

**AGREEMENT BETWEEN THE COUNTY OF FRESNO AND THE FRESNO
COUNCIL OF GOVERNMENTS FOR OVERALL WORK PROGRAM
PLANNING SERVICES**

This Agreement (hereinafter referred to as AGREEMENT) is made and entered into this 25th day of April, 2017, by and between the COUNTY OF FRESNO, a political subdivision of the state of California (hereinafter referred to as "AGENCY"), and the FRESNO COUNCIL OF GOVERNMENTS, a joint powers public agency (hereinafter referred to as "FCOG") acting both as the federally designated Metropolitan Planning Organization of the urbanized County of Fresno in accordance with Title 23 of the United States Code (USC) Section 134 (23 USC §134) and Title 23 Code of Federal Regulations (CFR) Section 450.104 (23 CFR §450.104) and as the Regional Transportation Planning Agency (RTPA) recognized under California Government Code Section 29532, which establishes a general transportation planning and programming process codifying the responsibilities of FCOG and AGENCY. This AGREEMENT supersedes and effectively cancels the MASTER AGREEMENT BETWEEN THE COUNTY OF FRESNO AND THE COUNCIL OF FRESNO COUNTY GOVERNMENTS FOR OWP CONSULTING SERVICES dated February 4, 1985:

WITNESSETH:

WHEREAS, Title 23 of the United States Code requires an annual Overall Work Program (OWP) which identifies regional planning and planning-related activities of FCOG and its member governments, to be adopted each fiscal year by FCOG; and

WHEREAS, the planning process employed by FCOG will provide for the cooperation of, and coordination with, public transit and paratransit operators, public airport operators, local public works and planning departments, air pollution control districts, passenger and freight rail operators, and other state and federal agencies, as appropriate; and

WHEREAS, FCOG, in cooperation with the State Department of Transportation, Federal Highway Administration, Federal Transit Administration, the designated air pollution control agency, and public transportation service providers, will be responsible for carrying out the metropolitan transportation planning process; and

WHEREAS, in accordance with 23 CFR Section 450.212 and 23 CFR Section 450.316(b), the planning process shall be conducted in an open manner so members of public, civic groups, interest groups, businesses and industries, and other agencies can fully participate; and

WHEREAS, Chapter 2, Section 2.3 of the Joint Powers AGREEMENT creating FCOG allows member agencies to perform planning services in accordance with the approved work programs; and

NOW THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter expressed, and intending to be legally bound thereby, the parties do mutually agree as follows:

SECTION 1. EMPLOYMENT OF AGENCY

FCOG hereby engages AGENCY to perform such professional technical services and assistance as are set forth in the adopted Overall Work Program.

SECTION 2. SCOPE OF SERVICES

AGENCY shall perform the respective services described in the Overall Work Program, of which each program as incorporated by reference herein. For purposes of this AGREEMENT, the term "Overall Work Program" or "OWP" shall include the current Overall Work Program and all annual Overall Work Programs subsequently adopted during the term of this AGREEMENT.

SECTION 3. DATA TO BE FURNISHED

All information, data, reports, records, and maps as are existing and necessary to carry out the work detailed in Section 2, above, shall be made mutually available by FCOG and AGENCY without charge, with the agency that supplied grant funding to develop the information, data, reports, records, and maps retaining ownership.

SECTION 4. LIAISON

The FCOG Executive Director shall coordinate the various activities under this AGREEMENT. AGENCY shall appoint a staff member(s) to coordinate the various tasks and to maintain liaison with FCOG.

SECTION 5. PERSONNEL - SUBCONTRACTING

All services hereunder performed by AGENCY subsequent to this AGREEMENT shall be performed by AGENCY respectively under its direct supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under state and local law to perform the service. In performance of the work, duties, and obligations assumed by AGENCY to be provided under this AGREEMENT, it is mutually expressly understood and agreed that AGENCY will at all times be acting and performing as an independent contracting firm, and shall act in an independent capacity. Furthermore, FCOG shall have no right to control or supervise or direct the manner or method by which AGENCY shall perform its work and function. However, FCOG shall retain the right to administer this AGREEMENT so as to verify that AGENCY is performing its obligations in accordance with the terms and conditions thereof. AGENCY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contracting firm, AGENCY shall have absolutely no right to employment rights and benefits available to FCOG employees. AGENCY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, AGENCY shall be solely responsible and save FCOG harmless from all matters relating to payment of AGENCY employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

None of the work or services covered by this AGREEMENT shall be subcontracted out by AGENCY unless approved in advance by the FCOG Executive Director. Such consent shall not be construed as making the FCOG a party to such subcontract, or subjecting the FCOG to liability of any kind to any subcontractor. No subcontract whether existing or later entered into as set forth herein, under any circumstances shall relieve the AGENCY of its obligations under this contract.

SECTION 6. TIME OF PERFORMANCE

Work completed pursuant to this AGREEMENT shall be in accordance with the schedule for each project, task or work element set forth in the adopted OWP in effect at the time of performance of that work.

SECTION 7. COMPENSATION

- A. Maximum total cost for work performed by AGENCY pursuant to this AGREEMENT shall not exceed the amounts programmed for reimbursement as set forth in the adopted OWP in effect at the time of performance of that work.
- B. Only incurred actual costs are eligible under this AGREEMENT.
 - 1. Direct Personnel Costs - Staff charges shall be supported by time cards, and payroll records. Compensation shall be based on the actual salary and benefits paid and actual time spent on the project. Overhead charges shall be determined in accordance with the provisions of Title 2 CFR Part 200.
 - 2. Travel and subsistence cost incurred pursuant to fulfilling the objectives under this AGREEMENT shall be in accordance with adopted travel reimbursement policies and supported by documentation and shall not exceed rates authorized to be paid non-state employees under current State Department of Personnel Administration (DPA) rules unless written verification is supplied that governments hotel rates are not commercially available at the time and location required.

3. The cost of other equipment, material, and services as may be required shall be supported by appropriate documentation, including but not limited to invoices, purchase orders, vouchers, receipts, etc.

SECTION 8. METHOD OF PAYMENT

AGENCY may bill quarterly for performance of services pursuant to this AGREEMENT by submitting a summary invoice reflecting the hours worked by work element, the individual incurring the hours, the official billing rate based on actual cost, documentation of other direct cost and a statement reflecting progress made on work items.

SECTION 9. RECORDS, COMPLIANCE WITH LAWS

AGENCY shall comply with all current Federal, State, and local laws, ordinances, and regulations applicable in carrying out its obligations under this AGREEMENT. Title 2, CFR, part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be used to determine authorization to allow reimbursement of individual project cost items.

AGENCY shall also comply with applicable federal procedures in accordance with Title 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

AGENCY and subcontractors hired by AGENCY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to performance under this AGREEMENT, including but not limited to, the cost of administering this AGREEMENT. All parties shall make such material available at their respective offices at all reasonable times throughout the contract term and for three years from the date of final payment under this AGREEMENT. Any duly authorized representative of the FCOG, the state, or the federal government shall have access to any books, records, and documents that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Any costs for which payment has been made that are determined by subsequent audit to be unallowable are subject to repayment by AGENCY.

Any subcontract entered into as a result of this AGREEMENT, shall contain all of the provisions of this Section 9.

SECTION 10. PROGRESS REPORT

AGENCY shall provide quarterly and year end progress reports to FCOG of all activities reimbursed pursuant to this AGREEMENT so FCOG can provide progress reports to the FCOG Board, member agencies, and State and Federal agencies detailing work done pursuant to the OWP.

SECTION 11. CHANGES

The OWP may be amended from time to time to reflect changes in the scope of services subsequent to approval by the FCOG Board, and state and federal agencies.

SECTION 12. SEVERABLE PROVISIONS

Each work element as listed in the OWP is considered separate and independent for the purposes of this AGREEMENT. Inability to complete or perform satisfactory progress on one work element will be deemed a partial breach of this AGREEMENT. Payment under this contract for satisfactorily completed items will not be withheld because of disagreement over one or more other particular work elements; only the payments under the disputed work element will be withheld, pending resolution of the dispute.

SECTION 13. CERTIFICATIONS AND ASSURANCES

AGENCY shall adhere to the requirements contained in FCOG's annual Certification and Assurances submitted and published annually as part of FCOG's OWP. Such requirements may include but are not limited to.

1. Title VI of the Civil Rights Act of 1964, and the Civil Rights Act of 1987 (P.L. 100.259).
2. 49 CFR Part 26 regarding the involvement of disadvantaged business enterprises in the award and administration of USDOT-assisted contracts.
3. The Americans with Disabilities Act of 1990 (Title 49 CFR Parts 27, 37, and 39.)

SECTION 14. FEDERAL AND STATE LOBBYING ACTIVITIES CERTIFICATION

AGENCY certifies, to the best of its knowledge and belief, no State or Federal funds shall be paid by or on behalf of AGENCY, to any person for influencing or attempting to influence and officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into any cooperative agreement, or the

extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.

AGENCY shall complete and submit Federal Standard Form-LL, "Disclosure Form to Report Lobbying," for any Non State or Federal funds paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress; and officer or employee of Congress, or an employee or a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

SECTION 15. DRUG FREE WORK PLACE

AGENCY certifies compliance with Government Code Section 8355 pertaining to providing a drug-free workplace.

SECTION 16. REPORTS

AGENCY shall acknowledge the participation of federal funds by causing to have printed on the cover page of any final document provided subsequent to this AGREEMENT, "The preparation of this report has been financed in part through grants from the United States Department of Transportation".

SECTION 17. TERM

This Agreement shall become effective as of the date of its execution by the parties hereto and shall remain in full force and effect until December 31, 2024.

SECTION 18. MODIFICATION

This AGREEMENT may be amended only by mutual written agreement, executed by duly authorized representatives of each of the parties hereto.

SECTION 19. TERMINATION

Either party may terminate this AGREEMENT at any time by giving written notice to the other party of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, AGENCY will be reimbursed for allowable costs in accordance with Section 7, of this Agreement to the date of termination. FCOG and AGENCY shall respectively provide all unfinished documents, data, studies, services, drawings, maps, photographs, reports, etc. prepared by that party pursuant to this AGREEMENT upon request from the other party.

SECTION 20. AVAILABILITY OF FUNDS

It is agreed by FCOG and AGENCY that funds authorized for projects and services pursuant to this AGREEMENT through the current adopted OWP as of the date of execution hereof, constitute all the money presently available for the purposes of this

AGREEMENT; and it is understood and acknowledged by the parties hereto that future additional funding of this AGREEMENT will depend not only on AGENCY'S satisfactory performance, but also upon the availability of grant funds allocated for such purposes.

FCOG and AGENCY agree that because additional funding may not be available beyond the term of a particular OWP for the competition of any unfinished project or service, each party is expected to structure and conduct each project in such a manner that it may be readily completed or wound up with a minimum waste or loss in the event no further funding is available.

SECTION 21. BINDING NATURE OF AGREEMENT; MODIFICATION

The parties agree that all of the terms of this AGREEMENT shall be binding upon each of them and that together these terms constitute the entire AGREEMENT of the parties with respect to the subject matter hereof. No variation or modification of this AGREEMENT and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties. This AGREEMENT shall be binding upon FCOG, the AGENCY, and their respective successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

SECTION 22. INDEMNITY

AGENCY and FCOG each agree to indemnify, save, hold harmless, and upon request, defend each other, and their respective boards, committees, representatives, officers, agents, and employees from and against any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage) occurring or resulting from any negligent acts, errors or omissions in performance of this AGREEMENT, and from any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death and property damage), occurring or resulting to any person, firm, corporation, or entity who may be injured or damaged to the extent such injury or damage arises from any negligent acts, errors or omissions in the performance of this AGREEMENT. This section shall survive termination or expiration of this Agreement.

SECTION 23. CONFLICT OF INTEREST

AGENCY and FCOG each covenants that it has no interest, and will not have any interest, direct or indirect, which would conflict in any manner with its performance of the services required hereunder.

SECTION 24. VENUE; GOVERNING LAW

Venue for any claim or action arising under this AGREEMENT shall only be in Fresno County, California. This AGREEMENT shall be governed in all respects by the laws of the State of California.

SECTION 25. LEGAL AUTHORITY

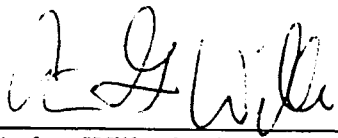
Each individual executing or attesting this AGREEMENT hereby covenants, warrants, and represents: (1) that he or she is duly authorized to execute or attest and deliver this AGREEMENT on behalf of such agency in accordance with a duly adopted resolution of the agency's board of directors and in accordance with such agency's article of incorporation or charter and bylaws; and (2) that this AGREEMENT is binding upon such agency.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT at Fresno, California, effective as of the day and year first above written.

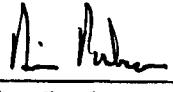
**FRESNO COUNCIL OF
GOVERNMENTS**

By: 
Tony Boren
Executive Director
Fresno Council of Governments

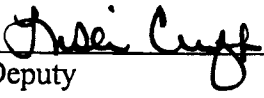
APPROVED AS TO LEGAL FORM
ON BEHALF OF THE FCOG:
Daniel C. Cederborg, County Counsel

By: 
Arthur Wille, Senior Deputy
County Counsel

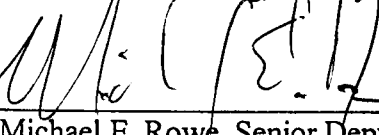
COUNTY OF FRESNO

By: 
Brian Pacheco, Chairman
Board of Supervisors

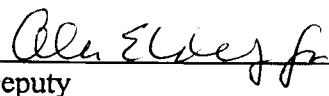
ATTEST:
Bernice E. Seidel, Clerk
Board of Supervisors

By: 
Deputy

APPROVED AS TO LEGAL FORM
ON BEHALF OF THE COUNTY
Daniel C. Cederborg, County Counsel

By: 
Michael E. Rowe, Senior Deputy

APPROVED AS TO ACCOUNTING
FORM
Oscar J. Garcia CPA
Auditor-Controller / Treasurer-Tax
Collector

By: 
Deputy

REVIEWED AND RECOMMENDED
FOR APPROVAL

By: 
Steven E. White, Director
Department of Public Works and
Planning

FOR ACCOUNTING USE ONLY

Fund: 0010
Subclass: 11000
Org. No.: 4510
Account: 4910