

AGENDA ITEM NO. 9:30am C

COUNCIL MEETING 3/31/09

APPROVED BY

*[Signature]*  
DEPARTMENT DIRECTOR

CITY MANAGER

March 31, 2009

FROM: PATRICK N. WIEMILLER, Public Works Director  
Public Works Department *[Signature]*

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director  
Public Works Department *[Signature]*

SUBJECT: CONSIDERATION OF APPROVAL OF MEASURE "C" COOPERATIVE AGREEMENTS FOR THE WILLOW/SHEPHERD INTERSECTION IMPROVEMENT PROJECT, THE MONTEREY STREET BRIDGE PROJECT, THE PEACH AVENUE WIDENING PROJECT FROM BUTLER TO SR-180, THE CALIFORNIA AVENUE WIDENING PROJECT FROM WEST AVENUE TO FRUIT AVENUE AND THE VETERANS BOULEVARD/SR-99 INTERCHANGE PROJECT

**KEY RESULT AREA**

One Fresno

Presented to City Council  
Date 3/31/09  
Disposition Rec. approved

**RECOMMENDATIONS**

Staff recommends the Council approve the Measure "C" Draft Cooperative Agreements in substantially the form attached for the Willow/Shepherd Intersection Improvement Project, the Monterey Street Bridge Project, the Peach Avenue Widening Project from Butler Avenue to SR-180, the California Avenue Widening Project from West Avenue to Fruit Avenue and the Veterans Boulevard/SR-99 Interchange Project; and that the Council authorize the Public Works Director to execute the Cooperative Project Agreements on behalf of the City subject to City Attorney approval to form.

**EXECUTIVE SUMMARY**

On January 27, 2009, the Council adopted Resolution No. 2009-19 in support of the Measure "C" Short-Term Regional Transportation Program. The program and associated handbook was approved by the Council of Fresno County Governments ("COG") on January 29, 2009, and in turn by the Fresno County Transportation Authority ("Authority") on February 18, 2009. The Authority has prepared a Measure "C" Cooperative Project Agreement which is to be executed by the Authority and a project sponsor such as the City of Fresno for each specific project. The Agreement will allow the City to deliver a project and request eligible project funding (Measure "C" or Regional Transportation Mitigation Fee funds) from the Authority that has been programmed for specific street and highway projects in the Handbook and consistent with Tier 1 Regional Transportation Program projects listed in the Measure "C" Expenditure Plan. The Agreement establishes the scope, schedule and budget for each project, including the Measure "C" funds authorized for the project. The Agreement is a program funding

*46: Memorial use: Memoz - Public Works*

agreement; staff will return to Council for required project environmental assessment, approvals and awards. Staff has prepared the Agreements covering five specific Tier 1 projects which are anticipated to be considered at the April 2009 FCTA Board meeting: the Willow/Shepherd Intersection Improvement Project, the Monterey Street Bridge Project, the Peach Avenue Widening Project from Butler Avenue to SR-180, the California Avenue Widening Project from West Avenue to Fruit Avenue and the Veterans Boulevard/SR-99 Interchange Project. The attached Draft Cooperative Agreements have been approved as to form by the City Attorney's Office. Staff will return to Council within the next 45 days to address the balance of the City of Fresno Tier 1 projects that are programmed to receive funding in the 2009/10 fiscal year, in order that the Authority may consider the remaining project-specific Cooperative Project Agreements at their scheduled June 2009 Board meeting. Staff will also return to Council within the next 45 days to recommend amendment of the Annual Appropriations Resolution to appropriate the Tier 1 funds for these initial five projects, and for required project approvals/awards following environmental assessment and full match funding.

### **KEY OBJECTIVE BALANCE**

The recommended action best addresses Customer Satisfaction and Employee Satisfaction through moving forward on critical transportation projects in the City of Fresno that will benefit the traveling public. Financial Management will be achieved through utilizing the Measure "C" funds in a timely manner and at the lowest cost to the public.

### **BACKGROUND**

In November 2006, the voters approved a 20-year extension of Measure "C", the half-cent sales tax for transportation. On January 27, 2009, the Council adopted Resolution No. 2009-19 in support of the proposed Measure "C" Short-Term Regional Transportation Program. The program and associated handbook was approved by the Council of Fresno County Governments ("COG") on January 29, 2009, and in turn by the Fresno County Transportation Authority ("Authority") on February 18, 2009. The Authority has prepared a Measure "C" Cooperative Project Agreement which is to be executed by the Authority and a project sponsor such as the City of Fresno for each specific project. This agreement template was transmitted to the City on March 23, 2009. The Authority advised staff that the City could request FCTA Board approval of the project-specific agreements if the Draft agreements were returned to the Authority by April 1, 2009, along with Council approval of the Cooperative Project Agreements. Upon approval by the FCTA Board, project sponsors such as the City of Fresno will be able to enter into project-specific agreements with the FCTA in substantially the form attached that will allow Tier 1 projects to move forward.

Five City of Fresno projects have Measure "C" Tier 1 funding programmed for this fiscal year that require immediate approval of Draft Cooperative Project Agreements to avoid adverse impacts upon the schedule. The five projects are the Willow/Shepherd Intersection Improvement Project which has started construction, the Monterey Street Bridge project for which staff will be requesting Council approval of the consultant agreement within the next 14 days, the Veterans Boulevard project which is programmed for funding to continue progress on the Project Report and initiate the environmental document, the California Avenue Widening Project from West Avenue to Fruit Avenue for which bids have been opened, and the Peach Avenue Widening

Project which requires Measure "C" funding authorization in order to proceed with right-of-way acquisition. The remaining City of Fresno 2009/10 projects are very close behind and will be proposed in the FY2010 capital improvement budget, such that with FCTA Board and Council approval in June, work will be able to begin on those projects as well after July 1, 2009. Those remaining Tier 1 projects are the Herndon Avenue/Golden State Boulevard project, the Willow Avenue project from Teague Avenue to Shepherd Avenue, the Willow Avenue Widening Project from Shepherd Avenue to Behymer Avenue, the Herndon Avenue widening from Valentine Avenue to Marks Avenue, the SR-180 West Frontage Road project and the Peach Avenue Widening Project from Butler Avenue to Jensen Avenue.

Approval of the attached funding Agreements does not constitute Council approval of the individual projects funded by Measure "C". Staff will return to Council for adoption of the associated CEQA/NEPA environmental documents, approval of right-of-way acquisition agreements, requests for appropriations and for award of construction contracts as required for each of the projects.

The Draft Cooperative Agreements have been approved as to form by the City Attorney's Office.

#### **FISCAL IMPACT**

Implementation of the staff recommendation will have no impact upon the City's General Fund. Capital projects to be designed and constructed will be funded through Measure "C" Tier 1 funds along with matching funds such as developer impact fees, Federal grants, State grants and/or gas tax as appropriate for the specific project.

PNW/SLM/eam  
Consider Apprv Measure C Cooperative Agrmts rev 3-31-09

- Attachment:
- "A" – Cooperative Project Agreement for the Willow/Shepherd Intersection Improvement Project (Urban Project D-2A)
  - "B" – Cooperative Project Agreement for the Monterey Street Bridge Project (Urban Project G)
  - "C" – Cooperative Project Agreement for the Peach Avenue Widening Project from Butler Avenue to SR-180 (Urban Project I-3)
  - "D" – Cooperative Project Agreement for the California Avenue Widening Project from West Avenue to Fruit Avenue (Urban Project H-1)
  - "E" – Cooperative Project Agreement for the Veterans Boulevard/SR-99 Interchange Project (Urban Project N-1)

**MEASURE "C"**  
**COOPERATIVE PROJECT AGREEMENT**  
**Short-Term Regional Transportation Program**  
**(Project D-2A Urban, Willow/Shepherd Intersection**  
**Improvements)**

This Cooperative Project Agreement ("**Agreement**") is made and entered into on June 1<sup>st</sup>, 2009, by and between the City of Fresno ("**Responsible Agency**") and the Fresno County Transportation Authority ("**Authority**").

**RECITALS**

WHEREAS, Authority and Responsible Agency desire to enter into an Agreement for funding of a transportation improvement project in Fresno County pursuant to the Measure "C" Short-Term Regional Transportation Program Handbook ("**Handbook**"), and the Fresno County Measure "C" Expenditure Plan ("**Expenditure Plan**"), which was approved by the voters of Fresno County in November 2006; and,

WHEREAS, Responsible Agency desires to receive eligible Measure "C" Regional Transportation Program ("**Measure "C"**") and Regional Transportation Mitigation Fee ("**RTMF**") funding (as applicable) from the Authority for the D-2A Urban, Willow/Shepherd Intersection Improvements ("**Project**") as specified in the Handbook and consistent with the Tier 1 list of Regional Transportation Program projects referenced in the Expenditure Plan; and

WHEREAS, Authority is authorized to approve Project funding for payment to Responsible Agency in accordance with this Agreement, the Handbook and the Expenditure Plan regarding the Project ; and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" \$ 353,000 of Measure "C" funding.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

## AGREEMENT

### SECTION I

#### Covenants of Responsible Agency

Responsible Agency agrees to abide by the terms and conditions of this Agreement for the receipt of Measure "C" and RTMF funds (as applicable) and to comply with the Expenditure Plan, Handbook, and adopted Policies and Procedures, as well as any subsequent amendments, updates, or other applicable plans.

**1.1 Project Scope, Schedule and Funding Program.** The Project scope of work, schedule and funding program, as well as any change thereto may not be implemented or initiated until it has been approved by the Authority in accordance with the Handbook. For purposes of this Agreement, the Project scope, schedule and funding program is as defined and described in the Handbook and as further described below. The Responsible Agency must demonstrate in the funding program that the Project or Project phase is fully funded.

1.1.1 Project Scope. See Exhibit "A"

1.1.2 Project Schedule. See Exhibit "B"

1.1.3 Project Funding Program. See Exhibit "C"

**1.2 Eligible Project Costs.** Notwithstanding any provisions of Section 1.1 of this Agreement, the Authority reserves the right to consider on a case by case basis, eligible costs incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority. Eligible Project costs shall be equal to or less than Measure "C" and RTMF funds (as applicable) allocated to a Project as specified in Section 1.1.3 of this Agreement and in the Handbook. State Transportation Improvement Program (STIP) or other funding allocations (other than Measure "C" and RTMF) identified in the Handbook are considered "other" contributions available to the Project. The Responsible Agency must match Measure "C" funds with other such funds consistent with the funding program referenced in Section 1.1.3 of this Agreement and consistent with the Handbook and Expenditure Plan.

NOTE: Expenses incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority for a currently active project, are incurred at the risk of the Responsible Agency.

**1.3 Compliance with California PUC Code 142257.** Responsible Agency agrees to the following:

1.3.1 Measure "C" funds will not be used to substitute for property tax funds, which the Responsible Agency had previously used for regional or other transportation purposes. It is hereby acknowledged by Responsible Agency that such substitution of property tax funds is expressly prohibited by California Public Utilities Code Section 142257.

1.3.2 The Responsible Agency has segregated property tax revenues from its other general fund revenues used to support the Project so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to the Responsible Agency's entire general fund.

1.3.3 Responsible Agency shall account for Project funds received pursuant to Public Utilities Code Section 142257. Responsible Agency shall maintain current records in accordance with generally accepted accounting principles, and shall separately record expenditures for each type of eligible purpose. Responsible Agency shall make such records available to the Authority for inspection or audit at any time.

**1.4 Compliance with Other Laws.** In performance of its obligations relating to administration and completion of the Project, Responsible Agency shall at all times comply with all federal, state and local laws, ordinances and regulations currently in force as well as those that are subsequently enacted, promulgated or amended and thereby become applicable during the term of this Agreement.

**1.5 Measure "C" Funds Defined.** For purposes of this Agreement, eligible Project Measure "C" and RTMF funds (as applicable) are deemed available as of the effective date of this Agreement. Eligible Project costs shall be equal to or less than the amount of funding available for the Project on a fiscal year basis as specified in the Handbook and in Section 1.1.3 of this Agreement. In no case shall the total amount of Measure "C" or RTMF funds for the Project in the Handbook or referenced in Section 1.1.3 of this Agreement be exceeded without written amendment to this Agreement and to the Handbook.

**1.6 Invoices.** The Responsible Agency shall submit invoices to the Authority no more frequently than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:

1.6.1 Monitoring Expenditures and Progress Payments. The Responsible Agency will monitor expenditures and progress payments against the "not to exceed" limits specified in Section 1.1.3 of this Agreement.

1.6.2 Project Progress. If Project costs have not been invoiced for a six-month period, Responsible Agency agrees to submit a written explanation of the absence of the Project's progress to the Authority, along with a target billing date and a target billing amount.

1.6.3 Direct and Indirect Costs. Responsible Agency may include in the Project invoice, direct and indirect costs of the Project. Indirect costs (as defined by OMB Circular A-87) will be considered an eligible expense.

1.6.4 Copies of Invoices. Responsible Agency shall provide the Authority with one (1) copy of appropriate source documentation to substantiate Project expenses or costs.

1.6.5 Eligible Project Cost Request Deadline. Invoices for eligible Project costs incurred by the Responsible Agency shall be submitted to the Authority on the approved form. The appropriation request will specify the use of the funding and the manner in which local matching funds were applied. The Authority's Executive Director will review invoices for accuracy and sufficiency in terms of compliance with the foregoing requirements. Unsatisfactory or inadequate invoices will be returned to the Responsible Agency for correction and resubmission. Upon receipt of a proper invoice, eligible Measure "C" and RTMF funds (as applicable) shall be provided to the Responsible Agency within 45 days.

1.6.6 Use of Funds. Responsible Agency shall use Measure "C" and RTMF funds (as applicable) consistent with the Expenditure Plan, Handbook, and Section 1.1.1 of this Agreement.

**1.7 Reporting Form.** Responsible Agency will indicate in the invoice form, its intent to complete and return the Annual Reporting Form (reference Appendix C in the Handbook) to the Authority no later than October 15<sup>th</sup> of each year. If

the Responsible Agency does not return the Annual Reporting Form to the Authority by that deadline, the Authority will withhold Measure "C" and RTMF funds (as applicable) until such time as the form is returned by the Responsible Agency and reviewed for correctness by the Authority.

## **1.8 Cost Savings and Excess Costs.**

1.8.1 Cost Savings. After the Project has been accepted by the Responsible Agency as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.1.3 and the total amount invoiced to the Authority shall be considered Project cost savings and shall be reprogrammed to other Tier 1 projects by Fresno COG and the Authority as provided in the Handbook, as amended or updated.

1.8.2 Excess Costs. In the event the actual total Project costs exceed the estimate approved by the Authority, this amount will be considered an Excess Cost.

1.8.3 Reconciliation of Excess Costs. In the event that costs to complete the Project exceed the total amount of funds programmed, the Responsible Agency will be fiscally responsible for the full amount of Excess Costs associated with the Project, unless otherwise agreed by the parties pursuant to Section 2.3 of this Agreement.

1.9 **Project Management/Formation of Project Development Team (PDT).** To ensure that the Project is implemented in a timely manner and consistent with the Handbook and Expenditure Plan, a Project Development Team (PDT) shall be formed under the control of the Responsible Agency. The Responsible Agency will form, notice, conduct and administer the PDT for the Project. The PDT formed for the Project shall include a staff member from both the Authority and Fresno COG.

1.10 **Award of Project.** The Responsible Agency shall administer the Project, including but not limited to its advertisement and award of all contracts, in accordance with applicable legal requirements as provided above in Section 1.4 and in full conformity with the standards applied by Responsible Agency in the administration of its own road construction projects.

- 1.11 **Maintenance of Project Records.** Responsible Agency shall maintain complete and accurate records with respect to costs addressed in Section 1.1.3 of this Agreement. All such records shall be maintained on a generally-accepted accounting basis and be clearly identified and readily accessible. Responsible Agency shall provide free access to the Authority at all times to such books and records. Responsible Agency shall maintain all work data, documents, and proceedings of this Agreement for a period of five (5) years from the date of final audit from the Authority.
- 1.12 **Project Groundbreaking and Ribbon Cutting Ceremonies.** Responsible Agency shall acknowledge Measure "C" funding contribution to the Project at the groundbreaking and ribbon cutting ceremony should the Responsible Agency conduct such a ceremony. Groundbreaking and ribbon cutting ceremonies are encouraged, but not required. The costs of all ceremonies will be considered a project construction expense.
- 1.13 **Project Signage.** Responsible Agency shall provide signage at construction sites or on equipment, as appropriate, for the projects funded partially or wholly by Measure "C" sales tax revenue included in the Handbook so that Fresno County Taxpayers are informed as to how funds are being used. The signage shall be in conformance with specifications approved by and on file with the Authority, and included in Appendix D in the Handbook.

## SECTION II

### Covenants of Authority

Authority agrees to provide Measure "C" and RTMF funds to the Responsible Agency for eligible Project costs in accordance with the terms and conditions set forth herein, and in compliance with the Expenditure Plan, the Handbook, all Measure "C" Policies and Procedures, as well as any subsequent amendments or updates, and to other applicable plans and programs.

- 2.1 Eligible Project Cost Payments.** The Authority shall make payments to Responsible Agency for actual incurred eligible Project costs as specified in Section 1.1.3 of this Agreement and consistent with the Handbook. To receive payments for Project work completed, the Responsible Agency shall comply with the following procedures:
- 2.1.1 Ineligible Costs. The Authority reserves the right to recover payment made to the Responsible Agency if payment made on an invoice includes ineligible Project costs.
  - 2.1.2 Payment Amount. The amount of Project payments to the Responsible Agency shall be made pursuant to the Handbook and this Agreement.
  - 2.1.3 Suspension of Payment. Payments for eligible Project costs shall be suspended without interest when a dispute arises as to whether or not a cost item(s) is eligible for payment.
    - 2.1.3.1 Dispute Resolution. All disputes shall be settled in accordance with the laws of the State of California. Once a dispute has occurred, the Authority and Responsible Agency shall attempt to resolve the dispute informally in a mutually agreeable manner.
- 2.2 Right to Conduct Audit.** The Authority shall have the right to conduct an audit of all Responsible Agency's records pertaining to the Project at any time following completion of the Project.
- 2.2.1 Notice of Audit. The Authority shall provide at least 30 days' advance notice to the Responsible Agency if an audit is to be conducted.

- 2.3 Reconciliation of Excess Costs.** Excess project costs to complete a Project are not eligible for reimbursement. The amount of Measure "C" and RTMF funds identified in Section 1.1.3 of this Agreement and in the Handbook are the maximum funds available for reimbursement to the Responsible Agency and will not be exceeded by the Responsible Agency without an approved amendment to this Agreement. If needed for that purpose, the Responsible Agency shall make a written request to the Authority for an amendment to this Agreement. Any such amendment shall constitute an effective modification of this Agreement only if signed and approved by duly authorized representatives of both the Authority and the Responsible Agency.

### **SECTION III**

#### **Mutual Covenants**

The Authority is released from any liability to Responsible Agency regarding the Authority's administration and issuance of the Measure "C" and RTMF proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan and Handbook.

- 3.1 Effective Date and Term.** This Agreement shall become effective as of the date of its execution by the Authority and Responsible Agency and shall remain in full force and effect through **June 30, 2010**, unless earlier terminated as provided in Section 3.2 or in Section 3.4 of this Agreement.
- 3.2 Discharge.** This Agreement shall be subject to discharge as follows:
- 3.2.1 Termination of Mutual Consent.** This Agreement may be terminated at any time by mutual consent of Responsible Agency and Authority. If this Agreement is mutually terminated by the parties, Responsible Agency will no longer receive Measure "C" or RTMF funds (as applicable) unless a new agreement between Responsible Agency and Authority is formed.
- 3.2.2 Discharge Upon Completion of Project.** Except as to any rights or obligations which survive discharge as specified herein below in Section 3.14 ("Survival"), this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.2.3 Termination by Authority. The Authority reserves the right to terminate the Agreement at any time by giving written notice to Responsible Agency of such termination and specifying the effective date thereof, provided that the effective date of termination shall be at least 10 days after the date Authority sends written notice of termination. If this Agreement is terminated by the Authority as provided herein, Responsible Agency will be paid by the Authority for eligible Project costs incurred prior to the effective date of termination of the Agreement consistent with the funding program contained in Section 1.1.3 and in the Handbook. In that event, all finished or unfinished documents and other materials shall, at the option of the Authority, become its property subject to the terms and conditions of Section 1.11 of this Agreement.

3.3 Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Responsible Agency:

3.3.1 Responsible Agency shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any and all damages, liabilities, claims and expenses, arising out of Responsible Agency's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Responsible Agency shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Responsible Agency under this Agreement or in connection with any work, authority, or jurisdiction delegated to Responsible Agency under this Agreement.

3.3.2 Authority shall fully defend, indemnify and hold harmless Responsible Agency, and any officer or employee of Responsible Agency, against any and all damages, liabilities, claims and expenses, arising out of Authority's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold the Responsible Agency harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by

Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

**3.4** **Limitation.** All obligations of the Authority under the terms of this Agreement are expressly subject to the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure "C" and RTMF funds. If for any reason the Authority's right to collect or expend such sales tax and RTMF proceeds is terminated or suspended in whole or part, the Authority shall promptly notify the Responsible Agency, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any future obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the Authority to expend sales tax or RTMF proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of the Authority under all outstanding contracts, agreements to other obligations of the Authority, of funds for such purposes.

**3.5** **Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**AUTHORITY:**

**With A Copy To:**

Mr. Ron Peterson, Executive Dir.  
Fresno County Transportation Authority  
2220 Tulare Street, Suite 411  
Fresno, CA 93721  
Ph: (559) 453-5023 Fax: (559) 488-3303

**RESPONSIBLE AGENCY:**

Mr. Patrick Wiemiller, Public Works Director  
City of Fresno, Public Works Department  
2600 Fresno Street, 4<sup>th</sup> Floor  
Ph: (559) 621-8650 Fax: (559) 488-1045  
FAX Number

3.5.1 Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received

on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

- 3.6 Additional Acts and Documents.** Each party agrees to do all such things and take all actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.
- 3.7 Integration.** This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. NO representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 3.8 Amendment.** This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 3.9 Independent Agency.** Responsible Agency renders services under this Agreement as an independent agency under the Agreement. None of the Responsible Agency's agents or employees shall be agents or employees of the Authority and none of the Authority's agents or employees shall be agents or employees of Responsible Agency.
- 3.10 Assignment.** The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of all parties hereto.
- 3.11 Binding on Successors.** This Agreement shall be binding upon each of the parties and their respective successor(s), assignee(s) or transferee(s). Provided however that this provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement, other than as provided in the immediately preceding Section 3.10 of this Agreement.
- 3.12 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

- 3.13 Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14 Survival.** The following provisions in this Agreement shall survive discharge:
- 3.14.1 **Responsible Agency.** As to Responsible Agency, the following sections of this Agreement shall survive discharge: Section 1.6 ("Invoices") and Section 1.9 ("Project Management/Formation of Project Development Team").
- 3.14.2 **Authority.** As to Authority, the following sections of this Agreement shall survive discharge: Section 2.2 ("Right to Conduct Audit").
- 3.15 Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- 3.16 Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
- 3.17 Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Fresno County, California.
- 3.18 Captions.** The captions in this Agreement are for convenience only and are not intended to and shall not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.
- 3.19 No Continuing Waiver.** The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
- 3.20 No Rights in Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement

on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

- 3.21 **Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 **Attorney's Fees and Costs.** Authority and Responsible Agency will bear their own respective costs, including attorney's fees, in connection with any legal proceedings related to the interpretation or enforcement of this Agreement or any of the terms and conditions hereof.
- 3.23 **Exhibits and Recitals.** The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 3.24 **Signator's Warranty.** Each signatory to this Agreement warrants to the other party that he or she is fully authorized and competent to execute this Agreement in the capacity indicated by his or her signature, and each party agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each party's authorized representatives.
- 3.25 **Force Majuere.** Any party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by federal, state or local government; national fuel shortage; or a material act or omission by any party; when satisfactory evidence of such cause is presented to that other party, and provided further such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

**FRESNO COUNTY TRANSPORTATION AUTHORITY**

By [Signature]  
(Signature)

Name \_\_\_\_\_  
(Typed)

Title Chair of the Authority

ATTEST  
By [Signature]  
(Signature)

Name \_\_\_\_\_  
(Typed)

Title Executive Director

APPROVED AS TO LEGAL FORM:  
KEVIN BRIGGS, INTERIM COUNTY  
COUNSEL

By [Signature]  
(Signature)

Name \_\_\_\_\_  
(MICHAEL E ROWE)

Title Senior Deputy County Counsel

APPROVED AS TO ACCOUNTING  
FORM:

By [Signature]  
(Signature)

Name [Signature]  
(VICKI CROW)

Title Auditor-Controller/Treasurer-Tax  
Collector

**City of Fresno**

By [Signature]  
(Signature)

Name \_\_\_\_\_  
(PATRICK N. WIEMILLER)

Title Public Works Director

By [Signature], Deputy  
(Signature)

Name Jennifer Morelos  
(REBECCA E. KLISCH)

Title City Clerk

APPROVED AS TO FORM  
JAMES SANCHEZ, City Attorney

BY: [Signature] 5-07-09  
Deputy Cyle



# EXHIBIT A – PROJECT SCOPE

## Urban Project D-2A – Willow/Shepherd Intersection Improvements



Responsible Agency  
City of Fresno

### Project Limits

The project limits include the reconstruction of the Willow Avenue and Shepherd Intersection. The limits of construction extend 1300' west and 1050' east of the intersection on Shepherd Avenue and 2250' south and 750' north of the intersection on Willow Avenue.

### Project Phase

- Phase 1 - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction *(Includes Project Construction & Construction Management)*

### Project Phase(s) Scope

The ultimate project will reconstruct the intersection of Willow Avenue and Shepherd Avenue. Phase 3 involves construction of the Project, Construction Management and traffic detours using Chestnut, Peach, Teague and Perrin Avenues.

### Complete Project Scope

Phase 1 and Phase 2 have been completed. Phase 1 included development of PS&E and preparation of the environmental documents to comply with NEPA and CEQA requirements. The NEPA determination for this project was a Programmatic Categorical Exclusion and the CEQA determination was a Categorical Exemption. Phase 2 included the appraisal, acquisition processing and purchase of 2 parcels along the east side of Willow Avenue.

### Project Purpose

The purpose of this project is to reduce congestion, improve safety and improve traffic operations through the intersection of Willow and Shepherd Avenues.

### Transportation Benefit

The project is expected to reduce traffic congestion thereby improving travel time and motorist safety.

### Implications of Not Doing the Project

It was determined in various traffic studies that the existing number of travel lanes along Willow Avenue and Shepherd Avenue will not be sufficient to accommodate the traffic demands in the Year 2025. According to the traffic study conducted by City of Fresno Traffic Division, the expected volume along the Project in the Year 2025 will be 39,000 vehicles per day and 3,300 during the PM Peak Hour. Based on the expected future volumes, without the Project, the Level of Service (LOS) is expected to be LOS "F". With the Project, the expected LOS is projected to be LOS "D".

### Community Engagement

The project limits are within a moderately populated residential area. Residents and property owners will be kept informed of the Project's status and schedule through the local media. The improvements have been carefully coordinated with the adjacent business owner.

### Construction Staging

Construction phasing has been implemented due to the potential impacts on adjacent residences and businesses, which use this facility to access their property.

### Detours

During construction of this Project, the east and west bound traffic will be routed south bound on Chestnut Avenue or Peach Avenue and then east or west bound along Teague Avenue. The north and south bound traffic will be routed west bound on Teague Avenue or Perrin Avenue and then north or south bound along Chestnut Avenue.

### Current Status

Phase 1 and 2 are complete and Phase 3 will be initiated. Funding for this Phase was programmed as of the date of execution of this Agreement.

### Contact

For inquiries, you may contact Scott Mozier, P.E., with the City of Fresno Public Works Dept. at (559) 621-8650.



# EXHIBIT B – PROJECT SCHEDULE

## Urban Project D-2A – Willow/Shepherd Intersection Improvements

Responsible Agency  
City of Fresno

**Project Limits**

The project limits include the reconstruction of the Willow Avenue and Shepherd Intersection. The limits of construction extend 1300' west and 1050' east of the intersection on Shepherd Avenue and 2250' south and 750' north of the intersection on Willow Avenue.

**Project Phase**

- Phase 1 - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 – Right-of-Way Acquisition
- Phase 3 – Construction *(Includes Project Construction & Construction Management)*

**Contact**

For inquiries, you may contact Scott Mozier, P.E., with the City of Fresno Public Works Dept. at (559) 621-8650.

**Project Schedule**

PROJECT PHASE	START	END	SHORT-TERM PROGRAM FY 2008/09 - 2009/10																							
			2008/09												2009/10											
			J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
<b>Prelim. Eng. *1</b>	Prior	Prior																								
1. Prelim. Design																										
2. PS&E																										
3. Environ. Doc.																										
4. Other (Explain)																										
5. Other (Explain)																										
<b>Right-of-Way *2</b>	Prior	Prior																								
1. Parcel Research																										
2. Appraisal																										
3. Acquisition																										
4. Other (Explain)																										
5. Other (Explain)																										
<b>Construction *3</b>	2011/12	2012/13																								
1. Bid Devel.																										
2. Construction																										
3. Constr. Manage.																										
4. Detour Process																										
5. Other (Explain)																										

\*1 Preliminary Engineering: Preliminary Design/Engineering (PS&E), Environmental

\*2 Right-of-Way Acquisition

\*3 Project Construction & Construction Management



Measure "C" Short-Range Regional Transportation Program | Project Funding Program – Exhibit C



# EXHIBIT C - PROJECT FUNDING PROGRAM

## Urban Project D-2A – Willow/Shepherd Intersection Improvements

Responsible Agency  
City of Fresno

**Project Limits**

The project limits include the reconstruction of the Willow Avenue and Shepherd Intersection. The limits of construction extend 1300' west and 1050' east of the intersection on Shepherd Avenue and 2250' south and 750' north of the intersection on Willow Avenue..

**Project Phase**

- Phase 1 - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 – Right-of-Way Acquisition
- Phase 3 – Construction *(Includes Project Construction & Construction Management)*

**Contact**

For inquiries, you may contact Scott Mozier, P.E., with the City of Fresno Public Works Dept. at (559) 621-8650.

**Funding Program (\$ in millions)**

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION						TOTAL COST & FUNDING	
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14							
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13		2013/14
<b>Continuously Expanding Program</b>	<b>Prior</b>	<b>2007/08</b>	<b>\$0.338</b>								
<b>Continuously Expanding Program</b>				\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.338
Measure "C" Original Program											\$0.000
Measure "C" Extension											\$0.000
RTMP											\$0.000
STP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid			\$0.338								\$0.338
Other State (Specify)											\$0.000
Other Local (Fresno)			\$0.064								\$0.064
Other Local (Clovis)			\$0.064								\$0.064
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 1:</b>			<b>\$0.338</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.338</b>
<b>Right of Way</b>	<b>Prior</b>	<b>2007/08</b>	<b>\$0.399</b>								
<b>Right of Way</b>				\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.399
Measure "C" Original Program											\$0.000
Measure "C" Extension											\$0.000
RTMP											\$0.000
STP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid			\$0.399								\$0.399
Other State (Specify)											\$0.000
Other Local (Fresno)											\$0.000
Other Local (Clovis)			\$0.074								\$0.074
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 2:</b>			<b>\$0.399</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.399</b>
<b>Construction</b>	<b>2008/09</b>	<b>2009/10</b>	<b>\$0.000</b>								
<b>Construction</b>				\$0.000	\$0.000	\$0.353	\$0.000	\$0.000	\$0.000	\$0.000	\$0.353
Measure "C" Original Program											\$0.000
Measure "C" Extension											\$0.000
RTMP						\$0.353					\$0.353
STP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid			\$1.947								\$1.947
Other State (Specify)											\$0.000
Other Local (Fresno)			\$0.066								\$0.066
Other Local (Clovis)			\$0.018								\$0.018
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 3:</b>			<b>\$1.458</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.353</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$1.811</b>
<b>TOTAL FUNDING ALL PHASES:</b>			<b>\$2.195</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.353</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$0.000</b>	<b>\$2.548</b>

1 - Continuously Expanding Program  
2 - Right of Way Acquisition  
3 - Project Construction & Construction Management



PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14							
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Construction <sup>3</sup>	2008/09	2009/10	\$0.000	\$0.000	\$0.353	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.353
<b>FUNDING PROGRAM</b>											
Measure "C" Original Program											\$0.000
Measure "C" Extension					\$0.353						\$0.353
RTMF											\$0.000
STIP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid				\$1.347							\$1.347
Other State (Specify)											\$0.000
Other Local (Fresno)				\$0.096							\$0.096
Other Local (Clovis)				\$0.016							\$0.016
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 3:</b>			\$1.458	\$0.000	\$0.353	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$1.811
<b>TOTAL FUNDING ALL PHASES:</b>			\$2.093	\$0.000	\$0.353	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.446

<sup>1</sup> Preliminary Engineering: Preliminary Design/Engineering (PSE), Environmental

<sup>2</sup> Right-of-Way Acquisition

<sup>3</sup> Project Construction & Construction Management

**MEASURE "C"**  
**COOPERATIVE PROJECT AGREEMENT**  
**Short-Term Regional Transportation Program**  
**(Project G Urban, Monterey Street Bridge**  
**Rehabilitation)**

This Cooperative Project Agreement ("**Agreement**") is made and entered into on June 1<sup>st</sup>, 2009, by and between the City of Fresno ("**Responsible Agency**") and the Fresno County Transportation Authority ("**Authority**").

**RECITALS**

WHEREAS, Authority and Responsible Agency desire to enter into an Agreement for funding of a transportation improvement project in Fresno County pursuant to the Measure "C" Short-Term Regional Transportation Program Handbook ("**Handbook**"), and the Fresno County Measure "C" Expenditure Plan ("**Expenditure Plan**"), which was approved by the voters of Fresno County in November 2006; and,

WHEREAS, Responsible Agency desires to receive eligible Measure "C" Regional Transportation Program ("**Measure "C"**") and Regional Transportation Mitigation Fee ("**RTMF**") funding (as applicable) from the Authority for the G Urban, Monterey Street Bridge Rehabilitation ("**Project**") as specified in the Handbook and consistent with the Tier 1 list of Regional Transportation Program projects referenced in the Expenditure Plan; and

WHEREAS, Authority is authorized to approve Project funding for payment to Responsible Agency in accordance with this Agreement, the Handbook and the Expenditure Plan regarding the Project ; and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$ 1,602,000** of Measure "C" funding.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

## AGREEMENT

### SECTION I

#### Covenants of Responsible Agency

Responsible Agency agrees to abide by the terms and conditions of this Agreement for the receipt of Measure "C" and RTMF funds (as applicable) and to comply with the Expenditure Plan, Handbook, and adopted Policies and Procedures, as well as any subsequent amendments, updates, or other applicable plans.

**1.1 Project Scope, Schedule and Funding Program.** The Project scope of work, schedule and funding program, as well as any change thereto may not be implemented or initiated until it has been approved by the Authority in accordance with the Handbook. For purposes of this Agreement, the Project scope, schedule and funding program is as defined and described in the Handbook and as further described below. The Responsible Agency must demonstrate in the funding program that the Project or Project phase is fully funded.

1.1.1 Project Scope. See Exhibit "A"

1.1.2 Project Schedule. See Exhibit "B"

1.1.3 Project Funding Program. See Exhibit "C"

**1.2 Eligible Project Costs.** Notwithstanding any provisions of Section 1.1 of this Agreement, the Authority reserves the right to consider on a case by case basis, eligible costs incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority. Eligible Project costs shall be equal to or less than Measure "C" and RTMF funds (as applicable) allocated to a Project as specified in Section 1.1.3 of this Agreement and in the Handbook. State Transportation Improvement Program (STIP) or other funding allocations (other than Measure "C" and RTMF) identified in the Handbook are considered "other" contributions available to the Project. The Responsible Agency must match Measure "C" funds with other such funds consistent with the funding program referenced in Section 1.1.3 of this Agreement and consistent with the Handbook and Expenditure Plan.

NOTE: Expenses incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority for a currently active project, are incurred at the risk of the Responsible Agency.

**1.3 Compliance with California PUC Code 142257.** Responsible Agency agrees to the following:

1.3.1 Measure "C" funds will not be used to substitute for property tax funds, which the Responsible Agency had previously used for regional or other transportation purposes. It is hereby acknowledged by Responsible Agency that such substitution of property tax funds is expressly prohibited by California Public Utilities Code Section 142257.

1.3.2 The Responsible Agency has segregated property tax revenues from its other general fund revenues used to support the Project so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to the Responsible Agency's entire general fund.

1.3.3 Responsible Agency shall account for Project funds received pursuant to Public Utilities Code Section 142257. Responsible Agency shall maintain current records in accordance with generally accepted accounting principles, and shall separately record expenditures for each type of eligible purpose. Responsible Agency shall make such records available to the Authority for inspection or audit at any time.

**1.4 Compliance with Other Laws.** In performance of its obligations relating to administration and completion of the Project, Responsible Agency shall at all times comply with all federal, state and local laws, ordinances and regulations currently in force as well as those that are subsequently enacted, promulgated or amended and thereby become applicable during the term of this Agreement.

**1.5 Measure "C" Funds Defined.** For purposes of this Agreement, eligible Project Measure "C" and RTMF funds (as applicable) are deemed available as of the effective date of this Agreement. Eligible Project costs shall be equal to or less than the amount of funding available for the Project on a fiscal year basis as specified in the Handbook and in Section 1.1.3 of this Agreement. In no case shall the total amount of Measure "C" or RTMF funds for the Project in the Handbook or referenced in Section 1.1.3 of this Agreement be exceeded without written amendment to this Agreement and to the Handbook.

- 1.6 Invoices.** The Responsible Agency shall submit invoices to the Authority no more frequently than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:
- 1.6.1 Monitoring Expenditures and Progress Payments. The Responsible Agency will monitor expenditures and progress payments against the "not to exceed" limits specified in Section 1.1.3 of this Agreement.
  - 1.6.2 Project Progress. If Project costs have not been invoiced for a six-month period, Responsible Agency agrees to submit a written explanation of the absence of the Project's progress to the Authority, along with a target billing date and a target billing amount.
  - 1.6.3 Direct and Indirect Costs. Responsible Agency may include in the Project invoice, direct and indirect costs of the Project. Indirect costs (as defined by OMB Circular A-87) will be considered an eligible expense.
  - 1.6.4 Copies of Invoices. Responsible Agency shall provide the Authority with one (1) copy of appropriate source documentation to substantiate Project expenses or costs.
  - 1.6.5 Eligible Project Cost Request Deadline. Invoices for eligible Project costs incurred by the Responsible Agency shall be submitted to the Authority on the approved form. The appropriation request will specify the use of the funding and the manner in which local matching funds were applied. The Authority's Executive Director will review invoices for accuracy and sufficiency in terms of compliance with the foregoing requirements. Unsatisfactory or inadequate invoices will be returned to the Responsible Agency for correction and resubmission. Upon receipt of a proper invoice, eligible Measure "C" and RTMF funds (as applicable) shall be provided to the Responsible Agency within 45 days.
  - 1.6.6 Use of Funds. Responsible Agency shall use Measure "C" and RTMF funds (as applicable) consistent with the Expenditure Plan, Handbook, and Section 1.1.1 of this Agreement.
- 1.7 Reporting Form.** Responsible Agency will indicate in the invoice form, its intent to complete and return the Annual Reporting Form (reference Appendix C in the Handbook) to the Authority no later than October 15<sup>th</sup> of each year. If

the Responsible Agency does not return the Annual Reporting Form to the Authority by that deadline, the Authority will withhold Measure "C" and RTMF funds (as applicable) until such time as the form is returned by the Responsible Agency and reviewed for correctness by the Authority.

## **1.8 Cost Savings and Excess Costs.**

1.8.1 Cost Savings. After the Project has been accepted by the Responsible Agency as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.1.3 and the total amount invoiced to the Authority shall be considered Project cost savings and shall be reprogrammed to other Tier 1 projects by Fresno COG and the Authority as provided in the Handbook, as amended or updated.

1.8.2 Excess Costs. In the event the actual total Project costs exceed the estimate approved by the Authority, this amount will be considered an Excess Cost.

1.8.3 Reconciliation of Excess Costs. In the event that costs to complete the Project exceed the total amount of funds programmed, the Responsible Agency will be fiscally responsible for the full amount of Excess Costs associated with the Project, unless otherwise agreed by the parties pursuant to Section 2.3 of this Agreement.

1.9 **Project Management/Formation of Project Development Team (PDT).** To ensure that the Project is implemented in a timely manner and consistent with the Handbook and Expenditure Plan, a Project Development Team (PDT) shall be formed under the control of the Responsible Agency. The Responsible Agency will form, notice, conduct and administer the PDT for the Project. The PDT formed for the Project shall include a staff member from both the Authority and Fresno COG.

1.10 **Award of Project.** The Responsible Agency shall administer the Project, including but not limited to its advertisement and award of all contracts, in accordance with applicable legal requirements as provided above in Section 1.4 and in full conformity with the standards applied by Responsible Agency in the administration of its own road construction projects.

- 1.11 **Maintenance of Project Records.** Responsible Agency shall maintain complete and accurate records with respect to costs addressed in Section 1.1.3 of this Agreement. All such records shall be maintained on a generally-accepted accounting basis and be clearly identified and readily accessible. Responsible Agency shall provide free access to the Authority at all times to such books and records. Responsible Agency shall maintain all work data, documents, and proceedings of this Agreement for a period of five (5) years from the date of final audit from the Authority.
- 1.12 **Project Groundbreaking and Ribbon Cutting Ceremonies.** Responsible Agency shall acknowledge Measure "C" funding contribution to the Project at the groundbreaking and ribbon cutting ceremony should the Responsible Agency conduct such a ceremony. Groundbreaking and ribbon cutting ceremonies are encouraged, but not required. The costs of all ceremonies will be considered a project construction expense.
- 1.13 **Project Signage.** Responsible Agency shall provide signage at construction sites or on equipment, as appropriate, for the projects funded partially or wholly by Measure "C" sales tax revenue included in the Handbook so that Fresno County Taxpayers are informed as to how funds are being used. The signage shall be in conformance with specifications approved by and on file with the Authority, and included in Appendix D in the Handbook.

## SECTION II

### Covenants of Authority

Authority agrees to provide Measure "C" and RTMF funds to the Responsible Agency for eligible Project costs in accordance with the terms and conditions set forth herein, and in compliance with the Expenditure Plan, the Handbook, all Measure "C" Policies and Procedures, as well as any subsequent amendments or updates, and to other applicable plans and programs.

**2.1 Eligible Project Cost Payments.** The Authority shall make payments to Responsible Agency for actual incurred eligible Project costs as specified in Section 1.1.3 of this Agreement and consistent with the Handbook. To receive payments for Project work completed, the Responsible Agency shall comply with the following procedures:

2.1.1 Ineligible Costs. The Authority reserves the right to recover payment made to the Responsible Agency if payment made on an invoice includes ineligible Project costs.

2.1.2 Payment Amount. The amount of Project payments to the Responsible Agency shall be made pursuant to the Handbook and this Agreement.

2.1.3 Suspension of Payment. Payments for eligible Project costs shall be suspended without interest when a dispute arises as to whether or not a cost item(s) is eligible for payment.

2.1.3.1 Dispute Resolution. All disputes shall be settled in accordance with the laws of the State of California. Once a dispute has occurred, the Authority and Responsible Agency shall attempt to resolve the dispute informally in a mutually agreeable manner.

**2.2 Right to Conduct Audit.** The Authority shall have the right to conduct an audit of all Responsible Agency's records pertaining to the Project at any time following completion of the Project.

2.2.1 Notice of Audit. The Authority shall provide at least 30 days' advance notice to the Responsible Agency if an audit is to be conducted.

- 2.3 Reconciliation of Excess Costs.** Excess project costs to complete a Project are not eligible for reimbursement. The amount of Measure "C" and RTMF funds identified in Section 1.1.3 of this Agreement and in the Handbook are the maximum funds available for reimbursement to the Responsible Agency and will not be exceeded by the Responsible Agency without an approved amendment to this Agreement. If needed for that purpose, the Responsible Agency shall make a written request to the Authority for an amendment to this Agreement. Any such amendment shall constitute an effective modification of this Agreement only if signed and approved by duly authorized representatives of both the Authority and the Responsible Agency.

### SECTION III

#### Mutual Covenants

The Authority is released from any liability to Responsible Agency regarding the Authority's administration and issuance of the Measure "C" and RTMF proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan and Handbook.

- 3.1 Effective Date and Term.** This Agreement shall become effective as of the date of its execution by the Authority and Responsible Agency and shall remain in full force and effect through **December 31, 2013**, unless earlier terminated as provided in Section 3.2 or in Section 3.4 of this Agreement.
- 3.2 Discharge.** This Agreement shall be subject to discharge as follows:
- 3.2.1 Termination of Mutual Consent. This Agreement may be terminated at any time by mutual consent of Responsible Agency and Authority. If this Agreement is mutually terminated by the parties, Responsible Agency will no longer receive Measure "C" or RTMF funds (as applicable) unless a new agreement between Responsible Agency and Authority is formed.
- 3.2.2 Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified herein below in Section 3.14 ("Survival"), this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.2.3 Termination by Authority. The Authority reserves the right to terminate the Agreement at any time by giving written notice to Responsible Agency of such termination and specifying the effective date thereof, provided that the effective date of termination shall be at least 10 days after the date Authority sends written notice of termination. If this Agreement is terminated by the Authority as provided herein, Responsible Agency will be paid by the Authority for eligible Project costs incurred prior to the effective date of termination of the Agreement consistent with the funding program contained in Section 1.1.3 and in the Handbook. In that event, all finished or unfinished documents and other materials shall, at the option of the Authority, become its property subject to the terms and conditions of Section 1.11 of this Agreement.

3.3 Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Responsible Agency:

3.3.1 Responsible Agency shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any and all damages, liabilities, claims and expenses, arising out of Responsible Agency's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Responsible Agency shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Responsible Agency under this Agreement or in connection with any work, authority, or jurisdiction delegated to Responsible Agency under this Agreement.

3.3.2 Authority shall fully defend, indemnify and hold harmless Responsible Agency, and any officer or employee of Responsible Agency, against any and all damages, liabilities, claims and expenses, arising out of Authority's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold the Responsible Agency harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by

Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

**3.4 Limitation.** All obligations of the Authority under the terms of this Agreement are expressly subject to the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure "C" and RTMF funds. If for any reason the Authority's right to collect or expend such sales tax and RTMF proceeds is terminated or suspended in whole or part, the Authority shall promptly notify the Responsible Agency, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any future obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the Authority to expend sales tax or RTMF proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of the Authority under all outstanding contracts, agreements to other obligations of the Authority, of funds for such purposes.

**3.5 Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**AUTHORITY:**

**With A Copy To:**

Mr. Ron Peterson, Executive Dir.  
Fresno County Transportation Authority  
2220 Tulare Street, Suite 411  
Fresno, CA 93721  
Ph: (559) 453-5023 Fax: (559) 488-3303

**RESPONSIBLE AGENCY:**

Mr. Patrick Wiemiller, Public Works Director  
City of Fresno, Public Works Department  
2600 Fresno Street, 4<sup>th</sup> Floor  
Ph: (559) 621-8650 Fax: (559) 488-1045  
FAX Number

3.5.1 Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received

on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

- 3.6 Additional Acts and Documents.** Each party agrees to do all such things and take all actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.
- 3.7 Integration.** This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. NO representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 3.8 Amendment.** This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 3.9 Independent Agency.** Responsible Agency renders services under this Agreement as an independent agency under the Agreement. None of the Responsible Agency's agents or employees shall be agents or employees of the Authority and none of the Authority's agents or employees shall be agents or employees of Responsible Agency.
- 3.10 Assignment.** The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of all parties hereto.
- 3.11 Binding on Successors.** This Agreement shall be binding upon each of the parties and their respective successor(s), assignee(s) or transferee(s). Provided however that this provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement, other than as provided in the immediately preceding Section 3.10 of this Agreement.
- 3.12 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

- 3.13 Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14 Survival.** The following provisions in this Agreement shall survive discharge:
- 3.14.1 **Responsible Agency.** As to Responsible Agency, the following sections of this Agreement shall survive discharge: Section 1.6 ("Invoices") and Section 1.9 ("Project Management/Formation of Project Development Team"),
- 3.14.2 **Authority.** As to Authority, the following sections of this Agreement shall survive discharge: Section 2.2 ("Right to Conduct Audit").
- 3.15 Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- 3.16 Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
- 3.17 Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Fresno County, California.
- 3.18 Captions.** The captions in this Agreement are for convenience only and are not intended to and shall not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.
- 3.19 No Continuing Waiver.** The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
- 3.20 No Rights in Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement

on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

- 3.21 Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 Attorney's Fees and Costs.** Authority and Responsible Agency will bear their own respective costs, including attorney's fees, in connection with any legal proceedings related to the interpretation or enforcement of this Agreement or any of the terms and conditions hereof.
- 3.23 Exhibits and Recitals.** The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 3.24 Signator's Warranty.** Each signatory to this Agreement warrants to the other party that he or she is fully authorized and competent to execute this Agreement in the capacity indicated by his or her signature, and each party agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each party's authorized representatives.
- 3.25 Force Majeure.** Any party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by federal, state or local government; national fuel shortage; or a material act or omission by any party; when satisfactory evidence of such cause is presented to that other party, and provided further such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

**FRESNO COUNTY TRANSPORTATION AUTHORITY**

By [Signature]  
(Signature)

Name \_\_\_\_\_  
(Typed)

Title Chair of the Authority

ATTEST  
By [Signature]  
(Signature)

Name \_\_\_\_\_  
(Typed)

Title Executive Director

APPROVED AS TO LEGAL FORM:  
KEVIN BRIGGS, INTERIM COUNTY  
COUNSEL

By [Signature]  
(Signature)

Name \_\_\_\_\_  
(MICHAEL E ROWE)

Title Senior Deputy County Counsel

APPROVED AS TO ACCOUNTING  
FORM:

By [Signature]  
(Signature)

Name \_\_\_\_\_  
(VICKI CROW)

Title Auditor-Controller/Treasurer-Tax  
Collector

**City of Fresno**

By [Signature]  
(Signature)

Name \_\_\_\_\_  
(PATRICK N. WIEMILLER)

Title Public Works Director

By [Signature], Deputy  
(Signature)

Name Jennifer Morelos  
(REBECCA E. KLISCH)

Title City Clerk

APPROVED AS TO FORM  
JAMES SANCHEZ, City Attorney

BY: [Signature] 5.07.09  
Deputy Coyle



## EXHIBIT A – PROJECT SCOPE

### Urban Project G – Monterey Street Bridge Rehabilitation

**Responsible Agency**  
City of Fresno

#### Project Limits

The project limits include the Monterey Street Bridge between Golden State Boulevard and Broadway Street.

#### Project Phase *(Choose the Project Phase(s) applicable to this Agreement)*

- Phase 1 - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction *(Includes Project Construction & Construction Management)*

#### Project Phase(s) Scope *(Provide detail to describe the Phase(s) that is the subject of this Agreement as checked above)*

The project scope consists of the rehabilitation of the existing bridge which parallels the SR-41 freeway viaduct, spanning Monterey Street and the Union Pacific Railroad, connecting Golden State Boulevard to downtown Fresno at Broadway Street. Phase 1 includes development of PS&E and preparation of the environmental documents to comply with NEPA and CEQA requirements. Phase 3 involves construction of the Project and Construction Management. Measure C funds are providing the local match funds on Federal HBP grant funding for the rehabilitation of the existing bridge.

#### Complete Project Scope *(Provide detail to describe all phases of the Project - it is important for the Authority to understand the scope of the entire Project, not just the Project phase(s) that is described above)*

Phase 1 will involve preliminary design, engineering and the preparation of PS&E. This phase will also include the preparation of environmental documents in compliance with NEPA and CEQA requirements. It is not necessary to obtain right of way for this project, therefore Phase 2 will not be included with this project. Phase 3 will involve the construction of the rehabilitation measures necessary to re-open the bridge, including inspection, testing and construction contract administration.

#### Project Purpose

The purpose of this project is to rehabilitate the Monterey Street Bridge to allow it to re-open to traffic.

#### Transportation Benefit

The project will open an important link to connect traffic from Golden State Boulevard to the downtown core.

#### Implications of Not Doing the Project

The bridge is currently closed to traffic. If this project is not completed, the bridge will remain closed.

#### Community Engagement

The City held a workshop and public hearing in 2005 to discuss the options for the bridge – closure or rehabilitation. It was decided to rehabilitate the bridge.

#### Construction Staging

Construction phasing has been implemented due to the potential impacts on adjacent residences and businesses, which use this facility to access their property.

#### Detours

The bridge is currently closed to traffic. Detours will not be required.

#### Current Status

Phase 1 is beginning and Phase 3 will be initiated upon receipt of funding approval of the HBP funds. The E-76 authorization for Preliminary Engineering has been received by the City. The engineering consultant will be issued a Notice to Proceed upon execution of the Agreement.

#### Contact

For inquiries, you may contact Scott Mozier, P.E., with the City of Fresno Public Works Dept. at (559) 621-8650.





## EXHIBIT C - PROJECT FUNDING PROGRAM

### Urban Project G – Monterey Street Bridge Rehabilitation

#### Responsible Agency

City of Fresno

#### Project Limits

The project limits include the Monterey Street Bridge between Golden State Boulevard and Broadway Street.

**Project Phase** *(Choose all applicable to this Agreement - funding for the phase(s) must be fully funded at the time that the agreement is approved by the Authority and the Responsible Agency)*

- Phase 1 - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 – Right-of-Way Acquisition
- Phase 3 – Construction *(Includes Project Construction & Construction Management)*

#### Contact

For inquiries, you may contact Scott Mozier, P.E., with the City of Fresno Public Works Dept. at (559) 621-8650.

#### Funding Program *(\$ in millions)*

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING	
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14								
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14		
Preliminary Engineering <sup>1</sup>			\$0.000	\$0.000	\$0.773	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.773
<b>FUNDING PROGRAM</b>												
Measure "C" Original Program												\$0.000
Measure "C" Extension					\$0.155							\$0.155
RTMF												\$0.000
STIP												\$0.000
TCRP												\$0.000
Local Development Fees												\$0.000
Federal Aid					\$0.618							\$0.618
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
<b>TOTAL FUNDING PHASE 1:</b>			\$0.000	\$0.000	\$0.773	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.773

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING	
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14								
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14		
Right-of-Way <sup>2</sup>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>FUNDING PROGRAM</b>												
Measure "C" Original Program												\$0.000
Measure "C" Extension												\$0.000
RTMF												\$0.000
STIP												\$0.000
TCRP												\$0.000
Local Development Fees												\$0.000
Federal Aid												\$0.000
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
<b>TOTAL FUNDING PHASE 2:</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING	
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14								
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14		
Construction <sup>3</sup>	2011/12	2012/13	\$0.000	\$0.000	\$0.000	\$0.000	\$7.234	\$0.000	\$0.000	\$0.000	\$0.000	\$7.234
<b>FUNDING PROGRAM</b>												
Measure "C" Original Program												\$0.000
Measure "C" Extension							1.447					\$1.447
RTMF												\$0.000
STIP												\$0.000
TCRP												\$0.000
Local Development Fees												\$0.000
Federal Aid							5.787					\$5.787
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
<b>TOTAL FUNDING PHASE 3:</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$7.234	\$0.000	\$0.000	\$0.000	\$0.000	\$7.234
<b>TOTAL FUNDING ALL PHASES:</b>			\$0.000	\$0.000	\$0.773	\$0.000	\$7.234	\$0.000	\$0.000	\$0.000	\$0.000	\$8.007

<sup>1</sup> Preliminary Engineering - Preliminary Design Engineering (PSE) - Environmental

<sup>2</sup> Right-of-Way Acquisition

<sup>3</sup> Project Construction & Construction Management



**MEASURE "C"**  
**COOPERATIVE PROJECT AGREEMENT**  
**Short-Term Regional Transportation Program**  
**(Project H-1 Urban, California Avenue Widening from**  
**West Avenue to Fruit Avenue)**

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **June 1<sup>st</sup>, 2009**, by and between the City of Fresno ("**Responsible Agency**") and the Fresno County Transportation Authority ("**Authority**").

**RECITALS**

WHEREAS, Authority and Responsible Agency desire to enter into an Agreement for funding of a transportation improvement project in Fresno County pursuant to the Measure "C" Short-Term Regional Transportation Program Handbook ("**Handbook**"), and the Fresno County Measure "C" Expenditure Plan ("**Expenditure Plan**"), which was approved by the voters of Fresno County in November 2006; and,

WHEREAS, Responsible Agency desires to receive eligible Measure "C" Regional Transportation Program ("**Measure "C"**") and Regional Transportation Mitigation Fee ("**RTMF**") funding (as applicable) from the Authority for the **H-1 Urban, California Avenue Widening from West Avenue to Fruit Avenue** ("**Project**") as specified in the Handbook and consistent with the Tier 1 list of Regional Transportation Program projects referenced in the Expenditure Plan; and

WHEREAS, Authority is authorized to approve Project funding for payment to Responsible Agency in accordance with this Agreement, the Handbook and the Expenditure Plan regarding the Project ; and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$ 2,200,000** of Measure "C" funding.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

## AGREEMENT

### SECTION I

#### Covenants of Responsible Agency

Responsible Agency agrees to abide by the terms and conditions of this Agreement for the receipt of Measure "C" and RTMF funds (as applicable) and to comply with the Expenditure Plan, Handbook, and adopted Policies and Procedures, as well as any subsequent amendments, updates, or other applicable plans.

**1.1 Project Scope, Schedule and Funding Program.** The Project scope of work, schedule and funding program, as well as any change thereto may not be implemented or initiated until it has been approved by the Authority in accordance with the Handbook. For purposes of this Agreement, the Project scope, schedule and funding program is as defined and described in the Handbook and as further described below. The Responsible Agency must demonstrate in the funding program that the Project or Project phase is fully funded.

1.1.1 Project Scope. See Exhibit "A"

1.1.2 Project Schedule. See Exhibit "B"

1.1.3 Project Funding Program. See Exhibit "C"

**1.2 Eligible Project Costs.** Notwithstanding any provisions of Section 1.1 of this Agreement, the Authority reserves the right to consider on a case by case basis, eligible costs incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority. Eligible Project costs shall be equal to or less than Measure "C" and RTMF funds (as applicable) allocated to a Project as specified in Section 1.1.3 of this Agreement and in the Handbook. State Transportation Improvement Program (STIP) or other funding allocations (other than Measure "C" and RTMF) identified in the Handbook are considered "other" contributions available to the Project. The Responsible Agency must match Measure "C" funds with other such funds consistent with the funding program referenced in Section 1.1.3 of this Agreement and consistent with the Handbook and Expenditure Plan.

NOTE: Expenses incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority for a currently active project, are incurred at the risk of the Responsible Agency.

**1.3 Compliance with California PUC Code 142257.** Responsible Agency agrees to the following:

1.3.1 Measure "C" funds will not be used to substitute for property tax funds, which the Responsible Agency had previously used for regional or other transportation purposes. It is hereby acknowledged by Responsible Agency that such substitution of property tax funds is expressly prohibited by California Public Utilities Code Section 142257.

1.3.2 The Responsible Agency has segregated property tax revenues from its other general fund revenues used to support the Project so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to the Responsible Agency's entire general fund.

1.3.3 Responsible Agency shall account for Project funds received pursuant to Public Utilities Code Section 142257. Responsible Agency shall maintain current records in accordance with generally accepted accounting principles, and shall separately record expenditures for each type of eligible purpose. Responsible Agency shall make such records available to the Authority for inspection or audit at any time.

**1.4 Compliance with Other Laws.** In performance of its obligations relating to administration and completion of the Project, Responsible Agency shall at all times comply with all federal, state and local laws, ordinances and regulations currently in force as well as those that are subsequently enacted, promulgated or amended and thereby become applicable during the term of this Agreement.

**1.5 Measure "C" Funds Defined.** For purposes of this Agreement, eligible Project Measure "C" and RTMF funds (as applicable) are deemed available as of the effective date of this Agreement. Eligible Project costs shall be equal to or less than the amount of funding available for the Project on a fiscal year basis as specified in the Handbook and in Section 1.1.3 of this Agreement. In no case shall the total amount of Measure "C" or RTMF funds for the Project in the Handbook or referenced in Section 1.1.3 of this Agreement be exceeded without written amendment to this Agreement and to the Handbook.

- 1.6 Invoices.** The Responsible Agency shall submit invoices to the Authority no more frequently than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:
- 1.6.1 Monitoring Expenditures and Progress Payments. The Responsible Agency will monitor expenditures and progress payments against the "not to exceed" limits specified in Section 1.1.3 of this Agreement.
  - 1.6.2 Project Progress. If Project costs have not been invoiced for a six-month period, Responsible Agency agrees to submit a written explanation of the absence of the Project's progress to the Authority, along with a target billing date and a target billing amount.
  - 1.6.3 Direct and Indirect Costs. Responsible Agency may include in the Project invoice, direct and indirect costs of the Project. Indirect costs (as defined by OMB Circular A-87) will be considered an eligible expense.
  - 1.6.4 Copies of Invoices. Responsible Agency shall provide the Authority with one (1) copy of appropriate source documentation to substantiate Project expenses or costs.
  - 1.6.5 Eligible Project Cost Request Deadline. Invoices for eligible Project costs incurred by the Responsible Agency shall be submitted to the Authority on the approved form. The appropriation request will specify the use of the funding and the manner in which local matching funds were applied. The Authority's Executive Director will review invoices for accuracy and sufficiency in terms of compliance with the foregoing requirements. Unsatisfactory or inadequate invoices will be returned to the Responsible Agency for correction and resubmission. Upon receipt of a proper invoice, eligible Measure "C" and RTMF funds (as applicable) shall be provided to the Responsible Agency within 45 days.
  - 1.6.6 Use of Funds. Responsible Agency shall use Measure "C" and RTMF funds (as applicable) consistent with the Expenditure Plan, Handbook, and Section 1.1.1 of this Agreement.
- 1.7 Reporting Form.** Responsible Agency will indicate in the invoice form, its intent to complete and return the Annual Reporting Form (reference Appendix C in the Handbook) to the Authority no later than October 15<sup>th</sup> of each year. If

the Responsible Agency does not return the Annual Reporting Form to the Authority by that deadline, the Authority will withhold Measure "C" and RTMF funds (as applicable) until such time as the form is returned by the Responsible Agency and reviewed for correctness by the Authority.

## **1.8 Cost Savings and Excess Costs.**

1.8.1 Cost Savings. After the Project has been accepted by the Responsible Agency as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.1.3 and the total amount invoiced to the Authority shall be considered Project cost savings and shall be reprogrammed to other Tier 1 projects by Fresno COG and the Authority as provided in the Handbook, as amended or updated.

1.8.2 Excess Costs. In the event the actual total Project costs exceed the estimate approved by the Authority, this amount will be considered an Excess Cost.

1.8.3 Reconciliation of Excess Costs. In the event that costs to complete the Project exceed the total amount of funds programmed, the Responsible Agency will be fiscally responsible for the full amount of Excess Costs associated with the Project, unless otherwise agreed by the parties pursuant to Section 2.3 of this Agreement.

1.9 **Project Management/Formation of Project Development Team (PDT).** To ensure that the Project is implemented in a timely manner and consistent with the Handbook and Expenditure Plan, a Project Development Team (PDT) shall be formed under the control of the Responsible Agency. The Responsible Agency will form, notice, conduct and administer the PDT for the Project. The PDT formed for the Project shall include a staff member from both the Authority and Fresno COG.

1.10 **Award of Project.** The Responsible Agency shall administer the Project, including but not limited to its advertisement and award of all contracts, in accordance with applicable legal requirements as provided above in Section 1.4 and in full conformity with the standards applied by Responsible Agency in the administration of its own road construction projects.

- 1.11 Maintenance of Project Records.** Responsible Agency shall maintain complete and accurate records with respect to costs addressed in Section 1.1.3 of this Agreement. All such records shall be maintained on a generally-accepted accounting basis and be clearly identified and readily accessible. Responsible Agency shall provide free access to the Authority at all times to such books and records. Responsible Agency shall maintain all work data, documents, and proceedings of this Agreement for a period of five (5) years from the date of final audit from the Authority.
- 1.12 Project Groundbreaking and Ribbon Cutting Ceremonies.** Responsible Agency shall acknowledge Measure "C" funding contribution to the Project at the groundbreaking and ribbon cutting ceremony should the Responsible Agency conduct such a ceremony. Groundbreaking and ribbon cutting ceremonies are encouraged, but not required. The costs of all ceremonies will be considered a project construction expense.
- 1.13 Project Signage.** Responsible Agency shall provide signage at construction sites or on equipment, as appropriate, for the projects funded partially or wholly by Measure "C" sales tax revenue included in the Handbook so that Fresno County Taxpayers are informed as to how funds are being used. The signage shall be in conformance with specifications approved by and on file with the Authority, and included in Appendix D in the Handbook.

## SECTION II

### Covenants of Authority

Authority agrees to provide Measure "C" and RTMF funds to the Responsible Agency for eligible Project costs in accordance with the terms and conditions set forth herein, and in compliance with the Expenditure Plan, the Handbook, all Measure "C" Policies and Procedures, as well as any subsequent amendments or updates, and to other applicable plans and programs.

**2.1 Eligible Project Cost Payments.** The Authority shall make payments to Responsible Agency for actual incurred eligible Project costs as specified in Section 1.1.3 of this Agreement and consistent with the Handbook. To receive payments for Project work completed, the Responsible Agency shall comply with the following procedures:

2.1.1 Ineligible Costs. The Authority reserves the right to recover payment made to the Responsible Agency if payment made on an invoice includes ineligible Project costs.

2.1.2 Payment Amount. The amount of Project payments to the Responsible Agency shall be made pursuant to the Handbook and this Agreement.

2.1.3 Suspension of Payment. Payments for eligible Project costs shall be suspended without interest when a dispute arises as to whether or not a cost item(s) is eligible for payment.

2.1.3.1 Dispute Resolution. All disputes shall be settled in accordance with the laws of the State of California. Once a dispute has occurred, the Authority and Responsible Agency shall attempt to resolve the dispute informally in a mutually agreeable manner.

**2.2 Right to Conduct Audit.** The Authority shall have the right to conduct an audit of all Responsible Agency's records pertaining to the Project at any time following completion of the Project.

2.2.1 Notice of Audit. The Authority shall provide at least 30 days' advance notice to the Responsible Agency if an audit is to be conducted.

- 2.3 Reconciliation of Excess Costs.** Excess project costs to complete a Project are not eligible for reimbursement. The amount of Measure "C" and RTMF funds identified in Section 1.1.3 of this Agreement and in the Handbook are the maximum funds available for reimbursement to the Responsible Agency and will not be exceeded by the Responsible Agency without an approved amendment to this Agreement. If needed for that purpose, the Responsible Agency shall make a written request to the Authority for an amendment to this Agreement. Any such amendment shall constitute an effective modification of this Agreement only if signed and approved by duly authorized representatives of both the Authority and the Responsible Agency.

### SECTION III

#### Mutual Covenants

The Authority is released from any liability to Responsible Agency regarding the Authority's administration and issuance of the Measure "C" and RTMF proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan and Handbook.

- 3.1 Effective Date and Term.** This Agreement shall become effective as of the date of its execution by the Authority and Responsible Agency and shall remain in full force and effect through **December 31, 2010**, unless earlier terminated as provided in Section 3.2 or in Section 3.4 of this Agreement.

- 3.2 Discharge.** This Agreement shall be subject to discharge as follows:

3.2.1 Termination of Mutual Consent. This Agreement may be terminated at any time by mutual consent of Responsible Agency and Authority. If this Agreement is mutually terminated by the parties, Responsible Agency will no longer receive Measure "C" or RTMF funds (as applicable) unless a new agreement between Responsible Agency and Authority is formed.

3.2.2 Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified herein below in Section 3.14 ("Survival"), this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.2.3 Termination by Authority. The Authority reserves the right to terminate the Agreement at any time by giving written notice to Responsible Agency of such termination and specifying the effective date thereof, provided that the effective date of termination shall be at least 10 days after the date Authority sends written notice of termination. If this Agreement is terminated by the Authority as provided herein, Responsible Agency will be paid by the Authority for eligible Project costs incurred prior to the effective date of termination of the Agreement consistent with the funding program contained in Section 1.1.3 and in the Handbook. In that event, all finished or unfinished documents and other materials shall, at the option of the Authority, become its property subject to the terms and conditions of Section 1.11 of this Agreement.

3.3 Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Responsible Agency:

3.3.1 Responsible Agency shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any and all damages, liabilities, claims and expenses, arising out of Responsible Agency's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Responsible Agency shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Responsible Agency under this Agreement or in connection with any work, authority, or jurisdiction delegated to Responsible Agency under this Agreement.

3.3.2 Authority shall fully defend, indemnify and hold harmless Responsible Agency, and any officer or employee of Responsible Agency, against any and all damages, liabilities, claims and expenses, arising out of Authority's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold the Responsible Agency harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by

Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

**3.4** **Limitation.** All obligations of the Authority under the terms of this Agreement are expressly subject to the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure "C" and RTMF funds. If for any reason the Authority's right to collect or expend such sales tax and RTMF proceeds is terminated or suspended in whole or part, the Authority shall promptly notify the Responsible Agency, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any future obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the Authority to expend sales tax or RTMF proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of the Authority under all outstanding contracts, agreements to other obligations of the Authority, of funds for such purposes.

**3.5** **Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**AUTHORITY:**

**With A Copy To:**

Mr. Ron Peterson, Executive Dir.  
Fresno County Transportation Authority  
2220 Tulare Street, Suite 411  
Fresno, CA 93721  
Ph: (559) 453-5023 Fax: (559) 488-3303

**RESPONSIBLE AGENCY:**

Mr. Patrick Wiemiller, Public Works Director  
City of Fresno, Public Works Department  
2600 Fresno Street, 4<sup>th</sup> Floor  
Ph: (559) 621-8650 Fax: (559) 488-1045  
FAX Number

3.5.1 Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received

on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

- 3.6 Additional Acts and Documents.** Each party agrees to do all such things and take all actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.
- 3.7 Integration.** This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. NO representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 3.8 Amendment.** This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 3.9 Independent Agency.** Responsible Agency renders services under this Agreement as an independent agency under the Agreement. None of the Responsible Agency's agents or employees shall be agents or employees of the Authority and none of the Authority's agents or employees shall be agents or employees of Responsible Agency.
- 3.10 Assignment.** The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of all parties hereto.
- 3.11 Binding on Successors.** This Agreement shall be binding upon each of the parties and their respective successor(s), assignee(s) or transferee(s). Provided however that this provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement, other than as provided in the immediately preceding Section 3.10 of this Agreement.
- 3.12 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

- 3.13 Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14 Survival.** The following provisions in this Agreement shall survive discharge:
- 3.14.1 Responsible Agency. As to Responsible Agency, the following sections of this Agreement shall survive discharge: Section 1.6 ("Invoices") and Section 1.9 ("Project Management/Formation of Project Development Team").
- 3.14.2 Authority. As to Authority, the following sections of this Agreement shall survive discharge: Section 2.2 ("Right to Conduct Audit").
- 3.15 Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- 3.16 Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
- 3.17 Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Fresno County, California.
- 3.18 Captions.** The captions in this Agreement are for convenience only and are not intended to and shall not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.
- 3.19 No Continuing Waiver.** The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
- 3.20 No Rights in Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement

on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

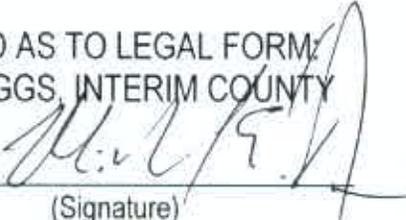
- 3.21 Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 Attorney's Fees and Costs.** Authority and Responsible Agency will bear their own respective costs, including attorney's fees, in connection with any legal proceedings related to the interpretation or enforcement of this Agreement or any of the terms and conditions hereof.
- 3.23 Exhibits and Recitals.** The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 3.24 Signator's Warranty.** Each signatory to this Agreement warrants to the other party that he or she is fully authorized and competent to execute this Agreement in the capacity indicated by his or her signature, and each party agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each party's authorized representatives.
- 3.25 Force Majuere.** Any party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by federal, state or local government; national fuel shortage; or a material act or omission by any party; when satisfactory evidence of such cause is presented to that other party, and provided further such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

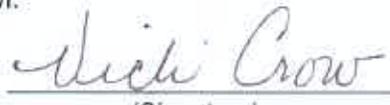
IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

**FRESNO COUNTY TRANSPORTATION AUTHORITY**

By   
(Signature)  
Name \_\_\_\_\_  
(Typed)  
Title Chair of the Authority

ATTEST  
By   
(Signature)  
Name \_\_\_\_\_  
(Typed)  
Title Executive Director

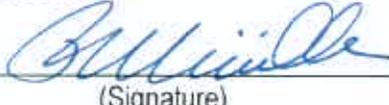
APPROVED AS TO LEGAL FORM:  
KEVIN BRIGGS, INTERIM COUNTY  
COUNSEL  
By   
(Signature)  
Name \_\_\_\_\_  
(MICHAEL E ROWE)

APPROVED AS TO ACCOUNTING  
FORM:  
By   
(Signature)  
Name \_\_\_\_\_  
(VICKI CROW)

Title Senior Deputy County Counsel

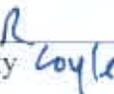
Title Auditor-Controller/Treasurer-Tax  
Collector

**City of Fresno**

By   
(Signature)  
Name \_\_\_\_\_  
(PATRICK N. WIEMILLER)  
Title Public Works Director

By , Deputy  
(Signature)  
Name Jennifer Morelos  
(REBECCA E. KLISCH)  
Title City Clerk

APPROVED AS TO FORM  
JAMES SANCHEZ, City Attorney

BY:  5-07-09  
Deputy Coyle



## EXHIBIT A – PROJECT SCOPE

### Urban Project H-1 – California Avenue Widening, West Avenue to Fruit Avenue



#### Responsible Agency

City of Fresno

#### Project Limits

The project limits include 2 miles of added travel lanes on California Avenue between West Avenue and Fruit Avenue, and eastbound transition paving along the western approach to the project.

#### Project Phase

- Phase 1 - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction *(Includes Project Construction & Construction Management)*

#### Project Phase(s) Scope

This project is to widen California Avenue to an arterial street with four lanes and a landscaped median. Scope of the project involves reconstruction of California Avenue between West and Fruit Avenues and the westerly approach transition to the project. This project also includes bike lanes, streetlights, street trees, curb, gutter, sidewalks, flood control facilities and ADA curb ramps.

#### Complete Project Scope

Phase 1 and Phase 2 have been completed and no Federal funds were utilized for any of the phases. Phase 1 involved preparation of PS&E and CEQA compliance. A Finding of Conformity with the adopted City of Fresno 2025 General Plan was filed with the County Clerk in August 2008. All Phase 1 work which involves PS&E was finalized in March 2009 using local funds. Phase 2 involved the processing and partial acquisition of 12 parcels along the north and south side of California Avenue between West and Fruit Avenues. Two partial right of way acquisitions west of West Avenue were acquired for the transitions. Of the 14 partial right of way acquisitions, 3 parcels were dedicated by the Housing Authority for street right of way purposes. Phase 2 was fully funded with local dollars.

#### Project Purpose

The purpose of this project is to provide street improvements to improve mobility, improve safety and to address both existing and future traffic demands along California Avenue. The road improvements complement the Hope VI housing project under construction by the Housing Authority using a \$25 million federal grant.

#### Transportation Benefit

The California Avenue project is expected to reduce traffic congestion thereby improving air quality, travel time and motorist safety.

#### Implications of Not Doing the Project

Existing California Avenue is a former two lane County road that is in a poor condition and requires total reconstruction. In addition to the poor condition of the road surfacing, the existing roadway is inadequate to serve existing and future traffic. The existing facility lacks adequate accommodations for cyclists and pedestrians.

#### Community Engagement

The project limits are within a moderately populated residential and industrial area. Residents and property owners will be kept informed of the Project's status by the by distributing leaflets prior to commencement of construction.

#### Construction Staging

Construction will be continuous and during construction adjacent residences and businesses will be provided access at all times.

#### Detours

During construction of this Project, traffic will be routed through the construction site in a safe manner.

#### Current Status

Phase 1 and 2 were completed with City funds. Phase 3 is ready to be implemented and funding for this Phase was programmed as of the date of execution of this Agreement.

#### Contact

For inquiries, you may contact Scott Mozier, P.E., City Engineer with the City of Fresno Public Works Dept. at (559) 621-8650.



## EXHIBIT B – PROJECT SCHEDULE

### Urban Project H-1 – California Avenue Widening, West Avenue to Fruit Avenue



#### Responsible Agency

City of Fresno

#### Project Limits

The project limits include 2 miles of added travel lanes on California Ave. between West Avenue and Fruit Avenue, and eastbound transition to the western approach to the project.

#### Project Phase

- Phase 1 - Preliminary Engineering *[Includes Preliminary Design/Engineering (PS&E) and Environmental]*
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction *[Includes Project Construction & Construction Management]*

#### Contact

For inquiries, you may contact Scott Mozier, P.E., City Engineer, with the City of Fresno Public Works Dept. at (559) 621-8650.

#### Project Schedule

PROJECT PHASE	START	END	2008/09												2009/10											
			J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
<b>Prelim. Eng. *1</b>	Prior	Prior																								
1. Prelim. Design																										
2. PS&E																										
3. Environ. Doc.																										
4. Other (Explain)																										
5. Other (Explain)																										
<b>Right-of-Way *2</b>	Prior	Prior																								
1. Parcel Research																										
2. Appraisal																										
3. Acquisition																										
4. Other (Explain)																										
5. Other (Explain)																										
<b>Construction *3</b>	2008/09	2009/10																								
1. Bid Devel.																										
2. Construction																										
3. Constr. Manage.																										

\*1 Preliminary Engineering, Preliminary Design/Engineering (PS&E), Environmental

\*2 Right of Way Acquisition

\*3 Project Construction & Construction Management



## EXHIBIT C - PROJECT FUNDING PROGRAM

### Urban Project H-1 – California Avenue Widening, West Avenue to Fruit Avenue



#### Responsible Agency

City of Fresno

#### Project Limits

The project limits include 2 miles of added travel lanes on California Ave. between West Ave. and Fruit Avenue, and eastbound transition to the western approach to the project.

#### Project Phase

- Phase 1 - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction *(Includes Project Construction & Construction Management)*

#### Contact

For inquiries, you may contact Scott Mozier, P.E., City Engineer, with the City of Fresno Public Works Department at (559) 621-8650.

Funding Program *(\$ in millions)* See Attachment

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14							
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Preliminary Engineering <sup>1</sup>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>FUNDING PROGRAM</b>											
Measure "C" Original Program											\$0.000
Measure "C" Extension											\$0.000
RTMF											\$0.000
STIP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 1:</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14							
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Right-of-Way <sup>2</sup>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>FUNDING PROGRAM</b>											
Measure "C" Original Program											\$0.000
Measure "C" Extension											\$0.000
RTMF											\$0.000
STIP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 2:</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14							
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Construction <sup>3</sup>	2008/09	2009/10	\$0.000	\$0.000	\$2.200	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.200
<b>FUNDING PROGRAM</b>											
Measure "C" Original Program											\$0.000
Measure "C" Extension					2.2						\$2.200
RTMF											\$0.000
STIP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 3:</b>			\$0.000	\$0.000	\$2.200	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.200
<b>TOTAL FUNDING ALL PHASES:</b>			\$0.000	\$0.000	\$2.200	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.200

<sup>1</sup> Preliminary Engineering - Preliminary Design/Engineering (P/E) Excludes

<sup>2</sup> Right-of-Way Acquisition

<sup>3</sup> Project Construction & Construction Management

U

3/31/09  
9:30 am "e"

**MEASURE "C"**  
**COOPERATIVE PROJECT AGREEMENT**  
**Short-Term Regional Transportation Program**  
**(Project I-3 Urban, Peach Avenue SR-180 to Butler Avenue)**

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **June 1<sup>st</sup>, 2009**, by and between the City of Fresno ("**Responsible Agency**") and the Fresno County Transportation Authority ("**Authority**").

**RECITALS**

WHEREAS, Authority and Responsible Agency desire to enter into an Agreement for funding of a transportation improvement project in Fresno County pursuant to the Measure "C" Short-Term Regional Transportation Program Handbook ("**Handbook**"), and the Fresno County Measure "C" Expenditure Plan ("**Expenditure Plan**"), which was approved by the voters of Fresno County in November 2006; and,

WHEREAS, Responsible Agency desires to receive eligible Measure "C" Regional Transportation Program ("**Measure "C"**") and Regional Transportation Mitigation Fee ("**RTMF**") funding (as applicable) from the Authority for the **I-3 Urban, Peach Avenue SR-180 to Butler Avenue** ("**Project**") as specified in the Handbook and consistent with the Tier 1 list of Regional Transportation Program projects referenced in the Expenditure Plan; and

WHEREAS, Authority is authorized to approve Project funding for payment to Responsible Agency in accordance with this Agreement, the Handbook and the Expenditure Plan regarding the Project ; and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$ 5,685,000** of Measure "C" funding.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

## AGREEMENT

### SECTION I

#### Covenants of Responsible Agency

Responsible Agency agrees to abide by the terms and conditions of this Agreement for the receipt of Measure "C" and RTMF funds (as applicable) and to comply with the Expenditure Plan, Handbook, and adopted Policies and Procedures, as well as any subsequent amendments, updates, or other applicable plans.

**1.1 Project Scope, Schedule and Funding Program.** The Project scope of work, schedule and funding program, as well as any change thereto may not be implemented or initiated until it has been approved by the Authority in accordance with the Handbook. For purposes of this Agreement, the Project scope, schedule and funding program is as defined and described in the Handbook and as further described below. The Responsible Agency must demonstrate in the funding program that the Project or Project phase is fully funded.

1.1.1 Project Scope. See Exhibit "A"

1.1.2 Project Schedule. See Exhibit "B"

1.1.3 Project Funding Program. See Exhibit "C"

**1.2 Eligible Project Costs.** Notwithstanding any provisions of Section 1.1 of this Agreement, the Authority reserves the right to consider on a case by case basis, eligible costs incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority. Eligible Project costs shall be equal to or less than Measure "C" and RTMF funds (as applicable) allocated to a Project as specified in Section 1.1.3 of this Agreement and in the Handbook. State Transportation Improvement Program (STIP) or other funding allocations (other than Measure "C" and RTMF) identified in the Handbook are considered "other" contributions available to the Project. The Responsible Agency must match Measure "C" funds with other such funds consistent with the funding program referenced in Section 1.1.3 of this Agreement and consistent with the Handbook and Expenditure Plan.

NOTE: Expenses incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority for a currently active project, are incurred at the risk of the Responsible Agency.

**1.3 Compliance with California PUC Code 142257.** Responsible Agency agrees to the following:

1.3.1 Measure "C" funds will not be used to substitute for property tax funds, which the Responsible Agency had previously used for regional or other transportation purposes. It is hereby acknowledged by Responsible Agency that such substitution of property tax funds is expressly prohibited by California Public Utilities Code Section 142257.

1.3.2 The Responsible Agency has segregated property tax revenues from its other general fund revenues used to support the Project so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to the Responsible Agency's entire general fund.

1.3.3 Responsible Agency shall account for Project funds received pursuant to Public Utilities Code Section 142257. Responsible Agency shall maintain current records in accordance with generally accepted accounting principles, and shall separately record expenditures for each type of eligible purpose. Responsible Agency shall make such records available to the Authority for inspection or audit at any time.

**1.4 Compliance with Other Laws.** In performance of its obligations relating to administration and completion of the Project, Responsible Agency shall at all times comply with all federal, state and local laws, ordinances and regulations currently in force as well as those that are subsequently enacted, promulgated or amended and thereby become applicable during the term of this Agreement.

**1.5 Measure "C" Funds Defined.** For purposes of this Agreement, eligible Project Measure "C" and RTMF funds (as applicable) are deemed available as of the effective date of this Agreement. Eligible Project costs shall be equal to or less than the amount of funding available for the Project on a fiscal year basis as specified in the Handbook and in Section 1.1.3 of this Agreement. In no case shall the total amount of Measure "C" or RTMF funds for the Project in the Handbook or referenced in Section 1.1.3 of this Agreement be exceeded without written amendment to this Agreement and to the Handbook.

- 1.6 Invoices.** The Responsible Agency shall submit invoices to the Authority no more frequently than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:
- 1.6.1 Monitoring Expenditures and Progress Payments. The Responsible Agency will monitor expenditures and progress payments against the "not to exceed" limits specified in Section 1.1.3 of this Agreement.
  - 1.6.2 Project Progress. If Project costs have not been invoiced for a six-month period, Responsible Agency agrees to submit a written explanation of the absence of the Project's progress to the Authority, along with a target billing date and a target billing amount.
  - 1.6.3 Direct and Indirect Costs. Responsible Agency may include in the Project invoice, direct and indirect costs of the Project. Indirect costs (as defined by OMB Circular A-87) will be considered an eligible expense.
  - 1.6.4 Copies of Invoices. Responsible Agency shall provide the Authority with one (1) copy of appropriate source documentation to substantiate Project expenses or costs.
  - 1.6.5 Eligible Project Cost Request Deadline. Invoices for eligible Project costs incurred by the Responsible Agency shall be submitted to the Authority on the approved form. The appropriation request will specify the use of the funding and the manner in which local matching funds were applied. The Authority's Executive Director will review invoices for accuracy and sufficiency in terms of compliance with the foregoing requirements. Unsatisfactory or inadequate invoices will be returned to the Responsible Agency for correction and resubmission. Upon receipt of a proper invoice, eligible Measure "C" and RTMF funds (as applicable) shall be provided to the Responsible Agency within 45 days.
  - 1.6.6 Use of Funds. Responsible Agency shall use Measure "C" and RTMF funds (as applicable) consistent with the Expenditure Plan, Handbook, and Section 1.1.1 of this Agreement.
- 1.7 Reporting Form.** Responsible Agency will indicate in the invoice form, its intent to complete and return the Annual Reporting Form (reference Appendix C in the Handbook) to the Authority no later than October 15<sup>th</sup> of each year. If

the Responsible Agency does not return the Annual Reporting Form to the Authority by that deadline, the Authority will withhold Measure "C" and RTMF funds (as applicable) until such time as the form is returned by the Responsible Agency and reviewed for correctness by the Authority.

## **1.8 Cost Savings and Excess Costs.**

1.8.1 Cost Savings. After the Project has been accepted by the Responsible Agency as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.1.3 and the total amount invoiced to the Authority shall be considered Project cost savings and shall be reprogrammed to other Tier 1 projects by Fresno COG and the Authority as provided in the Handbook, as amended or updated.

1.8.2 Excess Costs. In the event the actual total Project costs exceed the estimate approved by the Authority, this amount will be considered an Excess Cost.

1.8.3 Reconciliation of Excess Costs. In the event that costs to complete the Project exceed the total amount of funds programmed, the Responsible Agency will be fiscally responsible for the full amount of Excess Costs associated with the Project, unless otherwise agreed by the parties pursuant to Section 2.3 of this Agreement.

**1.9 Project Management/Formation of Project Development Team (PDT).** To ensure that the Project is implemented in a timely manner and consistent with the Handbook and Expenditure Plan, a Project Development Team (PDT) shall be formed under the control of the Responsible Agency. The Responsible Agency will form, notice, conduct and administer the PDT for the Project. The PDT formed for the Project shall include a staff member from both the Authority and Fresno COG.

**1.10 Award of Project.** The Responsible Agency shall administer the Project, including but not limited to its advertisement and award of all contracts, in accordance with applicable legal requirements as provided above in Section 1.4 and in full conformity with the standards applied by Responsible Agency in the administration of its own road construction projects.

- 1.11 Maintenance of Project Records.** Responsible Agency shall maintain complete and accurate records with respect to costs addressed in Section 1.1.3 of this Agreement. All such records shall be maintained on a generally-accepted accounting basis and be clearly identified and readily accessible. Responsible Agency shall provide free access to the Authority at all times to such books and records. Responsible Agency shall maintain all work data, documents, and proceedings of this Agreement for a period of five (5) years from the date of final audit from the Authority.
- 1.12 Project Groundbreaking and Ribbon Cutting Ceremonies.** Responsible Agency shall acknowledge Measure "C" funding contribution to the Project at the groundbreaking and ribbon cutting ceremony should the Responsible Agency conduct such a ceremony. Groundbreaking and ribbon cutting ceremonies are encouraged, but not required. The costs of all ceremonies will be considered a project construction expense.
- 1.13 Project Signage.** Responsible Agency shall provide signage at construction sites or on equipment, as appropriate, for the projects funded partially or wholly by Measure "C" sales tax revenue included in the Handbook so that Fresno County Taxpayers are informed as to how funds are being used. The signage shall be in conformance with specifications approved by and on file with the Authority, and included in Appendix D in the Handbook.

## SECTION II

### Covenants of Authority

Authority agrees to provide Measure "C" and RTMF funds to the Responsible Agency for eligible Project costs in accordance with the terms and conditions set forth herein, and in compliance with the Expenditure Plan, the Handbook, all Measure "C" Policies and Procedures, as well as any subsequent amendments or updates, and to other applicable plans and programs.

**2.1 Eligible Project Cost Payments.** The Authority shall make payments to Responsible Agency for actual incurred eligible Project costs as specified in Section 1.1.3 of this Agreement and consistent with the Handbook. To receive payments for Project work completed, the Responsible Agency shall comply with the following procedures:

2.1.1 Ineligible Costs. The Authority reserves the right to recover payment made to the Responsible Agency if payment made on an invoice includes ineligible Project costs.

2.1.2 Payment Amount. The amount of Project payments to the Responsible Agency shall be made pursuant to the Handbook and this Agreement.

2.1.3 Suspension of Payment. Payments for eligible Project costs shall be suspended without interest when a dispute arises as to whether or not a cost item(s) is eligible for payment.

2.1.3.1 Dispute Resolution. All disputes shall be settled in accordance with the laws of the State of California. Once a dispute has occurred, the Authority and Responsible Agency shall attempt to resolve the dispute informally in a mutually agreeable manner.

**2.2 Right to Conduct Audit.** The Authority shall have the right to conduct an audit of all Responsible Agency's records pertaining to the Project at any time following completion of the Project.

2.2.1 Notice of Audit. The Authority shall provide at least 30 days' advance notice to the Responsible Agency if an audit is to be conducted.

- 2.3 Reconciliation of Excess Costs.** Excess project costs to complete a Project are not eligible for reimbursement. The amount of Measure "C" and RTMF funds identified in Section 1.1.3 of this Agreement and in the Handbook are the maximum funds available for reimbursement to the Responsible Agency and will not be exceeded by the Responsible Agency without an approved amendment to this Agreement. If needed for that purpose, the Responsible Agency shall make a written request to the Authority for an amendment to this Agreement. Any such amendment shall constitute an effective modification of this Agreement only if signed and approved by duly authorized representatives of both the Authority and the Responsible Agency.

## SECTION III

### Mutual Covenants

The Authority is released from any liability to Responsible Agency regarding the Authority's administration and issuance of the Measure "C" and RTMF proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan and Handbook.

- 3.1 Effective Date and Term.** This Agreement shall become effective as of the date of its execution by the Authority and Responsible Agency and shall remain in full force and effect through **December 31, 2014**, unless earlier terminated as provided in Section 3.2 or in Section 3.4 of this Agreement.
- 3.2 Discharge.** This Agreement shall be subject to discharge as follows:
- 3.2.1 Termination of Mutual Consent. This Agreement may be terminated at any time by mutual consent of Responsible Agency and Authority. If this Agreement is mutually terminated by the parties, Responsible Agency will no longer receive Measure "C" or RTMF funds (as applicable) unless a new agreement between Responsible Agency and Authority is formed.
- 3.2.2 Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified herein below in Section 3.14 ("Survival"), this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.2.3 Termination by Authority. The Authority reserves the right to terminate the Agreement at any time by giving written notice to Responsible Agency of such termination and specifying the effective date thereof, provided that the effective date of termination shall be at least 10 days after the date Authority sends written notice of termination. If this Agreement is terminated by the Authority as provided herein, Responsible Agency will be paid by the Authority for eligible Project costs incurred prior to the effective date of termination of the Agreement consistent with the funding program contained in Section 1.1.3 and in the Handbook. In that event, all finished or unfinished documents and other materials shall, at the option of the Authority, become its property subject to the terms and conditions of Section 1.11 of this Agreement.

3.3 Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Responsible Agency:

3.3.1 Responsible Agency shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any and all damages, liabilities, claims and expenses, arising out of Responsible Agency's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Responsible Agency shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Responsible Agency under this Agreement or in connection with any work, authority, or jurisdiction delegated to Responsible Agency under this Agreement.

3.3.2 Authority shall fully defend, indemnify and hold harmless Responsible Agency, and any officer or employee of Responsible Agency, against any and all damages, liabilities, claims and expenses, arising out of Authority's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold the Responsible Agency harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by

Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

**3.4 Limitation.** All obligations of the Authority under the terms of this Agreement are expressly subject to the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure "C" and RTMF funds. If for any reason the Authority's right to collect or expend such sales tax and RTMF proceeds is terminated or suspended in whole or part, the Authority shall promptly notify the Responsible Agency, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any future obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the Authority to expend sales tax or RTMF proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of the Authority under all outstanding contracts, agreements to other obligations of the Authority, of funds for such purposes.

**3.5 Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**AUTHORITY:**

**With A Copy To:**

Mr. Ron Peterson, Executive Dir.  
Fresno County Transportation Authority  
2220 Tulare Street, Suite 411  
Fresno, CA 93721  
Ph: (559) 453-5023 Fax: (559) 488-3303

**RESPONSIBLE AGENCY:**

Mr. Patrick Wiemiller, Public Works Director  
City of Fresno, Public Works Department  
2600 Fresno Street, 4<sup>th</sup> Floor  
Ph: (559) 621-8650 Fax: (559) 488-1045  
FAX Number

3.5.1 Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received

on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

- 3.6 Additional Acts and Documents.** Each party agrees to do all such things and take all actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.
- 3.7 Integration.** This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. NO representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 3.8 Amendment.** This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 3.9 Independent Agency.** Responsible Agency renders services under this Agreement as an independent agency under the Agreement. None of the Responsible Agency's agents or employees shall be agents or employees of the Authority and none of the Authority's agents or employees shall be agents or employees of Responsible Agency.
- 3.10 Assignment.** The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of all parties hereto.
- 3.11 Binding on Successors.** This Agreement shall be binding upon each of the parties and their respective successor(s), assignee(s) or transferee(s). Provided however that this provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement, other than as provided in the immediately preceding Section 3.10 of this Agreement.
- 3.12 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

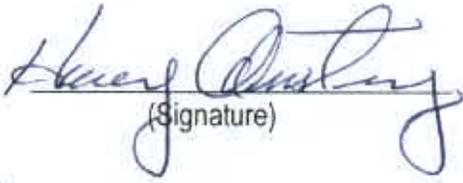
- 3.13 Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14 Survival.** The following provisions in this Agreement shall survive discharge:
- 3.14.1 **Responsible Agency.** As to Responsible Agency, the following sections of this Agreement shall survive discharge: Section 1.6 ("Invoices") and Section 1.9 ("Project Management/Formation of Project Development Team").
- 3.14.2 **Authority.** As to Authority, the following sections of this Agreement shall survive discharge: Section 2.2 ("Right to Conduct Audit").
- 3.15 Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- 3.16 Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
- 3.17 Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Fresno County, California.
- 3.18 Captions.** The captions in this Agreement are for convenience only and are not intended to and shall not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.
- 3.19 No Continuing Waiver.** The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
- 3.20 No Rights in Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement

on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

- 3.21 Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 Attorney's Fees and Costs.** Authority and Responsible Agency will bear their own respective costs, including attorney's fees, in connection with any legal proceedings related to the interpretation or enforcement of this Agreement or any of the terms and conditions hereof.
- 3.23 Exhibits and Recitals.** The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 3.24 Signator's Warranty.** Each signatory to this Agreement warrants to the other party that he or she is fully authorized and competent to execute this Agreement in the capacity indicated by his or her signature, and each party agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each party's authorized representatives.
- 3.25 Force Majuere.** Any party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by federal, state or local government; national fuel shortage; or a material act or omission by any party; when satisfactory evidence of such cause is presented to that other party, and provided further such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

**FRESNO COUNTY TRANSPORTATION AUTHORITY**

By   
(Signature)

Name \_\_\_\_\_  
(Typed)

Title Chair of the Authority

ATTEST By   
(Signature)

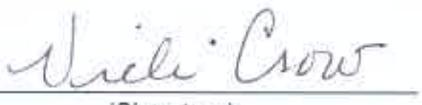
Name \_\_\_\_\_  
(Typed)

Title Executive Director

APPROVED AS TO LEGAL FORM:  
KEVIN BRIGGS, INTERIM COUNTY  
COUNSEL  
By   
(Signature)

Name \_\_\_\_\_  
(MICHAEL E ROWE)

Title Senior Deputy County Counsel

APPROVED AS TO ACCOUNTING  
FORM:  
By   
(Signature)

Name \_\_\_\_\_  
(VICKI CROW)

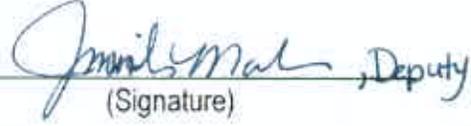
Title Auditor-Controller/Treasurer-Tax  
Collector

**City of Fresno**

By   
(Signature)

Name \_\_\_\_\_  
(PATRICK N. WIEMILLER)

Title Public Works Director

By , Deputy  
(Signature)

Name Jennifer Morelos  
(REBECCA E. KLISCH)

Title City Clerk

APPROVED AS TO FORM  
JAMES SANCHEZ, City Attorney

BY:  5-07-09  
Deputy Gayle



# EXHIBIT A – PROJECT SCOPE

## Urban Project I-3 – Peach Ave. Widening, SR 180 to Butler Ave.



### Responsible Agency

City of Fresno

### Project Limits

The project limits include 1.5 miles of added travel lanes on Peach Ave. between State Route 180 and Butler Ave.

### Project Phase *(Choose the Project Phase(s) applicable to this Agreement)*

- Phase 1 - Preliminary Engineering *[Includes Preliminary Design/Engineering (PS&E) and Environmental]*
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction *[Includes Project Construction & Construction Management]*

### Project Phase(s) Scope *(Provide detail to describe the Phase(s) that is the subject of this Agreement as checked above)*

The ultimate project will widen Peach Ave. from two lanes to a divided four-lane arterial with median landscaping, protected-left-turn-lanes, bike lanes, curb and gutter, sidewalk, landscaping, streetlights, modifications of existing traffic signal facilities and a installation of new traffic signal at Peach Ave. and Huntington Blvd., relocation and restoration of property fence lines, and relocation and replacement of existing palm and olive trees. Phase 1 includes preparation of the environmental document to comply with CEQA requirements. No federal funds are involved with this project; therefore NEPA processing is not required. Phase 1 also involves the preparation of construction documents including engineer's estimates for construction. Phase 2 involves the appraisal, acquisition processing and purchase of property for street right-of-way purposes involving 40 parcels, of which 10 are full-take acquisitions. Phase 3 involves construction of the Project, traffic detours using major cross streets and providing access to residences and businesses adjacent to Peach Ave. in the Project area, and Construction Management activities associated with the Project. This agreement encompasses Phase 1 & 2 only.

### Complete Project Scope *(Provide detail to describe all phases of the Project - It is important for the Authority to understand the scope of the entire Project, not just the Project phase(s) that is described above)*

Phase 1 involved development and completion of an Initial Study and a Mitigated Negative Declaration and received discretionary approval at the January 2009 CTC meeting. Phase 1 is currently in the 60% design phase and consists of preparation of PS&E. Phase 2 includes the processing and acquisition of ROW for 40 parcels along Peach Ave. between Kings Canyon Rd. and Belmont Ave. Phase 3 will be initiated after completion of Phase 2 and relocation of existing utilities by PG&E. Phase 3 involves construction of the Project, the associate traffic control operations and construction management activities.

### Project Purpose

The purpose of this project is to provide for improved mobility by increasing capacity along Peach Avenue between Butler Ave. and State Route 180.

### Transportation Benefit

The project is expected to improve air quality, reduce traffic congestion thereby improving travel time, and motorist and pedestrian safety.

### Implications of Not Doing the Project

It was determined in various traffic studies that the existing number of travel lanes along Peach Avenue will not be sufficient to accommodate the traffic demands in the Year 2025. According to the traffic study conducted by URS Corporation, the expected volume along the Project in the Year 2025 will be 29,000 vehicles per day and 1,200 during the PM Peak Hour. Based on the expected future volumes, without the Project, the Level of Service (LOS) is expected to be LOS "F". With the Project, the expected LOS is projected to be LOS "D".

### Community Engagement

The project limits are within a moderately populated residential and commercial area. Residents and property owners will be kept informed of the Project's status and schedule through Project newsletters, the City's website and local media.

### Construction Staging

Construction phasing may be implemented due to the potential impacts on adjacent residences, businesses, schools, which use this street to access their property.

#### Detours

During construction of this Project, traffic will be routed to north/south arterials Willow and Minnewawa Avenues, and east/west arterials Kings Canyon Road, Tulare and Belmont Avenues. Access to residences, businesses, and schools adjacent to Peach Avenue will be provided and maintained throughout construction.

#### Current Status

The Environmental portion of Phase 1 is complete and we are currently into the 60% design phase for this project. Application for approval of the Phase 2 allocation along with a Letter of No Prejudice is being prepared for the May 2009 California Transportation Commission agenda. Funding for this Phase was programmed as of the date of execution of this Agreement. Phase 3 construction will be initiated after completion of Phase 2 and relocation of existing utilities by PG&E and will involve a separate agreement.

#### Contact

For inquiries, you may contact Scott Mozier, P.E., City Engineer, with the City of Fresno Public Works Dept. at (559) 621-8650.







# EXHIBIT C - PROJECT FUNDING PROGRAM

## Urban Project I-3 – Peach Ave. Widening, SR 180 to Butler Ave.

**Responsible Agency**  
City of Fresno

**Project Limits**

The project limits include 1.5 miles of added travel lanes on Peach Ave. between State Route 180 and Butler Ave.

**Project Phase** (Choose all applicable to this Agreement - funding for the phase(s) must be fully funded at the time that the agreement is approved by the Authority and the Responsible Agency)

- Phase 1 - Preliminary Engineering (Includes Preliminary Design/Engineering (PS&E) and Environmental)
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction (Includes Project Construction & Construction Management)

**Contact**

For inquiries, you may contact Scott Mozier, P.E., City Engineer, with the City of Fresno Public Works Dept. at (559) 621-8650.

**Funding Program (\$ in millions)**

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING	
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14								
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14		
<b>PRELIMINARY ENGINEERING FUNDING PROGRAM</b>	Prior	2009/10	\$0.600	\$0.000	\$0.200	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.800
Measure "C" Original Program												\$0.000
Measure "C" Extension					\$0.200							\$0.200
STIP												\$0.000
TCRP												\$0.000
Local Development Fees			\$0.600									\$0.600
Federal Aid												\$0.000
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
<b>TOTAL FUNDING PHASE 1</b>			\$0.600	\$0.000	\$0.200	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.800
<b>RIGHT-OF-WAY ACQUISITION FUNDING PROGRAM</b>	2008/09	2010/11	\$1.400	\$0.000	\$4.211	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$5.611
Measure "C" Original Program												\$0.000
Measure "C" Extension					\$4.211							\$4.211
STIP												\$0.000
TCRP												\$0.000
Local Development Fees			\$1.400									\$1.400
Federal Aid												\$0.000
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
<b>TOTAL FUNDING PHASE 2</b>			\$1.400	\$0.000	\$4.211	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$5.611
<b>CONSTRUCTION FUNDING PROGRAM</b>	2011/12	2012/13	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.374
Measure "C" Original Program												\$0.000
Measure "C" Extension										1.274		\$1.274
STIP												\$0.000
TCRP												\$0.000
Local Development Fees										8.000		\$8.000
Federal Aid												\$0.000
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
<b>TOTAL FUNDING PHASE 3</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$1.274	\$8.000	\$9.274
<b>TOTAL FUNDING ALL PHASES</b>			\$2.000	\$0.000	\$4.411	\$0.000	\$0.000	\$0.000	\$0.000	\$1.274	\$8.000	\$14.685

1 - Preliminary Engineering (Includes Preliminary Design/Engineering (PS&E) and Environmental)  
2 - Right of Way Acquisition  
3 - Project Construction & Construction Management



PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING	
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14								
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14		
Construction <sup>3</sup>	2011/12	2012/13	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$9.274	\$0.000	\$9.274
<b>FUNDING PROGRAM</b>												
Measure "C" Original Program												\$0.000
Measure "C" Extension										1.274		\$1.274
RTMF												\$0.000
STIP												\$0.000
TCRP										\$8.000		\$8.000
Local Development Fees												\$0.000
Federal Aid												\$0.000
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
<b>TOTAL FUNDING PHASE 3:</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$9.274	\$0.000	\$9.274
<b>TOTAL FUNDING ALL PHASES:</b>			\$2.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$9.274	\$0.000	\$15.685

<sup>1</sup> Preliminary Engineering - Preliminary Design/Engineering (PSE), Environmental

<sup>2</sup> Right-of-Way Acquisition

<sup>3</sup> Project Construction & Construction Management

**MEASURE "C"**  
**COOPERATIVE PROJECT AGREEMENT**  
**Short-Term Regional Transportation Program**  
**(Project N-1 Urban, Veterans Boulevard SR- 99**  
**Interchange and Grade Separation)**

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **June 1<sup>st</sup>, 2009**, by and between the City of Fresno ("**Responsible Agency**") and the Fresno County Transportation Authority ("**Authority**").

**RECITALS**

WHEREAS, Authority and Responsible Agency desire to enter into an Agreement for funding of a transportation improvement project in Fresno County pursuant to the Measure "C" Short-Term Regional Transportation Program Handbook ("**Handbook**"), and the Fresno County Measure "C" Expenditure Plan ("**Expenditure Plan**"), which was approved by the voters of Fresno County in November 2006; and,

WHEREAS, Responsible Agency desires to receive eligible Measure "C" Regional Transportation Program ("**Measure "C"**") and Regional Transportation Mitigation Fee ("**RTMF**") funding (as applicable) from the Authority for the **N-1 Urban, Veterans Boulevard SR-99 Interchange and Grade Separation** ("**Project**") as specified in the Handbook and consistent with the Tier 1 list of Regional Transportation Program projects referenced in the Expenditure Plan; and

WHEREAS, Authority is authorized to approve Project funding for payment to Responsible Agency in accordance with this Agreement, the Handbook and the Expenditure Plan regarding the Project ; and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$ 1,500,000** of Measure "C" funding.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

## AGREEMENT

### SECTION I

#### Covenants of Responsible Agency

Responsible Agency agrees to abide by the terms and conditions of this Agreement for the receipt of Measure "C" and RTMF funds (as applicable) and to comply with the Expenditure Plan, Handbook, and adopted Policies and Procedures, as well as any subsequent amendments, updates, or other applicable plans.

**1.1 Project Scope, Schedule and Funding Program.** The Project scope of work, schedule and funding program, as well as any change thereto may not be implemented or initiated until it has been approved by the Authority in accordance with the Handbook. For purposes of this Agreement, the Project scope, schedule and funding program is as defined and described in the Handbook and as further described below. The Responsible Agency must demonstrate in the funding program that the Project or Project phase is fully funded.

1.1.1 Project Scope. See Exhibit "A"

1.1.2 Project Schedule. See Exhibit "B"

1.1.3 Project Funding Program. See Exhibit "C"

**1.2 Eligible Project Costs.** Notwithstanding any provisions of Section 1.1 of this Agreement, the Authority reserves the right to consider on a case by case basis, eligible costs incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority. Eligible Project costs shall be equal to or less than Measure "C" and RTMF funds (as applicable) allocated to a Project as specified in Section 1.1.3 of this Agreement and in the Handbook. State Transportation Improvement Program (STIP) or other funding allocations (other than Measure "C" and RTMF) identified in the Handbook are considered "other" contributions available to the Project. The Responsible Agency must match Measure "C" funds with other such funds consistent with the funding program referenced in Section 1.1.3 of this Agreement and consistent with the Handbook and Expenditure Plan.

NOTE: Expenses incurred after July 1, 2007, but before a Responsible Agency has entered into an Agreement with the Authority for a currently active project, are incurred at the risk of the Responsible Agency.

**1.3 Compliance with California PUC Code 142257.** Responsible Agency agrees to the following:

1.3.1 Measure "C" funds will not be used to substitute for property tax funds, which the Responsible Agency had previously used for regional or other transportation purposes. It is hereby acknowledged by Responsible Agency that such substitution of property tax funds is expressly prohibited by California Public Utilities Code Section 142257.

1.3.2 The Responsible Agency has segregated property tax revenues from its other general fund revenues used to support the Project so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to the Responsible Agency's entire general fund.

1.3.3 Responsible Agency shall account for Project funds received pursuant to Public Utilities Code Section 142257. Responsible Agency shall maintain current records in accordance with generally accepted accounting principles, and shall separately record expenditures for each type of eligible purpose. Responsible Agency shall make such records available to the Authority for inspection or audit at any time.

**1.4 Compliance with Other Laws.** In performance of its obligations relating to administration and completion of the Project, Responsible Agency shall at all times comply with all federal, state and local laws, ordinances and regulations currently in force as well as those that are subsequently enacted, promulgated or amended and thereby become applicable during the term of this Agreement.

**1.5 Measure "C" Funds Defined.** For purposes of this Agreement, eligible Project Measure "C" and RTMF funds (as applicable) are deemed available as of the effective date of this Agreement. Eligible Project costs shall be equal to or less than the amount of funding available for the Project on a fiscal year basis as specified in the Handbook and in Section 1.1.3 of this Agreement. In no case shall the total amount of Measure "C" or RTMF funds for the Project in the Handbook or referenced in Section 1.1.3 of this Agreement be exceeded without written amendment to this Agreement and to the Handbook.

- 1.6 Invoices.** The Responsible Agency shall submit invoices to the Authority no more frequently than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:
- 1.6.1 Monitoring Expenditures and Progress Payments. The Responsible Agency will monitor expenditures and progress payments against the "not to exceed" limits specified in Section 1.1.3 of this Agreement.
  - 1.6.2 Project Progress. If Project costs have not been invoiced for a six-month period, Responsible Agency agrees to submit a written explanation of the absence of the Project's progress to the Authority, along with a target billing date and a target billing amount.
  - 1.6.3 Direct and Indirect Costs. Responsible Agency may include in the Project invoice, direct and indirect costs of the Project. Indirect costs (as defined by OMB Circular A-87) will be considered an eligible expense.
  - 1.6.4 Copies of Invoices. Responsible Agency shall provide the Authority with one (1) copy of appropriate source documentation to substantiate Project expenses or costs.
  - 1.6.5 Eligible Project Cost Request Deadline. Invoices for eligible Project costs incurred by the Responsible Agency shall be submitted to the Authority on the approved form. The appropriation request will specify the use of the funding and the manner in which local matching funds were applied. The Authority's Executive Director will review invoices for accuracy and sufficiency in terms of compliance with the foregoing requirements. Unsatisfactory or inadequate invoices will be returned to the Responsible Agency for correction and resubmission. Upon receipt of a proper invoice, eligible Measure "C" and RTMF funds (as applicable) shall be provided to the Responsible Agency within 45 days.
  - 1.6.6 Use of Funds. Responsible Agency shall use Measure "C" and RTMF funds (as applicable) consistent with the Expenditure Plan, Handbook, and Section 1.1.1 of this Agreement.
- 1.7 Reporting Form.** Responsible Agency will indicate in the invoice form, its intent to complete and return the Annual Reporting Form (reference Appendix C in the Handbook) to the Authority no later than October 15<sup>th</sup> of each year. If

the Responsible Agency does not return the Annual Reporting Form to the Authority by that deadline, the Authority will withhold Measure "C" and RTMF funds (as applicable) until such time as the form is returned by the Responsible Agency and reviewed for correctness by the Authority.

## **1.8 Cost Savings and Excess Costs.**

1.8.1 Cost Savings. After the Project has been accepted by the Responsible Agency as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.1.3 and the total amount invoiced to the Authority shall be considered Project cost savings and shall be reprogrammed to other Tier 1 projects by Fresno COG and the Authority as provided in the Handbook, as amended or updated.

1.8.2 Excess Costs. In the event the actual total Project costs exceed the estimate approved by the Authority, this amount will be considered an Excess Cost.

1.8.3 Reconciliation of Excess Costs. In the event that costs to complete the Project exceed the total amount of funds programmed, the Responsible Agency will be fiscally responsible for the full amount of Excess Costs associated with the Project, unless otherwise agreed by the parties pursuant to Section 2.3 of this Agreement.

1.9 **Project Management/Formation of Project Development Team (PDT).** To ensure that the Project is implemented in a timely manner and consistent with the Handbook and Expenditure Plan, a Project Development Team (PDT) shall be formed under the control of the Responsible Agency. The Responsible Agency will form, notice, conduct and administer the PDT for the Project. The PDT formed for the Project shall include a staff member from both the Authority and Fresno COG.

1.10 **Award of Project.** The Responsible Agency shall administer the Project, including but not limited to its advertisement and award of all contracts, in accordance with applicable legal requirements as provided above in Section 1.4 and in full conformity with the standards applied by Responsible Agency in the administration of its own road construction projects.

- 1.11 **Maintenance of Project Records.** Responsible Agency shall maintain complete and accurate records with respect to costs addressed in Section 1.1.3 of this Agreement. All such records shall be maintained on a generally-accepted accounting basis and be clearly identified and readily accessible. Responsible Agency shall provide free access to the Authority at all times to such books and records. Responsible Agency shall maintain all work data, documents, and proceedings of this Agreement for a period of five (5) years from the date of final audit from the Authority.
- 1.12 **Project Groundbreaking and Ribbon Cutting Ceremonies.** Responsible Agency shall acknowledge Measure "C" funding contribution to the Project at the groundbreaking and ribbon cutting ceremony should the Responsible Agency conduct such a ceremony. Groundbreaking and ribbon cutting ceremonies are encouraged, but not required. The costs of all ceremonies will be considered a project construction expense.
- 1.13 **Project Signage.** Responsible Agency shall provide signage at construction sites or on equipment, as appropriate, for the projects funded partially or wholly by Measure "C" sales tax revenue included in the Handbook so that Fresno County Taxpayers are informed as to how funds are being used. The signage shall be in conformance with specifications approved by and on file with the Authority, and included in Appendix D in the Handbook.

## SECTION II

### Covenants of Authority

Authority agrees to provide Measure "C" and RTMF funds to the Responsible Agency for eligible Project costs in accordance with the terms and conditions set forth herein, and in compliance with the Expenditure Plan, the Handbook, all Measure "C" Policies and Procedures, as well as any subsequent amendments or updates, and to other applicable plans and programs.

**2.1 Eligible Project Cost Payments.** The Authority shall make payments to Responsible Agency for actual incurred eligible Project costs as specified in Section 1.1.3 of this Agreement and consistent with the Handbook. To receive payments for Project work completed, the Responsible Agency shall comply with the following procedures:

2.1.1 Ineligible Costs. The Authority reserves the right to recover payment made to the Responsible Agency if payment made on an invoice includes ineligible Project costs.

2.1.2 Payment Amount. The amount of Project payments to the Responsible Agency shall be made pursuant to the Handbook and this Agreement.

2.1.3 Suspension of Payment. Payments for eligible Project costs shall be suspended without interest when a dispute arises as to whether or not a cost item(s) is eligible for payment.

2.1.3.1 Dispute Resolution. All disputes shall be settled in accordance with the laws of the State of California. Once a dispute has occurred, the Authority and Responsible Agency shall attempt to resolve the dispute informally in a mutually agreeable manner.

**2.2 Right to Conduct Audit.** The Authority shall have the right to conduct an audit of all Responsible Agency's records pertaining to the Project at any time following completion of the Project.

2.2.1 Notice of Audit. The Authority shall provide at least 30 days' advance notice to the Responsible Agency if an audit is to be conducted.

- 2.3 Reconciliation of Excess Costs.** Excess project costs to complete a Project are not eligible for reimbursement. The amount of Measure "C" and RTMF funds identified in Section 1.1.3 of this Agreement and in the Handbook are the maximum funds available for reimbursement to the Responsible Agency and will not be exceeded by the Responsible Agency without an approved amendment to this Agreement. If needed for that purpose, the Responsible Agency shall make a written request to the Authority for an amendment to this Agreement. Any such amendment shall constitute an effective modification of this Agreement only if signed and approved by duly authorized representatives of both the Authority and the Responsible Agency.

### SECTION III

#### Mutual Covenants

The Authority is released from any liability to Responsible Agency regarding the Authority's administration and issuance of the Measure "C" and RTMF proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan and Handbook.

- 3.1 Effective Date and Term.** This Agreement shall become effective as of the date of its execution by the Authority and Responsible Agency and shall remain in full force and effect through **June 30, 2012**, unless earlier terminated as provided in Section 3.2 or in Section 3.4 of this Agreement.

- 3.2 Discharge.** This Agreement shall be subject to discharge as follows:

**3.2.1 Termination of Mutual Consent.** This Agreement may be terminated at any time by mutual consent of Responsible Agency and Authority. If this Agreement is mutually terminated by the parties, Responsible Agency will no longer receive Measure "C" or RTMF funds (as applicable) unless a new agreement between Responsible Agency and Authority is formed.

**3.2.2 Discharge Upon Completion of Project.** Except as to any rights or obligations which survive discharge as specified herein below in Section 3.14 ("Survival"), this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.2.3 Termination by Authority. The Authority reserves the right to terminate the Agreement at any time by giving written notice to Responsible Agency of such termination and specifying the effective date thereof, provided that the effective date of termination shall be at least 10 days after the date Authority sends written notice of termination. If this Agreement is terminated by the Authority as provided herein, Responsible Agency will be paid by the Authority for eligible Project costs incurred prior to the effective date of termination of the Agreement consistent with the funding program contained in Section 1.1.3 and in the Handbook. In that event, all finished or unfinished documents and other materials shall, at the option of the Authority, become its property subject to the terms and conditions of Section 1.11 of this Agreement.

3.3 Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Responsible Agency:

3.3.1 Responsible Agency shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any and all damages, liabilities, claims and expenses, arising out of Responsible Agency's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Responsible Agency shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Responsible Agency under this Agreement or in connection with any work, authority, or jurisdiction delegated to Responsible Agency under this Agreement.

3.3.2 Authority shall fully defend, indemnify and hold harmless Responsible Agency, and any officer or employee of Responsible Agency, against any and all damages, liabilities, claims and expenses, arising out of Authority's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold the Responsible Agency harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by

Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

**3.4 Limitation.** All obligations of the Authority under the terms of this Agreement are expressly subject to the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure "C" and RTMF funds. If for any reason the Authority's right to collect or expend such sales tax and RTMF proceeds is terminated or suspended in whole or part, the Authority shall promptly notify the Responsible Agency, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any future obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the Authority to expend sales tax or RTMF proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of the Authority under all outstanding contracts, agreements to other obligations of the Authority, of funds for such purposes.

**3.5 Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**AUTHORITY:**

**With A Copy To:**

Mr. Ron Peterson, Executive Dir.  
Fresno County Transportation Authority  
2220 Tulare Street, Suite 411  
Fresno, CA 93721  
Ph: (559) 453-5023 Fax: (559) 488-3303

**RESPONSIBLE AGENCY:**

Mr. Patrick Wiemiller, Public Works Director  
City of Fresno, Public Works Department  
2600 Fresno Street, 4<sup>th</sup> Floor  
Ph: (559) 621-8650 Fax: (559) 488-1045  
FAX Number

3.5.1 Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received

on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

- 3.6 Additional Acts and Documents.** Each party agrees to do all such things and take all actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.
- 3.7 Integration.** This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. NO representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 3.8 Amendment.** This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 3.9 Independent Agency.** Responsible Agency renders services under this Agreement as an independent agency under the Agreement. None of the Responsible Agency's agents or employees shall be agents or employees of the Authority and none of the Authority's agents or employees shall be agents or employees of Responsible Agency.
- 3.10 Assignment.** The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of all parties hereto.
- 3.11 Binding on Successors.** This Agreement shall be binding upon each of the parties and their respective successor(s), assignee(s) or transferee(s). Provided however that this provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement, other than as provided in the immediately preceding Section 3.10 of this Agreement.
- 3.12 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

- 3.13 Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14 Survival.** The following provisions in this Agreement shall survive discharge:
- 3.14.1 **Responsible Agency.** As to Responsible Agency, the following sections of this Agreement shall survive discharge: Section 1.6 ("Invoices") and Section 1.9 ("Project Management/Formation of Project Development Team").
- 3.14.2 **Authority.** As to Authority, the following sections of this Agreement shall survive discharge: Section 2.2 ("Right to Conduct Audit").
- 3.15 Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- 3.16 Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
- 3.17 Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Fresno County, California.
- 3.18 Captions.** The captions in this Agreement are for convenience only and are not intended to and shall not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.
- 3.19 No Continuing Waiver.** The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
- 3.20 No Rights in Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement

on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

- 3.21 **Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 **Attorney's Fees and Costs.** Authority and Responsible Agency will bear their own respective costs, including attorney's fees, in connection with any legal proceedings related to the interpretation or enforcement of this Agreement or any of the terms and conditions hereof.
- 3.23 **Exhibits and Recitals.** The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 3.24 **Signator's Warranty.** Each signatory to this Agreement warrants to the other party that he or she is fully authorized and competent to execute this Agreement in the capacity indicated by his or her signature, and each party agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each party's authorized representatives.
- 3.25 **Force Majuere.** Any party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by federal, state or local government; national fuel shortage; or a material act or omission by any party; when satisfactory evidence of such cause is presented to that other party, and provided further such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

**FRESNO COUNTY TRANSPORTATION AUTHORITY**

By   
(Signature)

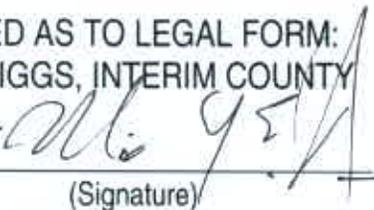
Name \_\_\_\_\_  
(Typed)

Title Chair of the Authority

ATTEST  
By   
(Signature)

Name \_\_\_\_\_  
(Typed)

Title Executive Director

APPROVED AS TO LEGAL FORM:  
KEVIN BRIGGS, INTERIM COUNTY  
COUNSEL  
By   
(Signature)

Name \_\_\_\_\_  
(MICHAEL E ROWE)

Title Senior Deputy County Counsel

APPROVED AS TO ACCOUNTING  
FORM:  
By   
(Signature)

Name \_\_\_\_\_  
(VICKI CROW)

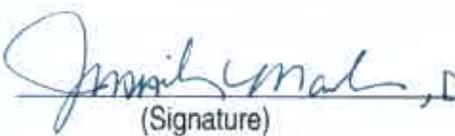
Title Auditor-Controller/Treasurer-Tax  
Collector

**City of Fresno**

By   
(Signature)

Name \_\_\_\_\_  
(PATRICK N. WIEMILLER)

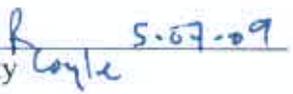
Title Public Works Director

By  Deputy  
(Signature)

Name Jennifer Morelos  
(REBECCA E. KLISCH)

Title City Clerk

APPROVED AS TO FORM  
JAMES SANCHEZ, City Attorney

BY:  5.07.09  
Deputy Coyle



# EXHIBIT A – PROJECT SCOPE

## Urban Project N-1 – Veterans Blvd/SR-99 Interchange and Grade Separation



Responsible Agency  
City of Fresno

Project Limits  
The project limits for Urban Project N-1 are from Shaw Avenue to Herndon Avenue.

- Project Phase
- Phase 1\* - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
  - Phase 2 - Right-of-Way Acquisition
  - Phase 3 - Construction *(Includes Project Construction & Construction Management)*

\*Project Approval / Environmental Document (PAVED) only. Right-of-way and construction phases are to be scheduled in the Measure C Mid-Term and Long-Term Programs.

### Project Phase(s) Scope

This phase of the project includes the preparation and completion of a Caltrans Project Report and a CEQA/NEPA environmental document for the project. Measure C funds are addressing the project limits of Barstow Avenue to Bullard Avenue, specifically consisting of the Veterans Boulevard / State Route 99 interchange, connection to Golden State Boulevard and Veterans Boulevard / Union Pacific Railroad grade separation. To address logical termini requirements of the NEPA process, local development impact fees are augmenting this phase of the project to provide preliminary engineering and CEQA/NEPA clearance for a 4-lane Veterans Boulevard on the ultimate 6-lane Official Plan Line alignment between Shaw Avenue and Barstow Avenue, and also from Bullard Avenue to Herndon Avenue, representing a total project limit of Shaw Avenue to Herndon Avenue for the PAVED phase of the project.

### Complete Project Scope

A Project Study Report has been prepared by the City of Fresno and is being circulated for final corrections and Caltrans District Director signature. The next phase (PAVED) has been included in the FY2008/09 and 2009/10 fiscal years of the Measure C Short-Term program. Future phases will be final design including Plans, Specifications and Estimates (PS&E), right-of-way acquisition and utility relocation, concluding with Construction and associated Construction Management services. The project scope is the construction of Veterans Boulevard to its ultimate six-lane configuration between Barstow Avenue and Bullard Avenue, with a new overcrossing of State Route 99, on- and off-ramps, the connection to Golden State Boulevard, a bridge spanning Golden State Boulevard and a grade separation at the Union Pacific Railroad crossing; the project proposes a four-lane facility from Bullard Avenue north to Herndon Avenue and from Barstow Avenue south to Shaw Avenue. The project is consistent with the recorded Official Plan Line approved by the City and County in 1996 for the planned superarterial roadway alignment. The project will include traffic signals at the freeway interchange off-ramps and signalized intersections at Shaw Avenue, Barstow Avenue, Golden State Boulevard connector roadway, Bullard Avenue and Herndon Avenue.

### Project Purpose

As described in the Caltrans PSR, the purpose of the project is to provide improved traffic circulation and access to lands adjacent to and surrounding the interchange; provide congestion relief to improve traffic flow on the existing local and regional transportation system; to accommodate local development and corresponding increases in traffic volumes; and to be consistent with existing and planned local and regional development.

### Transportation Benefit

The project will provide an east-west connection from west Fresno to north Fresno and a greatly improved freeway interchange access for northwest Fresno. The project will also provide a grade-separated crossing of the Union Pacific Railroad facilitating access to SR-99 for the Herndon Avenue corridor. The project will relieve congestion at the adjacent SR-99 interchanges at Herndon Avenue and Shaw Avenue which are inadequate to serve existing and future traffic demands.

### Implications of Not Doing the Project

Veterans Boulevard is an integral component of the City of Fresno 2025 General Plan and the regional road network. The traffic operational analysis that has been prepared for the PSR shows level of service "F" at intersections and interchanges in the project vicinity.

## Urban Project N-1 – Veterans Blvd/SR-99 Interchange and Grade Separation

Page Two

### Community Engagement

The project limits are within a populated residential and industrial area. Residents and property owners will be kept informed of the Project's status by a newsletter that will be available on a web site as well as through a project e-mail distribution list. The environmental document approval process will include community meetings and a public hearing process.

### Construction Staging

Construction will be continuous and during construction adjacent residences and businesses will be provided access at all times. Falsework will be erected over SR-99 to maintain freeway traffic.

### Detours

Short-term limited detours will be necessary for Golden State Boulevard and a very short nighttime freeway detour will be required for falsework placement. Otherwise existing transportation facilities will be unaffected by the project.

### Current Status

The PSR is close to signature and the project is ready to proceed with the PAVED phase.

### Contact

For inquiries, you may contact Scott Mozier, P.E., City Engineer with the City of Fresno Public Works Dept. at (559) 621-8650.





## EXHIBIT C - PROJECT FUNDING PROGRAM

### Urban Project N-1 – Veterans Blvd/SR-99 Interchange and Grade Separation

Responsible Agency  
City of Fresno

#### Project Limits

The project limits for Urban Project N-1 are from Shaw Avenue to Herndon Avenue.

#### Project Phase

- Phase 1\* - Preliminary Engineering *(Includes Preliminary Design/Engineering (PS&E) and Environmental)*
- Phase 2 - Right-of-Way Acquisition
- Phase 3 - Construction *(Includes Project Construction & Construction Management)*

\*Phase 1 – Project Approval / Environmental Document (PA/ED) only. Right-of-way and construction phases are to be scheduled in the Measure C Mid-Term and Long-Term Programs

#### Contact

For inquiries, you may contact Scott Mozier, P.E., City Engineer, with the City of Fresno Public Works Department at (559) 621-8650.

Funding Program *(\$ in millions - See Attached)*

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING
				SHORT-TERM PROGRAM FY 2007/08 - 2013/14							
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Preliminary Engineering 1:			\$0.000	\$0.000	\$1.000	\$1.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.000
<b>FUNDING PROGRAM</b>											
Measure "C" Original Program											\$0.000
Measure "C" Extension					\$0.750	\$0.750					\$1.500
RTMF											\$0.000
STIP											\$0.000
TCRP											\$0.000
Local Development Fees					\$0.250	\$0.250					\$0.500
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 1:</b>			\$0.000	\$0.000	\$1.000	\$1.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.000
<b>FUNDING PROGRAM</b>											
Right-of-Way 2:			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>FUNDING PROGRAM</b>											
Measure "C" Original Program											\$0.000
Measure "C" Extension											\$0.000
RTMF											\$0.000
STIP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 2:</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>FUNDING PROGRAM</b>											
Construction 3:	2008/09	2009/10	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>FUNDING PROGRAM</b>											
Measure "C" Original Program											\$0.000
Measure "C" Extension											\$0.000
RTMF											\$0.000
STIP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
<b>TOTAL FUNDING PHASE 3:</b>			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
<b>TOTAL FUNDING ALL PHASES:</b>			\$0.000	\$0.000	\$1.000	\$1.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.000

1 Preliminary Engineering: Preliminary Design/Engineering (PDE) (Environmental)

2 Right-of-Way Acquisition

3 Project Construction & Construction Management