written description of the cost or price analyses,
24 specifications, name of low bidder and low bid proposal, public notices, and all written
25 correspondence to:

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

1 L. The County has determined that the Project is exempt from the provisions
2 of the California Environmental Quality Act (CEQA) and the National Environmental Protection Act
3 (NEPA).

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

8 N. Upon approval of Project completion by the County, the District shall provide
9 the County Community Development Division with a resolution of acceptance, or similar
10 documentation, demonstrating that the Project was completed in accordance with the scope of
11 work approved and authorized pursuant to this executed Agreement and any approved
12 subsequent amendments and/or change orders, and that the District has accepted the Project.
13 Prior to the final request for payment, the District shall also provide the County with a written
14 summary of all Project work completed with CDBG and other funds.

15 O. During the contract period, the District shall complete and submit annually
16 on June 1, and upon completion of the Project, a Project Outcome Measurement Report (POM)
17 form, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference. The
18 POM shall contain the following information for the County's Federal reporting purposes to HUD:

- 19 1. Total number of households/persons assisted.
- 20 2. Number of total households/persons assisted that:
 - 21 a. Now have new access to this type of public facility or
22 infrastructure improvement.
 - 23 b. Now have improved access to this type of public facility or
24 infrastructure improvement.
 - 25 c. Now are served by public facility or infrastructure that is no
26 longer substandard.

27 P. The District shall be responsible for maintenance of the improvements after
28 the Project is completed and shall do so from non-CDBG resources.

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

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

17 S. The District acknowledges that the County may periodically inspect the
18 Project to ensure that the property is being used as described in this Agreement. The District
19 agrees to provide any necessary information to the County to carry out such inspections.
20 Furthermore, the District agrees to take corrective action if the County determines that
21 modifications to the use and location of the Project have resulted in a violation of the Federal
22 CDBG regulations.

23 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

24 A. The District, its consultants, and vendors shall comply with all applicable
25 State and Federal laws and regulations governing projects that utilize Federal funds.

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

1 C. Whenever the District receives at least \$100,000 for a project from the
2 County's CDBG Program under this Agreement, the District shall complete and submit to the
3 County Community Development Division a "Certification of Payments to Influence Federal
4 Transactions" form and a "Standard Form LLL - Disclosure of Lobbying Activities" form. Likewise,
5 before the District awards a contract using at least \$100,000 of such CDBG funds, the District shall
6 require the consultant, vendor, and/or contractor and all their sub-consultants and/or
7 subcontractors to complete and submit these two (2) forms described hereinabove to both the
8 District and the County.

9 V. PAYMENT FOR THE PROJECT

10 A. At monthly intervals, the District shall submit a written request to the County
11 for payment of specified costs incurred in the performance of this Agreement. The request for the
12 County to make such a payment shall be in accordance with the exemplar Project Pay Request
13 Form attached hereto as Exhibit 2 and incorporated herein by reference. The request shall also
14 be accompanied by a written certification from the District that the request for payment is consistent
15 with the amount of work that has been completed, and that said work is in accordance with the
16 contract documents and this Agreement. The request for payment shall also be accompanied by
17 documentation acceptable to the County, such as checks, invoices or vouchers for services or
18 materials purchased, procurement costs, or other costs chargeable to the Project.

19 B. Any savings realized in the final cost of the Project, due to Project cost
20 and/or scope of work reductions, liquidated damages, or any other reason, shall be used to reduce
21 the amount of this Project paid for with CDBG funds in the same pro rata share that CDBG funds
22 were used in payment of the Project. If the District is required to provide any additional funds
23 toward the Project other than described in this Agreement, any cost savings shall be first used to
24 reimburse the District for its contribution in excess of the total amount provided by this Agreement.

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

27 D. The County will not be bound by any agreement between the District and its
28 agents.

1 E. The County may withhold payment of the final payment request made by
2 the District until evidence is submitted to the County that a maintenance plan has been prepared
3 and adopted for this Project procured with CDBG funds.

4 F. Upon the completion of the Project, the District shall submit to the County
5 Community Development Division a written request for final payment of costs which shall provide
6 a detailed description of the Project pay items and costs. The final pay request shall be in
7 accordance with Exhibit 2. The County shall not be obligated to make any payments under this
8 Agreement if the request for payment is submitted by the District more than sixty (60) days after
9 the evidence of delivery, inspection, and acceptance by the District has been submitted to the
10 County. An extension to the sixty (60) day period may be granted by the Director of the County
11 Department of Public Works and Planning prior to the deadline if the District can demonstrate
12 just cause for the delay.

13 G. The County may withhold payment of the final payment request made by
14 the District, until a final POM and written summary of all Project work completed with CDBG and
15 other funds have been submitted to the County.

16 H. All requests for payment and supporting documentation shall be sent to:

17 Business Manager
18 County of Fresno
19 Department of Public Works and Planning
20 Financial Services Division
2220 Tulare Street, 6th Floor
Fresno, CA 93721

21 I. The District shall establish accounting and bookkeeping procedures in
22 accordance with standard accounting and bookkeeping practices, including, but not limited to,
23 employee timecards; payrolls; and other records of all transactions to be paid with CDBG funds in
24 accordance with the performance of this Agreement. All records and accounts shall be available
25 for inspection by the County, the State of California, if applicable, the Comptroller General of the
26 United States, and HUD or any of their duly authorized representatives; at all reasonable times for
27 a period of at least five (5) years following final payment under this Agreement or the closure of all
28 other pending matters, whichever is later. The District shall certify accounts when required or

1 requested by the County.

2 J. The District, as a subrecipient of Federal financial assistance, is required to
3 comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as
4 amended. Whenever the District receives CDBG funds from the County for the Project, a copy of
5 any audit performed by the District in accordance with said Act shall be forwarded to the County
6 Community Development Grants Program Manager within nine (9) months of the end of any
7 District fiscal year in which funds were expended and/or received for the Project. Failure to perform
8 the requisite audit functions as required by this paragraph may result in the County performing any
9 necessary audit tasks or, at the County's option, the County contracting with a public accountant
10 to perform the audit. All audit costs related to the District's failure to perform the requisite audit are
11 the sole responsibility of the District and such audit work costs incurred by the County shall be
12 billed to the District as determined by County's Auditor-Controller/Treasurer-Tax Collector. In the
13 event the District is only required to perform an audit under the provisions of the Act because the
14 District is receiving CDBG funds, the County may perform, or cause to be performed, the required
15 audit to determine whether funds provided through this Agreement have been expended in
16 accordance with applicable laws and regulations. Any audit-related costs incurred by the County
17 under this provision shall be charged to the County CDBG Program. The District agrees to take
18 prompt and appropriate corrective action on any instance of material non-compliance with
19 applicable laws and regulations.

20 K. The District shall send a copy of the audit to:

21 Community Development Grants
22 County of Fresno
23 Department of Public Works and Planning
24 Community Development Division
25 2220 Tulare Street, 6th Floor
26 Fresno, CA 93721

27 VI. INDEMNIFICATION

28 The District shall indemnify, defend, and save harmless the County, its officers,
agents, and employees from and against any and all claims and losses whatsoever occurring or
resulting to persons, firms, or corporations furnishing or supplying work, services, materials, or

1 supplies in connection with the performance of this Agreement, and from any and all claims and
2 losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising
3 out of or connected with the District's performance of, or failure to perform, its obligations under
4 this Agreement.

5 VII. TIME OF PERFORMANCE

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

8 1. Complete Specifications and Submit to the County for Review –
9 October 31, 2017.

10 2. Complete County Review and Approval of Specifications –
11 November 30, 2017.

12 3. Begin Advertising for Bids – December 8, 2017.

13 4. Award Contract – January 5, 2018.

14 B. Evidence of delivery, inspection, and acceptance by the District shall be
15 submitted to the County Community Development Division no later than August 31, 2018.

16 C. The final POM Report, written summary of all work completed, and request
17 for final payment shall be submitted to the County no later than October 31, 2018.

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

25 VIII. BREACH OF AGREEMENT

26 In the event the District fails to comply with any of the terms of this Agreement, the
27 County may, at its option, deem the District's failure a material breach of this Agreement and utilize
28 any of the remedies set forth in 24 CFR 85.43 or that it deems appropriate. Should the County

1 deem a breach of this Agreement material, the County shall immediately be relieved of its
2 obligations to make further payment as provided herein. Termination of this Agreement due to
3 breach shall not, in any way whatsoever, limit the rights of the County in seeking any other legal
4 relief in a court of law or equity, including the recovery of damages. In addition to the Agreement
5 being terminated by the County in accord with a material breach of this Agreement by the District,
6 this Agreement may also be terminated for convenience by the County in accord with 24 CFR
7 85.44.

8 IX. TERMINATION OF PROJECT

9 A. If the District decides to cancel the Project covered by this Agreement, the
10 District shall submit a request in writing to the County Department of Public Works and Planning,
11 Community Development Division explaining just cause for the request. The Director of the
12 Department is authorized to approve such a request if, in the Director's judgment, there is just
13 cause for the Project's cancellation.

14 B. If the District's request to cancel the Project covered by this Agreement is
15 approved, the District shall promptly return to the County all payments of specified costs incurred
16 in the performance of the Agreement to date.

17 X. VENUE; GOVERNING LAW

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

22 XI. ENTIRE AGREEMENT

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

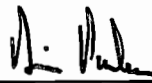
27 ///

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

3 FRESNO COUNTY FIRE
4 PROTECTION DISTRICT

COUNTY OF FRESNO

5 By: 
6 President/Superintendent/
7 Chairman/Manager

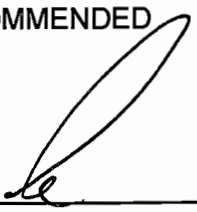

Brian Pacheco, Chairman
Board of Supervisors

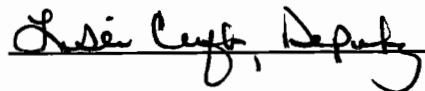
8 Date: 8/8/2017

Date: September 26, 2017

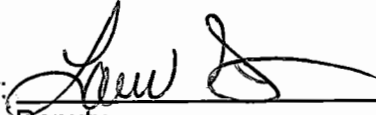
10 REVIEWED AND RECOMMENDED
11 FOR APPROVAL

ATTEST:
Bernice E. Seidel, Clerk
Board of Supervisors

12
13 By: 
14 Steven E. White, Director
15 Department of Public Works
16 and Planning

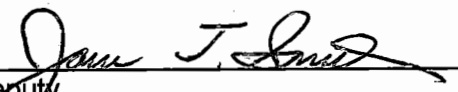
By: 

17 APPROVED AS TO ACCOUNTING FORM
18 Oscar J. Garcia, CPA
19 Auditor-Controller/Treasurer – Tax Collector

20 By: 
Deputy

21 FUND NO: 0001
22 SUBCLASS NO: 10000
23 ORG NO: 7205
24 ACCOUNT NO: 7885
25 PROJECT NO: N17731
26 ACTIVITY CODE: 7219

APPROVED AS TO LEGAL FORM
Daniel C. Cederborg, County Counsel

By: 
Deputy

27 REMIT TO:
28 Fresno County Fire Protection District
Attention: Josh Chrisman, Battalion Chief
210 S. Academy Avenue
Sanger, CA 93657
Telephone: (559) 493-4305

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: _____

Exhibit 2

Project Pay Request

Date

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

Subject: Request for Payment, CDBG Project No. _____
<District Name>
<Project Title>

In accordance with the executed Agreement for the above-referenced project, the
<District Name> is requesting payment of \$_____ for project costs.

The District certifies that this request for payment is consistent with the amount of
work that has been completed to date, performed in accordance with the
construction contract documents and the executed Agreement, and as evidenced by
the enclosed invoices and supporting documents.

<u>Payee</u>	<u>Invoice #</u>	<u>Amount</u>
--------------	------------------	---------------

Sincerely,

<District Manager>
<District Name>

Enclosure(s)