City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 1 H
COUNCIL MEETING December 10, 2009
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

December 10, 2009

FROM: PATRICK N. WIEMILLER, Public Works Director
Public Works Department

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

SUBJECT: CONSIDERATION OF APPROVAL OF MEASURE "C" COOPERATIVE AGREEMENT FOR THE WILLOW AVENUE IMPROVEMENT PROJECT FROM BARSTOW AVENUE TO ESCALON AVENUE (PROPERTY LOCATED IN COUNCIL DISTRICT 4)

RECOMMENDATIONS

Staff recommends the Council approve the Measure "C" Draft Cooperative Agreement in substantially the form attached for the Willow Avenue Improvement Project between Barstow Avenue and Escalon Avenue (Urban Project D-8); and that the Council authorize the Public Works Director or his designee to execute the Cooperative Project Agreement on behalf of the City subject to City Attorney approval as 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 Fresno County Transportation Authority ("Authority") on February 18, 2009. Since that time, the Council of Fresno County Governments (COG) has recognized the savings on recent regional highway projects. On December 16, 2009, the Authority Board will consider an amendment to the Measure C Short-Term Regional Transportation Program, as recommended by the COG Policy Board in November 2009 that will recognize these savings and enable the three largest regional projects, the SR-180/SR-168/SR-41 Braided Ramps project, the Veterans Boulevard project and the SR-180 East extension to proceed with final design and right-of-way acquisition in the Short-Term Program 7-year period. Also included in the amendment is the acceleration of a $1.7 million Willow Avenue Improvement Project from Barstow to Escalon Avenue, in order to leverage State Traffic Congestion Relief Program (TCRP) funds and to utilize California State University Fresno property that is to be donated for the intersection widening and trail improvements. Staff recommends approval of the Measure "C" Cooperative Agreement for the project.

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. Since that time, the Council of Fresno County Governments (COG) has recognized the savings on recent regional highway projects. On December 16, 2009, the Authority Board will consider an amendment to the Measure C Short-Term Regional Transportation Program, as recommended by the COG Policy Board in November 2009 that will recognize these savings and enable the three largest regional projects, the SR-180/SR-168/SR-41 Braided Ramps project, the Veterans Boulevard project and the SR-180 East extension to proceed with final design and right-of-way acquisition in the Short-Term Program 7-year period. Also included in the amendment is the acceleration of a $1.7 million Willow Avenue Improvement Project from Barstow to Escalon Avenue, in order to leverage $250,000 in State Traffic Congestion Relief Program (TCRP) funds and to utilize California State University Fresno property that is to be donated for the intersection widening and trail improvements.

The proposed Willow Avenue Improvement Project between Barstow Avenue and Escalon Avenue is supported by the City of Clovis and California State University, Fresno. The scope will include the widening of the intersection of Willow Avenue and Bullard Avenue to expand from four to six through lanes on Willow Avenue, to expand from single left turn lanes to dual left turn lanes on all four approaches and to provide for separate right turn pockets for southbound, eastbound and northbound traffic. The project will include six through lanes on Willow Avenue within the project limits and will construct a Class 1 multi-purpose bike and pedestrian trail on the west side of Willow Avenue, utilizing property to be donated by California State University, Fresno for both the trail and intersection widening.

In early 2009, the Authority prepared a boilerplate 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 Council has previously approved eleven cooperative agreements for Measure C Tier 1 Urban projects in the City of Fresno; the Willow Avenue agreement will be the twelfth cooperative agreement undertaken by the City.

Approval of the attached funding Agreement does not constitute Council approval of this individual project funded by Measure "C". Staff will return to Council for adoption of the associated CEQA document, approval of right-of-way acquisition agreement, requests for appropriations and for award of construction contracts as required for the project.

The Draft Cooperative Agreement has 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. This capital project will be designed and constructed through Measure "C" and TCRP funds.

PNW/SLM/eam
Consider Apprv Measure C Cooperative Agrmts (rev 12-1-09) 12-10-09

Attachment: Cooperative Project Agreement for the Willow Avenue Improvement Project from Barstow Avenue to Escalon Avenue (Urban Project D-8)

MEASURE "C"
COOPERATIVE PROJECT AGREEMENT
Short-Term Regional Transportation Program
(*Project D-8, Willow Avenue Improvements – Barstow Avenue to Escalon Avenue*)

This Cooperative Project Agreement ("**Agreement**") is made and entered into on *December ___, 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 D-8, Willow Avenue Widening – Barstow Avenue to Escalon 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.

WHEREAS, Authority shall provide funding to Responsible Agency for eligible Project costs "not to exceed" **$1,450,000** 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 scope consists of the improvements of Willow Avenue to six through travel lanes between Barstow Avenue and Escalon Avenue, a total length of 0.75 miles. At the intersection of Willow Avenue and Bullard Avenue, the project will widen the intersection to provide six through lanes on Willow Avenue, retain four through lanes on Bullard Avenue, widen for dual left turn lanes on all four approaches and provide separate right turn pockets for the southbound, eastbound and northbound directions of travel. The project will construct a Class 1 Multi-Purpose Bicycle and Pedestrian Trail on the west side of Willow Avenue within the project limits. See Exhibit A, for specific description.

1.1.2 Project Schedule. Construction will occur between August 2010 and February 2011. See Exhibit B, for specific description.

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

Measure C Tier 1:	1,450,000
Traffic Congestion Relief Program (TCRP)	250,000
TOTAL DIRECT COSTS	$1,700,000

See Exhibit C, for specific description.

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 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 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 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 2.6.

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, 2012**, 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:

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

With A Copy To:

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, hypotheticated, 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 1.9 (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 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 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)

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

ATTEST
By _____
(Signature)

Name REBECCA E. KLISCH

Title City Clerk

APPROVED AS TO FORM
JAMES SANCHEZ, City Attorney

BY: _____
Deputy

EXHIBIT A – PROJECT SCOPE

Project D-8 – Willow Avenue Improvements from Barstow Avenue to Escalon Avenue

Replace information below with information for subject Project phase

Responsible Agency
City of Fresno

Project Limits
Between Barstow Avenue and Escalon Avenue (0.75 miles)

Project Phase *(Choose the Project Phase(s) applicable to this Agreement)*
☒ Phase 1 - Preliminary Engineering *[Includes Preliminary Design/Engineering (PS&E) and Environmental]*
☒ Phase 2 - Right-of-Way Acquisition
☒ Phase 3 - Construction *(Includes Project Construction & Construction Management)*

Project Phase(s) Scope *(Provide detail to describe the Phase(s) that is the subject of this Agreement as checked above)*
Phase 1 includes preparation of the environmental document to comply with CEQA requirements, and preparation of contract construction documents including engineer's estimates for construction. Phase 2 includes acquisition of right-of-way at the southeast corner of the intersection of Willow Avenue and Bullard Avenue. Phase 3 includes project construction.

Complete Project Scope *(Provide detail to describe all phases of the Project - It is important for the Authority to understand the scope of the entire Project; not just the Project phase(s) that is described above).*
The project scope consists of the improvement of Willow Avenue to six through travel lanes between Barstow Avenue and Escalon Avenue, a total length of 0.75 miles. At the intersection of Willow Avenue and Bullard Avenue, the project will widen the intersection to provide six through lanes on Willow Avenue, retain four through lanes on Bullard Avenue, widen for dual left turn lanes on all four approaches and provide separate right turn pockets for the southbound, eastbound and northbound directions of travel. The project will construct a Class 1 Multi-Purpose Bicycle and Pedestrian Trail on the west side of Willow Avenue within the project limits.

Project Purpose
The purpose of this project is to provide for improved mobility by increasing capacity along Willow Avenue between Barstow Avenue and Escalon Avenue; and to improve level of service, reduce congestions and delays at the intersection of Willow Avenue and Bullard 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 Avenue will not be sufficient to accommodate the traffic demands in the Year 2030. The intersection of Willow Avenue and Bullard Avenue has been projected to reach Level of Service (LOS) "F" without the project, in various traffic impact studies conducted by California State University, Fresno, and as analyzed by the Fresno-Madera Interchange Deficiency Study.

Community Engagement
The project limits are within a moderately populated residential area. Residents, businesses 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, lane closures will be implemented as part of the stage construction for the project. Complete road closures and associated detours will not be necessary. Access will be maintained throughout construction.

Current Status
Phase 1 is scheduled to commence in December 2009. Phase 2 will begin after approval of the preliminary environmental study (CEQA). Phase 3 will be initiated after completion of Phase 2, with an expected start of construction in August 2010.

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

EXHIBIT B – PROJECT SCHEDULE

Project D-8 – Willow Avenue Widening from Barstow Avenue to Escalon Avenue

Replace information below with information for subject project phase

Responsible Agency
City of Fresno

Project Limits
The project limits include 0.75 miles of added travel lanes on Willow Ave. between Barstow Ave. and Escalon Ave.

Project Phase *(Choose all 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)*

Contact
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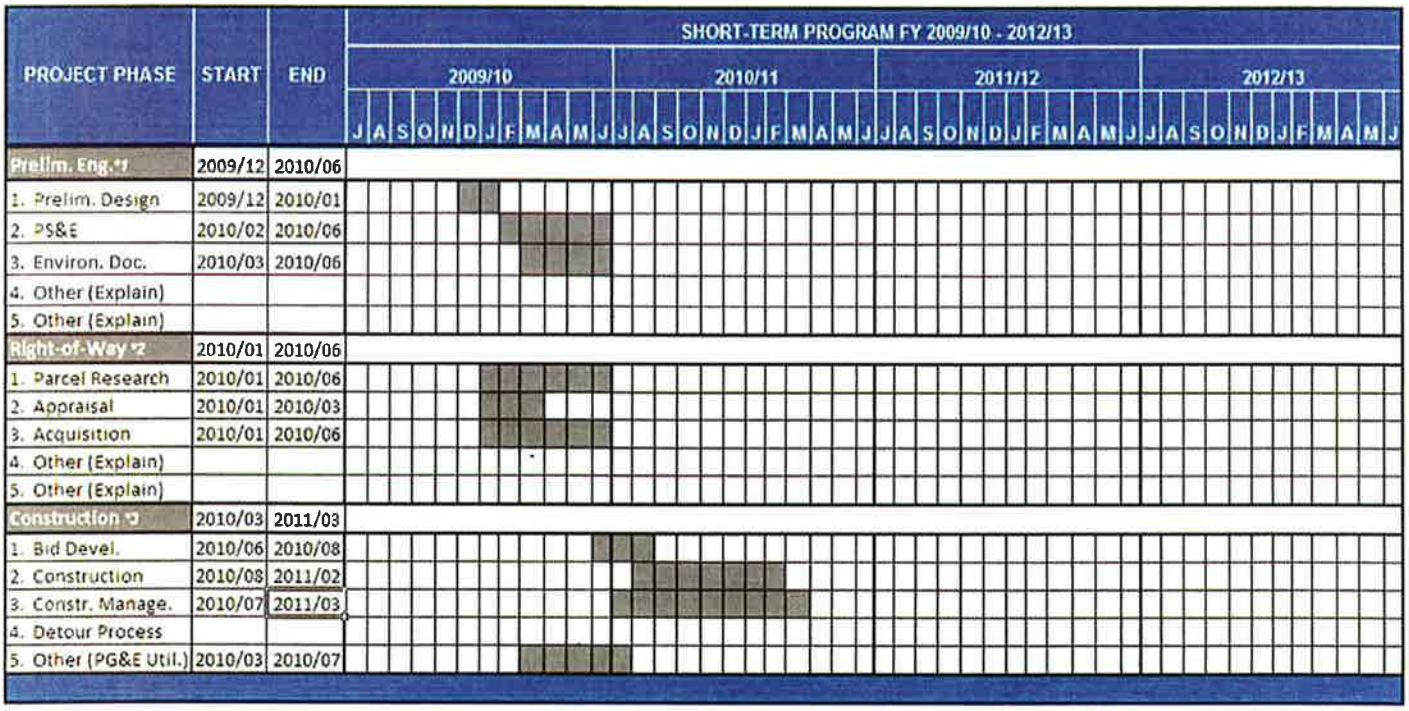
Project Schedule *(Double click on Table below to complete for all Project phases – It is important for the Authority to understand the schedule for the entire Project; not just the Project phase(s) that is checked above and the subject of this Agreement. Revise Fiscal Years in table below to reflect schedule for all phases of the Project)*

PROJECT PHASE	START	END
Prelim. Eng.*1	2009/12	2010/06
1. Prelim. Design	2009/12	2010/01
2. PS&E	2010/02	2010/06
3. Environ. Doc.	2010/03	2010/06
4. Other (Explain)		
5. Other (Explain)		
Right-of-Way *2	2010/01	2010/06
1. Parcel Research	2010/01	2010/06
2. Appraisal	2010/01	2010/03
3. Acquisition	2010/01	2010/06
4. Other (Explain)		
5. Other (Explain)		
Construction *3	2010/03	2011/03
1. Bid Devel.	2010/06	2010/08
2. Construction	2010/08	2011/02
3. Constr. Manage.	2010/07	2011/03
4. Detour Process		
5. Other (PG&E Util.)	2010/03	2010/07



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

*2 Right-of-Way Acquisition

*3 Project Construction & Construction Management

EXHIBIT C - PROJECT FUNDING PROGRAM

Project D-8 – Willow Avenue Improvements from Barstow Avenue to Escalon Avenue

Replace information below with information for subject Project phase

Responsible Agency
City of Fresno

Project Limits
Between Barstow Avenue and Escalon Avenue (0.75 miles)

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
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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 SHORT-TERM PROGRAM FY 2007/08 - 2013/14							TOTAL COST & FUNDING
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Preliminary Engineering [1]	2009/10	2009/10	$0.000	$0.000	$0.000	$0.110	$0.000	$0.000	$0.000	$0.000	$0.110
FUNDING PROGRAM											
Measure "C" Original Program											$0.000
Measure "C" Extension	2009/10	2009/10				$0.110					$0.110
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 1			$0.000	$0.000	$0.000	$0.110	$0.000	$0.000	$0.000	$0.000	$0.110

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION SHORT-TERM PROGRAM FY 2007/08 - 2013/14							TOTAL COST & FUNDING
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Right-of-Way [2]	2009/10	2009/10	$0.000	$0.000	$0.000	$0.040	$0.000	$0.000	$0.000	$0.000	$0.040
FUNDING PROGRAM											
Measure "C" Original Program											$0.000
Measure "C" Extension	2009/10	2009/10				$0.040					$0.040
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	$0.040	$0.000	$0.000	$0.000	$0.000	$0.040

PROJECT PHASE	START YEAR	END YEAR	PRIOR COST & FUNDING	NEW ALLOCATION SHORT-TERM PROGRAM FY 2007/08 - 2013/14							TOTAL COST & FUNDING
				2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Construction [3]	2009/10	2010/11	$0.000	$0.000	$0.000	$1.550	$0.000	$0.000	$0.000	$0.000	$1.550
FUNDING PROGRAM											
Measure "C" Original Program											$0.000
Measure "C" Extension	2009/10	2010/11				$1.300					$1.300
RTMF											$0.000
STIP											$0.000
TCRP*	2009/10	2010/11				$0.250					$0.250
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	$1.550	$0.000	$0.000	$0.000	$0.000	$1.550
TOTAL FUNDING ALL PHASES:			$0.000	$0.000	$0.000	$1.700	$0.000	$0.000	$0.000	$0.000	$1.700

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