

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF MERCED
AND THE CITY OF MERCED
FOR THE ROAD IMPROVEMENTS OF MCKEE ROAD WITHIN
MERCED CITY LIMITS FROM NORTH BEAR CREEK DRIVE TO
YOSEMITE AVENUE**

This Memorandum of Understanding ("MOU") is made and entered into by and between the County of Merced, a political subdivision of the State of California, its successors and assigns, through its Board of Supervisors (hereinafter "County"), and the City of Merced (hereinafter "City"), together named hereinafter the "Parties", to perform road improvements to the sections of McKee Road in between North Bear Creek Drive and Yosemite Avenue located within the City Limits (hereinafter "Project").

WHEREAS, the County is performing paving and other road improvements to County roads around the City Limits of Merced; and,

WHEREAS, some segments of McKee Road between North Bear Creek Drive and Yosemite Avenue are within city limits, maintained by the City of Merced (as shown on Exhibit A); and,

WHEREAS, there exists an opportunity to complete the Project at a reduced cost due to economies of scale with the County's project as opposed to the City performing a stand-alone project; and,

WHEREAS, the County has estimated the Project costs for the portion within the City limits to be \$ 995,000; and,

WHEREAS, the County will schedule the Project to be performed in conjunction with the road improvements to portions of McKee Road within County jurisdiction.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Parties hereto do hereby agree as follows:

- 1) **Project.** The Parties have acknowledged the County will perform the Project and the City will reimburse the County for the costs of Project, up to a maximum estimated amount of \$ 995,000.

Prior to the commencement of work, and as a precondition to this MOU, the Parties shall maintain Commercial General Liability (CGL) insurance with limits no less than \$1,000,000 per occurrence covering bodily injury, personal injury and property damage; and Workers Compensation Insurance as required according to the California Labor Code, including Employer's Liability limits of \$1,000,000 per accident during the term of the MOU.

Each party shall provide the other certificates of insurance upon request. Each party and its officers, employees, and agents shall be endorsed to the other's CGL policy as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.

- 2) **CEQA.** The Parties have determined that the County will act as the lead agency for purposes

of California Environmental Quality Act compliance as it applies to the Project.

- 3) **Indemnity.** County shall indemnify, defend and hold harmless City, its officers, elected officials, employees and agents, from and against any claims, damages, costs, expenses, including any amount equal to reasonable attorney's fees, or liabilities arising out of or in any way connected with this Agreement, including, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent such claims, damages, costs, expenses, attorney's fees, or liabilities are caused by the County's negligence, whether by action or omission, or willful misconduct.

City shall indemnify, defend and hold harmless County, its officers, elected officials, employees and agents, from and against any claims, damages, costs, expenses, including any amount equal to reasonable attorney's fees, or liabilities arising out of or in any way connected with this Agreement, including, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent such claims, damages, costs, expenses, attorney's fees, or liabilities are caused by the City's negligence, whether by action or omission, or willful misconduct.

The obligations set forth above shall survive expiration or termination of this Agreement

- 4) **Applicable Law.** All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed to in writing by County and counsel for County.
- 5) **Binding Effect.** This Agreement is for the benefit of and shall be binding upon all parties and their respective successors, heirs, executors, administrators, assigns and successors in interest.
- 6) **Venue.** The venue for any claims arising out of this Agreement shall be in the Merced County Superior Court, unless otherwise required by law.
- 7) **Waiver.** One or more waivers of any term, condition, or covenant of this Agreement by either party shall not be construed as a waiver of any other term, condition, or covenant.
- 8) **Notices.** "Notice" means any notice, demand, request, or other communication or document to be provided under this Agreement. All Notices shall be in writing and shall be given to the Party at its regular mail address, or such other address as the Party may later specify for that purpose by notice to the other Party.

City
City Manager
City of Merced
678 West 18th St
Merced, CA 95340

County
Director of Public Works / Road Commissioner
Merced County
715 Martin Luther King Jr. Way
Merced, CA 95341

- 9) **Entire Agreement.** This Agreement, including the attachments incorporated herein by reference, represents the entire agreement and understanding between the parties. Any modifications to this Agreement shall be in writing and signed by authorized representatives of the parties.
- 10) **Signing Authority.** The individuals signing this Agreement below represent and agree that they have full and actual authority to bind their respective parties to this Agreement.
- 11) **Duplicate Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU, which shall take effect on the date of the last Party's signature below.

COUNTY OF MERCED,
A Political Subdivision of the State of California

CITY OF MERCED,
A California Municipal
Corporation

Chairman, Merced County
Board of Supervisors

City Manager

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: _____
Deputy County Counsel

BY: Craig Cornwell
City Attorney

