

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
_____ AND THE FRESNO COUNCIL OF GOVERNMENTS
FOR OVERALL WORK PROGRAM PLANNING SERVICES**

This Memorandum of Understanding (MOU) , made and entered into this _____ day of _____, 2017, by and between the _____, a California municipal corporation (hereinafter referred to as “AGENCY”), and the FRESNO COUNCIL OF GOVERNMENTS, a joint powers public agency (hereinafter referred to as “FCOG”) acting as both the federally designated Metropolitan Planning Organization of the urbanized County of Fresno in accordance with United States Code (USC) section 134 (23 USC 134) and 23 Code of Federal Regulations (CFR) 450.104 (23 CFR 450.104) and the Regional Transportation Planning Agency (RTPA) recognized under California Government Code Section 29532, establishes a general transportation planning and programming process codifying the responsibilities of FCOG and AGENCY. This Agreement supersedes and cancels the MASTER AGREEMENT BETWEEN THE _____ AND THE COUNCIL OF FRESNO COUNTY GOVERNMENTS FOR OWP CONSULTING SERVICES entered into _____:

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, Title 23 section 134(f) stipulates Federal Planning Emphasis Areas and Planning Factors that shall be incorporated into the OWP and this Agreement, 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, 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.

WHEREAS, in accordance with 23 CFR 450.212 and 23 CFR 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 for 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. ENGAGEMENT 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 subsequent Overall Work Programs.

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 task 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.

Subcontracts in connection with work or services covered described in the approved OWP are undertaken by direct contract between FCOG and consultants. 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 liability and obligation under this contract, and all transactions with the FCOG must be through the AGENCY.

SECTION 6. TIME OF PERFORMANCE

Work completed pursuant to this Agreement shall be in accordance with the work element schedule's set forth in the current adopted OWP.

SECTION 7. COMPENSATION

- A. Maximum total cost for work pursuant to this Agreement shall not exceed the amounts programmed for reimbursement as set forth in the current approved OWP.
- B. Only incurred actual cost 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. Over head charges shall be based on an auditable and equitable indirect cost allocation plan.
 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 material and services as may be required shall be supported by 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 the allowability of individual project cost items.

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

AGENCY and subcontractors hired by AGENCY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the cost of administering the contract. All parties shall make such material available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. Any duly authorized representative of the FCOG, the state, or 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.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

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, State and Federal agencies detailing work done pursuant to the OWP.

SECTION 11. AMENDMENTS TO OWP

The OWP may be amended from time to time to reflect changes in the scope of services subsequent to approval by the FCOG Board, 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 certify compliance 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 (49 CFR 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 marking 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 14. DRUG FREE WORK PLACE

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

SECTION 15. 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 16. 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. Upon the mutual written Agreement of the parties hereto, this Agreement may be amended.

SECTION 17. 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 counter party.

SECTION 18. AVAILABILITY OF FUNDS

It is agreed by FCOG and AGENCY that funds authorized for projects and services through the current adopted OWP pursuant to this Agreement constitute all the money presently available for the purpose of this Agreement that future additional funding will depend not only on 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 19. BINDING NATURE OF AGREEMENT*; MODIFICATION

The parties agree that all of the terms of this Agreement shall be binding upon 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 successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

SECTION 20. INDEMNITY

FCOG shall indemnify, hold harmless and defend AGENCY and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the AGENCY, FCOG or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of FCOG or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by FCOG of governmental immunities including California Government Code Section 810 et seq.

AGENCY shall indemnify, hold harmless and defend FCOG and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by FCOG, AGENCY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of AGENCY or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by AGENCY of governmental immunities including California Government Code Section 810 et seq.

In the event of concurrent negligence on the part of FCOG or any of its officers, officials, employees, agents or authorized volunteers, and AGENCY or any of its officers, officials, employees, agents or authorized volunteers, the liability for any and all

such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

SECTION 21. CONFLICT OF INTEREST

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

SECTION 22. 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 23. 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 agencies board of directors and in accordance with such agencies article of incorporation or charter and bylaws; (2) that this Agreement is binding upon such agency.

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