



AGENDA ITEM NO.	1B
COUNCIL MEETING	5/21/09
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

May 21, 2009

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

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

SUBJECT: CONSIDERATION OF APPROVAL OF MEASURE "C" COOPERATIVE AGREEMENTS FOR THE HERNDON/GOLDEN STATE BOULEVARD IMPROVEMENT 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 (COUNCIL DISTRICTS 2,3,5,6)

KEY RESULT AREA

One Fresno

Presented to City Council
 Date 5/21/09
 Disposition Res. approved

RECOMMENDATION

Staff recommends the Council approve the Measure "C" Draft Cooperative Agreements in substantially the form attached for the Herndon/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 Project 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; and that the Council authorize the Public Works Director, or his designee 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 agreement; staff will return to Council for required project environmental assessment, approvals and awards. Staff has prepared the Agreements covering six specific Tier 1 projects which are anticipated to be considered at the monthly FCTA Board meeting as funds become available. The Herndon/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 Project 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. The attached Draft Cooperative Agreements have been approved as to form by the City Attorney's Office. These projects represent the balance of the City of Fresno Tier 1 projects that are programmed to receive funding in the 2009/10 fiscal year, and staff will present the Cooperative Project Agreements at the FCTA scheduled June 2009 Board meeting.

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 before June 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.

Six City of Fresno projects have Measure "C" Tier 1 funding programmed for the fiscal year that require immediate approval of Draft Cooperative Project Agreements to avoid adverse impacts upon the schedule. The six projects are the Herndon/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 Project 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. These remaining City of Fresno

2009/10 projects 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 these projects after July 1, 2009.

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/DC/eam
Consid Apprv Meas C Coop Agrmts Various Prjs 5-21-09

- Attachments:
- "A" – Cooperative Project Agreement for the Herndon/Golden State Boulevard Project (Urban Project K-7)
 - "B" – Cooperative Project Agreement for the Willow Avenue Project from Teague Avenue to Shepherd Avenue (Urban Project D-4A)
 - "C" – Cooperative Project Agreement for the Willow Avenue Widening Project from Shepherd Avenue to Behymer Avenue (Urban Project D-4B)
 - "D" – Cooperative Project Agreement for the Herndon Avenue Widening Project from Valentine Avenue to Marks Avenue (Urban Project K-6)
 - "E" – Cooperative Project Agreement for the SR-180 West Frontage Road Project (Urban Project B-2)
 - "F" – Cooperative Project Agreement for the Peach Avenue Widening Project from Butler to Jensen Avenue (Urban Project I-2)

ATTACHMENT "A"

**COOPERATIVE PROJECT AGREEMENT
PROJECT K7 (URBAN)
HERNDON AVENUE WIDENING SR-99 TO WEBER AVENUE**

MEASURE "C"
COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program
(Project K7 Urban, Herndon Avenue Widening SR-99 to
Weber Avenue)

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **June 18, 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 **K7 Urban, Herndon Avenue Widening SR-99 to Weber 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" **\$996,000** 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 15th 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, 4th 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 _____
(VICKI CROW)

Title Auditor-Controller/Treasurer-Tax
Collector

City of Fresno

By [Signature]
(Signature)

Name _____
(PATRICK N. WIEMILLER)

Title Public Works Director

By [Signature]
(Signature)

Name Jennifer Morales, Deputy
(REBECCA E. KLISCH)

Title City Clerk

APPROVED AS TO FORM
JAMES SANCHEZ, City Attorney

BY: [Signature] 5-08-09
Deputy Coyle



EXHIBIT A – PROJECT SCOPE

Urban Project K7 – Herndon Ave. Widening, SR 99 to Weber Ave.



Responsible Agency

City of Fresno

Project Limits

The project limits include approximately 1,800 ft of added travel lanes on Herndon Ave. from State Route 99 to 600 ft east of Weber Ave. The project also includes approximately 600 ft north and 450 ft south on Golden State Blvd. from the Intersection of Herndon and Golden State.

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 widen Herndon Ave. by constructing additional through lanes, turn lanes, bus bays, curb and gutter, sidewalk, landscaping, streetlights, modifications of existing traffic signal facilities and modification of the at grade railroad crossing. Phase 1 includes preparation of the environmental documents to comply with CEQA and NEPA requirements and 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 2 parcels that are full-take acquisitions. Phase 2 also includes the acquisition of additional easement from Union Pacific Railroad for the street right-of-way. Phase 3 involves construction of the Project, traffic detours using major cross streets and providing access to residences and businesses adjacent to Herndon Ave. in the Project area, and Construction Management activities associated with the Project.

Complete Project Scope

Phase 1 involved development of an Initial Study and a Mitigated Negative Declaration to satisfy the CEQA requirements and the development of a Preliminary Environmental Study and a Programmatic Categorical Exclusion to satisfy the NEPA requirements which has been completed. Phase 1 is currently in the 95% design phase. Phase 2 consists of preparation of PS&E and includes the processing and acquisition of ROW for 2 parcels at the intersection of Herndon Ave. and Weber Ave. and the acquisition of additional easement from the Union Pacific Railroad Company. 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 Herndon Avenue between SR 99 and Weber Ave.

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 Herndon Avenue will not be sufficient to accommodate the traffic demands in the Year 2025. According to the traffic study conducted by Peters Engineering Group, the existing A.M. Peak Hour LOS for the intersection of Herndon and Golden State will improve from LOS "C" to a LOS "B" by constructing these improvements. The P.M. Peak Hour LOS is projected to improve from a LOS "D" to a LOS "B".

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.

EXHIBIT A – PROJECT SCOPE

Urban Project K7 – Herndon Ave. Widening, SR 99 to Weber Ave.

Detours

During construction of this Project, detours may be utilized temporarily to reroute traffic. Access to residences, businesses, and schools adjacent to Herndon Avenue and Golden State Boulevard will be provided and maintained throughout construction.

Current Status

Phase 1 is currently into the 95% design phase. Phase 2 is underway and is projected to be complete by May 2009. Phase 3 will be initiated after completion of Phase 3 and relocation of existing utilities by PG&E.

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 K7 - Herndon Ave. Widening, SR 99 to Weber Ave.



Responsible Agency
City of Fresno

Project Limits

The project limits include approximately 1,800 ft of added travel lanes on Herndon Ave. from State Route 99 to 600 ft east of Weber Ave. The project also includes approximately 600 ft north and 450 ft south on Golden State Blvd. from the Intersection of Herndon and Golden State.

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]

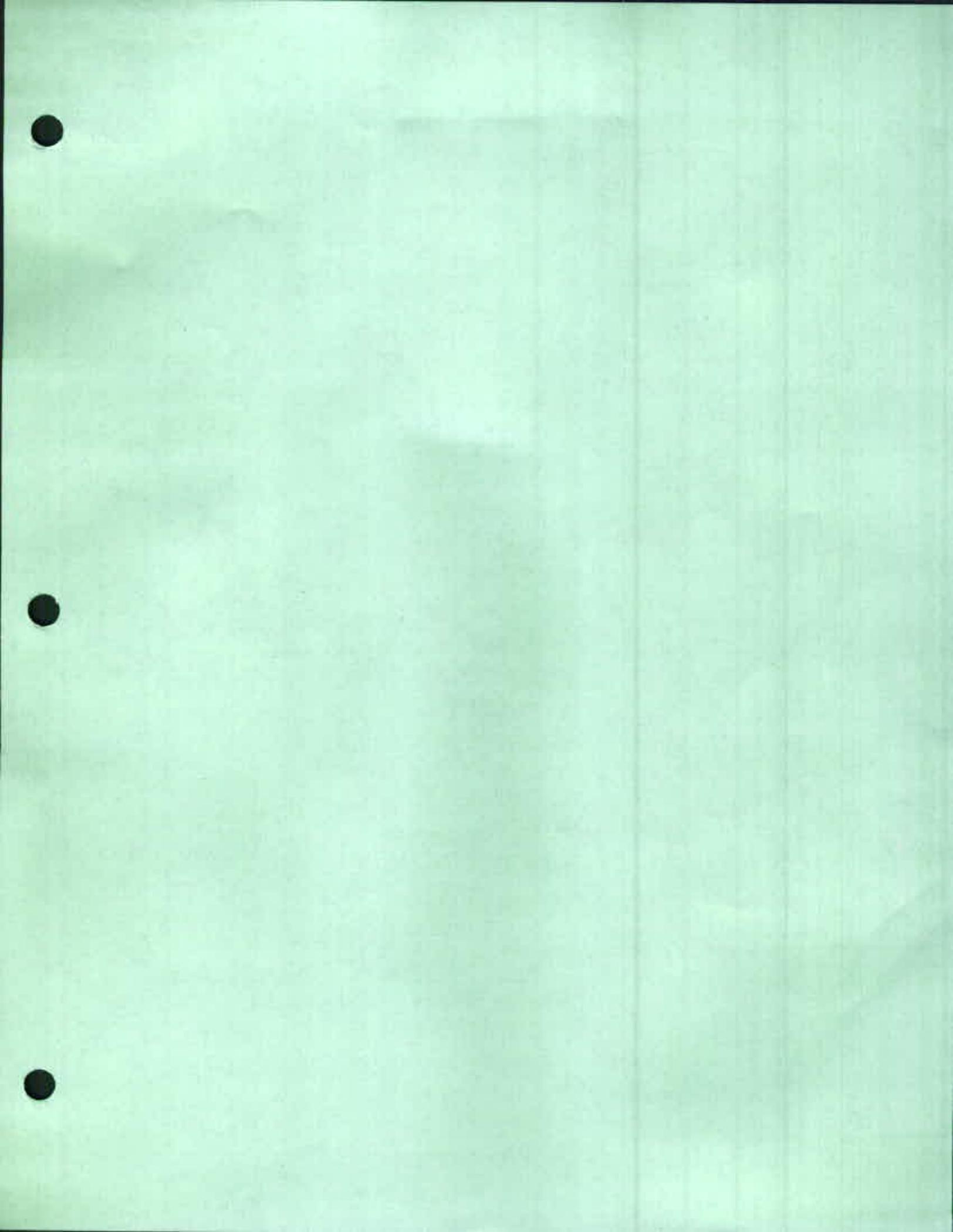
Contact

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

Funding Program (\$ in millions)

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING	
				SHORT-TERM PROGRAM FY 2007/08 - 2012/14								
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14		
Preliminary Engineering - FUNDING PROGRAM	Phase 1	Phase 1	\$0.275	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.275
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			\$0.275									\$0.275
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
TOTAL FUNDING PHASE 1:			\$0.275	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.275
Right-of-Way - FUNDING PROGRAM	Phase 2	Phase 2	\$0.305	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.305
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			\$0.305									\$0.305
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
TOTAL FUNDING PHASE 2:			\$0.305	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.305
Construction - FUNDING PROGRAM	Phase 3	Phase 3	\$0.000	\$0.000	\$4.944	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$4.944
Measure "C" Original Program												\$0.000
Measure "C" Extension					\$0.996							\$0.996
RTMP												\$0.000
STP												\$0.000
TCRP												\$0.000
Local Development Fees												\$0.000
Federal Aid					\$4.948							\$4.948
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
TOTAL FUNDING PHASE 3:			\$0.000	\$0.000	\$4.944	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$4.944
TOTAL FUNDING ALL PHASES:			\$0.580	\$0.000	\$4.944	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$5.524

1. Funding Program - Funding Report/Estimate/PS&E/Construction
2. Funding Report/Estimate
3. Project Construction/Construction Management



ATTACHMENT "B"

**COOPERATIVE PROJECT AGREEMENT
PROJECT D-4a (URBAN)
WILLOW AVENUE WIDENING TEAGUE AVENUE
TO SHEPHERD AVENUE**

MEASURE "C"
COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program
(Project D-4a Urban, Willow Avenue Widening Teague Avenue to Shepherd Avenue)

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **June 18, 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-4a Urban, Willow Avenue Widening Teague Avenue to Shepherd 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" **\$289,000** 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 15th 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, 4th 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)

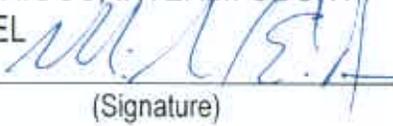
Title Chair of the Authority

ATTEST
By 
(Signature)

Name _____
(Typed)

Title Executive Director

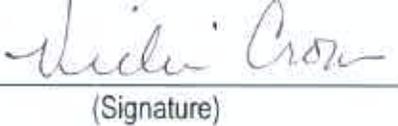
APPROVED AS TO LEGAL FORM:
KEVIN BRIGGS, INTERIM COUNTY
COUNSEL

By 
(Signature)

Name _____
(MICHAEL E ROWE)

Title Senior Deputy County Counsel

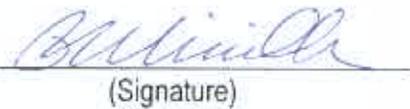
APPROVED AS TO ACCOUNTING
FORM:

By 
(Signature)

Name _____
(VICKI CROW)

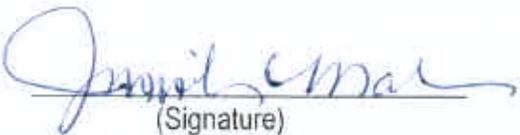
Title Auditor-Controller/Treasurer-Tax
Collector

City of Fresno

By 
(Signature)

Name _____
(PATRICK N. WIEMILLER)

Title Public Works Director

By 
(Signature)

Name Jennifer Morelos, Deputy
(REBECCA E. KLISCH)

Title City Clerk

APPROVED AS TO FORM
JAMES SANCHEZ, City Attorney

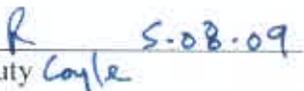
BY:  5-08-09
Deputy Coyle



EXHIBIT A – PROJECT SCOPE

Urban Project D-4a – Willow Ave. Teague Ave. to Shepherd Ave.



Responsible Agency
City of Fresno

Project Limits

The project limits southbound travel lane and the median island on Willow Ave. between Teague Ave. to Shepherd Ave.

Project Phase

- Phase 1 – Preparation of Project Plans and Specifications
- Phase 2- Right-of-Way Acquisition
- Phase 3 – Construction or Procurement

Project Phase(s) Scope

This project is a shelf ready project where Phase 1 and 2 has been completed. Phase 3 of the remains to be implemented.

Complete Project Scope

Phase 1 and 2 has been completed. Phase 3 involves construction of the median island, a southbound lane, installation of landscaping, 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 southbound Willow Avenue.

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 Willow Ave. will not be sufficient to accommodate the traffic demands in the Year 2025. By not implementing the project current traffic congestion will cause more delays and resulting increase polluting emissions.

Community Engagement

The project limits are within a highly 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

No Construction staging is anticipated is anticipated for this project .

Detours

During construction of this Project, traffic will be routed through cone zone using the existing pavement no detour are anticipated.

Current Status

Phase 1 and 2 are complete. Phase 3 will be initiated after funding is authorized.

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 D-4a – Willow Ave. Teague Ave. to Shepherd Ave.



Responsible Agency
City of Fresno/City of Clovis

Project Limits

The project limits include 0.5 mile of added travel lane on Willow Avenue between Teague Avenue and Shepherd Avenue.

Project Phase

- Phase 1 – Preparation of Project Plans and Specifications
- Phase 2 - Right-of-Way Acquisition
- Phase 3 – Construction or Procurement

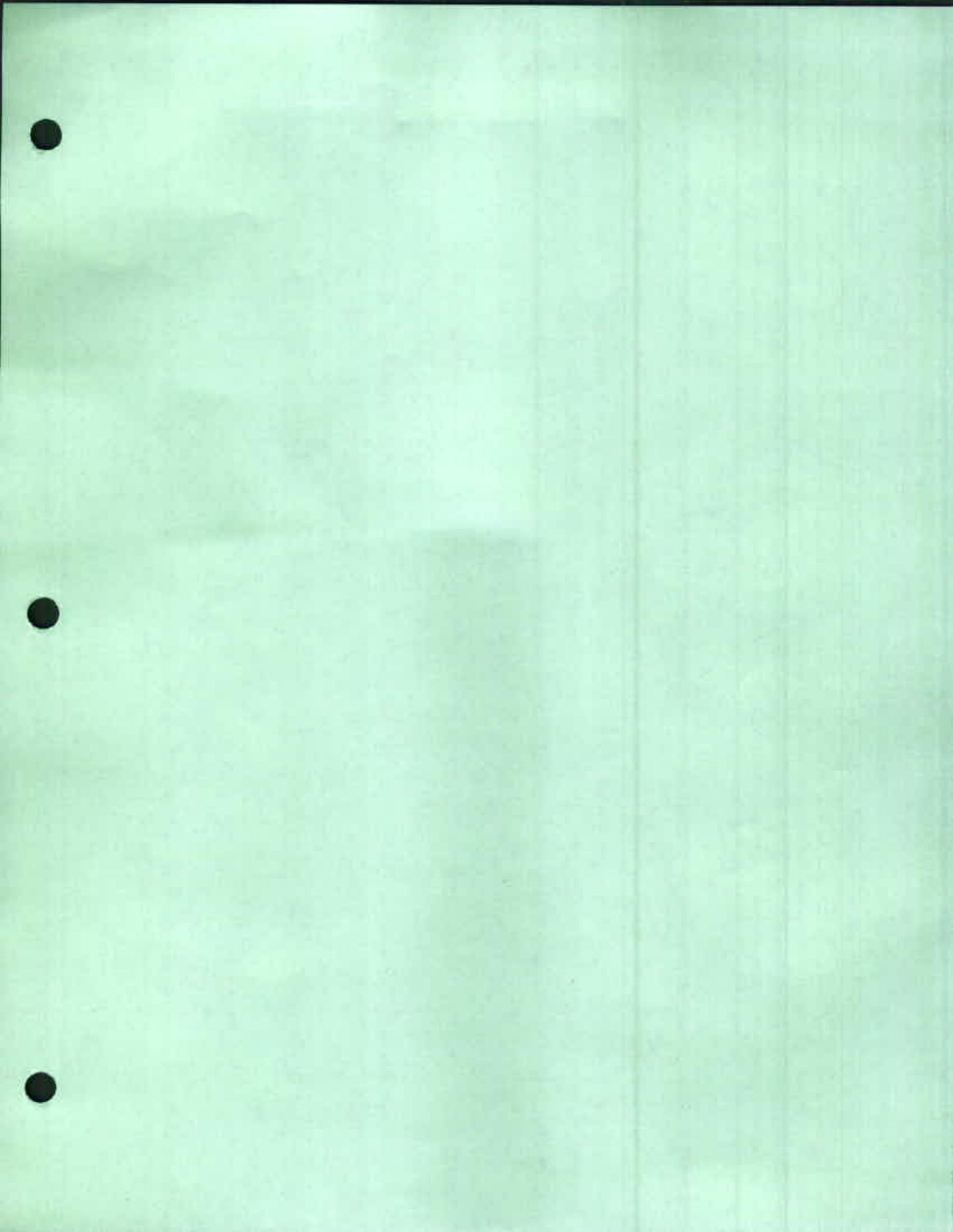
Contact

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

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		
Phase 1 - Preparation of Project Plans and Specifications	2009/10	2010/11	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Measure "C" Original Program												\$0.000
Measure "C" Extension												\$0.000
RTMP												\$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
TOTAL FUNDING PHASE 1			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Phase 2 - Right-of-Way Acquisition	2008/09	2010/11	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Measure "C" Original Program												\$0.000
Measure "C" Extension												\$0.000
RTMP												\$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
TOTAL FUNDING PHASE 2			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Phase 3 - Construction or Procurement	2011/12	2013/14	\$0.000	\$0.000	\$0.289	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.289
Measure "C" Original Program												\$0.000
Measure "C" Extension												\$0.289
RTMP												\$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
TOTAL FUNDING PHASE 3			\$0.000	\$0.000	\$0.289	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.289
TOTAL FUNDING ALL PHASES			\$0.000	\$0.000	\$0.289	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.289

Handwritten initials



ATTACHMENT "C"

**COOPERATIVE PROJECT AGREEMENT
PROJECT D4B
WILLOW AVENUE WIDENING FROM
SHEPHERD AVENUE TO BEHYMER AVENUE**

MEASURE "C"
COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program
(Project D4B, Willow Avenue Widening from Shepherd Avenue to Behymer Avenue)

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **August 19, 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 ("**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 transportation improvement Project D4B, Willow Avenue Widening from Shepherd Avenue to Behymer Avenue, 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 Project D4B (Willow Avenue Widening from Shepherd Avenue to Behymer Avenue); and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$2,858,000** 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 15th 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, 4th 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.

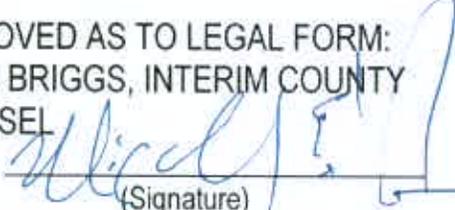
- 3.21 **Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 **Attorney's 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.

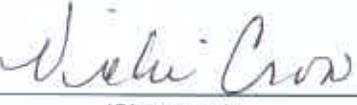
IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

FRESNO COUNTY TRANSPORTATION AUTHORITY

By 
(Signature)
Name Harry Armstrong
(Typed)
Title Chair of the Authority

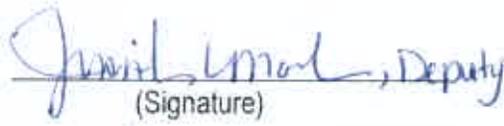
ATTEST
By 
(Signature)
Name Ron Peterson
(Typed)
Title Executive Director

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
(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 Marellos
(REBECCA E. KLISCH)
Title City Clerk, Deputy

APPROVED AS TO FORM
JAMES SANCHEZ, City Attorney

BY:  5-08-09
Deputy Loyle



EXHIBIT A -PROJECT SCOPE

Urban Project D4B – Willow Avenue Widening, Shepherd Avenue to Behymer Avenue



Responsible Agency

City of Fresno

Project Limits

The project limits include 1 mile of added travel lane on Willow Ave. between Shepherd Ave. and Behymer Ave.

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 widen the south bound side of Willow Ave. from two lanes to three lanes with construction of median islands, curb and gutter, and streetlights. 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 is not applicable to this project because there is no right-of-way acquisition. Phase 3 involves construction of the Project, the associate traffic control operations, and Construction Management activities associated with the Project.

Complete Project Scope

Phase 1 has been initiated and is currently in the 95% design phase. Phase 1 involves development of an Initial Study and a Mitigated Negative Declaration for the CEQA requirements and the preparation of PS&E. Phase 2 is not included with this project. Phase 3 will be initiated after completion of Phase 1 and the 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 Willow Avenue between Shepherd Ave. and Behymer Ave.

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 Willow Avenue will not be sufficient to accommodate the traffic demands in the Year 2025. The 2007 Regional Transportation Plan modeled Willow Ave. without the project and projected the Level of Service (LOS) to be a LOS "F" and with the project to be a LOS "B".

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, detours may be utilized temporarily to reroute traffic. Access to residences, businesses, and schools adjacent to Willow Avenue will be provided and maintained throughout construction.

Current Status

Phase 1 has been initiated and is currently into the 95% design phase. There is no Phase 2 work in this project. Phase 3 will be initiated after completion of Phase 1 and relocation of existing utilities by PG&E.

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 D4B – Willow Avenue Widening, Shepherd Avenue to Behymer Avenue



Responsible Agency
City of Fresno

Project Limits

The project limits include 1 mile of added travel lane on Willow Ave. between Shepherd Ave. and Behymer Ave

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

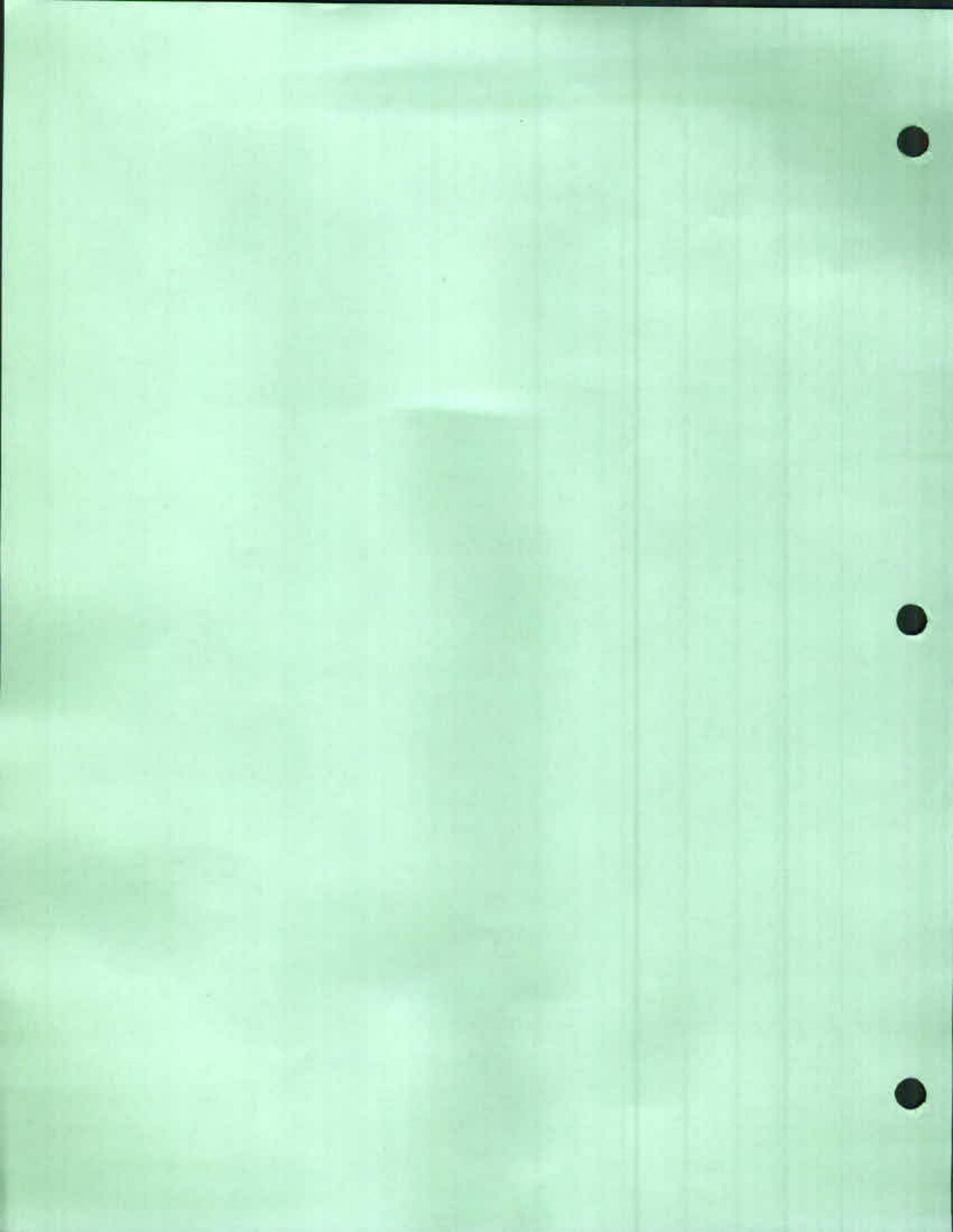
For inquiries, you may contact Scott Mozier, P.E., City Engineer, with the City of Fresno Public Works Dept. at (559) 621-8650.

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	2008/09	2009/09	\$0.000	\$0.900	\$0.213	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.213
FUNDING PROGRAM												
Measure "C" Original Program												\$0.000
Measure "C" Extension					\$0.170							\$0.170
RTMP												\$0.000
STP												\$0.000
TCRP												\$0.000
Local Development Fees					\$0.043							\$0.043
Federal Aid												\$0.042
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
TOTAL FUNDING PHASE 1:			\$0.000	\$0.900	\$0.213	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.213
Right-of-Way			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
FUNDING PROGRAM												
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												\$0.000
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
TOTAL FUNDING PHASE 2:			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Construction	2008/09	2009/09	\$0.000	\$0.900	\$3.300	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$3.300
FUNDING PROGRAM												
Measure "C" Original Program												\$0.000
Measure "C" Extension					\$2.088							\$2.088
RTMP												\$0.000
STP												\$0.000
TCRP												\$0.000
Local Development Fees					\$0.572							\$0.572
Federal Aid												\$0.000
Other State (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
Other Local (Specify)												\$0.000
TOTAL FUNDING PHASE 3:			\$0.000	\$0.900	\$3.300	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$3.300
AL FUNDING ALL PHASES:			\$0.000	\$0.900	\$3.573	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$3.573

© Measure C - Short-Range Regional Transportation Program (SRTP) - 2007/08 - 2013/14
 Prepared by: [unclear]
 Date: [unclear]

[Handwritten initials]



ATTACHMENT "D"

**COOPERATIVE PROJECT AGREEMENT
PROJECT K6 (URBAN)
HERNDON AVENUE VALENTINE AVENUE TO MARKS AVENUE**

1 B
5/21/09
attachment 0 D4

MEASURE "C"
COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program
(Project K6 Urban, Herndon Avenue Valentine Avenue
to Marks Avenue)

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **August 19, 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 ("**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 transportation improvement Project K6, Herndon Avenue Widening Valentine Avenue to Marks Avenue, 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 Project K6 (Herndon Avenue Valentine Avenue to Marks Avenue); and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$807,000** 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 15th 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, 4th 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.

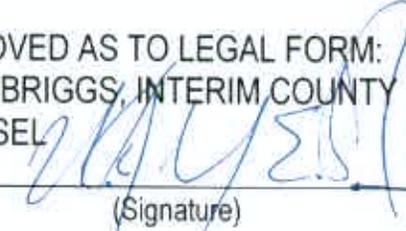
- 3.21 Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 Attorney's 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.

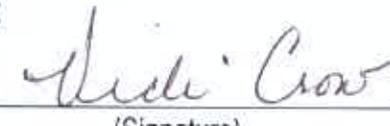
IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

FRESNO COUNTY TRANSPORTATION AUTHORITY

By 
(Signature)
Name Harry Armstrong
(Typed)
Title Chair of the Authority

ATTEST
By 
(Signature)
Name Ron Peterson
(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
(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, Deputy

APPROVED AS TO FORM
JAMES SANCHEZ, City Attorney

BY:  5.08.09
Deputy Coyle



EXHIBIT A – PROJECT SCOPE

Urban Project K6 – Herndon Ave. Widening, Valentine Ave. to Marks Ave.



Responsible Agency

City of Fresno

Project Limits

The project limits include 1700 ft. of added travel lanes on Herndon Ave. between Valentine Ave. and Marks Ave.

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 widen Herndon Ave. from four lanes to six lanes with median landscaping, protected-left-turn-lanes, curb and gutter, Multi-use Trail, streetlights, and modifications of existing traffic signal facilities. Phase 1 includes preparation of the environmental document to comply with CEQA and NEPA requirements and 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 4 parcels, of which none are full-take acquisitions. Phase 3 involves construction of the Project, traffic control operations, and Construction Management activities associated with the Project.

Complete Project Scope

Phase 1 involves development of an Initial Study and a Mitigated Negative Declaration to satisfy the CEQA requirements and the development of a Preliminary Environmental Study and a Programmatic Categorical Exclusion to satisfy the NEPA requirements and the preparation of PS&E. Phase 1 is currently in the 60% design phase. Phase 2 includes the processing and acquisition of ROW from 4 parcels along Herndon Ave. between Valentine Ave. and Marks 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 Herndon Avenue between Valentine Ave. and Marks Ave.

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 Herndon Avenue will not be sufficient to accommodate the traffic demands in the Year 2025. Also, other portions of Herndon to the east and the west of this project have already been widened. If this project is not completed it will ultimately create a bottleneck along Herndon Avenue.

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

No traffic detours will be needed during the construction of the widening project. Detours may be needed during the utility relocation phase of this project. Access to residences, businesses, and schools adjacent to Herndon Avenue will be provided and maintained throughout construction.

EXHIBIT A – PROJECT SCOPE

Urban Project K6 – Herndon Ave. Widening, Valentine Ave. to Marks Ave.

Current Status

Phase 1 has been initiated and the NEPA documents have been completed. Phase 1 is currently into the 60% design phase. Phase 2 has been initiated and will be completed before the next phase. Phase 3 will be initiated after completion of Phase 2 and relocation of existing utilities by PG&E and others.

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 K6 – Herndon Ave. Widening,
Valentine Ave. to Marks Ave.



Responsible Agency
City of Fresno

Project Limits

The project limits include 1700 ft. of added travel lanes on Herndon Ave. between Valentine Ave. and Marks Ave.

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.

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 - FUNDING PROGRAM	Prior	Prior	\$0.115	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.115
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			\$0.115								\$0.115
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
TOTAL FUNDING PHASE 1:			\$0.115	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.115
Right-of-Way - FUNDING PROGRAM	Prior	2008/09	\$0.256	\$0.000	\$0.396	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.652
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			\$0.256		\$0.396						\$0.652
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
TOTAL FUNDING PHASE 2:			\$0.256	\$0.000	\$0.396	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.652
Construction - FUNDING PROGRAM	2009/10	2009/10	\$0.000	\$0.000	\$0.000	\$2.159	\$0.000	\$0.000	\$0.000	\$0.000	\$2.159
Measure "C" Original Program											\$0.000
Measure "C" Extension						\$0.607					\$0.607
RTMP											\$0.000
STP											\$0.000
TCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid											\$0.000
Other State (Specify)						\$1.392					\$1.392
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
TOTAL FUNDING PHASE 3:			\$0.000	\$0.000	\$0.000	\$2.159	\$0.000	\$0.000	\$0.000	\$0.000	\$2.159
AL FUNDING ALL PHASES:			\$0.371	\$0.000	\$0.396	\$2.159	\$0.000	\$0.000	\$0.000	\$0.000	\$2.936

1. For Federal Funding, Funded by State/Localities (RTMP, TCNP)
2. Right-of-Way Acquisition
3. Right-of-Way Acquisition (Measure C)

AMENDMENT NO. 1 TO COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program (STRTP)
Project K6 Urban, Herndon Avenue - Valentine Avenue to Marks Avenue

This Amendment to STRTP Project K6 Urban, Herndon Avenue - Valentine Avenue to Marks Avenue is made and entered into the 16th day of December 2009 by and between the Fresno County Transportation Authority ("Authority") and the City of Fresno ("Responsible Agency").

1. PARTIES. The Authority and the City of Fresno are collectively referred to herein as "the Parties".
2. RECITALS.

2.1 WHEREAS, the Parties entered into the Cooperative Project Agreement for Project K6 Urban, Herndon Avenue - Valentine Avenue to Marks Avenue, ("Agreement"), dated August 19, 2009, for funding of a transportation improvement project ("**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, Authority is authorized to approve and revise Project funding for payment to Responsible Agency in accordance with the Agreement, the Handbook and the Expenditure Plan regarding the Project K6 Urban, Herndon Avenue - Valentine Avenue to Marks Avenue; and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$807,000** of Measure "C" funding and that will remain unchanged by this Amendment.

- 2.2 The Parties now desire to amend the statements defining and delineating the Project Scope, Project Schedule and Project Funding Program, as set forth in the original Agreement, based on the following:
 - Responsible Agency desires to reallocate, from Project Construction fund to Right of Way acquisition fund, a portion of the approved Measure "C" Regional Transportation Program ("**Measure "C"**") funding for the transportation improvement Project K6 Urban, Herndon Avenue - Valentine Avenue to Marks Avenue, per the revised Exhibits as more thoroughly described in Section 3.1 of this Amendment. This reallocation does not alter the total funding amount authorized by the original Agreement.

3. TERMS.

- 3.1 Exhibit "A" (Project Scope), Exhibit "B" (Project Schedule) and Exhibit "C" (Project Funding Program), which hereinafter shall be referenced collectively the "Original Exhibits" as set forth in Section 1.1 of the original Agreement, and fully incorporated therein by the provisions of Section 3.23 thereof, shall be and are hereby replaced by: Exhibit "A1" (Project Scope), Exhibit "B1" (Project Schedule) and Exhibit "C1" (Project Funding Program), which are attached hereto and incorporated herein by this reference, commencing upon the Effective Date of this Amendment No. 1 to the Agreement.
- 3.2 All work performed by the Responsible Agency under the Agreement prior to the Effective Date of this Amendment shall be governed by and compensated pursuant to the Original Exhibits and the Agreement. All work performed commencing upon the Effective Date of this Amendment shall be performed and compensated pursuant to the Agreement as amended herein.
- 3.3 Effective Date. The Effective Date of this Amendment No.1 to the Agreement shall be 12:01 a.m. of the day following the date upon which it is signed by the Parties. In the event this Amendment No. 1 to the Agreement is signed by the Parties on different dates, the Effective Date shall be 12:01 a.m. of the day following that date upon which it is signed by the second of the Parties.
- 3.4 All other terms and conditions contained in the Cooperative Project Agreement are unaffected by this First Amendment and shall remain in full force and effect.

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)

ATTEST
By [Signature]
(Signature)

Name _____
(Typed)

Name _____
(Typed)

Title Chair of the Authority

Title Executive Director

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

By [Signature]
(Signature)

APPROVED AS TO ACCOUNTING
FORM:

By [Signature]
(Signature)

Name MICHAEL E ROWE

Name VICKI CROW

Title Senior Deputy County Counsel

Title Auditor-Controller/Treasurer-Tax Collector

AGENCY NAME

ATTEST

By [Signature]
(Signature)

By [Signature]
(Signature)

Name Patrick N. Wijemiller

Name Jennifer Morelas, Deputy

Title Public Works Director

Title City Clerk, Deputy

APPROVED AS TO FORM
JAMES SANCEHZ, City Attorney

BY: [Signature] 11-12-09
Sr Deputy Coyle



EXHIBIT A1 – PROJECT SCOPE

Urban Project K6 – Herndon Ave. Widening, Valentine Ave. to Marks Ave.



Responsible Agency

City of Fresno

Project Limits

The project limits include 1700 ft. of added travel lanes on Herndon Ave. between Valentine Ave. and Marks Ave.

Project Phase

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

Project Phase(s) Scope

The ultimate project will widen Herndon Ave. from four lanes to six lanes with median landscaping, protected-left-turn-lanes, curb and gutter, Multi-use Trail, streetlights, and modifications of existing traffic signal facilities. Phase 1 includes preparation of the environmental document to comply with CEQA and NEPA requirements and the preparation of contraction 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 4 parcels, of which none are full-take acquisitions **and necessary utility relocation essential for the construction phase**. Phase 3 involves construction of the Project, traffic control operations, and Construction Management activities associated with the Project.

Complete Project Scope

Phase 1 involves development of an Initial Study and a Mitigated Negative Declaration to satisfy the CEQA requirements and the development of a Preliminary Environmental Study and a Programmatic Categorical Exclusion to satisfy the NEPA requirements and the preparation of PS&E. Phase 1 is currently in the 60% design phase. Phase 2 includes the processing and acquisition of ROW from 4 parcels along Herndon Ave. between Valentine Ave. and Marks Ave **and the relocation of an irrigation canal that runs along the south side of Herndon Avenue**. Phase 3 will be initiated after completion of Phase 2 and relocation of existing utilities. 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 Herndon Avenue between Valentine Ave. and Marks Ave.

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. Also, other portions of Herndon to the east and the west of this project have already been widened. If this project is not completed it will ultimately create a bottleneck along Herndon Avenue.

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

No traffic detours will be needed during the construction of the widening project. Detours may be needed during the utility relocation phase of this project. Access to residences, businesses, and schools adjacent to Herndon Avenue will be provided and maintained throughout construction.

Current Status

Phase 1 has been initiated and the NEPA documents have been completed. Phase 1 is currently into the 60% design phase. Phase 2 has been initiated and will be completed before the next phase. Phase 3 will be initiated after completion of Phase 2 and relocation of existing utilities by PG&E and others.

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 C1 - PROJECT FUNDING PROGRAM

Urban Project K6 – Herndon Ave. Widening,
Valentine Ave. to Marks Ave.

Responsible Agency
City of Fresno

Project Limits

The project limits include 1700 ft. of added travel lanes on Herndon Ave. between Valentine Ave. and Marks Ave.

Project Phase

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

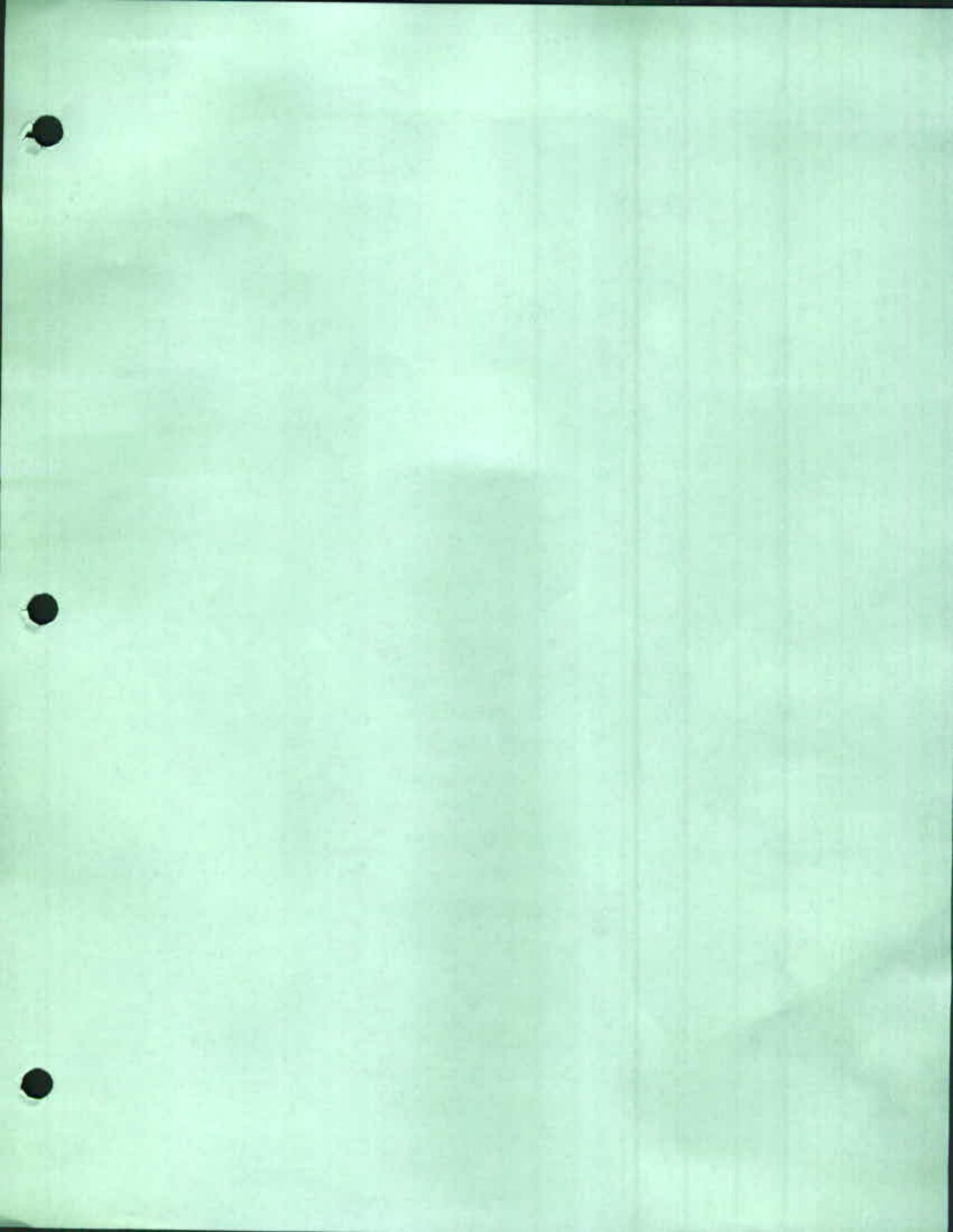
Contact

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	FUND 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	Phase 1	Phase 1	\$4,113	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$4,113
FUNDING PROGRAM													
Measure "C" Original Program													\$0,000
Measure "C" Extension													\$0,000
RTWP													\$0,000
STIP													\$0,000
TCRP													\$0,000
Local Development Fees													\$0,000
Federal Aid			\$4,113										\$4,113
Other State (Specify)													\$0,000
Other Local (Specify)													\$0,000
Other Local (Specify)													\$0,000
Other Local (Specify)													\$0,000
Other Local (Specify)													\$0,000
TOTAL FUNDING PHASE 1)			\$4,113	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$4,113
Phase 2													
Right-of-Way	Phase 2	Phase 2	\$0,268	\$0,000	\$0,268	\$0,433	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$1,709
FUNDING PROGRAM													
Measure "C" Original Program													\$0,000
Measure "C" Extension						\$0,433							\$0,433
RTWP													\$0,000
STIP													\$0,000
TCRP													\$0,000
Local Development Fees													\$0,000
Federal Aid			\$0,268		\$0,268								\$0,536
Other State (Specify)													\$0,000
Other Local (Specify)													\$0,000
Other Local (Specify)													\$0,000
Other Local (Specify)													\$0,000
TOTAL FUNDING PHASE 2)			\$0,268	\$0,000	\$0,268	\$0,433	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$1,709
Phase 3													
Construction	Phase 3	Phase 3	\$0,000	\$0,000	\$0,000	\$1,729	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$1,729
FUNDING PROGRAM													
Measure "C" Original Program													\$0,000
Measure "C" Extension						\$0,374							\$0,374
RTWP													\$0,000
STIP													\$0,000
TCRP													\$0,000
Local Development Fees													\$0,000
Federal Aid						\$1,729							\$1,729
Other State (Specify)													\$0,000
Other Local (Specify)													\$0,000
Other Local (Specify)													\$0,000
Other Local (Specify)													\$0,000
TOTAL FUNDING PHASE 3)			\$0,000	\$0,000	\$0,000	\$1,729	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$1,729
TOTAL FUNDING ALL PHASES)			\$4,381	\$0,000	\$0,268	\$2,162	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$0,000	\$6,750

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



ATTACHMENT "E"

**COOPERATIVE PROJECT AGREEMENT
PROJECT B-2 (URBAN)
MARKS AVENUE TO HUGHES-WEST, CONNECTOR**

MEASURE "C"
COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program
(Project B-2 Urban, Marks Avenue to Hughes-West,
Connector)

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **June 18 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 **B-2 Urban, Marks Avenue to Hughes-West, Connector** ("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" **\$335,000** 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 15th 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, 4th 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.

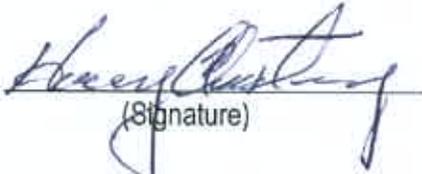
- 3.13 Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14 Survival.** The 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

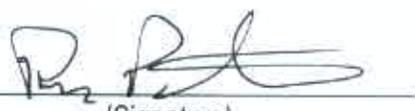
on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

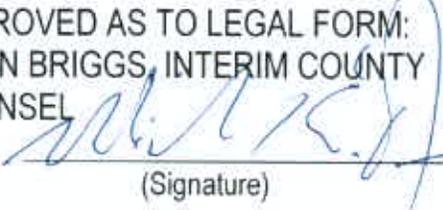
- 3.21 Responsible Agency Legal Proceedings.** The Responsible Agency shall inform the Authority of all pending legal proceedings associated with the Project to which Responsible Agency is a party, and allow Authority to participate in such proceedings to the extent legally authorized.
- 3.22 Attorney's 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.

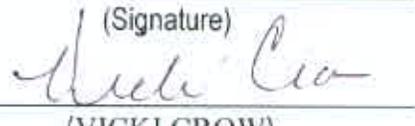
IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

FRESNO COUNTY TRANSPORTATION AUTHORITY

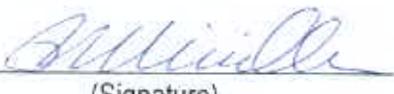
By 
(Signature)
Name _____
(Typed)
Title Chair of the Authority

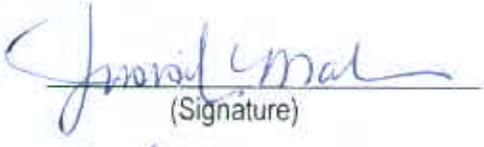
ATTEST
By 
(Signature)
Name _____
(Typed)
Title Executive Director

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

APPROVED AS TO FORM
JAMES SANCHEZ, City Attorney

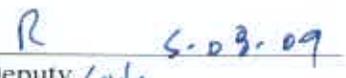
BY: 
Deputy Coyle



EXHIBIT A – PROJECT SCOPE

Urban Project B2 – Route 180 West Frontage Road – Marks Ave. to Hughes-West Ave. Connector



Responsible Agency
City of Fresno

Project Limits

The project limits include 1.0 miles of travel lanes on new Frontage Road between Marks Ave. and Hughes-West 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

The project will construct two lanes industrial connector street with curb and gutter, sidewalk, trees, streetlights, and traffic signals at Marks Avenue. Phase 1 includes preparation of the environmental document to comply with CEQA requirements and the preparation of construction documents including engineer's estimates for construction. No federal funds are involved with this project; therefore NEPA processing is not required. Phase 2 involves the appraisal, acquisition processing and purchase of property for street right-of-way purposes involving 9 parcels, of which 3 are full-take acquisitions. Phase 3 involves construction of the Project, traffic detours are not anticipated. Providing access to residences and businesses adjacent to construction site will be addressed by the contractor and the City Construction Managers at the time of construction.

Complete Project Scope

Phase 1 involved development of an Initial Study received approval. The 2 Geometric design was prepared by Caltrans during the design phase of SR180 between Hughes-West Ave. and Marks Ave. and this design will be adopted to prepare PS&E for the project. Additionally PG&E and other Utility companies will be notified of any utility poles that may impact this project. Phase 2 includes the processing and acquisition of ROW from 9 parcels along proposed alignment between Marks Avenue and Hughes-West Avenue. Phase 3 will be initiated after culmination Phase 2 with right of way certification. 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 and to promote development within the Roeding Business Park.

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 the by not implementing this project development of Roeding Business will not progress as planned thus resulting less job creation for the region.

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 it is unlikely that detours are needed for this project. Access to residences, and businesses will be provided and maintained throughout construction.

Current Status

Waiting for funding to initiate the project.

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 B2 – Route 180 West Frontage Road – Marks Ave. to Hughes-West Ave. Connector

Responsible Agency
City of Fresno

Project Limits

The project limits include 1.0 mile of added travel lanes on the proposed Connector between Marks Ave. and Hughes-West 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
FUNDING PROGRAM	2008/09	2012/13	\$0.000	\$0.000	\$0.335	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.335
Measure "C" Original Program											\$0.000
Measure "C" Extension					\$0.335						\$0.335
STIP											\$0.000
TCEP											\$0.000
Local Development Fee											\$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
TOTAL FUNDING PHASE 1			\$0.000	\$0.000	\$0.335	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.335
FUNDING PROGRAM	2008/09	2012/13	\$0.000	\$0.000	\$0.000	\$2.758	\$0.000	\$0.000	\$0.000	\$0.000	\$2.758
Measure "C" Original Program											\$2.000
Measure "C" Extension						\$2.758					\$2.758
STIP											\$0.000
TCEP											\$0.000
Local Development Fee											\$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
TOTAL FUNDING PHASE 2			\$0.000	\$0.000	\$0.000	\$2.758	\$0.000	\$0.000	\$0.000	\$0.000	\$2.758
FUNDING PROGRAM	2013/14	2013/14	\$0.000	\$0.000	\$0.000	\$4.428	\$0.000	\$0.000	\$0.000	\$0.000	\$4.428
Measure "C" Original Program											\$0.000
Measure "C" Extension						\$4.428					\$4.428
STIP											\$0.000
TCEP											\$0.000
Local Development Fee											\$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
TOTAL FUNDING PHASE 3			\$0.000	\$0.000	\$0.000	\$4.428	\$0.000	\$0.000	\$0.000	\$0.000	\$4.428
TOTAL FUNDING ALL PHASES			\$0.000	\$0.000	\$0.335	\$2.758	\$4.428	\$0.000	\$0.000	\$0.000	\$7.521

* Preliminary Engineering, Measure C-Original Program
 ** Right-of-Way Acquisition
 *** Project Construction & Construction Management

11



MEASURE "C"
COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program
(Project I-2, Peach Avenue Widening – Jensen Avenue
to Butler Avenue)

This Cooperative Project Agreement ("**Agreement**") is made and entered into on **December 14, 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 ("**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 transportation improvement Project I-2, Peach Avenue Widening – Jensen Avenue to Butler Avenue 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 I-2 Peach Avenue Widening – Jensen Avenue to Butler Avenue; and,

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **\$388,000** 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 such 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. The project will widen Peach Avenue between Jensen and Butler Avenues from a two-lane to divided four-lane arterial with median landscaping, curb, gutter and sidewalk, streetlights, installation of new and modification of existing traffic signal facilities, asphalt structural sections of roadway, bike lanes, relocation and restoration of property fences, and bridge widening at the Central Canal.

1.1.2 Project Schedule. Construction will occur between **July 2012 and September 2013**.

1.1.3 Project Funding Program. The total project budget is composed of the following funding source(s):

Measure C Tier 1:	7,514,640
<u>Local Development Fee</u>	<u>1,878,660</u>
TOTAL DIRECT COSTS	\$9,393,300

1.2 Eligible Project Costs. Notwithstanding section 1.1, 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

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 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 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 15th 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 the Handbook is 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 2.6.
- 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.

- 2.0 **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.
- 2.1 **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.
- 2.2 **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.
- 2.3 **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.

2.4 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:

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

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

2.4.3 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.

2.4.3.1 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.

2.5 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.

2.5.1 Notice of Audit. The Authority must provide timely notice to the Responsible Agency if an audit is to be conducted.

- 2.6 **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. The Responsible Agency shall request an Agreement amendment if needed for this purpose in writing to the Authority. Such amended Agreement shall be effective 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 sooner terminated as provided in Section 3.2 or in Section 3.4 or unless the Agreement's term is extended.

- 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.

1.2.2 **Discharge Upon Completion of Project**. Except as to any rights or obligations which survive discharge as specified in Section 3.14, 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.

1.2.3 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. If this Agreement is terminated by the Authority as provided herein, Responsible Agency will be paid for eligible Project costs incurred prior to termination of the Agreement by the Authority 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 2.1.

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, Director
City of Fresno, Department of Public Works
2600 Fresno Street, Room 4016
Fresno, CA 93721-3615
Ph: (559) 621-8650; Fax: (559) 488-1045

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 Section 3.10 above.
- 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 shall survive discharge: Section 1.6 (Invoices) and Section 2.0 (Project Management/Formation of Project Development Team).
- 3.14.2 Authority. As to Authority, the following section shall survive discharge: Section 2.5 (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 a part of this Agreement. The captions do 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 agreements, scheduled settlement hearings, or other scheduled legal proceedings associated with the Project and invite and allow Authority to participate in such proceedings or hearings.
- 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 party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.
- 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

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

By [Signature]
(Signature)

Name MICHAEL E ROWE

Title Senior Deputy County Counsel

ATTEST
By [Signature]
(Signature)

Name _____
(Typed)

Title Executive Director

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

APPROVED AS TO FORM
JAMES SANCHEZ, City Attorney

BY: [Signature] 11-19-09
Deputy Loyle

ATTEST
By [Signature], Deputy
(Signature) 11/20/09

Name REBECCA E. KLISCH

Title City Clerk

• • • • •

Current Status

Phase 1 is scheduled to commence in July 2009. Phase 2 will begin after approval of the preliminary environmental study (CEQA). Phase 3 will be initiated after completion of Phase 2 and relocation of existing utilities by PG&E and other utility companies.

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

Project I-2 – Peach Ave. Widening, Jensen Ave. to Butler Ave.



Replace information below with information for subject Project phase

Responsible Agency
City of Fresno

Project Limits

The project limits include 1.5 miles of added travel lanes on Peach Ave. between Jensen Ave. 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)

(Double click on Table on the following page to complete for all Project phases – It is important for the Authority to understand the funding program for the entire Project; not just the Project phase(s) that is checked above and the subject of this Agreement)

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION							TOTAL COST & FUNDING
				SHORT TERM PROGRAM FY 2007/08 - 2013/14							
FUNDING PROGRAM				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Measure "C" Original Program											\$0.000
Measure "C" Extension	2009/10	2010/11				\$0.388					\$0.388
BTMP											\$0.000
STIP											\$0.000
LCRP											\$0.000
Local Development Fees						\$0.097					\$0.097
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
TOTAL FUNDING PHASE 1:			\$0.000	\$0.000	\$0.000	\$0.485	\$0.000	\$0.000	\$0.000	\$0.000	\$0.485
Measure "C" Original Program											\$0.000
Measure "C" Extension								\$0.889			\$0.889
BTMP											\$0.000
STIP											\$0.000
LCRP											\$0.000
Local Development Fees								\$0.222			\$0.222
Federal Aid											\$0.000
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
TOTAL FUNDING PHASE 2:			\$0.000	\$0.000	\$0.000	\$0.000	\$1.111	\$0.000	\$0.000	\$0.000	\$1.111
Measure "C" Original Program											\$0.000
Measure "C" Extension	2012/12	2012/13								\$6.238	\$6.238
BTMP											\$0.000
STIP											\$0.000
LCRP											\$0.000
Local Development Fees											\$0.000
Federal Aid									\$1.559		\$1.559
Other State (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
Other Local (Specify)											\$0.000
TOTAL FUNDING PHASE 3:			\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$7.797	\$0.000	\$7.797
TOTAL FUNDING ALL PHASES:			\$0.000	\$0.000	\$0.000	\$0.485	\$1.111	\$0.000	\$7.797	\$0.000	\$9.293

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

