

Golden State Corridor Cooperative Agreement

This AGREEMENT is made and entered into this _____ day of _____, 2014 by and between the Fresno Council of Governments, a Joint Powers Public Agency (hereinafter “FCOG”), the County of Fresno, a political subdivision of the State of California (hereinafter “COUNTY”), the Fresno County Transportation Authority, a body politic duly organized and existing under the Constitution and laws of the State of California (hereinafter “AUTHORITY”), the City of Fowler, a municipal corporation (hereinafter “FOWLER”), the City of Selma, a municipal corporation (hereinafter “SELMA”), and the City of Kingsburg, a municipal corporation (hereinafter “KINGSBURG”).

RECITALS

WHEREAS, the parties to this AGREEMENT are presently planning an improvement along Golden State Boulevard, a 14.2 mile stretch of old Highway 99 generally from American Avenue south to Mission Street in Kingsburg (hereinafter “the PROJECT”). The PROJECT width is 300 feet wide, centered on the current Golden State Boulevard centerline. The PROJECT area will pass through the cities of FOWLER, SELMA, and KINGSBURG, and unincorporated areas under the jurisdiction of the COUNTY; and,

WHEREAS, FOWLER, SELMA, KINGSBURG, and the COUNTY will be referred to collectively as “PARTICIPATING LOCAL AGENCIES” at various times throughout this AGREEMENT; and

WHEREAS, PARTICIPATING LOCAL AGENCIES, while maintaining and in no way delegating or relinquishing any of their respective jurisdictional responsibilities, recognize that it will be to their mutual benefit for the PROJECT to be constructed under a single coordinated construction contract; and,

WHEREAS, significant challenges exist in the proposed PROJECT area, particularly from a design engineering standpoint, in that the corridor currently lacks an overall cohesive identity; and while many significant improvements have been made along some sections of the corridor, other areas need renovation to blend and complement the improved portions; and additionally, each city needs to have its own identity and planning issues reflected while maintaining an aesthetic consistency along the entire length of the corridor; and,

WHEREAS, in furtherance of the shared goal to achieve a unified improvement along the entire corridor, PARTICIPATING LOCAL AGENCIES have requested that FCOG take the lead role in facilitating the PROJECT design, and that AUTHORITY take the lead role in the administrative management of the PROJECT construction; and,

WHEREAS, FCOG has formed and will staff a Project Development Team, hereinafter know as PDT, consisting of representatives of the parties to this AGREEMENT, to provide oversight and advice throughout the duration of the PROJECT.

WHEREAS, FCOG has completed the “Community Vision for the Golden State Corridor,” which essentially serves as the design guidelines manual for the PROJECT; the 30% design plans for the entire corridor; the Utility, Railroad, and California Public Utilities Commission Report; the Water Conservation Opportunities Report; the Topographic Mapping and Aerial Photography; and the Draft Initial Study and Mitigated Negative Declaration; and,

WHEREAS, the initial cost estimates resulting from the 30% design plans were in excess of the available resources programmed in the Measure “C” Extension Expenditure Plan (hereinafter “the Expenditure Plan”), and accordingly FCOG had the consultant develop an “OPINION OF PROBABLE IMPROVEMENT COSTS – GOLDEN STATE CORRIDOR ECONOMIC DEVELOPMENT INFRASTRUCTURE IMPROVEMENTS - ADJUSTED TO MEASURE C ALLOCATION,” dated October 2011, a true and correct copy of which is attached hereto as EXHIBIT A and incorporated herein by this reference as though set forth in full. The parties to this Agreement hereby acknowledge and agree that the cost estimates contained in EXHIBIT A constitute a reasonable initial allocation of the available resources among the PROJECT components; and,

WHEREAS, the current Expenditure Plan programs \$6.226 million in 2013/14 for design and \$41.389 million during a three year period from 2018/19 through 2020/21 for construction of the PROJECT; and,

WHEREAS, it is currently unknown what the actual cost of each phase of the PROJECT eventually will be, just as the total amount of Measure “C” revenues that ultimately will be available for the actual construction is necessarily an estimate, based on economic projections; and accordingly, flexibility should be and is implied in the estimated totals for the design and construction phases listed in the immediately preceding Paragraph. The total PROJECT funding also will include relatively minor right of way purchases and allowances for review and construction engineering by the PARTICIPATING LOCAL AGENCIES, and therefore it is anticipated that adjustments may need to be made to the scope of work detailed in EXHIBIT A; and

WHEREAS, each of the PARTICIPATING LOCAL AGENCIES wishes to have its respective engineering and/or planning staff perform additional analysis of the engineering work FCOG has provided to date, including EXHIBIT A, for the purposes of adjusting the scope to fit individual agency requirements and to develop a conceptual approach that is both fiscally constrained and capable of implementation for presentation by the PARTICIPATING LOCAL AGENCIES to their respective governing bodies for approval; and,

WHEREAS, it is acknowledged that adjustments to EXHIBIT A will be necessary in order to accommodate the above mentioned engineering review and to factor in construction

management costs, and it is additionally recognized by the parties that future updates to the Expenditure Plan may result in changes in the amount of Measure “C” funding available; and for purposes of this Agreement and all subsequent modifications and amendments hereto, the resulting accumulated adjustments that necessarily must occur to EXHIBIT A over time, in allocating the available Measure “C” resources for the estimated PROJECT budget among the scope of improvements in each jurisdiction shall hereinafter be identified, as to each of the PARTICIPATING LOCAL AGENCIES, as its respective “PRO RATA SHARE”; and,

WHEREAS, FCOG will, to the extent financially feasible, incorporate the results of the EXHIBIT A scope revisions proposed by the PARTICIPATING LOCAL AGENCIES and approved by their respective governing bodies, in the Request for Proposal to complete the design phase of the PROJECT; and,

WHEREAS, should any of the PARTICIPATING LOCAL AGENCIES determine additional scope is required in excess of its adjusted PRO RATA SHARE, said agency may propose to revise other components of its PRO RATA SHARE or commit additional funding; and,

WHEREAS, should final bid cost for the entire PROJECT exceed available Measure “C” committed funding, the AUTHORITY shall postpone awarding contracts until the parties to this AGREEMENT identify additional reductions to PRO RATA SHARE or commit their own additional funding, from alternative sources, to make up the shortfall; and,

WHEREAS, FCOG has executed a separate Cooperative Agreement with the AUTHORITY, to reimburse the PARTICIPATING LOCAL AGENCIES (i.e., FOWLER, SELMA, KINGSBURG, and the COUNTY) for their costs incurred in connection with the above-referenced engineering review. Prior to starting the design or construction phases, this Agreement may be amended to provide additional reimbursement for the cost of reviewing design plans, specifications, RFI’s, shop drawings, change orders, periodic inspection, construction support services and other costs associated with designing and constructing the PROJECT.

NOW, THEREFORE, it is mutually agreed as follows:

SECTION I - FCOG RESPONSIBILITIES

1. FCOG shall convene and provide staff support to the PDT that assumes oversight responsibility for the PROJECT to the effect that the parties to this AGREEMENT have the opportunity to make effective decisions during the design and construction phases.
2. FCOG shall develop an RFP for services to design the PROJECT, starting on the basis of EXHIBIT A and incorporating any scope revisions deemed appropriate from both an engineering standpoint and within fiscal constraints of the estimated PROJECT budget and available Measure “C” funding, as determined by the

- consensus of the engineering review by the parties to this Agreement, and the respective adjusted PRO RATA SHARES.
3. FCOG shall involve the PDT in the selection of the design firm and any other third party consultant(s) required for the design phase of this PROJECT.
 4. FCOG shall execute one or more Cooperative Agreements with the AUTHORITY as necessary to fund the design phase of the PROJECT.
 5. FCOG shall enter into and administer the design contract with a qualified engineering firm.
 6. FCOG shall provide all design products and documents to the PDT and involve the PDT extensively in the decision making process during the design phase of the PROJECT.
 7. During the design phase, an amount to provide reimbursement to each of the PARTICIPATING LOCAL AGENCIES for engineering review and to the AUTHORITY for advertising and construction management shall be identified and incorporated into the respective adjusted PRO RATA SHARES.
 8. Upon completion of design and prior to turning the PROJECT over to the AUTHORITY to administer the advertisement, bidding and construction of the PROJECT, FCOG shall provide the proposed final design, plans and specifications to the PDT for review and approval.

**SECTION II. - PARTICIPATING LOCAL AGENCIES' RESPONSIBILITIES
(FOWLER, SELMA, KINGSBURG, COUNTY, respectively)**

1. Each of the PARTICIPATING LOCAL AGENCIES shall review the engineering work FCOG has done to date, including EXHIBIT A.
2. Each of the PARTICIPATING LOCAL AGENCIES shall determine what, if any, scope revisions are appropriate and that the revised scope is within fiscal constraints imposed by the adjusted estimated PROJECT budget and available Measure "C" funding, and the respective adjusted PRO RATA SHARES.
3. During the design and construction phase, PARTICIPATING LOCAL AGENCIES shall review design plans, specifications, RFI's, shop drawings and change orders, and shall provide periodic inspection and various construction support services related to the section of the PROJECT that falls within its respective jurisdiction.
4. CITY/COUNTY shall participate in the PDT decision making process to insure the design and construction of the PROJECT proceeds appropriately and in accordance with each of their respective standards.
5. If, in the course of PROJECT, final bids come in above available committed Measure "C" funds, or if any of the PARTICIPATING LOCAL AGENCIES determines additional scope is required that exceeds its respective PRO RATA SHARE, or if change orders occur during construction, or if hazardous materials mitigation is required during construction, then such agency shall work with FCOG and AUTHORITY to adjust the PROJECT scope accordingly, or shall commit its own additional funding, from alternative sources, to make up the shortfall;.

6. Each of the PARTICIPATING LOCAL AGENCIES shall acquire and retain ownership of right of way required for the portion of the PROJECT within its jurisdiction, in accordance with all applicable requirements at its own expense, subject to the reimbursements provided as available in its respective adjusted PRO RATA SHARE.
7. Upon completion of construction each of the PARTICIPATING LOCAL AGENCIES shall accept and maintain the improvements falling within its respective area of jurisdiction.
8. Each of the PARTICIPATING LOCAL AGENCIES shall waive all fees associated with permitting, plan check, and inspection of the PROJECT that otherwise would be payable by either FCOG or AUTHORITY with regard to the PROJECT.
9. It is understood that, if changes become necessary during construction of a portion of the PROJECT within the jurisdiction of one of the PARTICIPATING LOCAL AGENCIES, such changes shall be approved in advance by that agency's Director of Public Works or his/her designee. Such approval shall be given within a reasonable time, which shall in no event be more than two weeks, following notification to that agency of the proposed change.

SECTION III. - AUTHORITY RESPONSIBILITIES

1. AUTHORITY shall enter into a Cooperative Agreement with FCOG to fund the design phase of the PROJECT and provide reimbursement to the PARTICIPATING LOCAL AGENCIES for engineering review and construction management support costs incurred in connection with the PROJECT.
2. AUTHORITY shall participate in the PDT decision making process to insure the design and construction of the PROJECT proceeds appropriately.
3. Upon completion of the design phase of the PROJECT, satisfactory to the PDT, AUTHORITY shall advertise and bid the PROJECT.
4. AUTHORITY shall go through a selection process to obtain services of a Construction Management firm (hereinafter "the CM firm") to provide for construction engineering services, including but not limited to the furnishing of all necessary field engineering, construction observation and performance testing with regard to the administrative oversight of the contract construction work, pursuant to separate contract between AUTHORITY and the CM firm, subject to approval of the proposed award and contract by AUTHORITY's Board.
5. AUTHORITY shall involve the PDT in the selection of the preferred construction management and construction firms.
6. AUTHORITY, in conjunction with the CM firm, shall advertise and conduct a competitively bid selection process to obtain the services of a prime contractor (hereinafter "Construction Contractor") for construction of the PROJECT improvements, pursuant to separate contract between AUTHORITY and the Construction Contractor, subject to approval of the proposed award and contract by AUTHORITY's Board.
7. The cumulative amount of all costs to the AUTHORITY for PROJECT-related expenditures of any kind or nature relating to the design and construction of the

PROJECT, including but not limited to expenses incurred in connection with advertisement, bidding and award of the PROJECT, selection and payment of both the CM firm and the Construction Contractor pursuant to their respective contracts with AUTHORITY, and reimbursement of the other parties' PROJECT design costs as provided in Section IV below, shall not exceed the amount allocated to the PROJECT in the adopted Measure "C" Regional Transportation Program Tier 1 list as approved by the FCOG and AUTHORITY and as may be subsequently be modified as part of the biennial update of the Expenditure Plan.

8. AUTHORITY shall contractually require the Construction Contractor to provide insurance coverage in accordance with the plans and specifications of the PROJECT, in amounts commensurate with the PROJECT scope for each type of policy required, and to provide for the listing of each of the PARTICIPATING LOCAL AGENCIES as an additional insured in the Construction Contractor's commercial general liability insurance policy with respect to all PROJECT-related operations.
9. Any cost savings remaining at the end of the PROJECT, after all outstanding claims have been settled, shall revert to the Measure "C" Regional Transportation Program for reallocation to one or more other projects specified in that Program's updated Tier 1 list, in accordance with the most current Expenditure Plan update previously approved by the FCOG and AUTHORITY as of that point in time.

SECTION IV. - COST REIMBURSEMENT

1. Any reimbursement provided to the PARTICIPATING LOCAL AGENCIES under this Agreement will be at actual cost and must be supported by an invoice and source documentation verifying the cost.
2. FCOG has executed a separate Cooperative Agreement with the AUTHORITY, to provide \$100,000 to reimburse parties to this AGREEMENT for engineering cost associated with reviewing the 30% Design Plans with the amount allocated to FOWLER, SELMA and KINGSBURG not to exceed \$30,000 each and the allocation to the COUNTY not to exceed \$10,000.

SECTION IV. - INDEMNITY

Each party to this Agreement hereby agrees to hold harmless and indemnify all other parties, and their respective officers, agents and employees, from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance or failure to perform, by FOWLER, SELMA, KINGSBURG, the COUNTY, FCOG or the AUTHORITY, or their respective officers, agents, and employees, in carrying out such party's obligations under this Agreement. This section shall survive expiration or termination of this Agreement.

SECTION V. - INSURANCE

Without limiting the right of any party to obtain indemnification from any other party, it is understood that each party to this Agreement shall each maintain, at their sole expense,

insurance policies or self insurance programs including, but not limited to, an insurance pooling arrangement, and/or Joint Powers agreement, sufficient to fund its respective liabilities hereunder throughout the term of this Agreement. Coverage shall be provided for comprehensive general liability, automobile liability, professional liability, and worker's compensation exposure. Evidence of Insurance, Certificates of Insurance or similar documentation shall not be required of any party under this Agreement.

SECTION VI. – - ASSIGNMENT

No party to this Agreement shall assign, transfer or sub-contract this Agreement, or any of its rights or duties under this Agreement, without the advance written consent of each of the other parties to this Agreement.

SECTION VII. – - SEVERABLE

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision of this Agreement shall not affect the other provisions.

SECTION VIII. – - TERM

This AGREEMENT shall become effective immediately upon execution hereof by all of the parties and shall remain in effect until such time as construction of the PROJECT has been completed and accepted by all parties to this Agreement, and all claims arising hereunder have been settled or otherwise fully and finally resolved.

SECTION IX. – - COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when executed will be deemed to constitute one and the same instrument and agreement.

SECTION X. – - CONTENT

Each party acknowledges that it has read and fully understands the content of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral.

SECTION XI – - MODIFICATION

This Agreement may be modified only by written instrument executed by duly authorized representatives of all of the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first herein above written.

FRESNO COUNCIL OF GOVERNMENTS

By _____
TONY BOREN, Executive Director

APPROVED AS TO LEGAL FORM ON BEHALF OF THE FRESNO COUNCIL OF GOVERNMENTS:

DANIEL C. CEDERBORG, County Counsel

By _____
ARTHUR G. WILLE, Senior Deputy County Counsel