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CITY OF FRESNO
City Clerk's Office (Original)

06-FRE-99-(28.88/30.11)
EA: 06-0H360
Project Number: 0600000935
District Agreement No. 06-1502

COOPERATIVE AGREEMENT

This agreement, effective on JUL 24 2012, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Fresno, a body politic and municipal corporation or chartered city of the State of California, referred to as CITY.

For the purpose of this agreement, the term PARTNERS collectively refers to CALTRANS and CITY (all signatory parties to this agreement). The term PARTNER refers to any one of those signatory parties individually.

RECITALS

1. California Streets and Highways Code sections 114 and 130 authorize PARTNERS to enter into a cooperative agreement for performance of work within the State Highway System (SHS) right of way.

2. This agreement outlines the terms and conditions of cooperation between PARTNERS to perform Plans, Specifications and Estimates (PS&E) and Right of Way (ROW) for construction of a new interchange and associated improvements on State Route (SR) 99 at the proposed Veterans Boulevard alignment.

   For the purpose of this agreement, PS&E and ROW of a new interchange and associated improvements on State Route (SR) 99 at the proposed Veterans Boulevard alignment PM 28.88/30.11, in the City of Fresno, will be referred to as PROJECT. All responsibilities assigned in this agreement to perform PS&E and ROW will be referred to as OBLIGATIONS.

3. This agreement is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding PROJECT.

4. Prior to this agreement, CITY developed the Project Report (Cooperative Agreement No. 06-1415).

5. CITY prepared the environmental documentation for PROJECT.

6. The estimated date for OBLIGATION COMPLETION is July 1, 2017.

APPROVED BY CITY COUNCIL
July 19, 2012
By Sherri L. Badertscher
DEPUTY

7. In this agreement capitalized words represent defined terms and acronyms. The Definitions section contains a complete definition for each capitalized term.

8. From this point forward, PARTNERS define in this agreement the terms and conditions under which they will accomplish OBLIGATIONS.

RESPONSIBILITIES

9. CITY is SPONSOR for 100% of PROJECT.

10. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.

11. CITY may provide IQA for the portions of WORK outside existing and proposed SHS right of way.

12. CITY is the only FUNDING PARTNER for this agreement. CITY's funding commitment is defined in the FUNDING SUMMARY.

13. CALTRANS is the CEQA lead agency for PROJECT.

14. CALTRANS is the NEPA lead agency for PROJECT.

15. CITY is IMPLEMENTING AGENCY for PS&E and R/W.

SCOPE

Scope: General

16. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.

17. IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN.

18. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.

19. Each PARTNER will ensure that all of its personnel participating in OBLIGATIONS are appropriately qualified, and if necessary licensed, to perform the tasks assigned to them.

20. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in OBLIGATIONS.

21. If WORK is done under contract (not completed by a PARTNER's own employees) and is governed by the California Labor Code's definition of "public works" (section 1720(a)(a)), that PARTNER will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations.

22. IMPLEMENTING AGENCY for each PROJECT COMPONENT included in this agreement will be available to help resolve problems generated by that component for the entire duration of PROJECT.

23. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right of way.

    Contractors and/or agents, and utility owners will not perform WORK without an encroachment permit issued in their name.

24. If any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.

25. PARTNERS will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that PARTNERS share said documents with each other.

    PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.

26. If any PARTNER receives a public records request, pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public records. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.

27. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.

28. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake or cause to be undertaken HM

MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.

29. CITY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing SHS right of way. CITY will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.

30. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.

31. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

32. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this agreement.

33. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with written quarterly progress reports during the implementation of OBLIGATIONS in that component, which may be provided through Project Development Team meetings.

34. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right of way as part of WORK become the property of CALTRANS.

    CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right of way.

35. IMPLEMENTING AGENCY for a PROJECT COMPONENT will accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.

36. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.

37. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs, and provide billing and payment support.

38. PARTNERS will comply with the appropriate federal cost principles and administrative requirements outlined in the Applicable Cost Principles and Administrative Requirements table below. These principles and requirements apply to all funding types included in this agreement.

Applicable Cost Principles and Administration Requirements		
The federal cost principles and administrative requirements associated with each organization type apply to that organization.		
Organization Type	**Cost Principles**	**Administrative Requirements**
Federal Governments	2 CFR Part 225	OMB A-102
State and Local Government	2 CFR, Part 225	49 CFR, Part 18
Educational Institutions	2 CFR, Part 220	2 CFR, Part 215
Non-Profit Organizations	2 CFR, Part 230	2 CFR, Part 215
For Profit Organizations	48 CFR, Chapter 1, Part 31	49 CFR, Part 18
CFR (Code of Federal Regulations) **OMB (Office of Management and Budget)**		
Related URLs: • Various OMB Circular: http://www.whitehouse.gov/omb/grants_circulars • Code of Federal Regulations: http://www.gpoaccess.gov/CFR		

39. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this agreement.

40. PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.

41. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

    CALTRANS, the state auditor, FHWA, and CITY will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

    The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

    The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt.

    Upon completion of the final audit, PARTNERS have 30 days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within 30 calendar days of the final audit or dispute resolution findings.

42. Any PARTNER that hires another party to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual.*

43. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, IMPLEMENTING AGENCY will promptly notify SPONSOR.

    IMPLEMENTING AGENCY has no obligation to perform WORK if funds to perform WORK are unavailable.

44. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.

45. If WORK stops for any reason, each PARTNER will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each PARTNER's responsibilities in this agreement, in order to keep PROJECT in environmental compliance until WORK resumes.

46. Each PARTNER accepts responsibility to complete the activities that it selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.

Scope: Environmental Permits, Approvals and Agreements

47. Each PARTNER identified in the Environmental Permits table below accepts the responsibility to complete the assigned activities.

48.

Environmental Permits						
Permit	Coordinate	Prepare	Obtain	Implement	Renew	Amend
404	CITY	CITY	CITY	CITY	CITY	CITY
401	CITY	CITY	CITY	CITY	CITY	CITY

Scope: Plans, Specifications, and Estimate (PS&E)

49. CITY will ensure that the engineering firm preparing the plans, specifications, and estimate will not be employed by or under contract to the PROJECT construction contractor.

    CITY will not employ the engineering firm preparing the plans, specifications, and estimate for construction management of PROJECT.

    However, CITY may retain the engineering firm during the construction PROJECT COMPONENT to check shop drawings, do soil foundation tests, test construction materials, and perform construction surveys.

50. CITY will identify and locate all utility facilities within PROJECT area as part of PS&E responsibilities. The plans, specifications, and estimate for PROJECT will identify all utility facilities not relocated or removed in advance of the construction PROJECT COMPONENT.

51. CITY will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of PROJECT or that violate CALTRANS' encroachment policy.

52. The responsibility to advertise, open bids, award, and approve the construction contract will be handled outside of this agreement.

Scope: Right of Way (R/W)

53. CITY will provide a land surveyor licensed in the State of California to be responsible for surveying and right of way engineering. All survey and right of way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.

54. CITY will provide CALTRANS-approved verification of its arrangements for the protection, relocation, or removal of all conflicting facilities and that such work will be completed prior to construction contract award or as otherwise stated in the PROJECT plans, specifications, and estimate. This verification must include references to all required SHS encroachment permits.

55. CITY will utilize a public agency currently qualified by CALTRANS or a properly licensed consultant for all right of way activities. A qualified right of way agent will administer all right of way consultant contracts.

    CITY will submit a draft Right of Way Certification document to CALTRANS six weeks prior to the scheduled milestone date for review.

    CITY will prepare and submit a final Right of Way certification document to CALTRANS prior to PROJECT advertisement for approval.

56. All right of way conveyances must be completed prior to OBLIGATION COMPLETION.

57. CALTRANS' acceptance of right of way title is subject to review of an Updated Preliminary Title Report provided by CITY verifying that the title is free of all encumbrances and liens. Upon acceptance, CITY will provide CALTRANS with a Policy of Title Insurance in CALTRANS' name.

58. The California Transportation Commission will hear and may adopt Resolutions of Necessity. If CITY prefers to hear Resolutions of Necessity, CITY must obtain written approval from CALTRANS prior to hearing and adopting any Resolutions of Necessity.

COST

Cost: General

59. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS COST.

60. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.

61. CITY, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside of the existing SHS right of way.

62. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.

63. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS COST.

64. The cost to ensure that PROJECT remains in environmental compliance is an OBLIGATIONS COST.

65. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS COST.

66. Independent of OBLIGATIONS COST, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.

67. Independent of OBLIGATIONS COST, CITY will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.

68. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.

69. Fines, interest, or penalties levied against a PARTNER will be paid, independent of OBLIGATIONS cost, by the PARTNER whose actions or lack of action caused the levy. That PARTNER will indemnify and defend each other PARTNER.

70. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.

    Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this agreement.

    If CITY invoices for rates in excess of DPA rates, CITY will fund the cost difference and reimburse CALTRANS for any overpayment.

71. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds are subject the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. Caltrans periodically adjusts the Program Functional Rate and the Administration Rate.

73. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.

74. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

    That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

75. If there are insufficient funds in this agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTNER implementing commitments or conditions accepts responsibility to fund these activities, as they apply to each PARTNER's responsibilities, until such time are PARTNERS amend this agreement.

    Each PARTNER may request reimbursement for these costs during the amendment process.

76. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

Cost: Environmental Permits, Approvals and Agreements

77. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is an OBLIGATIONS COST.

Cost: Plans, Specifications, and Estimate (PS&E)

78. CITY will determine the cost to positively identify and locate, protect, relocate, or remove any utility facilities whether inside or outside SHS right of way in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.

79. The cost of any Right of Way support related to the California Transportation Commission hearing the RON, performed by CALTRANS staff, is an OBLIGATION COST *and will require an amendment to this Agreement.*

SCHEDULE

80. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

81. PARTNERS understand that this agreement is in accordance with and governed by the Constitution and laws of the State of California. This agreement will be enforceable in

the State of California. Any PARTNER initiating legal action arising from this agreement will file and maintain that legal action in the Fresno County Superior Court.

82. All OBLIGATIONS of CALTRANS under the terms of this agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.

83. Any PARTNER performing IQA does so for its own benefit. No one can assign liability to that PARTNER due to its IQA activities.

84. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

    It is understood and agreed that CALTRANS and/or its agents will fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this agreement.

85. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this agreement.

    It is understood and agreed that CITY will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under this agreement.

86. PARTNERS do not intend this agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. PARTNERS do not intend this agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.

87. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this agreement.

88. PARTNERS will not interpret any ambiguity contained in this agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.

89. A waiver of a PARTNER's performance under this agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section

of this agreement does not constitute an amendment to or negate all other articles or sections of this agreement. For a waiver of a PARTNER's performance to be valid it shall be in writing and executed by a person designated as authorized to grant the particular waiver of performance.

90. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

91. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within 30 calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.

92. PARTNERS will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of CITY will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

    Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this agreement. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

    Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

    If a PARTNER files any civil complaint, the prevailing PARTNER will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.

93. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

94. If any provisions in this agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and PARTNERS will automatically sever those provisions from this agreement.

95. PARTNERS intend this agreement to be their final expression and supersede any oral understanding or writings pertaining to OBLIGATIONS.

96. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this agreement to include completion of those additional tasks.

97. PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.

98. This agreement will terminate upon OBLIGATION COMPLETION or an amendment to terminate this agreement, whichever occurs first.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

99. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY.

DEFINITIONS

CALTRANS – The California Department of Transportation

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at http://www.dot.ca.gov/hq/projmgmt/guidance.htm.

CEQA (California Environmental Quality Act) – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

CFR (Code of Federal Regulations) – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this agreement and in all amendments to this agreement.

COST – The responsibility for cost responsibilities in this agreement can take one of three assignments:

- **OBLIGATIONS COST** – A cost associated with fulfilling OBLIGATIONS that will be funded as part of this agreement. The responsibility is defined by the funding commitments in this agreement.
- **PROJECT COST** – A cost associated with PROJECT that can be funded outside of OBLIGATIONS. A PROJECT COST may not necessarily be part of this agreement. This responsibility is defined by the PARTNERS' funding commitments at the time the cost is incurred.
- **PARTNER cost** – A cost that is the responsibility of a specific PARTNER, independent of PROJECT.

FHWA – Federal Highway Administration

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

FUNDING PARTNER – A PARTNER that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds identified on the FUNDING SUMMARY under its name.

FUNDING SUMMARY – The table that designates an agreement's funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are "not-to-exceed" amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See http://www.fasab.gov/accepted.html.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTNER responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

IQA (Independent Quality Assurance) – Ensuring that IMPLEMENTING AGENCY's quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan (QMP). IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another partner.

NEPA (National Environmental Policy Act of 1969) – The federal act that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this agreement, and all amendments to this agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

OBLIGATIONS – All responsibilities included in this agreement.

OBLIGATIONS COST – See COST.

OMB (Office of Management and Budget) – The federal office that oversees preparation of the federal budget and supervises its administration in Executive Branch agencies.

PARTNER – Any individual signatory party to this agreement.

PARTNERS – The term that collectively references all of the signatory agencies to this agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER's individual actions legally bind the other partners.

PROJECT – The undertaking to construct a new interchange and associated improvements on State Route (SR) 99 at the proposed Veterans Boulevard alignment.

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.
- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** –The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

PROJECT COST – See COST.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project's execution and control throughout that project's lifecycle.

PS&E (Plans, Specifications, and Estimate) – See PROJECT COMPONENT.

QMP (Quality Management Plan) – An integral part of the Project Management Plan that describes IMPLEMENTING AGENCY's quality policy and how it will be used.

R/W (Right of Way) SUPPORT – See PROJECT COMPONENT.

SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

SCOPE SUMMARY – The attachment in which each PARTNER designates its commitment to specific scope activities within each PROJECT COMPONENT as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at http://www.dot.ca.gov/hq/projmgmt/guidance.htm.

SHS (State Highway System) – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPONSOR – Any PARTNER that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. If a PROJECT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

WORK – All scope activities included in this agreement.

CONTACT INFORMATION

The information provided below indicates the primary contact data for each PARTNER to this agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this agreement.

The primary agreement contact person for CALTRANS is:
Jim Bane, Project Manager
2015 E. Shields Avenue, Suite 100
Fresno, California 93726
Office Phone: (559) 243-3469
Email: Jim_Bane@dot.ca.gov

The primary agreement contact person for CITY is:
Scott Mozier, City Engineer
2600 Fresno Street
Fresno, California 93721
Office Phone: (559) 621-8811

SIGNATURES

PARTNERS declare that:

1. Each PARTNER is an authorized legal entity under California state law.
2. Each PARTNER has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

APPROVED

By: Sharri Bender Ehlert
SHARRI BENDER EHLERT
District Director

Date: 7/24/2012

CERTIFIED AS TO FUNDS:

By: Emma Mendoza
for BILL EHTERTON
Budget Manager

Date: 7/24/12

CITY OF FRESNO

APPROVED

By: _____
PATRICK WIEMILLER
Public Works Director

Date: _____

Attest:

By: Cindy Briner, Deputy 7/19/12
YVONNE SPENCE
City Clerk

Date: _____

APPROVED AS TO FORM AND PROCEDURE

By: _____
~~JAMES C. SANCHEZ~~ Shannon Chaffin
City Attorney Sr. Deputy City Attorney

Date: 7/3/12

SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	CITY	N/A
3	185				Prepare Base Maps and Plan Sheets for PS&E Development		X	
4	195				Right of Way Property Management and Excess Land		X	
4	200				Utility Relocation		X	
3	205				Permits, Agreements during PS&E Component	X	X	
		05			Required permits		X	
		15			Railroad Agreements		X	
		25			Agreement for Material Sites		X	
		30			Executed Maintenance Agreement		X	
		45			MOU From Tribal Employment Rights Office (TERO)		X	
		55			NEPA Delegation	X		
4	220				RIGHT OF WAY ENGINEERING		X	
4	225				Obtain Right of Way Interests for Project Right of Way Certification		X	
3	230				Prepare Draft Plans, Specifications, and Estimates	X	X	
		05			Draft Roadway Plans		X	
		10			Draft Highway Planting Plans		X	
		15			Draft Traffic Plans		X	
		20			Transportation Management Plan		X	
		25			Draft Utility Plans		X	
		30			Draft Drainage Plans		X	
		35			Draft Specifications		X	
		40			Draft Plans, Specifications, and Estimates Quantities and Estimates		X	
		55			Structures Draft Plans, Specifications, and Estimates Incorporation		X	
		60			Updated Project Information for Plans, Specifications, and Estimates Package		X	
		90			NEPA Delegation	X		
		99			Other Draft Plans, Specifications, and Estimates Products		X	
3	235				Mitigate Environmental Impacts and Clean Up Hazardous Waste	X	X	
		05			Environmental Mitigation		X	
		10			Detailed Site Investigation for Hazardous Waste		X	
		15			Hazardous Waste Management Plan		X	
		20			Hazardous Waste Plans, Specifications, and Estimates		X	
		25			Hazardous Waste Clean-Up		X	
		30			Hazardous Substances Disclosure Document (HSDD)		X	
		35			Long Term Mitigation Monitoring		X	
		40			Updated Environmental Commitments Record		X	
		45			NEPA Delegation	X		
3	240				Draft Structures Plans, Specifications, and Estimates		X	

4	245				Post Right of Way Certification Work		X	
3	250				FINAL STRUCTURES PS&E PACKAGE		X	
3	255				Circulate, Review, and Prepare Final District Plans, Specifications, and Estimates Package	X	X	
		05			Circulated and Reviewed Draft District Plans, Specifications, and Estimates Package		X	
		10			Updated Plans, Specifications, and Estimates Package		X	
		15			Environmental Re-Evaluation		X	
		20			Final District Plans, Specifications, and Estimates Package		X	
		25			Geotechnical Information Handout		X	
		30			Materials Information Handout		X	
		35			Construction Staking Package and Control		X	
		40			Resident Engineer's Pending File		X	
		45			NEPA Delegation	X		
		50			Secured Lease for Resident Engineer Office Space or Trailer		X	
		55			Contractor Outreach		X	
		65			Right of Way Certification Document		X	
		70			Right of Way Engineering Products		X	
		75			Upgraded/Updated Right of Way Certification Document		X	
		95			Right of Way Certification Activity		X	
3	260				Contract Bid Documents Ready to List		X	
3	265				Awarded and Approved Construction Contract			X

FUNDING SUMMARY

Funding Source	Funding Partner	Fund Type	PS&E	R/W Support	Subtotal Support	Subtotal Capital	Subtotal Funds Type
LOCAL	CITY	Measure	$7,000,000	$1,500,000	$8,500,000	$0	$8,500,000
		Subtotals by Component	$7,000,000	$1,500,000	$8,500,000	$0	$8,500,000

Herndon - Public Works

City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. G.A.-D
COUNCIL MEETING 07/19/12
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

July 19, 2012

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department, Traffic and Engineering Services Division

SUBJECT: APPROVE A COOPERATIVE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE PREPARATION OF PLANS, SPECIFICATIONS AND ESTIMATES (PS&E) AND RIGHT-OF-WAY ACQUISITION FOR CONSTRUCTION OF A NEW INTERCHANGE AND ASSOCIATED IMPROVEMENTS ON STATE ROUTE 99 AND THE PROPOSED VETERANS BOULEVARD ALIGNMENT

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO AFFIRMING THAT THE CITY COUNCIL WILL HEAR RESOLUTIONS OF NECESSITY FOR THE CONSTRUCTION OF A NEW INTERCHANGE AT THE INTERSECTION OF STATE ROUTE 99 AND VETERANS BOULEVARD, IN THE EVENT EMINENT DOMAIN PROCEEDINGS ARE NECESSARY (PROJECT LOCATED IN COUNCIL DISTRICT 2)

RECOMMENDATIONS

It is recommended that the Council take the following actions:

1. Approve the attached Cooperative Agreement No. 06-1502 with Caltrans for the preparation of Plans, Specifications and Estimates and right-of-way acquisition for construction of a new interchange and associated improvements on State Route 99 and the proposed Veterans Boulevard alignment.

2. Authorize the Public Works Director or his designee to sign the Cooperative Agreement on behalf of the City of Fresno.

3. Approve the attached Resolution of the Council of the City of Fresno affirming that the City Council will hear resolutions of necessity for the construction of a new interchange at the intersection of State Route 99 and Veterans Boulevard in the event eminent domain proceedings are necessary.

EXECUTIVE SUMMARY

The City of Fresno has long expressed a desire to connect proposed Veterans Boulevard, formerly known as the Herndon-Grantland Diagonal, to State Route 99 by constructing a new interchange where their respective alignments intersect.

Presented to City Council
Date 7/19/12
Disposition approved
Res. 2012-134 adopted

Caltrans has prepared Cooperative Agreement No. 06-1502 which outlines the terms and conditions of cooperation between the City and Caltrans to perform the preparations of plans, specifications and estimates (PS&E) and right-of-way acquisition (ROW) for construction of a new interchange and associated improvements on State Route 99 at the proposed Veterans Boulevard alignment.

Staff also recommends that the City take the lead on right-of-way acquisition for the project instead of Caltrans. In order to obtain Caltrans approval, the Council must adopt a resolution agreeing to handle the acquisition of right-of-way, including the use of eminent domain, if necessary for the project.

BACKGROUND

The 1984 General Plan and 2025 General Plan reflect the intersection of Veterans Boulevard with State Route 99. The City has stated to Caltrans that it desires to connect Veterans Boulevard to Route 99 with a new interchange. To accomplish this, the City entered into a cooperative agreement for the Veterans Boulevard/State Route 99 Interchange and Grade Separation, Measure "C", Urban Project N-1. That agreement provided for $1,500,000 in Measure "C" funds for the first phase of the project, consisting of the Caltrans Project Report and Environmental Impact Report for Veterans Boulevard between Shaw and Herndon Avenues. On December 1, 2011, the Council approved an $8.8 million Measure "C" Cooperative Agreement with the FCTA to cover the PS&E phase of the project.

Currently the project is ready to proceed to the next phase, which consists of the final engineering design work known as the Plans, Specifications, and Estimates (PS&E) phase. The Cooperative Agreement with Caltrans is necessary in order for the project to proceed further.

Additionally, because of the time consuming process that the California Transportation Commission must go through and the lead time for placing matters on their agenda, the City has requested that Caltrans allow the City to acquire the properties necessary for the project.

The City of Fresno is the lead agency responsible for the successful completion of this project and acquisition of parts of forty-one (41) properties and all of four (4) will be necessary for this project. The City will appraise and negotiate in good faith with all property owners with the goal of reaching mutually agreeable settlements. In the event that eminent domain is necessary on an acquisition in order to keep this regionally critical project moving forward, the attached resolution sets the Fresno City Council as the hearing body for such actions. The acquisitions which will become a part of the State's Highway System are subject to the requirements and procedures of the Caltrans Right-of-Way Manual and, in particular, are subject to the requirements and procedures of Sections 17.04.09.00 through 17.04.09.09 of that manual, which states, in part "State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System.....If the city is to hear resolutions, then the city must pass a resolution by four-fifths vote, agreeing to hear the Resolution of Necessity for the project."

The Council has previously approved agreements with the Fresno County Transportation Authority (FCTA) for Measure "C" funding and with Caltrans for the environmental phase of the project.

The City will be funding the PS&E and ROW work through funds from Measure "C". The current estimated cost for the work is $7,000,000 for PS&E and ROW acquisition costs estimated at about $26,000,000. Caltrans is the lead agency for CEQA and NEPA environmental work for the project.

ENVIRONMENTAL FINDING

The agreement stipulates that Caltrans will be the lead agency for CEQA (California Environmental Quality Act) and NEPA (National Environmental Policy Act) approvals for the project. Currently the project approval and environmental document report are in draft form and being reviewed by Caltrans. It is anticipated that the environmental document will be completed and submitted for public comment/review later this year.

FISCAL IMPACT

Approval of this Cooperative Agreement No. 06-1502 will not impact the General Fund since funding for the described work is from Measure "C".

Attachments:
- Cooperative Agreement No. 06-1502
- Resolution
- Vicinity Map

ENTERED