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Seyed Sadredin
Executive Director
Air Pollution Control Officer

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4800 Enterprise Way
Modesto, CA 95356-8718
(209) 557-6400 • FAX (209) 557-6475

Central Region Office
1990 East Gettysburg Avenue
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34946 Flyover Court
Bakersfield, CA 93308-9725
(661) 392-5500 • FAX (661) 392-5585

DATE: October 18, 2012

TO: SJVUAPCD Governing Board



FROM: Seyed Sadredin, Executive Director/APCO
Project Coordinator: Tom Jordan

RE: **AGREEMENT WITH FRESNO COUNCIL OF GOVERNMENTS FOR \$32,380 TO SUPPORT LAND-USE SCENARIO PLANNING ACTIVITIES**

RECOMMENDATION:

Approve and authorize the Chair to sign the attached Agreement, for an amount not to exceed \$32,380, with the Fresno Council of Governments (Fresno COG) for land-use scenario planning activities.

BACKGROUND:

On March 15, 2012, the District Governing Board approved an agreement with the Stanislaus Council of Governments (StanCOG) on behalf of seven of the eight Valley Metropolitan Planning Organizations (MPOs) for an amount not to exceed \$184,650 to fund an agreement with Fregonese and Associates to develop tools to assist in the development for land-use scenarios. At the time of that agreement, Fresno COG had already contracted separately with the same consulting firm for similar work, and was not included in multi-county project and did not receive funding from the District.

Fresno COG indicated that they anticipated the need for additional assistance in developing land-use scenarios in order to complete their Sustainable Communities Strategy (SCS) as required by SB 375, and requested that the District consider providing funding for the additional support in lieu including their existing contract in the multi-county project.

While the focus of the SCS is to reduce greenhouse gas emissions to comply with SB 375, this project will clearly benefit the Valley's air quality attainment goals by reducing criteria pollutants related to motor vehicle travel. Mobile sources are the single largest source of air pollution in the San Joaquin Valley. Land-use scenario development

and analysis tools will allow jurisdictions in Fresno County to further refine land-use scenarios and analyze their potential to reduce motor vehicle travel and the associated criteria pollutant emissions.

DISCUSSION:

The attached agreement, for an amount not to exceed \$32,380, allows Fresno COG to contract with Fregonese Associates to further refine two land-use scenarios based upon public input, provide public workshop assistance, and assist Fresno COG staff with interpreting and analyzing scenario results.

FISCAL IMPACT:

This contract will be funded by revenue appropriated in the District's 2011-12 Non-Operating Budget. Sufficient appropriations are available to fund this contract. No additional fiscal impact is anticipated.

Attachment:

Fresno COG Agreement (13 Pages)

San Joaquin Valley Unified Air Pollution Control District
Meeting of the Governing Board
October 18, 2012

**AGREEMENT WITH FRESNO COUNCIL OF GOVERNMENTS FOR \$32,380
FOR SCENARIO PLANNING SUPPORT**

Attachment:

Fresno COG Agreement
(13 pages)

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AGREEMENT

This Agreement is made and entered into this 18th day of October, 2012, by and between the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT (DISTRICT), a unified air pollution control DISTRICT formed pursuant to California Health and Safety Code section 40150 et seq. (hereafter referred to as the "DISTRICT"), and the FRESNO COUNCIL OF GOVERNMENTS, (hereafter referred to as "FRESNO COG").

WITNESSETH:

WHEREAS, the San Joaquin Valley ("Valley") is currently classified as a nonattainment area for the federal health-based standards for ozone and fine particulate matter ("PM2.5"); and

WHEREAS, SB 375 requires each of the Metropolitan Planning Organizations ("MPOs") to prepare "Sustainable Community Strategies" to achieve greenhouse gas emission targets established by the California Air resources Board ("CARB"); and

WHEREAS, In establishing greenhouse gas emissions targets for the Valley, CARB recognized the need for enhanced modeling tools to properly assess appropriate target levels; and

WHEREAS, CARB committed to re-assess the greenhouse gas emissions targets in the Valley based upon the outputs of improved modeling tools; and

WHEREAS, In preparing "Sustainable Community Strategies" FRESNO COG has the need for assistance in developing and analyzing land-use scenarios; and

WHEREAS, meeting the targets established by SB 375 will have co-benefits that will assist the Valley in reducing ozone and PM2.5 precursor emissions; and

1 **WHEREAS**, the DISTRICT desires to provide technical and financial
2 support to the Valley MPOs in their efforts to improve their modeling capabilities; and

3 **WHEREAS**, FRESNO COG represents that it is willing and able,
4 through an agreement with Fregonese Associates, to develop and modify land-use
5 scenarios as specified in Exhibit A which is attached hereto and incorporated herein.

6 **NOW, THEREFORE**, based on their mutual promises, covenants, and
7 conditions, the parties hereby agree as follows:

8 **1. PROJECT**

9 (a) FRESNO COG through an agreement with Fregonese Associates,
10 will adjust recently produced target-setting scenarios to meet “Sustainable Community
11 Strategy” guidelines and widely engage the public in the process as specified in
12 Exhibit A which is attached hereto and incorporated herein.

13 (b) FRESNO COG agrees to furnish all labor, materials, equipment,
14 licenses, permits, fees, agreements and other incidentals necessary to perform and
15 complete, per schedule, in a professional manner, the services described herein.
16 FRESNO COG represents that it possesses the expertise necessary to adequately
17 perform the project.

18 //

19 **2. PERIOD OF PERFORMANCE/TIMETABLE**

20 (a) FRESNO COG through an agreement with Fregonese Associates
21 will complete the work as specified in Exhibit A by December 31, 2013, unless this
22 Agreement is terminated sooner.

23 If requested by the DISTRICT, FRESNO COG shall submit regular
24 progress reports, at intervals determined by the DISTRICT, detailing the work
25 performed; work planned; problems identified, solved, and/or unresolved; and the
26 percentage of each task completed.

27 **COMPENSATION**

28 (a) The total obligation of DISTRICT under this Agreement shall not

1 exceed thirty two thousand three hundred and eighty dollars (\$32,380) for FRESNO
2 COG to complete the work as specified in Exhibit A, , through an agreement with
3 Fregonese Associates.

4 **A. Payments:**

5 (1) DISTRICT will disburse the funds to FRESNO COG following
6 FRESNO COG entering into an agreement with Fregonese Associates, and upon
7 receipt of proper invoice and verification that Fregonese Associates has satisfactorily
8 completed the task/work for which compensation is sought. DISTRICT will issue
9 payment to FRESNO COG within thirty (30) calendar days from receipt of proper
10 invoices.

11 (3) FRESNO COG shall submit all invoices for work completed
12 within sixty days of completing the project by the dates specified in paragraph (2) or
13 upon termination of this agreement.

14 **B. Surplus Funds:** Any compensation which is not expended by

15 FRESNO COG pursuant to the terms and conditions of this Agreement by the project
16 completion date shall automatically revert to DISTRICT. Only expenditures incurred
17 by FRESNO COG in the direct performance of this Agreement will be reimbursed by
18 DISTRICT. If the actual costs of the project are lower than the anticipated costs as
19 stated in Section 3(a) of this Agreement, the DISTRICT shall only pay the actual
20 costs. If the actual costs of the project exceed the anticipated costs as stated in
21 paragraph 3(a) of this Agreement, the DISTRICT will not be responsible for the
22 additional costs.

23 **3. NON-ALLOCATION OF FUNDS**

24 The terms of this Agreement and the services to be provided thereunder
25 are contingent on the approval of funds by the appropriating government agency.
26 Should sufficient funds not be allocated, the services provided may be modified or this
27 Agreement terminated at any time by giving FRESNO COG thirty (30) days' prior
28 written notice.

1 **4. INDEPENDENT CONTRACTOR**

2 In performance of the work, duties, and obligations assumed by
3 FRESNO COG under this Agreement, it is mutually understood and agreed that
4 FRESNO COG, including any and all of its officers, agents, and employees, will at all
5 times be acting and performing as an independent contractor and shall act in an
6 independent capacity and not as an officer, agent, servant, employee, joint venturer,
7 partner, or associate of the DISTRICT. Furthermore, the DISTRICT shall have no
8 right to control or supervise or direct the manner or method by which FRESNO COG
9 shall perform its work and function. However, the DISTRICT shall retain the right to
10 administer this Agreement so as to verify that FRESNO COG is performing its
11 obligations in accordance with the terms and conditions thereof. FRESNO COG and
12 the DISTRICT shall comply with all applicable provisions of law and the rules and
13 regulations, if any, of governmental authorities having jurisdiction over matters the
14 subject thereof.

15 Because of its status as an independent contractor, FRESNO COG shall
16 have absolutely no right to employment rights and benefits available to DISTRICT
17 employees. FRESNO COG shall be solely liable and responsible for providing to, or
18 on behalf of, itself all legally required employee benefits. In addition, FRESNO COG
19 shall be solely responsible and save DISTRICT harmless from all matters relating to
20 payment of FRESNO COG's employees, including compliance with social security,
21 withholding, and all other regulations governing such matters. It is acknowledged that
22 during the term of this Agreement, FRESNO COG may be providing services to others
23 unrelated to the DISTRICT or to this Agreement.

24 **5. TERMINATION**

25 **A. Breach of Agreement:** DISTRICT may immediately suspend or
26 terminate this Agreement, in whole or in part, where in the determination of DISTRICT
27 there is:

- 28 1. An illegal or improper use of funds;

- 1 2. A failure to comply with any term of this Agreement;
2 3. A substantially incorrect or incomplete report submitted to DISTRICT;
3 or
4 4. Improperly performed services.

5 In no event shall any payment by DISTRICT constitute a waiver by
6 DISTRICT of any breach of this Agreement or any default which may then exist on the
7 part of FRESNO COG. Neither shall such payment impair or prejudice any remedy
8 available to DISTRICT with respect to the breach or default. DISTRICT shall have the
9 right to demand of FRESNO COG the repayment to DISTRICT of any funds disbursed
10 to FRESNO COG under this Agreement which in the judgment of DISTRICT were not
11 expended in accordance with the terms of this Agreement. FRESNO COG shall
12 promptly refund any such funds upon demand.

13 In addition to immediate suspension or termination, DISTRICT may
14 impose any other remedies available at law, in equity, or otherwise specified in this
15 Agreement.

16 **B. Without Cause:** Either party may terminate this Agreement at
17 any time upon giving the other party at least thirty (30) days' advance written notice of
18 intention to terminate. In such case, FRESNO COG shall, subject to paragraph 3, be
19 paid the reasonable value of all services satisfactorily rendered and actual,
20 reasonable costs incurred up to the time of the termination.

21 **6. MODIFICATION**

22 Any matters of this Agreement may be modified from time to time by the
23 written consent of all the parties without in any way affecting the remainder.

24 **7. NON-ASSIGNMENT**

25 No party to this Agreement shall assign, transfer, or subcontract this
26 Agreement, nor their rights or duties under this Agreement, without the prior express,
27 written consent of the other parties.

28 **8. INDEMNIFICATION**

1 FRESNO COG agrees to indemnify, save, hold harmless, and at
2 DISTRICT's request, defend DISTRICT, its boards, committees, representatives,
3 officers, agents, and employees from and against any and all costs and expenses
4 (including reasonable attorneys' fees and litigation costs), damages, liabilities, claims,
5 and losses (whether in contract, tort, or strict liability, including, but not limited to,
6 personal injury, death, and property damage) occurring or resulting to DISTRICT
7 which arises from any negligent or wrongful acts or omissions of FRESNO COG, its
8 officers, agents, subcontractors, or employees in their performance of this Agreement.

9 **9. INSURANCE**

10 **A.** FRESNO COG warrants that it is self-insured and that it has
11 sufficient funds and assets to provide coverage of at least One Million Dollars
12 (\$1,000,000) per occurrence for general commercial liability and commercial
13 automobile liability. FRESNO COG's responsibility for worker injuries is governed by
14 California law, and/or other applicable statutes.

15 **B.** If FRESNO COG acquires applicable insurance coverages during
16 the term of this Agreement, FRESNO COG shall provide certifications of insurance on
17 the applicable policies to DISTRICT, stating that such insurance coverages have been
18 obtained and are in full force; that DISTRICT, its officers, agents, and employees will
19 not be responsible for any premiums on the policies; that such coverages shall apply
20 as primary insurance, and any other insurance maintained by DISTRICT, its officers,
21 agents, and employees shall be excess only and not contributing with insurance
22 provided under FRESNO COG's policies herein. This insurance shall not be canceled
23 or changed without a minimum of thirty (30) days' advance, written notice given to
24 DISTRICT by FRESNO COG.

25 **C.** In the event FRESNO COG fails to keep in effect at all times
26 insurance coverage as herein provide, DISTRICT may, in addition to other remedies it
27 may have, suspend or terminate this Agreement upon the occurrence of such event.

28 **10. AUDITS AND INSPECTIONS**

1 FRESNO COG shall at any time during regular business hours, and as
2 often as DISTRICT may deem necessary, make available to DISTRICT for
3 examination all of its records and data with respect to the matters covered in this
4 Agreement. FRESNO COG shall, and upon request by DISTRICT, permit DISTRICT
5 to audit and inspect all of such records and data necessary to ensure FRESNO
6 COG's compliance with the terms of this Agreement.

7 FRESNO COG shall be subject to an audit by the DISTRICT or its
8 authorized representative to determine if the revenues received by FRESNO COG
9 were spent for the reduction of pollution and to determine whether said funds were
10 utilized as provided by law and this Agreement. If, after an audit DISTRICT makes a
11 determination that funds provided to FRESNO COG pursuant to this Agreement were
12 not spent in conformance with this Agreement or any other applicable provisions of
13 law, FRESNO COG agrees to immediately reimburse DISTRICT all funds determined
14 to have been expended not in conformance with said provisions.

15 FRESNO COG shall retain all records and data for activities performed
16 under this Agreement for at least three (3) years from the date of final payment under
17 this Agreement or until all state and federal audits are completed for that fiscal year,
18 whichever is later.

19 Because this Agreement exceeds Ten Thousand Dollars (\$10,000),
20 FRESNO COG shall be subject to the examination and audit of the auditor general for
21 a period of three (3) years after final payment under contract (Government Code §
22 10532).

23 **11. NOTICES**

24 The persons and their addresses having authority to give and receive
25 notices under this Agreement are as follows:

26 **FRESNO COG**
27 Tony Boren
28 Fresno Council of Governments
2035 Tulare St., Suite 201
Fresno, CA 93721

DISTRICT
Seyed Sadredin
Executive Director/APCO
1900 East Gettysburg Ave.
Fresno, CA 93726

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Any and all notices between the DISTRICT and FRESNO COG provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States mail, postage prepared, addressed to such party.

13. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines.

14. LOBBYING PROHIBITED

None of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of California.

15. CONFLICT OF INTEREST

No officer, employee, or agent of DISTRICT who exercises any function or responsibility for planning and carrying out the services provided under this Agreement shall have any direct or indirect personal financial interest in this Agreement. FRESNO COG shall comply with all federal and state conflict of interest laws, statutes, and regulations, which shall be applicable to all parties and beneficiaries under this Agreement and any officer, agent, or employee of DISTRICT.

16. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of California. Venue for any action arising out of this Agreement shall only be in Fresno County, California.

17. BINDING ON SUCCESSORS

This Agreement, including all covenants and conditions contained

1 herein, shall be binding upon and inure to the benefit of the parties, including their
2 respective successors-in-interest, assigns, and legal representatives.

3 **18. TIME IS OF THE ESSENCE**

4 It is understood that for FRESNO COG's performance under this
5 Agreement, time is of the essence. The parties reasonably anticipate that FRESNO
6 COG will, to the reasonable satisfaction of DISTRICT, complete all activities provided
7 herein within the time schedule outlined in paragraph 2 of this Agreement, provided
8 that FRESNO COG is not caused unreasonable delay in such performance.

9 **19. NO THIRD-PARTY BENEFICIARIES**

10 Notwithstanding anything else stated to the contrary herein, it is
11 understood that FRESNO COG's services and activities under this Agreement are
12 being rendered only for the benefit of DISTRICT, and no other person, firm,
13 corporation, or entity shall be deemed an intended third-party beneficiary of this
14 Agreement.

15 **20. SEVERABILITY**

16 In the event that any one or more of the provisions contained in this
17 Agreement shall for any reason be held to be unenforceable in any respect by a court
18 of competent jurisdiction, such holding shall not affect any other provisions of this
19 Agreement, and the Agreement shall then be construed as if such unenforceable
20 provisions are not a part hereof.

21 **21. SPECIAL CONDITIONS**

22 Funds may not be used to meet Americans with Disabilities Act (ADA)
23 requirements.

24 **23. ENTIRE AGREEMENT**

25 This Agreement constitutes the entire agreement between FRESNO
26 COG and the DISTRICT with respect to the subject matter hereof and supersedes all
27 previous negotiations, proposals, commitments, writings, advertisements,
28 publications, and understandings of any nature whatsoever unless expressly included

1 in this Agreement.

2 //

3 **IN WITNESS WHEREOF**, the parties hereto have caused this
4 Agreement to be executed as of the day and year first hereinabove written.

5 **FRESNO COG**

DISTRICT

6
7 Fresno Council of Governments

San Joaquin Valley Unified Air Pollution
Control District

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9 _____
Tony Boren

William O'Brien
Governing Board Chair

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11 _____
Tax I.D. No.

Recommended for approval:
San Joaquin Valley Unified Air Pollution
Control District

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14 _____
Seyed Sadredin
Executive Director/APCO

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16 **Approved as to legal form:**
San Joaquin Valley Unified Air Pollution
Control District

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19 _____
Catherine Redmond
District Counsel

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21 **Approved as to accounting form:**

22
23 _____
Cindi Hamm
Director of Administrative Services

24
25 **For accounting use only:**
San Joaquin Valley Unified Air Pollution
Control DISTRICT

26
27 Program: _____
Account No: _____

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MEMORANDUM

TO: KRISTINE CAI, FRESNO COG
FROM: GLEN BOLEN, SARAH LOGIUDICE AND ALEX JOYCE, FREGONESE ASSOCIATES
SUBJECT: PROPOSED SCOPE OF WORK FOR FRESNO SCS SCENARIO ASSISTANCE
DATE: AUGUST 23, 2012

Based on our recent experience assisting Fresno COG with scenario building and a discussion of Fresno's upcoming SCS scenario needs, below is a proposed scope of work for continued capacity building and assistance. We propose a process in which Fregonese Associates assists Fresno COG in adjusting recently produced target-setting scenarios to meet SCS guidelines and widely engage the public in the process.

Task 1: Technical Assistance to Fresno Staff to edit Scenario 2 & 3 from the target setting process

Fregonese will assist Fresno staff in making changes to Scenario 2 & 3 after inputs are received during the SCS public process. The same GIS base layers, parcel layers and scenario setup will be used for the first round of scenario development.

Deliverables

- *Technical assistance to Fresno staff for editing of scenarios 2 & 3 using Envision Tomorrow*
- *Assist with interpreting scenario output measures*

Task 2: Analysis and communication materials for modified Scenario 2 & 3

Fregonese Associates will assist Fresno COG in analyzing and communicating the modified scenario results.

Deliverables

- *Assist staff with interpreting and analyzing scenario results*
-

Task 3: Public workshop assistance

A critical component of the SCS scenario process will be reaching out to and involving the public and community stakeholders. Fregonese has pioneered public workshop strategies that have informed scenario processes throughout the country. Fregonese will work with Fresno COG to develop a workshop format that best suits the Fresno SCS process. Fregonese will assist in developing printable materials, including workshop maps, game pieces and a workshop agenda. Fresno COG staff will be responsible for printing and other material costs. This workshop is intended to inform the theme of a new scenario.

Deliverables

- *Develop agenda and activities for public engagement events and interactive workshops*
- *Attend and assist Fresno COG in facilitating the first workshop (1)*
- *Develop printable maps and workshop game pieces*
- *Review public engagement results and create recommendations for incorporation into the additional scenario*

Task 4: Develop a new scenario based on workshop input

Fregonese Associates will develop one new scenario that is based on public input from the workshops to test different strategies to meet CARB targets.

Deliverables

- *Document measurable scenario parameters based on staff and committee direction*
- *Create alternative scenario in Envision Tomorrow*

Task 5: Analysis and communication materials for additional scenario

Fregonese Associates will work with Fresno COG to analyze and communicate the modified scenario results. We will assist in the development of presentation and reports for delivery to CARB.

Deliverables

- *Assist staff with interpreting and analyzing scenario results*
- *Create a presentation comparing the three scenarios and documenting scenario creation process*

ENVISION TOMORROW PROPOSED BUDGET FRESNO SCS	Glen Bolen	Alex Joyce	Sarah LoGiudice	Fregonese Associates Hours	Fregonese Associates Costs
Task 1: Technical Assistance to edit scenario 2 and 3					\$ 3,840
2.1: Assist Fresno staff in scenario edits		16	18	34	\$ 2,700
2.2: Assist with scenario output measures		8	6	14	\$ 1,140
Task 2: Analysis and communication materials for modified Scenario 2 and 3					\$ 2,900
3.1: Assist staff with interpreting and analyzing scenario results	8	8	14	30	\$ 2,900
Task 3: Public workshop assistance					\$ 10,660
1.1: Develop agenda and activities	2	4	6	12	\$ 1,080
1.2: Attend and assist with 1 workshop		16	16	32	\$ 2,560
1.3: Develop printable maps and workshop materials	4	18	20	42	\$ 3,620
1.4: Review public engagement results; recommend ways of incorporating input into scenario refinement	8	12	16	36	\$ 3,400
Task 4: Develop additional scenario					\$ 9,200
4.1: Document measurable scenario parameters based on staff and committee direction	2	10	12	24	\$ 2,040
4.2: Create alternative scenario in Envision Tomorrow	4	22	46	72	\$ 5,800
4.3 Process scenario results for travel model		12	4	16	\$ 1,360
Task 5: Analysis and communication materials for additional scenario					\$ 3,380
5.1: Assist staff with interpreting and analyzing scenario results	4	6	6	16	\$ 1,560
5.2: Prepare final presentation comparing scenarios	2	6	14	22	\$ 1,820
Subtotal					\$ 29,980
Expenses - Travel					\$ 2,400
Total					\$ 32,380