

1 AMENDED AND RESTATED
2 AGREEMENT FOR COOPERATION AND INDEMNIFICATION IN CONNECTION WITH
3 SEWER TRUNK AND WATER MAIN IMPROVEMENT PROJECT

4 This AMENDED AND RESTATED AGREEMENT is entered into by and between the
5 City of Orange Cove, a municipal corporation ("City") and the County of Fresno, a political
6 subdivision of the State of California ("County"). City and County are each a "Party" to this
7 RESTATED AGREEMENT and collectively are the "Parties" to this RESTATED AGREEMENT

8
9 RECITALS

10 WHEREAS, on December 5, 2017, County and City entered into Agreement No. 17-626
11 (2017 Agreement) which facilitated the City's Economic Development Administration (EDA)
12 grant application to fund construction of the City's sewer trunk main in Sumner Avenue/Park
13 Boulevard to Anchor Avenue, a portion of which would be within County's road right-of-way
14 (ROW).

15 WHEREAS, City has been awarded an EDA grant to partially fund said sewer
16 infrastructure improvement and a new water main infrastructure improvement.

17 WHEREAS, due to the age of the 2017 Agreement and the desire to make additional
18 changes to the 2017 Agreement, County and City have determined that it is in their best
19 interests to enter into this RESTATED AGREEMENT, which will supersede and replace the
20 2017 Agreement.

21 WHEREAS, City is constructing a new sewer and water main as a component of the
22 Park Boulevard Improvements (the "Project"). The Project will include construction of a new
23 sewer trunk main in Sumner Avenue/Park Boulevard from Monson Avenue to Anchor Avenue
24 and new water main in Sumner Avenue from Monson Avenue to Orona Avenue (See Exhibit
25 "A"); and

26 WHEREAS, the Project is being partially funded by the United States Economic
27 Development Administration ("EDA") for \$1,942,800 of the overall Project costs (the "Grant");
28 and

1 WHEREAS, a portion of the Project will encroach into County's road ROW and EDA
2 therefore is requiring as a condition of grant funding that County and City have an executed
3 maintenance agreement in place before the City can receive any Grant funds; and

4 WHEREAS, the Grant is of critical importance to the Project; and

5 WHEREAS, County will receive no foreseeable, direct benefit from the Project, and in
6 consideration for County's participation in this RESTATED AGREEMENT the County seeks,
7 and City desires to confer, the broadest legally cognizable indemnity and defense to protect
8 County from any liability County could incur arising out of the Project or the Grant; and

9 WHEREAS, the Parties desire to define their respective rights and responsibilities for
10 the operation, maintenance, repair, and cost allocation associated with such water and sewer
11 main facilities; and

12 NOW THEREFORE, COUNTY and CITY hereby agree as follows:

13 ARTICLE I

14 DEFINITIONS

15 Unless the particular provision or context otherwise requires, the definitions contained in
16 this section shall govern the construction, meaning, and application of the words used in this
17 RESTATED AGREEMENT.

18 1. "Facilities" means the water and sewer pipelines, laterals, appurtenances, meters,
19 valves, manholes, and related infrastructure identified in Exhibit "A" attached hereto and
20 incorporated by reference.

21 2. "Maintenance" means routine inspection, cleaning, servicing, repair, and replacement
22 necessary to keep the Facilities in good working order.

23 3. "Effective Date" shall mean the last date that all the parties hereto execute this
24 RESTATED AGREEMENT between County and City.

25 ARTICLE II

26 SCOPE OF RESTATED AGREEMENT

27 1. This RESTATED AGREEMENT governs City-owned water and sewer facilities located
28 within County road ROW, as identified in Exhibit A.

1 2. Ownership of the Facilities shall always remain with City. Nothing in this RESTATED
2 AGREEMENT shall be construed as a transfer of ownership, control, or responsibility to
3 County.

4
5 ARTICLE III

6 TERMS AND CONDITIONS

7 **1. COUNTY'S OBLIGATIONS**

8 The County authorizes the City to access County road ROW as reasonably necessary
9 for the operation, maintenance, repair, and replacement of the Facilities, subject to applicable
10 permitting and traffic control requirements.

11 The County shall have no responsibility for the operation, maintenance, repair, or
12 replacement of the Facilities.

13 The County shall not knowingly interfere with or damage the Facilities and shall
14 coordinate with the City regarding planned County work within the road ROW that may affect
15 the Facilities.

16 **2. CITY'S OBLIGATIONS**

17 City shall be solely responsible for funding the Project and timely completing all work
18 relating thereto in compliance with all Grant requirements.

19 The City shall be solely responsible, at its own cost and expense, for the operation,
20 maintenance, repair, and replacement of the Facilities, including routine, extraordinary, and
21 emergency maintenance. Pipeline failures affecting the County roadway would be responded
22 to within 72 hours or less.

23 All work performed by the City shall be conducted in accordance with applicable federal,
24 state, and local laws, regulations, and County and City standards.

25 Following any maintenance or repair activities within the County road ROW, the City
26 shall restore the affected area to a condition reasonably equivalent to that existing prior to the
27 work, subject to County standards. City agrees to be solely responsible for paying all

1 Project costs, whether payable from the Grant or not. County shall have no obligation to pay
2 any amount of money under this RESTATED AGREEMENT.

3
4 City and any of its contractors working within the County road ROW shall obtain
5 encroachment permits prior to commencement of any work. City shall be responsible for
6 repairing the roadway following construction and for road repairs for any pavement failures
7 caused by the pipelines installed. City agrees to indemnify and defend County and to obey all
8 applicable laws in connection with the Project and the Grant, as provided for herein.

9 **3. COSTS AND FEES**

10 All costs associated with the operation, maintenance, repair, and replacement of the
11 Facilities shall be borne solely by the City. The County shall have no obligation to reimburse
12 the City for any costs incurred under this Agreement.

13 **4. EMERGENCY RESPONSE**

14 In the event of an emergency affecting the Facilities, the City may take immediate action
15 as necessary to protect public health and safety. The City shall notify the County as soon as
16 reasonably practicable following such action.

17 **5.. INDEMNIFICATION**

18 To the extent permitted by law, City shall hold County harmless and indemnify and
19 defend County in any covered judicial or administrative action or proceedings of whatever kind
20 or nature brought against County, its Board of Supervisors, or any officer, employee,
21 representative, or agent thereof, for any liability or purported liability arising in any manner out
22 of this RESTATED AGREEMENT, the Project and Grant application therefor, including, without
23 limitation, liability for property damage and personal injury.

24 Any special counsel hired to defend County under the provisions of this RESTATED
25 AGREEMENT is subject to the approval of the County's Board of Supervisors.

26 City and County will confer if, at any time, EDA or anyone acting on EDA's behalf seeks
27 to recover from County all or any portion of the Grant. Should County determine that payment
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1 will be made to EDA, County shall notify City of such determination and City shall advance the
2 funds to the County, which the County shall, in turn, pay to EDA.

3 **6. Insurance**

4 To ensure that City is capable of satisfying its indemnification and defense obligations
5 under this RESTATED AGREEMENT, City shall maintain adequate coverage to cover liability
6 arising out of the Project. City is a member of the Central San Joaquin Valley Risk
7 Management Authority (CSJVRMA) for general liability coverage. As a condition precedent to
8 County's obligations under this RESTATED AGREEMENT, City shall maintain liability
9 coverage through the CSJVRMA or another insurer with limits as follows:

10 1. General Liability coverage, no less than \$1,000,000 combined single Limit per
11 occurrence, and an annual aggregate of \$2 million naming County, its Board of Supervisors, or
12 any officer, employee, representative, or agent as Additional Covered Party.

13 2. Automobile Liability, Comprehensive Automobile Liability Insurance with limits for
14 bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person,
15 Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not
16 less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit
17 of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-
18 owned vehicles used in connection with this RESTATED AGREEMENT.

19 3. Worker's Compensation – A policy of Worker's Compensation insurance as may
20 be required by the California Labor Code.

21 **7.. CITY'S ASSURANCE OF LEGAL COMPLIANCE**

22 In connection with the Project, City will comply fully with all applicable federal, state, and
23 local statutes, ordinances, regulations, executive orders, rules, policies, procedures, or other
24 laws. Any liability County, its Board of Supervisors, or its officers, employees, representatives,
25 or agents may incur for City's failure to uphold its duty to comply with all applicable laws shall
26 fall within the ambit of Article III, Section 5 of this RESTATED AGREEMENT.

27 Without limiting the foregoing in any manner:
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1 a. City agrees to comply fully with 31 U.S.C. 1352 and its implementing regulations.
2 The Parties further agree that neither County nor City has paid funds to any person to
3 influence a federal officer or employee, a member of Congress, or an employee of a member
4 of Congress in connection with the Grant.

5 b. City hereby certifies that the Project will not confer a proprietary benefit on any
6 private individual, for-profit corporation, or other commercial entity.

7 c. To the extent applicable, in its implementation of the Project, City will comply fully
8 with all of the following:

- 9 i. Building codes and health and safety laws;
- 10 ii. Laws regulating conflicts of interest or the appearances thereof;
- 11 iii. Non-discrimination laws;
- 12 iv. The Intergovernmental Personnel Act of 1970;
- 13 v. The Lead Based Painting Poisoning Prevention Act;
- 14 vi. State, federal, and local laws intended to protect property owners and
15 displaced persons and businesses in the event of government acquisition
16 of private property;
- 17 vii. Labor laws;
- 18 viii. Flood insurance laws;
- 19 ix. Environmental laws, including the California Environmental Quality Act
20 and National Environmental Policy Act;
- 21 x. All audits requirements relating to the Project and requirements of any
22 kind to report to EDA or any other entity on the progress and performance
23 of the Project;
- 24 xi. Public bidding requirements; and
- 25 xii. Prevailing wage requirements.

26 **8. ASSIGNMENT**

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1 Neither Party may assign or delegate its rights or obligations pursuant to this
2 RESTATED AGREEMENT without the prior written consent of the other. Any assignment or
3 delegation in violation of this paragraph shall be void.

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5 **9. NOTICE**

6 Any notice necessary to the performance of this RESTATED AGREEMENT shall be
7 given in writing by personal delivery or by prepaid first-class mail addressed as follows:

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9 COUNTY:

10 County of Fresno
11 Attn: Public Works and Planning Director
12 2220 Tulare Street, 6th Floor
Fresno, CA 93721

AGENCY:

City of Orange Cove
Attn: City Manager
633 6th Street
Orange Cove, CA 93646

13 If notice is given by personal delivery, notice is deemed received as of the date of
14 personal delivery. If notice is given by mail, notice is deemed received as of three days
15 following the date of mailing or as of the date of delivery as reflected on a return receipt,
16 whichever occurs first.

17 **10. CHANGES AND AMENDMENTS; TERMINATION**

18 This RESTATED AGREEMENT may be amended only by subsequent written
19 agreement executed by both Parties. Absent as written novation, release, or accord and
20 satisfaction, or unless a Party commits the first material breach hereunder or fails to complete
21 a condition precedent or subsequent to the other Party's performance, neither Party's
22 obligations created hereunder shall terminate until fully performed.

23 **11. CHOICE OF LAW**

24 This RESTATED AGREEMENT shall be governed by the laws of the state of California.

25 **12. ENTIRE RESTATED AGREEMENT; COUNTERPARTS; CONTRIBUTIONS OR BOTH**
26 **PARTIES**

27 This RESTATED AGREEMENT, including any exhibits referenced herein, constitutes
28 the entire RESTATED AGREEMENT between the Parties, and there are no inducements,

1 promises, terms, conditions, or obligations made or entered into by County or City other than
2 those contained herein. This RESTATED AGREEMENT may be executed simultaneously and
3 in several counterparts, each of which shall be deemed an original, but which together shall
4 constitute one and the same instrument. This RESTATED AGREEMENT represents the
5 contributions of both parties, who are each represented by competent counsel, and it is
6 expressly agreed and understood that the rule state in Civil Code section 1654, that
7 ambiguities in a contract shall be construed against the drafter, shall have no application to the
8 construction of this RESTATED AGREEMENT.

9 **13. CONSTRUCTION; INCORPORATION OF EXHIBITS**

10 Unless otherwise provided in this RESTATED AGREEMENT, or unless the context
11 otherwise requires, the following definitions and rules of construction shall apply herein:

12 A. Captions. The captions of this RESTATED AGREEMENT are for convenience in
13 reference only, and the words contained therein shall in no way be held to explain, modify,
14 amplify, or aid in the interpretation, construction or meaning of the provisions of this
15 RESTATED AGREEMENT.

16 B. Number and Gender: Whenever the context so requires in this RESTATED
17 AGREEMENT, the neuter gender includes the feminine and masculine, and vice versa, the
18 feminine includes the masculine and vice versa, the singular includes the plural, and the work
19 "person" includes corporations, partnerships, firms or associations.

20 C. Mandatory and Permissive. Thee terms "shall" and "will" and "agrees" are mandatory.
21 "May" is permissive.

22 D. Term Includes Extensions. All references to the term of this RESTATED AGREEMENT
23 shall include any extensions of such term.

24 E. Exhibits. Any exhibits mentioned herein and attached hereto are specifically
25 incorporated herein by this reference and made a part of this RESTATED AGREEMENT.

26 F. Parties' Intent. In the event that any provision of this RESTATED AGREEMENT is
27 capable of more than one interpretation or is otherwise found to contain a latent or patent
28 ambiguity, the interpretation that best effectuates the objects of the RESTATED

1 AGREEMENT, as expressed by the Parties in the recitals above, shall govern to the extent
2 that such interpretation does not render the RESTATED AGREEMENT or any material
3 provision thereof void or otherwise unenforceable, and even if that interpretation conflicts with
4 the most literal or grammatically correct construction of the RESTATED AGREEMENT.

5 G. No Third Party Beneficiaries. Notwithstanding anything else to the contrary herein, the
6 Parties acknowledge and agree that no other person, firm, corporation, or entity shall be
7 deemed an intended third-party beneficiary of this RESTATED AGREEMENT.

8 H. Independent Capacity. Each Party shall act in an independent capacity and not as an
9 officer, agent, servant, employee, joint venture, partner, or associate of the other Party.
10 Neither Party shall have any right to employment rights and benefits available to the other
11 Party's employees. Each Party shall be solely liable and responsible for providing to, or on
12 behalf of, its employees all legally-required employee benefits.

13 I. Authority to Execute RESTATED AGREEMENT. Each Party represents and warrants
14 to the other Party that such Party is duly authorized and empowered to execute, enter into, and
15 perform its obligations set forth in this RESTATED AGREEMENT, and that the individual
16 signing this RESTATED AGREEMENT on behalf of such Party has been duly authorized to
17 execute this RESTATED AGREEMENT on behalf of such Party, and will, by signing this
18 RESTATED AGREEMENT on such Party's behalf, legally bind such Party to the terms and
19 conditions of this RESTATED AGREEMENT.

20 Each Party further represents and warrants to the other Party that no other person or
21 entity is required to give its approval or consent to this RESTATED AGREEMENT in order for
22 such Party to authorize, enter into, and perform its obligations under this RESTATED
23 AGREEMENT, or that if such approval or consent to this RESTATED AGREEMENT is
24 required, that such approval or consent has been obtained.

25 **14. SEVERABILITY**

26 If any of the provisions of this RESTATED AGREEMENT is found to be unenforceable,
27 the remainder shall be enforced as fully as possible, and the unenforceable provision shall be
28

1 deemed modified to the limited extent required to permit enforcement of the RESTATED
2 AGREEMENT as a whole.


3 THIS RESTATED AGREEMENT is entered into by and between the parties as of the
4 date by which both parties have executed it.

5 (Signature page follows.)
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1 IN WHITNESS WHEREOF, the parties hereto have executed this RESTATED AGREEMENT
2 in the County of Fresno, State of California, on the last as set forth below.

3 **CITY OF ORANGE**

COUNTY OF FRESNO

4 By: 
5 Diana Guerra Silva, Mayor
6 City of Orange Cove

Garry Bredefeld, Chairman of the
Board of Supervisors of the County
of Fresno

7 Date: 2/26/20

Date: _____

9 **ATTEST:**

ATTEST:

10 Cynithia Cisneros, City Clerk

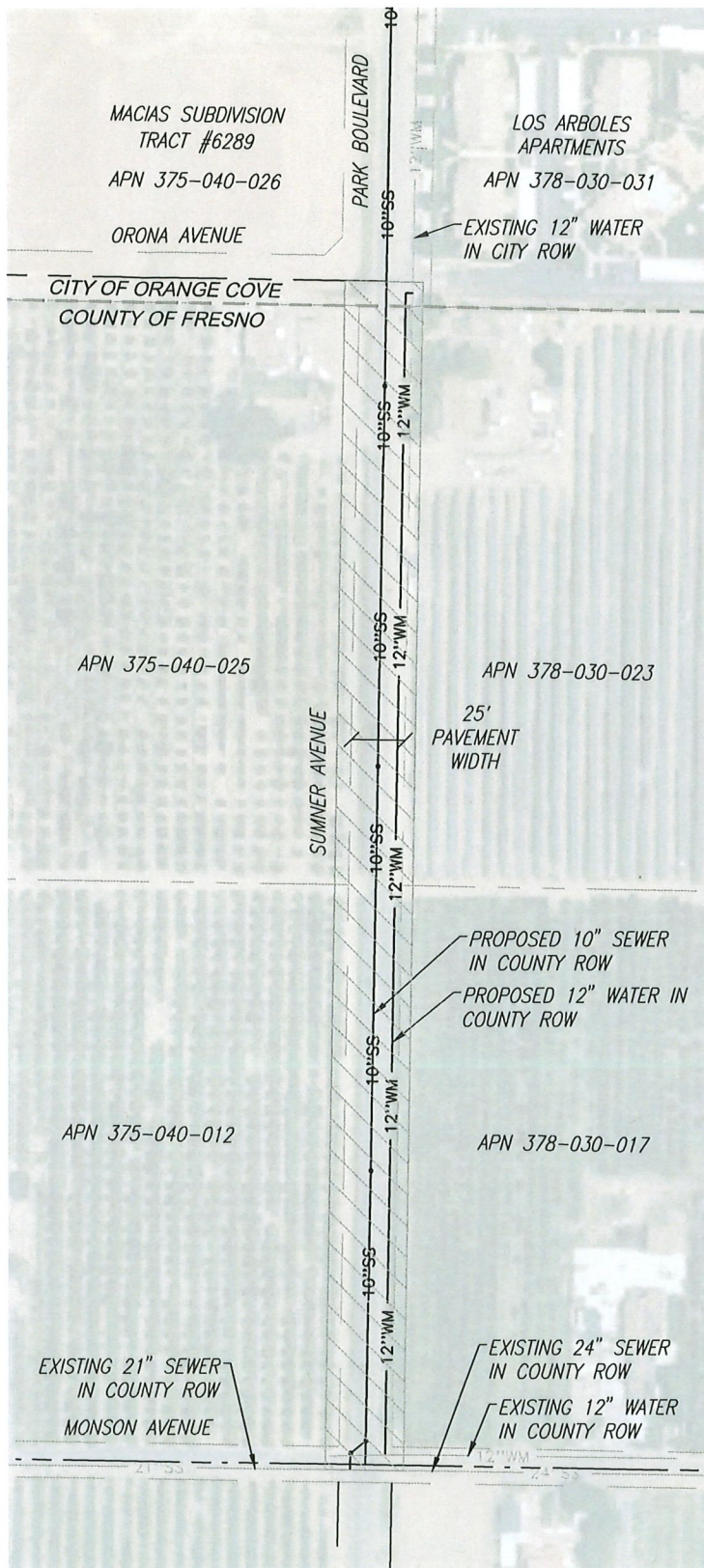
Bernice E. Seidel Clerk of the Board of
Supervisors County of Fresno, State of
California

11
12
13 By: 

By _____
Deputy

15 **APPROVED AS FORM**


16
17 By: 
18 Megan Crouch, City Attorney



SCALE 1" = 200'



LEGEND:

- — — — — EXISTING R/W
- — — — — EXISTING PARCEL LINE
- - - - - SECTION LINE
- 12"WM — PROPOSED WATER MAIN
- 21"SS — PROPOSED SEWER MAIN
- 12"WM — EXISTING WATER MAIN
- 21"SS — EXISTING SEWER MAIN
- - - - - COUNTY / CITY BORDER
-  INDICATES AREA OF MAINTENANCE AGREEMENT

P:\Civil\30 Projects\23-232\23-232\011\Documents\ExhibitA\23-232 Exhibit - Park Blvd - Sewer and Water for EDA.rvt.dwg



EXHIBIT A

DESCRIPTION:
**MAINTENANCE AGREEMENT
 EXHIBIT**

PROJECT NAME:

PARK BLVD. IMPROVEMENTS

1/27/26

JOB NUMBER: 23-232.011.0