

## MEMORANDUM OF UNDERSTANDING

### Comprehensive Federal and State Transportation Planning and Programming

This Memorandum of Understanding (MOU), entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the State of California acting through its Department of Transportation, hereinafter referred to as Department, and the Fresno Council of Governments, acting as both the federally designated Metropolitan Planning Organization, herein referred to as MPO, of the urbanized County of Fresno in accordance with Title 23 of the 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 the MPO and the Department, collectively referred to as the Parties, in accordance with 23 CFR 450.314.

#### CHAPTER 1: RECITALS

- 1.1 **Basis for Organization** - MPO is a regional transportation planning agency formed pursuant to California Government Code sections 6500 et seq., as designated in 23 USC 134.
- 1.2 **Ability to Contract and Receive Grants** - MPO is empowered to make and enter into contracts in its own name and to accept grants, gifts, donations and other monies to carry out its statutory purposes and functions.
- 1.3 **State Requirement for Transportation Plan** - In accordance with the schedule specified in California Government Code sections 65080 et seq. and the California Transportation Commission's (CTC) Regional Transportation Planning Guidelines, MPO shall prepare, adopt and submit a Regional Transportation Plan (RTP) and either Sustainable Communities Strategy (SCS) or, if applicable, Alternative Planning Strategy (APS).
- 1.4 **Federal Requirements for Long-Range Transportation Plans** - 23 USC 134 and 49 USC 5303, as amended by the Fixing America's Surface Transportation (FAST) Act and its successors, require that as a condition of receipt of federal capital or operating assistance, each urbanized area must have a continuing, comprehensive, coordinated transportation planning process, including a Long Range Transportation Plan, of which the MPO RTP is the equivalent. As part of the process, MPO shall fulfill the requirements of the joint Federal Highway (FHWA)/Federal Transit Administration (FTA) planning regulations (23 CFR Part 450 and 49 CFR Part 613) and any amendments thereto when developing the financially constrained Long Range Transportation Plan that conforms to the State Implementation Plan (SIP).
- 1.5 **Federal requirement for Overall Work Program** – MPO will document metropolitan planning activities and projected expenditures of funds provided under 23 U.S.C. Chapter

104 and 48 U.S.C. Chapter 53 in an annual Unified Planning Work Program, interchangeably referred to as the Overall Work Program, in accordance with 23 CFR 450 and 23 CFR 420.

- 1.6 **Federal Requirement for the Federal Transportation Improvement Program (FTIP) and Federal State Transportation Improvement Program (FSTIP)** - 23 USC 135 and 49 USC 5304 require the FTIP to be updated at least once every 4 years. However, California Streets and Highways Code Sections 182.6 and 182.7 require the FTIP to be updated biennially. The FTIP shall be financially constrained, shall be consistent with the adopted RTP, and shall conform to the State Implementation Plan (SIP). For purposes of this MOU, Department and MPO agree that FTIP and FSTIP shall be updated biennially.
- 1.7 **State and Federal Requirements for Congestion Management Program (CMP)** – California Government Code sections 65088 and 65089 and 23 CFR 450.322 require that a Congestion Management Program shall be developed, adopted, and updated for every county that includes an urbanized area, and that includes every city within the county and the entire county area, unless exempt from State requirements pursuant to Government Code section 65088.3. 23 CFR 500 requires the development of a Congestion Management System (CMS) that provides for effective management of new and existing transportation facilities.
- 1.8 **Federal Clearinghouse Requirements** - Presidential Executive Order 12372, entitled Intergovernmental Review of Federal Programs, requires that federal agencies coordinate the review of proposed federal financial assistance and direct development activities, including transportation programs and projects funded under the FAST Act and its successors, with affected State and local government entities. In California, the Governor's Office of Planning and Research (OPR) and designated Area-wide Clearinghouses are the entities responsible for implementation of Executive Order 12372.

Department fulfills this reporting requirement for the Federal State Transportation Improvement Program (FSTIP) and for the Consolidated Planning Grant (CPG). The CPG consists of funds flowing from the FHWA Metropolitan Planning (PL) source, the FTA Metropolitan Planning (Section 5303) source, FHWA State Planning and Research, and FTA Statewide Planning and Research source (Section 5304(f)).

1.9 **Planning Area Boundaries**

a) Federal Metropolitan Planning Area (MPA) Boundaries - For the purposes of meeting the requirements of 23 USC 134 and the agreement between the Governor and MPO, the MPA Boundaries include the County of Fresno as shown on Exhibit A.

MPO and Department will comply with 23 CFR 450.312 regarding MPA boundaries. Department and MPO will review the MPA boundary after each census to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized areas, and the MPA will be adjusted, as necessary, within 2 years of each decennial U.S. census, beginning in the year 2020. To the extent the Governor of California approves an exception request to allow multiple MPOs in an MPA to continue

to generate separate planning products pursuant to 23 CFR 450.312(i), Department will recognize the exception

b) State Regional Transportation Planning Area Boundaries - For purposes of meeting the requirements of California Government Code sections 65080 et seq., the boundaries of MPO, acting as the RTPA, include the County of Fresno as shown on Exhibit A.

- 1.10 **Coordination Across Metropolitan Planning Area Boundaries** – In accordance with 23 CFR 450.312 and 23 CFR 450.314(e), MPO agrees to coordinate with adjacent MPOs in the creation of long range planning and programming documents to ensure consistent assumptions in the urbanized areas identified in Exhibit A, especially where proposed transportation investments span MPA boundaries. This includes coordination with local and State air quality agencies, where appropriate. Coordination efforts and planning assumptions will be documented in MPO’s OWP, RTP and TIP. MPO will comply with federal regulation in instances where urbanized areas are not encompassed by existing MPA boundaries. Furthermore, Department will coordinate with MPO in pursuing exceptions to Federal rules regarding Metropolitan Planning Area boundaries, where applicable.

## **CHAPTER 2: THE PLANNING AND COORDINATION PROCESS**

- 2.1 **Provisions for the Planning and Programming Processes** - MPO is recognized as the agency responsible for comprehensive regional transportation planning pursuant to state and federal laws, as amended by the most current federal transportation authorization bill, for each MPO County and each incorporated city included in each county. This responsibility shall include, on a regional basis: providing a forum for regional transportation issues, developing and adopting goals and objectives, performing intermodal corridor and sub-area studies, developing and maintaining appropriate management information systems as required by the most current federal transportation authorization bill, providing policy guidance, allocating State and federal transportation funds in accordance with applicable regulations and laws, assuring prioritization of proposed transportation improvements to be funded with State and federal funds as required by applicable regulations, determining air quality conformity with the applicable SIP, complying with the California Environmental Quality Act (CEQA), and coordinating the RTP with other plans and programs as appropriate. The parties hereby express their joint intent to mutually carry out the above described transportation planning process for this MPO transportation planning area in a manner which will assure full compliance with the laws referred to in Chapter 1 of this MOU, the RTP Guidelines, and the planning constraints of the United States Department of Transportation (USDOT).

- 2.2 **Cooperation and Coordination** - The planning process employed by MPO 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, port operators, other federal agencies, as appropriate, and the Department. MPO will provide the level of coordination and cooperation necessary to meet State and federal transportation and air quality laws

and regulations. MPO will coordinate with Department's District, MPO's Air Pollution Control Districts, and the other affected air basin MPOs to develop consistency in travel demand modeling, transportation air emission modeling, air quality conformity determinations on the RTP and FTIP, transportation control measures, Overall Work Programs (OWP), other interregional issues related to the development of plans, and will, by entering into such agreements and operating procedures with other MPOs as is necessary and appropriate, implement this cooperative provision.

- 2.3 **Formal Public Participation** – In accordance with 23 CFR 450.212 and 23 CFR 450.316(b), the MPO planning process shall be conducted in an open manner so members of the public, civic groups, interest groups, businesses and industries, and other agencies can fully participate. Public participation procedures shall be documented, periodically revised, and their effectiveness regularly evaluated. MPO shall take appropriate actions to ensure public participation through such formal means as:

posting of public hearing agendas, (b) appointment of eligible citizen members, where appropriate and allowed, to serve as committee members, (c) innovative and creative outreach efforts targeting particularly the traditionally underserved public (e.g., minorities, senior citizens, low income citizens, and Native Americans), and (d) creation of standing advisory committees. Those committees not composed entirely of citizen members shall post public hearing agendas in accordance with the Brown Act (California Government Code section 54950 et seq.), when applicable, and all committees shall operate according to their adopted bylaws.

- 2.4 **State Cooperation in Transportation Planning** - Department has a continuing duty of:

(a) Planning transportation systems of statewide significance; (b) identifying potential transportation issues and concerns of overriding statewide interest; and (c) recognizing conflicts in regional transportation improvement programs.

In carrying out its duties, Department will work in partnership with MPO relative to activities within its transportation planning area and include MPO in its dealings with cities, counties, public transit operators, rail operators, and airports. MPO and Department will mutually carry out the transportation planning process for this transportation planning area in a manner which will assure full compliance with the laws referenced in Chapter 1 hereinabove and assure cooperation between all participants.

- 2.5 **Policy Level Involvement** - There exists within MPO, a Transportation Policy Committee, which consists of members of the Governing Board of Directors, members of the MPO, and the Department's— Director, or their designated representatives and alternates.

- 2.6 **Resolution of Disagreements** – MPO and Department agree in good faith to resolve any and all disputes arising from the performance or non-performance of the responsibilities in this MOU through existing administrative processes where possible. MPO and Department agree to notify the other party in writing if a disagreement regarding these responsibilities remains after attempts have been made to resolve at the staff level. Upon

receipt of formal notification, the Chief of the Caltrans Division of Transportation Planning or designee will meet with the Executive Director of MPO, or designee, within thirty (30) days of notice to reach an understanding and resolution regarding the dispute; provided, however the Executive Director of the MPO, or designee, shall have the option to request a meeting with the Director of Caltrans to reach an understanding. Thereafter, Department shall document such resolution in writing. During any such dispute, the appropriate administration of the United States Department of Transportation (USDOT) will be consulted by the Department. In cases where a resolution cannot be reached between the Parties regarding the disagreement, Department will initiate a request to USDOT for an administrative determination. The determination by USDOT shall be final, binding on each party, not appealable, and rendered within thirty (30) days of the request. Such request will include as an attachment a statement of facts from each party.

### **CHAPTER 3: FORMAL CONSULTATION**

- 3.1 **Consultation with Native American Tribal Governments** - In accordance with 23 CFR 450.316 and 49 U.S.C. 5303, MPO will appropriately involve any Indian Tribal government(s) within or contiguous to its planning area in the development of the RTP and the TIP.
- 3.2 **Consultation with Land and Resource Agencies** - In accordance with 23 CFR 450.316, MPO will involve any State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan. The consultation shall involve, as appropriate, comparison of transportation plans with State conservation plans or maps or comparison of transportation plans to inventories of natural or historic resources, if available.
- 3.3 **Documented Consultation Processes** - - In accordance with 23 CFR 450.316, MPO will develop documented processes that outline the procedures that it will follow when consulting with other governments and agencies as identified in paragraph 3.1 and 3.2.
- 3.4 **Clean Air act Consultation** - In nonattainment or maintenance areas, MPO shall consult with State and local agencies responsible for SIP, and will establish a consultation procedure and will coordinate the development of the RTP and improvement programs with the SIP development process, including the development of transportation control measures.

### **CHAPTER 4: PARTNERSHIP/COORDINATION**

- 4.1 **MPO Role and Responsibilities** – MPO, in cooperation with Department, the designated air pollution control agency, and public transportation service providers, will be responsible for carrying out the metropolitan transportation planning process. MPO will cooperatively develop plans and programs in accordance with the requirements specified in 23 USC 134 and 135, 23 CFR 450.100 through 600, Title 49 USC, and the Clean Air Act and all Clean Air Act Amendments.

- 4.2 **Long-range Transportation Plan Coordination** - MPO will prepare, adopt and update a long-range transportation plan, in the form of the MPO's RTP. The RTP will be updated at least every 4 years to incorporate new data and cost estimates, or 5 years in air quality attainment areas, and ensure that the horizon of the plan extends at least 20 years. This function will be carried out by MPO in cooperation with the Air Pollution Control District, Department, local government agencies, public transit owners and operators, and Native American Tribal Governments in the region. MPO shall fulfill the requirements of the joint FHWA/FTA planning regulations (23 CFR 450 and 49 CFR 613) and any amendments thereto. The RTP will also be prepared in accordance with the provisions specified in California Government Code section 65080, including the adoption of a Sustainable Communities Strategy or, if applicable, Alternative Planning Strategy. MPO will give public transportation service providers the opportunity to actively participate in the development of the RTP. Department, in collaboration with the California Transportation Commission (CTC) and in consultation with MPO, resource agencies, tribal governments, and other stakeholders, prepare and update the Regional Transportation Plan Guidelines for adoption by the CTC on an as needed basis.
- 4.3 **Transportation Improvement Program (TIP) Coordination** - MPO shall prepare, adopt, and biennially update at least a four-year TIP in accordance with the requirements of 23 CFR 450.300 et al. and California Government Code 65082 This function will be carried out by MPO in cooperation with MPO's Air Pollution Control District, Department, local government agencies, public transit owners and operators in MPO's County, Native American Tribal Governments in the region, and with the participation of the public. In accordance with the provisions in 23 CFR 450.326, MPO and Department will work with public transportation operators to cooperatively develop estimates of available federal and State funds which MPO can utilize in developing the TIP.
- 4.4 **Federal Statewide Transportation Improvement Program (FSTIP) Development Coordination** – Department shall prepare and biennially update at four-year FSTIP in accordance with the requirements of 23 CFR 450.200 et al. The FSTIP shall include all MPO FTIPs along with projects from the rural non-MPO region of the State. The FSTIP will be financially constrained by year according to the appropriate Code of Federal Regulations. The biennially prepared FSTIP will be submitted to the FHWA and FTA for joint approval.
- 4.5 **State Highway Operations and Protection Program (SHOPP) Coordination** - Under California Government Code section 14526.5, Department is required to prepare a SHOPP for the expenditure of transportation funds for major capital improvements which are necessary to preserve and protect the state highway system. Projects are limited to capital improvements relative to maintenance, safety, operations, and rehabilitation of State highways and bridges which do not add new capacity to the system. The program must be submitted no later than January 31 of each even numbered year. SHOPP is a four year program of projects adopted separately from the State Transportation Improvement Program (STIP) cycle. Prior to submitting the SHOPP, Department will make available, within a reasonable amount a time, to MPO a draft of the SHOPP for review and comment and will consider and include any comments received from MPO in the final SHOPP.

- 4.6 **State Highway System Planning Coordination** - In conducting its Transportation System Planning Program, Department will coordinate its studies with those being conducted by MPO. As one means of coordinating transportation planning activities, Department will provide information on its system planning activities for MPO's use in development of the OWP, RTP, RTIP, and FTIP, including required traffic data.
- 4.7 **Overall Work Program (OWP) Coordination** - MPO will develop, adopt, and submit to FHWA/FTA and Department (the "funding agencies"), an annual OWP intended to provide guidance in the management of work by MPO to develop and implement the State and federal transportation plans and programs and act as the basis for the MPO's annual budget. The draft OWP, and any amendments thereto, will be subject to review and approval by the funding agencies. As a basis for review of amendment requests, MPO will submit reasons for changes, scope of work revisions, and funding enhancements or reductions. MPO will require the same information from its sub-grantees, if any. MPO will provide the publicly owned transportation service providers timely notice of plans, programs, and studies and the full opportunity to participate in and comment on OWP development and implementation. Transportation planning activities conducted by public transportation providers may be included in the OWP for informational purposes.
- 4.8 **Federal Clearinghouse Requirements** - MPO has been designated by the State of California and the Governor's Office of Planning and Research (OPR) as the Area-wide Clearinghouse for its constituent counties to review regionally significant transportation projects in accordance with procedures developed by OPR as described in CEQA.
- 4.9 **Data Collection** – Department and MPO will share responsibility for fulfilling the data requirements of 23 CFR 420.105(b). Department will be responsible for data on State Highways and MPO will be responsible for data on local streets and roads of regional significance, as appropriate.
- 4.10 **Provisions for Performance Based Planning** - In accordance with 23 CFR 490, 49 U.S.C. 5326(c), and 49 U.S.C. 5329(d), MPO and Department agree to collaborate to implement the performance reporting and performance-based planning provisions first incorporated in MAP-21 and revised in the FAST Act. Specifically, MPO and Department agree to share information with regards to performance data and target-setting and to report on performance in attaining targets per the requirements established in federal final rule-making. MPO will integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other Department transportation plans and transportation processes required as part of a performance-based program.
- 4.11 **Project Cost Estimates** – For Department sponsored programs and projects, Department will collect and analyze data to be used in evaluating alternative transportation projects. For these projects, Department will supply MPO with project level cost and other data necessary for MPO to demonstrate in its financial plans that the entire system will be adequately maintained and operated. FHWA guidance for project cost estimates can be found at <http://www.fhwa.dot.gov>. MPO and local project sponsors will collect and

analyze data reflecting existing and historical information which will be the basis for local project estimates cost and revenue projections for transportation planning, programs, and projects.

- 4.12 **Annual Listing of Obligated Projects** – In accordance with 23 CFR 450.332, the State, public transportation operators, and MPO will cooperatively develop an annual listing of projects, including active transportation facilities, for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year. The listing will include all federally funded projects authorized or revised to increase obligations in the preceding program year, and will at a minimum include the TIP information under §450.326(g) (1) and (4) and identify, for each project, the amount of federal funds requested in the TIP, the federal funding that was obligated during the preceding year, and the federal funding remaining and available for subsequent years. This listing will be created no more than 90 days after the end of the federal program year and published or otherwise be made available in accordance with the MPO's public participation criteria for the TIP.

## **CHAPTER 5: AIR QUALITY CONFORMITY**

- 5.1 **Conformity** - In accordance with Title 42, section 176(c) (4) (C) of the Clean Air Act and the final rule on U.S. EPA Transportation Conformity (40 CFR, Parts 51 and 93, hereafter "the Final Rule"), and the U.S. DOT Planning Regulations (23 CFR 450), MPO, in cooperation with MPO's Air Pollution Control District, will make air quality conformity determinations for regional transportation plans and plan amendments, as applicable. MPO will collect and analyze data necessary to carry out its responsibilities under the Final Rule. The Air Quality Conformity determination will be made in accordance with the rules of MPO's Air Pollution Control District and consistent with the MOU and/or approved interagency consultation procedures among air basin MPOs and/or RTPAs where applicable. Department will fully participate and carry out its responsibilities as defined in the Final Rule, including public and interagency consultation, making project level conformity analysis for Department sponsored projects, and facilitating statewide discussion of SIP revisions and other conformity related issues.

## **CHAPTER 6: ENVIRONMENTAL PROTECTION AND STREAMLINING COORDINATION**

- 6.1 **Environmental Protection and Streamlining** – MPO will be an equal partner with Department to promote environmental stewardship in planning and programming projects for California's transportation systems. MPO and Department will work to streamline the environmental review and wetlands permitting process and expedite the development of transportation projects. MPO and Department agree to comply with all applicable environmental laws, regulations and policies, and cooperatively address any informational needs associated with such statutes. MPO will consult with federal and State resource agencies to seek their input, coordinate environmental protection issues with its constituents and any other entities for which it has assumed federal planning and programming responsibilities in the most current transportation authorization bill, and resolve any disputes using the processes defined in the most current federal regulations.



Department will assist MPO in developing its plans and programs by making available existing resources to MPO, participating in appropriate planning activities and, wherever possible, improving the available environmental data.

## CHAPTER 7: CERTIFICATION

- 7.1 **Certification Requirement** - Federal Metropolitan Transportation Planning Regulations require that MPO, undergo certification that the planning process is being carried out in conformance with all applicable requirements of 23 CFR 450.334.
- 7.2 **Certification Process** - For purposes of certification, MPO will establish a process which includes the following:
- a) Fully executed copies of both FHWA Metropolitan Planning Process Certification and FTA Certifications and Assurances are to be included as part of the final adopted and approved OWP.
  - b) MPO will provide Department with documentation (e.g. quarterly reports, public notices, finished work element products, etc.) to support MPO's planning process.

## CHAPTER 8: GENERAL PROVISIONS

- 8.1 **Review** - This MOU has been reviewed and endorsed by both parties to assure its continued effectiveness. Any proposed amendments shall be submitted in writing for the consideration of both parties.
- 8.2 **Amendment** - This MOU constitutes an expression of desire and a means of accomplishing the general requirements for a comprehensive transportation planning process for the MPO. It may be modified, altered, revised or expanded as deemed appropriate to that end by written agreement of both parties.
- 8.3 **Rescission of Prior Agreements** - This MOU supersedes any existing MOU designed to serve as a statement of the transportation planning and programming relationship between Department and MPO.
- 8.4 **Monitoring** - MPO and Department jointly agree to meet periodically to address and review issues of consistency with this MOU. Meetings will be held as often as is mutually agreed. Other issues and activities of mutual interest or concern may also be addressed. During the term of the MOU, MPO and Department mutually agree to notify the other of events which have a significant impact upon the MOU.
- 8.5 **Termination** - Subject to the provisions in Section 2.6 (Resolution of Disputes), either party may terminate this understanding upon written notice provided at least ninety (90) days prior to the effective date of termination and specifying that effective date of termination.
- 8.6 **No Third-party Beneficiaries** - This MOU is for the benefit of and applies to the Parties. There are no third-party beneficiaries, intended or otherwise.

IN WITNESS WHEREOF the parties hereto have cause this Memorandum of Understanding to be executed by their respective officers duly authorized.

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Amarpreet Singh Dhaliwal, Chairperson  
Fresno Council of Governments

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Date

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Malcolm Dougherty, Director  
Department of Transportation

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Date