

FRESNO COUNCIL OF GOVERNMENTS

JOINT POWERS AGREEMENT

THIS AGREEMENT made and entered into this 25th day of March, 1976, by and between the County of Fresno, a political subdivision of the State of California, and the Cities of Fresno, Clovis, Coalinga, Firebaugh, Fowler, Kerman, Kingsburg, Mendota, Orange Cove, Parlier, Reedley, Huron, Sanger, San Joaquin, and Selma all being municipal corporations of the State of California; WITNESSETH:

(Amendment No. 3)

WHEREAS, the President of the United States, through Executive Order 12372 (FR 30959, July 14, 1982), under the authority vested in him by the Constitution and laws of the United States of America, including Section 401 (a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231 (a)), Section 301 of Title 3 of the United States Code, and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) has ordered that Federal agencies shall provide opportunities for consultation by elected officials of those state and local governments that would provide non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development; and

(Amendment No. 4)

WHEREAS, the President has ordered that, to the extent permitted by law, Federal agencies shall utilize the State process to determine official views of State and local elected officials and, further, to make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process; and

(Amendment No. 4)

WHEREAS, the Governor of the State of California has established clearinghouse procedures pursuant to Executive Order 12372 providing for review of and comment on Federally-assisted programs by local elected officials through the Office of Planning and Research (gubernatorial Executive Order D-24-83); and

(Amendment No. 4)

WHEREAS, the Governor has designated the Fresno Council of Governments as the areawide clearinghouse for Fresno County, California; and

(Amendment No. 4)

WHEREAS, planning concerns in the County of Fresno, and the solution to such concerns often transcend municipal boundaries, making it desirable to regularly bring together representatives of the various governments to discuss common problems, develop consensus of policy questions of mutual interest in order to pursue a coordinated course of action without infringing on the political traditions and powers of the individual governments; and

(Amendment No. 3)

WHEREAS, Section 6500, et. Seq. of the California Government Code (Title 1, Division 7, Chapter 5, Article 1) provide for agreements between two or more public agencies to jointly exercise any power common to the contracting parties; and

(Amendment No. 3)

WHEREAS, the City of Fresno by virtue of its charter, and the County of Fresno, and other incorporated cities, parties hereto, by virtue of Sections 65600 and 65604, inclusive, of the California Government Code have the joint and mutual power to create an areawide planning organization.

(Amendment No. 3)

NOW, THEREFORE, in consideration of these premises, the parties hereto mutually agree as follows:

(Amendment No. 3)

CHAPTER 1

ORGANIZATION

1.1 ADDITIONAL MEMBERS: In addition to the named parties to this agreement, any city not now a member and any other city which may be hereafter incorporated within the boundaries of the County of Fresno, may become a member of the Fresno Council of Governments by executing this agreement without prior approval or ratification of the named parties, and shall thereafter be bound by all of the terms and provisions of the agreement as of the date of execution.

(Amendment No. 3)

1.2 COUNCIL; QUORUM; VOTING:

1.2.1 Council: The Council shall be the governing body of the Fresno Council of Governments. The Council shall be composed of one member of the County of Fresno Board of Supervisors, or in his absence such supervisor as may be present, and the mayors of the member cities, or in a mayor's absence such councilman as may be present.

(Amendment No. 8)

1.2.2 Quorum: A majority of the members in good standing of the Organization, which members represent no less than 40% of the total population of the member agencies in good standing, shall constitute a quorum for the transaction of business.

(Amendment No. 5)

1.2.3 Vote of Council: Any motion or action of the Council in order to be deemed carried or approved must receive an affirmative vote of a majority of the member agencies in good standing, which vote must represent no less than 40% of the total population of the member agencies in good standing.

(Amendment No. 5)

1.3 POLICY ADVISORY COMMITTEE: There shall be established a Policy Advisory Committee which shall be composed of the Chief Administrative Officer of each member agency, or his duly authorized representative, or if no such, or similar position exists, the Committee member shall be designated by the member agency's Council representative to serve at his pleasure, and shall be a full-time employee of the member agency. All matters upon which the Council is to act must first be considered by the Policy Advisory Committee and such matters when considered by the Council must be accompanied by the Policy Advisory Committee's comments and recommendations, if any, and voting record except that the Council may at its discretion consider urgent matters other than adoption of the annual budget or work program without prior consideration by the Policy Advisory Committee.

(Amendment No. 3)

1.4 STANDING TECHNICAL COMMITTEES: The Council may establish such technical advisory committees as may be necessary to assist in carrying out the duties as herein set forth in Chapter 2.

(Amendment No. 3)

1.5 COOPERATING MEMBERS: Subject to the approval of the Council, any governmental entity or public agency or nonprofit organization not eligible for membership under paragraph 1.1 of this Agreement may elect to join the Fresno Council of Governments as a cooperating member.

(Amendment No. 4)

1.5.1 Cooperating members shall be entitled to attend all meetings of the Council but shall not be entitled to vote or participate in debate.

(Amendment No. 4)

1.5.2 Cooperating members shall be entitled to receive data, studies, planning documents, special services, technical assistance, and other written materials and services of the Fresno Council of Governments, subject to policies adopted by the Council.

(Amendment No. 4)

CHAPTER 2

POWERS AND DUTIES

2.1 INTERGOVERNMENTAL COOPERATION: The Fresno Council of Governments shall perform clearinghouse review under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and Executive Order 12372 (FR 30959, July 14, 1982). The Fresno Council of Governments may establish committees and execute memoranda of understanding with local, regional, state and federal agencies to facilitate coordination and cooperation. The Fresno Council of Governments shall be the forum for cooperative decision making by principal elected officials of the member agencies.

(Amendment No. 4)

2.2 COMPREHENSIVE PLANNING: The Fresno Council of Governments shall carry out an ongoing areawide comprehensive planning process as hereinafter set forth and may cause to be developed areawide plans and elements with respect to:

2.2.1 Land Use

2.2.4 Transportation

2.2.2 Housing

2.2.5 Water Quality Management

2.2.3 Open Space

2.2.6 Air Quality Management

The Fresno Council of Governments may from time to time develop or coordinate other plans when authorized to do so by the Council.

(Amendment No. 3)

2.3 PLANNING PROCESS: All plans and plan elements and other projects which the Fresno Council of Governments shall prepare or cause to be prepared shall be done to the greatest extent by member agencies. Consulting services may, when authorized by the Council, be utilized to carry out all or portions of the Work Program. Such consulting services contract may be performed by any member agency and no consulting service contract may be tendered to other than a member agency unless each member agency has been provided with a reasonable opportunity to exercise the right of refusal. In the event of any controversy between member agencies regarding the assignment of consulting services, the Council shall make the final determination.

(Amendment No. 3)

All consulting services performed shall be conducted under the authority of the Fresno Council of Governments and in accordance with the approved work program.

(Amendment No. 3)

All plans upon which the Council is to act must first be submitted to the Policy Advisory Committee and such matters when considered by the Council must be accompanied by the Policy Advisory Committee's comments and recommendations, if any, and voting record

(Amendment No. 3)

2.4 CITIZEN INVOLVEMENT: The Fresno Council of Governments shall carry out a process for citizen involvement in major decisions. Such process may include committees, legal notices and public hearings.

(Amendment No. 3)

2.5 LOCAL TRANSPORTATION PLANNING AGENCY: The Fresno Council of Governments shall carry out the duties of a local transportation planning agency as provided by State Law including administration of the local transportation fund and assisting local governments in claiming, obtaining, and utilizing funds as required by the Transportation Development Act of 1973.

(Amendment No. 3)

2.6 TECHNICAL ASSISTANCE: The Fresno Council of Governments may assist member agencies, or cooperating members by providing technical assistance and services including, but not limited to, governmental management, planning, administration, public involvement, and grants-in-aid when and upon such terms as such assistance is approved by the Council.

(Amendment No. 4)

2.7 WORK PROGRAM: The Fresno Council of Governments shall prepare and adopt annually a multi-year work program which contains a description, including objectives and proposed costs, of all activities to be undertaken.

(Amendment No. 3)

2.8 SPECIAL SERVICES: Consistent with the policies approved by the Council, and the Public Records Act, the Fresno Council of Governments may provide data, studies, planning documents and other written materials to private or public organizations or individuals. Such organizations or individuals shall bear the cost of providing said data, studies, documents and materials, including the reasonable cost of staff time spent in reviewing said data, studies, documents and materials with the requesting party.

(Amendment No. 4)

2.9 REGIONAL VANPOOL SERVICES: The Fresno Council of Governments may operate vanpool services within the County of Fresno and enter into a Joint Exercise of Powers Agreement to operate regional van pool services and related activities, including, but not limited to, obtaining grant funds and borrowing funds for purchasing and leasing vans.

(Amendment No. 6)

2.10 PARTICIPATION IN SAN JOAQUIN JOINT POWERS AUTHORITY:

The San Joaquin Joint Powers Authority will be responsible for the following:

- Working with state and federal agencies to plan, program, and secure funding for improvements for intercity rail passenger services and facilities in the San Joaquin Rail Corridor, including the acquisition or leasing, or use by agreement of right-of-way, stations, and station sites; the leasing or acquisition of or use by agreement of equipment, and related activities.
- Negotiate for and accept funds to be expended for the purpose of providing and improving intercity rail passenger services and activities.
- Develop policy, plan and implement improvements, administer and manage the operations and marketing for the San Joaquin Rail Service as part of the California Passenger Rail System.
- Review and comment on facility, service, and operational plans and programs of the agency or agencies planning potential commuter rail service in the San Joaquin Rail Corridor.
- Coordinate facility, service, and operational plans and programs with other organizations, providing rail service in the San Joaquin Corridor or whom the SJJPA may share common facilities, including Caltrain, Capitol Corridor, the BNSF Railway and Union Pacific or their successor agencies or corporations.
- Advocate before local, regional, state, and federal officials and agencies for improvements to services and facilities for the San Joaquin Rail Corridor.

(Amendment No. 7)

2.11 Interregional Public Transportation Services.

The Fresno COG may act as lead agency, apply for and receive grant funding, enter into agreements to provide funding, administration and oversight for interregional public transportation services. Fresno COG's role as lead agency for interregional public transportation services between Fresno County and the abutting counties of Tulare, Kings, Merced, and Madera shall include oversight to assure that operators of interregional public transportation services provided through agreements with Fresno COG comply with state, local and federal regulations and requirements.

(Amendment No. 9)

CHAPTER 3

LIMITATIONS

3.1 MEMBER AGENCY AUTONOMY: Nothing herein shall be construed as limiting in any manner the power of the respective member agencies and all plans, programs and activities shall at all times be carried out in such manner as so to maintain and insure the separateness and autonomy of the member agencies.

(Amendment No. 3)

3.2 SUBMISSION OF PLANS: The council may consider adoption of any areawide plan or element thereof after such plan or element has been submitted to the legislative bodies of the respective member agencies for this consideration at least forty-five (45) days prior to such adoption.

(Amendment No. 3)

3.3 WORK PROGRAM: The Council may consider adoption of any Annual Budget or Work Program after the preliminary Annual Budget or Work Program has been submitted to the legislative bodies for the respective member agencies for their consideration at least forty-five (45) days prior to final adoption.

(Amendment No. 3)

CHAPTER 4

ENTRY INTO FORCE, AMENDMENT, WITHDRAWAL, TERMINATION AND DISSOLUTION

4.1 ENTRY INTO FORCE: This Amendment shall enter into force and become binding upon its adoption by resolution of the governing bodies of no less than one-half of the eligible agencies in Fresno County which in aggregate represent no less than one-half of the population of Fresno County.

(Amendment No. 3)

4.2 AMENDMENT: The Joint Powers Agreement, as well as any of the provisions may be amended by the approval or ratification of such amendment by the governing bodies of no less than one-half of the member agencies which in the aggregate represent no less than 40% of the population of the member agencies and all member agencies shall thereafter be bound by such amendments.

(Amendment No. 5)

4.3 WITHDRAWAL: Any of the parties to this agreement may by action of its governing body withdraw from the Fresno Council of Governments. Such withdrawal shall be accomplished in the following manner:

(Amendment No. 3)

4.3.1 NOTIFICATION OF INTENT: Written notification of intent to withdraw shall be transmitted to each member of the Council, and to the Executive Director. Such notification of intent must be given no less than ninety (90) days prior to formal withdraw action.

(Amendment No. 3)

4.3.2 NOTIFICATION OF WITHDRAWAL ACTION: Written notification of withdrawal action shall be transmitted to each member of the Council, and to the Executive Director. Such notification shall be given no sooner than ninety (90) days from the date of notification of intent as herein above set fourth in 4.31.

(Amendment No. 3)

4.3.3 **EFFECTIVE DATE OF WITHDRAWAL:** No withdrawal shall be come effective until nine (9) months from the date of notification of withdrawal as hereinabove set forth in 4.32.

(Amendment No. 3)

4.4 **TERMINATION:** This agreement may be terminated by resolution of the governing bodies of all of the member agencies or by vote of the Council in accordance with the voting procedures set forth in 1.23. Should this agreement be terminated, the Fresno Council of Governments shall be dissolved in accordance with the procedures hereinafter set forth.

(Amendment No. 5)

4.5 **DISSOLUTION:** Should the Fresno Council of Governments terminate as set forth above, or for any other reason, the President of the Council shall appoint a dissolution committee, which committee shall be approved by the Council. The dissolution committee shall exist for the sole purpose of settling the affairs of the Fresno Council of Governments, and shall be empowered to immediately take control of all lands, buildings, equipment, accounts, case records, and to conduct all business as may be necessary to dissolve the Fresno Council of Governments and dispose of any assets, to settle all liabilities and shall pay the balance to the member agencies which have been in good standing during the year on the same proportionate basis that costs are shared as set forth in Chapter 5. Should the proceeds be insufficient, the deficit shall be paid by the member agencies on the same proportionate basis.

(Amendment No. 3)

CHAPTER 5

FINANCIAL

5.1 **COSTS:** Costs incurred by Fresno Council of Governments shall be shared on a proportionate basis in the following manner:

5.1.1 A per capita cost shall be calculated by dividing the total cost by the sum of the total population of member cities and the unincorporated population of Fresno County. The annual population figures published by the California State Controller shall be used to determine the per capita cost.

(Amendment No. 3)

5.1.2 The County share shall equal the per capita cost times the unincorporated population of Fresno County.

(Amendment No. 3)

5.1.3 Each member city shall pay an amount equal to the per capita cost times the city's population.

(Amendment No. 3)

5.1.4 If the costs to be shared are not paid within ninety (90) days of the date they are due and payable as set forth in the by-laws, they shall be delinquent and the member agency shall no longer be a member in good standing until payment is made in full.

(Amendment No. 3)

The Fresno Council of Governments may also, when authorized by the Council and the governing body of any member agency, apply for and receive Federal and State grants-in-aid on behalf of the member agency. Nothing contained herein shall prevent the acceptance by the Fresno Council of Governments, for any of its purposes and functions under this agreement, of donations, grants of money, equipment, supplies, materials and services from any member agency the United States or any agency thereof, of State of California.

(Amendment No. 3)

5.2 **ANNUAL BUDGET:** The preliminary Annual Budget projecting a financial plan to undertake the work for the ensuing fiscal year shall be prepared by the Executive Director and presented, together with the Work

Program, to the Council and the Policy Advisory Committee at their regular February meetings of each year, and to the governing bodies of all member agencies not less than forty-five (45) days prior to the date scheduled for budget adoption by the Council. The Council shall review and adopt the Annual Budget and Work Program at or before the May meeting.

(Amendment No. 3)

5.3 FUNDS: The Treasurer of the County of Fresno shall be the depository and have custody of all money of the Fresno Council of Governments. The Auditor-Controller of the County of Fresno shall draw warrants to pay demands against the Fresno Council of Governments when approved by the Executive Director. All funds received by the Fresno Council of Governments shall be strictly accounted for and the Auditor-Controller shall cause to be made an annual audit of the accounts and records of the Fresno Council of Governments as prescribed in California Government Code Section 6505.

(Amendment No. 3)

5.4 ANNUAL REPORT: The annual audit report shall be included in and become a part of the Annual Report to the Council and the member agencies.

(Amendment No. 3)

CHAPTER 6

SERVICES AND PERSONNEL

6.1 EXECUTIVE DIRECTOR: There shall be established the position of Executive Director of the Fresno Council of Governments. The Executive Director shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be the chief executive officer of the Fresno Council of Governments and shall have charge of all projects and property and personnel. The Executive Director shall be bonded for an amount established by the Council.

(Amendment No. 3)

6.2 SERVICES: The Fresno County Counsel's Office shall provide all legal services to the Fresno Council of Governments, the Council and the committees, provided however the Council may elect to retain independent Counsel when deemed necessary.

(Amendment No. 3)

CHAPTER 7

AMENDMENT OF PREVIOUS AGREEMENTS

7.1 SUPERSEDING: This agreement amends in its entirety the original Joint Powers Agreement of the parties hereto dated September 24, 1969, together with the amendments thereto dated January 30, 1970, and April 25, 1971.

(Amendment No. 3)

It is the intent of the parties hereto that all other provisions of the Joint Powers Agreement dated March 25, 1976, shall remain unchanged.

(Amendment No. 4)

It is the intent of the parties hereto that all other provisions of the Joint Powers Agreement dated March 25, 1976, and of Amendment No. 4 dated June 25, 1985, not herein amended shall remain unchanged.

(Amendment No. 5)

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective duly authorized offices as of the day and year first hereinabove written.

(Amendment No. 3)

Amendment No. 3, dated March 25, 1976, replaced the Joint Powers Agreement in its entirety.

Amendment No. 4, dated June 25, 1985

Amendment No. 5, dated April 27, 1989

Amendment No. 6, dated September 10, 2010, renamed to Fresno Council of Governments from Council of Fresno County Governments

Amendment No. 7, dated December, 2012, added San Joaquin Joint Powers Authority participation (approved by each member agency)

Amendment No. 8, dated December 2013, changed section 1.2.1 (approved by each member agency)

Amendment No. 9 dated November 2014, added section 2.11 (approved by each member agency)