

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

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

**RECITALS**

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

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

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

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

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

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.

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.

## 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.

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

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.

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.



## EXHIBIT A – PROJECT SCOPE

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



#### Responsible Agency

City of Fresno

#### Project Limits

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

#### Project Phase

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

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

#### Project Phase(s) Scope

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

#### Complete Project Scope

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

#### Project Purpose

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

#### Transportation Benefit

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

#### Implications of Not Doing the Project

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



Measure "C" Short-Range Regional Transportation Program / Project Schedule – Exhibit B



## EXHIBIT B – PROJECT SCHEDULE

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



Responsible Agency  
City of Fresno

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

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

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

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

#### Project Schedule

PROJECT PHASE	START	END	SHORT-TERM PROGRAM FY 2008/09 - 2010/11																							
			2008/09												2009/10								2010/11			
			J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
Prelim. Eng.*1																										
1. PSR	Prior	2008/09																								
2. Project Report	2008/09	2010/11																								
3. Environ. Doc.	2008/09	2010/11																								
4. Other (Explain)																										
5. Other (Explain)																										
Right-of-Way *2	Future	Future																								
1. Parcel Research																										
2. Appraisal																										
3. Acquisition																										
4. Other (Explain)																										
5. Other (Explain)																										
Construction *3	Future	Future																								
1. Bid Devel.																										
2. Construction																										
3. Constr. Manage.																										

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

\*2 Right-of-Way Acquisition

\*3 Project Construction & Construction Management

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

\*1 Preliminary Engineering: Preliminary Design/Engineering (PSE), Environmental

\*2 Right of Way Acquisition

\*3 Project Construction & Construction Management