

REIMBURSEMENT AGREEMENT

California High Speed Rail Heavy Maintenance Facility

This Reimbursement Agreement (Agreement) is made and entered into on _____, 2017, by and between the City of Fresno (City) and the Fresno County Transportation Authority (Authority).

RECITALS

WHEREAS, the California High Speed Rail Authority (CHSRA) is in the process of selecting the location of the High Speed Rail Heavy Maintenance Facility (Heavy Maintenance Facility); and

WHEREAS, the CHSRA estimates that the Heavy Maintenance Facility will include an investment of \$250 million dollars and create 1200 full-time skilled and professional jobs; and

WHEREAS, passage of the Measure C Extension created an Alternative Transportation (Rail Consolidation) Program funded by the proceeds of Measure C sales and use taxes; and

WHEREAS, the Fresno Council of Governments (COG) Policy Board and the Authority Board approved Amendment #1 to the Measure C Extension Expenditure Plan in 2010 which authorized \$25 million to be reallocated from the Alternative Transportation Program to a new High Speed Rail Facilities Program; and

WHEREAS, Amendment # 1 expressly provided that expenditure of any of those funds was conditioned upon and subsequent to Fresno County being formally designated by the CHSRA as the location of the High Speed Rail Heavy Maintenance Facility; and

WHEREAS, CHSRA representatives had emphasized the importance of site control as a major factor in the Heavy Maintenance Facility site selection process; and

WHEREAS, the City has hired a specialized right of way consultant, Continental Field Services (CFS), to conduct a voluntary acquisition program and to negotiate land purchase and sale agreements pursuant thereto with the owners of the parcels located within the Fresno Heavy Maintenance Facility site footprint as depicted in Exhibit "A" (Site); and

WHEREAS the land purchase and sale agreements are transferrable to the CHSRA when Fresno County is formally designated by the CHSRA as the location for the Heavy Maintenance Facility; and

WHEREAS, should it be necessary or advantageous to do so, City will itself proceed to acquire said parcels pursuant to the land purchase and sale agreements, and subsequently transfer ownership to the State of California for use by CHSRA for the Heavy Maintenance Facility; and

WHEREAS, on January 26, 2017, the COG Policy Board approved, subject to final approval by the Authority's Board, Amendment #3 to the Measure C Extension Expenditure Plan by adoption of its Resolution No. 2017-01; and

WHEREAS, Amendment # 3 by its terms allows for expenditure of a portion of the \$25 million dollars designated for the High Speed Rail Facilities Program, for the purpose of reimbursement to the City of Fresno, which expenditure in an amount not to exceed \$500,000 may occur both prior to and irrespective of whether the CHSRA formally designates Fresno County as the location of the Heavy Maintenance Facility; and

WHEREAS, on February 8, 2017, the Authority Board, by its Resolution No. 2017-01, approved Amendment #3 to the Measure C Extension Expenditure Plan, subject to preparation and execution by the City and Authority of an appropriate reimbursement agreement; and

WHEREAS, the Authority's Board authorized Authority's Chairman to execute this Agreement on behalf of Authority, contingent upon prior approval by the FCTA's Executive Director and its legal counsel; and

WHEREAS, if requested to do so by the CHSRA, following formal designation by CHSRA of Fresno County as the location of the Heavy Maintenance Facility, it is understood that Authority would consider a request by City, subject to subsequent approval by Authority's Board pursuant to either an entirely separate agreement or a formal amendment hereto, that the Authority deposit directly into the escrows on behalf of CHSRA, from the remainder of the Authority's \$25 million allocation to its High Speed Rail Facilities Program, the remainder of the purchase price for each of the parcels collectively comprising the Site; and

WHEREAS, Authority and City now desire to enter into this Agreement, which serves primarily to establish the requirements and parameters governing reimbursement by Authority to the City, up to the maximum amount of \$500,000, of certain funds expended by City for the purpose of securing control of the Site.

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

1. Reimbursement of Expenditures. City has entered into, or will enter into, purchase agreements to acquire the properties for the Site (Purchase Agreements). The Purchase Agreements are subject to a condition precedent that Fresno County is selected as the location for the Heavy Maintenance Facility and require non-refundable deposits to the property owners of up to \$250,000 in 2017 and \$250,000 in 2018 for a total of \$500,000 (Deposits). If Fresno County is selected for the Heavy Maintenance Facility, the Deposits are applied toward the purchase price for the properties. The Authority shall reimburse City for the Deposits as permitted by Amendment #3 to the Measure C Extension Expenditure Plan.
2. Measure "C" Funds Defined. For purposes of this Agreement, Measure C funds are deemed to be available under the High Speed Rail Facilities Program. The total cumulative amount of Measure C funds allocated under the High Speed Rail Facilities Program for reimbursement of the Deposits shall not exceed the sum of \$500,000.

3. Invoices. Upon full execution of a Purchase Agreement, City shall submit a copy of the executed Purchase Agreement and an invoice for the Deposit to the Authority. Authority shall submit payment to the City within thirty calendar days of receipt of the invoice.
4. Eligible Expenses. City shall be reimbursed only for the Deposits and not for any other related expenses such as consultant fees or City staff time.
5. Effective Date and Term. This Agreement shall become effective as of the date of its full execution by the parties and shall remain in full force and effect following its final approval by the Authority's Chairman, until June 30, 2019, unless sooner terminated as provided herein or unless the Agreement's term is extended by formal approval of a subsequent amendment hereto.
6. Limited Indemnification Provision. City hereby agrees to save, indemnify, hold harmless and, at Authority's request, defend Authority and its officers, agents, and employees, from and against any and all allegations, claims, demands, expenses, liabilities, losses and costs (including but not limited to court costs and attorney's fees), and damages of any kind or nature whatsoever, with regard to any alleged violation of any applicable federal, state or local laws or regulations, including but not limited to the regulatory provisions implementing the federal Uniform Relocation Act (set forth in 49 Code of Federal Regulations Part 24) and the applicable provisions of the California Environmental Quality Act and its implementing regulations and Guidelines, based on any alleged act or omission by City or its authorized agents, specifically including CFS, regarding the conduct of the voluntary acquisition program pursuant to which the Purchase Agreements were negotiated.

Notwithstanding any other provision of this Agreement, City shall pay all reasonable attorneys' fees and costs related to the representation of Authority in connection with any action initiated by a non-party to this Agreement in which Authority is named as a defendant, if any allegation upon which the action is based is encompassed by the scope of City's limited duty to indemnify and defend the Authority as specified in the immediately preceding paragraph of this Section 6.

City shall notify Authority in writing within ten business days of its receipt of any notice, summons, demand, claim, action, proceeding, or litigation as to which Authority is entitled to be indemnified, defended and held harmless by City pursuant hereto. If Authority requests that City defend Authority, then it shall notify City of such request in writing within ten business days of Authority's receipt of City's notification of any such demand, claim, action, proceeding, or litigation. Authority shall cooperate fully in such defense.

7. Termination. This Agreement may be terminated by mutual consent of City and Authority following a final determination by the CHSRA Board not to locate its Heavy Maintenance Facility in Fresno County. If this Agreement is mutually terminated by the parties, City will no longer receive Measure C funds under the High Speed Rail Facilities Program for the proposed Heavy Maintenance Facility project.

8. 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 Extension funds. If for any reason the Authority's right to collect or expend such sales tax proceeds is terminated or suspended in whole or part, the Authority shall promptly notify the City, and the parties shall consult on a course of action. If, after 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 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.

9. 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:

Mike Leonardo, Executive Director
Fresno County Transportation Authority
2220 Tulare Street, Suite 411
Fresno, CA 93721
Phone: (559) 600-3282 Fax: (559) 600-1499

CITY:

City of Fresno
Attn: City Manager
2600 Fresno Street, 2nd Floor
Fresno, CA 93721
Phone: (559) 621-7770

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.

10. 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.
11. 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.

12. Amendment. This Agreement may not be changed, modified, or rescinded except in writing, approved by the respective governing bodies and duly executed by authorized representatives of each of the parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
13. Independent Agency. City renders services under this Agreement as an independent agency under the Agreement. None of the City'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 the City.
14. Assignment. This Agreement may not be assigned or transferred, in whole or in part, by any party without the express written consent of all parties hereto.
15. 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 for either party to assign or transfer any of its rights, duties or obligations hereunder, except as allowed by the provisions of the immediately preceding Section 14.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. Attorney's Fees and Costs. Authority and City each will bear its own respective costs, including attorney's fees, in connection with any legal proceedings as between the parties hereto related to the interpretation or enforcement of this Agreement or any of the terms and conditions hereof.

23. Exhibits and Recitals. The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
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.
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.

[Signatures appear on following page]

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

FRESNO COUNTY TRANSPORTATION AUTHORITY

ATTEST:

By: _____
(Signature)

Name: ERNEST "BUDDY" MENDES
(Typed)

Title: Chair of the Authority

APPROVED AS TO LEGAL FORM:
DANIEL C. CEDERBORG, COUNTY
COUNSEL

By: _____
(Signature)

Name: MICHAEL E. ROWE

Title: Senior Deputy County Counsel

CITY OF FRESNO

By: _____
(Signature)

Name: BRUCE RUDD

Title: City Manager

APPROVED AS TO FORM
DOUGLAS SLOAN, City Attorney

By: _____
Laurie Avedisian-Favini
Assistant City Attorney

By: _____
(Signature)

Name: MIKE LEONARDO
(Typed)

Title: Executive Director

APPROVED AS TO
ACCOUNTING FORM:

By: _____
(Signature)

Name: OSCAR J. GARCIA

Title: Auditor-Controller/Treasurer-
Tax Collector

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
(Signature)

Name: YVONNE SPENCE, CMC

Title: City Clerk