#15-638
7-16-2015

CALIFORNIA
High-Speed Rail Authority

CITY OF FRESNO
City Clerk's Office (Original)

Facility Relocation Cooperative Agreement With the City of Fresno

FACILITY RELOCATION COOPERATIVE AGREEMENT

THIS AGREEMENT is entered into and is effective the date last written below (the "AGREEMENT") through the completion of the initial construction section located within the City of Fresno for the high-speed rail project, by and between the California High-Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 620 MS 3, Sacramento, California 95814, hereinafter referred to as the "AUTHORITY", and the City of Fresno, a California Municipal Corporation, whose principal mailing address for purposes of this AGREEMENT is 2600 Fresno Street, 4th Floor, Fresno, CA 93721, hereinafter referred to as the "CITY".

1. RECITALS

WHEREAS, the AUTHORITY is currently engaging in a program that has various projects under current provisions of Section 2704.04 of the Streets and Highway Code ("S&H Code") and Sections 185030 and 185511 of the Public Utilities Code throughout the State of California identified as the California High-Speed Rail Projects (collectively the "PROJECT"); and

WHEREAS, the PROJECT will require the protection, relocation, installation, or removal of certain FACILITIES, as defined herein, located within the RIGHT-OF-WAY OF CITY, or some combination thereof, including any submittal review, inspection, environmental mitigation, certification or other oversight activity specific to CITY'S FACILITIES (collectively "FACILITY WORK"); and

WHEREAS, the AUTHORITY is responsible for the RELOCATION of FACILITIES that are in conflict with the design or construction of the PROJECT, including the execution and funding of RELOCATION; and

WHEREAS, the AUTHORITY'S CONTRACTOR for the first construction package of the PROJECT is responsible for complying with the AUTHORITY'S commitments to mitigate impacts to the CITY in the Final Environmental Impact Report/Environmental Impact Statement for the Merced to Fresno section of the PROJECT; and

WHEREAS, the AUTHORITY'S CONTRACTOR for the second construction package of the PROJECT is responsible for complying with the AUTHORITY'S commitments to mitigate impacts to the CITY in the Final Environmental Impact Report/Environmental Impact Statement for the Fresno to Bakersfield section of the PROJECT; and

WHEREAS, the AUTHORITY and the CITY desire to enter into an agreement which establishes the contractual terms and conditions applicable to that portion of FACILITY WORK related to the RELOCATION of FACILITIES.

ACCORDINGLY, the AUTHORITY and the CITY hereby agree as follows:

2. DEFINITIONS

As used in this AGREEMENT, the following terms have the following meanings:

2.1 AUTHORITY

"AUTHORITY" means the California High-Speed Rail Authority and its authorized

representatives.

2.2 AUTHORITY'S CONTRACTOR

"AUTHORITY'S CONTRACTOR" means the proposer who is awarded the design and construction of any portion of the PROJECT.

2.3 BETTERMENT

"BETTERMENT" means any upgrading of the FACILITY being relocated that is not attributable to the PROJECT construction and is made solely for the benefit of and at the election of the CITY.

BETTERMENT does not mean those differences in cost caused by changes in design or manufacturing standards, availability of materials, regulatory requirements or any upgrading required by CITY standard specifications, standards of practice, or construction methods applied to comparable facilities constructed by or for the CITY at its own expense, which are in effect as of the date of the specific permit application for FACILITY WORK. Additionally, mitigation measures called for in the adopted environmental impact report are not considered BETTERMENT.

2.4 CITY

"CITY" means the City of Fresno, a municipal corporation.

2.5 CITY PERMITS

"CITY PERMITS" means any permits, including street work permits, required by the CITY for the modification of CITY'S FACILITIES.

Notwithstanding the fact that no CITY PERMIT will be required for FACILITY WORK to be performed by the AUTHORITY'S CONTRACTOR in HSR RIGHT-OF-WAY which is intended to and will become the CITY'S FACILITIES, such work will be addressed in CITY PERMITS for adjacent FACILITY WORK and be subject to the same review, access, inspection, conflict resolution, approval process, and warranty used for, and applicable to, similar work within RIGHT-OF-WAY OF CITY.

2.6 CONSTRUCTION AND MAINTENANCE AGREEMENT

"CONSTRUCTION AND MAINTENANCE AGREEMENT" means an agreement between the AUTHORITY and the CITY specific to a particular grade separation that is required for grade separation approval from the California Public Utilities Commission ("CPUC") prior to construction. Each CONSTRUCTION AND MAINTENANCE AGREEMENT will set forth, among other things, the schedule, cost, maintenance cost apportionment, billing, payment, documentation, documentation retention, accounting, and coordination as it relates to the particular FACILITY WORK.

2.7 DIRECTOR

"DIRECTOR" means the CITY'S Director of the Department of Public Works or his or her designee.

2.8 FACILITY

"FACILITY" or "FACILITIES" means any CITY owned and operated road, street, bridge, or grade separation. The term "FACILITY" or "FACILITIES" includes traffic signals, street lights, curbs, gutters, sidewalks, and railroad crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, crossing equipment, communication facilities owned or used by the CITY, CITY irrigation controller equipment, or CITY transit shelters shall be deemed to provide service to such facilities. Electrical transmission facilities not serving said facilities are not covered under the terms of this Section.

2.9 HAZARDOUS MATERIAL

"HAZARDOUS MATERIAL(S)" means any hazardous substance, hazardous material, or hazardous waste as defined under local, state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

2.10 HSR RIGHT-OF-WAY

"HSR RIGHT-OF-WAY" means any restricted access right-of-way for the PROJECT.

2.11 OPERATION AND MAINTENANCE AGREEMENT

"OPERATION AND MAINTENANCE AGREEMENT" means an agreement between the AUTHORITY and the CITY detailing the respective responsibilities and rights for ownership, operation, and maintenance of FACILITIES affected by this AGREEMENT.

2.12 PARTY

"PARTY" refers to the AUTHORITY or the CITY, as the context may require and "PARTIES" refers to the AUTHORITY and the CITY, collectively.

2.13 PROJECT

"PROJECT" refers to the projects under current provisions of Section 2704.04 of the S&H Code and Sections 185030 to 185511 of the Public Utilities Code throughout the State of California.

2.14 RAILROAD RIGHT-OF-WAY

"RAILROAD RIGHT-OF-WAY" means the right-of-way of any rail line registered with the CPUC, except for HSR RIGHT-OF-WAY throughout the State of California.

2.15 RELOCATION

"RELOCATION" means alteration, construction, removal, relocation, replacement, reconstruction, deactivation, support, abandonment, closure, protection or any other rearrangement of a CITY FACILITY as ordered and approved by both the AUTHORITY and the CITY to accommodate the AUTHORITY'S PROJECT. RELOCATION shall

include, but not be limited to: preparation of relocation plans; drawings; and designs; engineering; planning; inspection; acquisition of necessary rights-of-way and replacement right-of-way; permitting; testing and certifying; compliance with commitments and conditions set forth in the environmental documentation; coordination with regulatory agencies and any miscellaneous related work by the AUTHORITY sufficiently engineered to allow construction of the ordered RELOCATION by the AUTHORITY'S CONTRACTOR.

2.16 RESTORATION WORK

"RESTORATION WORK" is all work necessary to place CITY FACILITIES in permanent working conditions, at a minimum to the same level as when the AUTHORITY commenced FACILITY WORK herein, where for reasons outside of the control of the AUTHORITY, the PROJECT is cancelled or altered. Where the PARTIES agree in writing that it is necessary to avoid a major conflict between the restoration and the surrounding area, the PARTIES will work in good faith to find a mutually agreeable solution.

2.17 RIGHT-OF-WAY OF CITY

"RIGHT-OF-WAY OF CITY" means any real property right held by the CITY in the form of either a recorded or fully executed deed or other property right for the FACILITY.

2.18 STAKEHOLDERS

"STAKEHOLDERS" means the CITY, the AUTHORITY, the AUTHORITY'S CONTRACTOR, and any other third party entities affected by the PROJECT, including regulatory agencies, railroads, local agencies, and public and private utility owners.

2.19 FACILITY WORK

"FACILITY WORK" means those activities related to the RELOCATION of any FACILITIES.

2.20 UNFORESEEN WORK

"UNFORESEEN WORK" means any new, extra, or unanticipated work not previously contemplated in the AUTHORITY'S design/build contract with the AUTHORITY'S CONTRACTOR, found essential to the satisfactory completion of the PROJECT (including the RELOCATION of FACILITIES and UTILITIES).

2.21 DAYS AND WORKING DAYS

"DAY'S" means calendar days unless otherwise stated. "WORKING DAYS" means each weekday that is not an AUTHORITY DESIGNATED HOLIDAY or a weather day as designated by the AUTHORITY'S resident engineer.

An "AUTHORITY DESIGNATED HOLIDAY" means New Year's Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day

after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

3. WORK TO BE DONE

3.1 FACILITY WORK

FACILITY WORK to be performed under this AGREEMENT will involve all work necessary to accomplish the RELOCATION of FACILITIES that are in conflict with the design or construction of the PROJECT, including those identified in the construction plans as approved by the CITY, Appendix B, Appendix B-1, and the Merced to Fresno and Fresno to Bakersfield Final Environmental Impact Reports for the PROJECT.

RELOCATION shall include compliance with the AUTHORITY'S commitments to mitigate impacts to the CITY in the Final Environmental Impact Reports/Environmental Impact Statements for the Merced to Fresno and Fresno to Bakersfield sections of the PROJECT including, but not limited to: obtaining all necessary permits from the CITY; and ensuring that the operations of the AUTHORITY'S CONTRACTOR comply with the mitigation measures and permit requirements. The AUTHORITY'S responsibility for such mitigation located within the CITY'S sphere of influence shall survive termination of this AGREEMENT and until such time as all written notices of completion from regulatory agencies have been obtained by the AUTHORITY and copies provided to the CITY, upon request.

All designs and plans for FACILITY WORK shall include compliance with the AUTHORITY'S commitments in the Final Environmental Impact Reports/Environmental Impact Statements for the Merced to Fresno and Fresno to Bakersfield sections of the PROJECT and are to be developed in cooperation with the CITY. Any issues identified related to the design of the RELOCATION are to be addressed and resolved among the CITY, the AUTHORITY and the AUTHORITY'S CONTRACTOR designated technical staff.

Notwithstanding any provision contrary in this AGREEMENT, all FACILITY WORK will be performed pursuant to applicable CITY standards unless otherwise agreed to by the PARTIES in writing. Roads closures, grade separations requiring CPUC approval and other RELOCATIONS are identified in Appendix B and Appendix B-1.

3.1.1 ROAD CLOSURES

All road closures of CITY roads or streets will be performed pursuant to CITY procedures and Appendix B and Appendix B-1.

3.1.2 GRADE SEPARATIONS REQUIRING CPUC APPROVAL

For constructing a new rail crossing or modifying an existing rail crossing, CPUC approval is required, and FACILITY WORK will be performed pursuant to executed CONSTRUCTION AND MAINTENANCE AGREEMENT(S).

3.1.3 OPERATION AND MAINTENANCE

Ownership, operation, and maintenance of FACILITIES shall be pursuant to the

OPERATION AND MAINTENANCE AGREEMENT.

3.2 BETTERMENT WORK

No work performed pursuant to this AGREEMENT shall be a BETTERMENT.

3.3 UNFORESEEN WORK

The AUTHORITY shall be responsible for all UNFORESEEN WORK.

4. LIABILITY FOR WORK

4.1 AUTHORITY'S EXPENSE

Unless the CITY agrees otherwise in writing, FACILITY WORK and all other work contemplated herein or as a result of the AUTHORITY'S compliance with this AGREEMENT (including all the CITY'S costs for property transfers contemplated in the City of Fresno Right-of-Way Agreement) shall be performed at the AUTHORITY'S expense.

4.2 CITY'S EXPENSE

The CITY shall not be responsible for payment of any work performed pursuant to this AGREEMENT, unless otherwise agreed to in writing.

4.3 DELAYS

The AUTHORITY and the CITY acknowledge and agree that delays in the performance of FACILITY WORK may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the PROJECT. Consequently, the PARTIES shall make all reasonable and good faith efforts to facilitate the PROJECT.

4.4 AUTHORITY'S CONTRACTOR CLAIMS

In the event the AUTHORITY'S CONTRACTOR or other party retained by the AUTHORITY provides a notice of intent to make a claim against the AUTHORITY relating to FACILITY WORK, the AUTHORITY shall, in accordance with the AUTHORITY'S procedure, notify the CITY of the notice of intent and the CITY shall cooperate with the AUTHORITY, at the AUTHORITY'S expense, in analyzing and resolving the claim within a reasonable time; provided, however that the AUTHORITY shall not cause the CITY to become a party to any such claim. The AUTHORITY shall defend, indemnify, and hold the CITY harmless in the event of any claim brought against CITY due to PROJECT construction and design pursuant to Section 2 of Appendix A.

4.5 DISPUTES

This Section is not applicable to the CITY'S permitting process, including any FACILITY WORK to be performed by the AUTHORITY'S CONTRACTOR in HSR RIGHT-OF-WAY

which will become the CITY'S FACILITIES.

It is noted, that for the purposes of Construction Package 01, under the terms of Contract HSR13-06, the AUTHORITY'S CONTRACTOR is liable for design activities related to third party Facility Work, including planning, local agency encroachment permits, preliminary design, engineering, surveys, coordination with all interested parties, final design, construction document preparation, scheduling, cost estimates, quality assurance, and control (See HSR13-06, General Provisions, Section 49.1.1).

The PARTIES agree to work in good faith to resolve any disputes. If a dispute cannot be resolved at the technical level, it will be elevated to the CITY Manager or his or her designee for the CITY and the Regional Director or his or her designee for the AUTHORITY to resolve.

Notwithstanding any dispute, the PARTIES agree that they will continue their respective performances required herein, and such continuation of efforts shall not be construed as a waiver of any legal right or power (a) of any PARTY under this AGREEMENT or any other agreement executed pursuant hereto, or (b) otherwise available pursuant to applicable law. Records of FACILITY WORK shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this AGREEMENT irrespective of the ultimate outcome of any dispute.

5. PERFORMANCE OF WORK

5.1. AUTHORITY RESPONSIBLE FOR WORK

The AUTHORITY is responsible for performing, or causing to be performed by the AUTHORITY'S CONTRACTOR, all FACILITY WORK contemplated herein or to be performed as a result of the AUTHORITY'S compliance with this AGREEMENT by the completion of the PROJECT. As between the AUTHORITY and the CITY, the AUTHORITY shall be responsible for all tasks and obligations assigned to the AUTHORITY'S CONTRACTOR (including but not limited to those of the AUTHORITY'S CONTRACTOR'S authorized agents, architects, engineers, or subcontractors) for any FACILITY WORK contemplated herein. A breach by the AUTHORITY'S CONTRACTOR shall be a breach by the AUTHORITY for purposes of this AGREEMENT.

5.2. PERFORMANCE OF WORK

FACILITY WORK to be performed by the AUTHORITY or the AUTHORITY'S CONTRACTOR will be consistent with the CITY'S current permitting process. The AUTHORITY'S CONTRACTOR will be required to obtain CITY PERMITS as applicable consistent with Section 2.5 above.

5.3. STAKEHOLDER COLLABORATION

The CITY agrees to collaborate with the AUTHORITY, the AUTHORITY'S CONTRACTOR, and any other third party entities affected by the PROJECT(S), including regulatory agencies, other local agencies, and public and private utility owners

(collectively "STAKEHOLDERS"). The PARTIES shall work together to identify collaborative methods for resolving issues that may arise as part of the PROJECT. As between the AUTHORITY and the CITY, the AUTHORITY shall be solely responsible for soliciting the participation of STAKEHOLDERS in such a collaboration,

STAKEHOLDERS will be requested by the AUTHORITY to attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the PROJECT(S). During the initial workshop, the AUTHORITY shall request that the STAKEHOLDERS develop procedures and agreements as specified in Appendix B. "STAKEHOLDER COLLABORATION," included herein, to facilitate the collaborative relationship and aid in identifying and resolving issues as they arise throughout the PROJECT(S).

Reimbursement to the CITY for its actual cost to prepare for and participate in the initial workshop and subsequent stakeholder meetings shall be made by the AUTHORITY.

5.4. RESTORATION WORK

If the PROJECT which precipitated this AGREEMENT is canceled or modified so as to eliminate the necessity of work, the AUTHORITY will notify the CITY in writing and the AUTHORITY reserves the right to terminate this AGREEMENT by amendment. The amendment shall provide mutually acceptable terms and conditions for terminating the AGREEMENT, and performance of RESTORATION WORK, including restoration of disturbed FACILITIES where applicable.

6. INSPECTION AND ACCEPTANCE OF WORK

The CITY shall, at its own discretion, conduct final inspection of the AUTHORITY'S work prior to accepting ownership of RELOCATED FACILITIES. The CITY may reject FACILITY WORK that is a material deviation from the plans approved by the CITY. The CITY shall provide the AUTHORITY or the AUTHORITY'S CONTRACTOR with a punch list of all FACILITY WORK which (1) deviates from approved plans and (2) is unacceptable to the CITY; the AUTHORITY shall timely remedy any such deviations of FACILITY WORK from the plans approved by the CITY will not unreasonably reject minor, non-critical deviations from the approved plans.

The PARTIES recognize that some FACILITY WORK will be performed on HSR RIGHT-OF-WAY and transferred to the CITY as RIGHT-OF-WAY OF CITY at a later date after completion. For such work, the CITY shall have the right to inspect as if such work were performed on RIGHT-OF-WAY OF CITY.

All costs associated with the CITY'S inspections shall be borne by the AUTHORITY and outlined in CITY PERMITS.

The AUTHORITY agrees to work with the CITY in good faith to ensure that the AUTHORITY'S CONTRACTOR performs FACILITY WORK in accordance with the approved plans, including conferring with the CITY for any actual or perceived deviations from the plans approved by the

CITY. The AUTHORITY, if it deems necessary, may exercise its contractual rights as between the AUTHORITY and the AUTHORITY'S CONTRACTOR, including withholding payment from the AUTHORITY'S CONTRACTOR for deficient FACILITY WORK. Notwithstanding, nothing in this AGREEMENT confers a right to the CITY to require the AUTHORITY to withhold payment from the AUTHORITY'S CONTRACTOR.

7. CITY'S SERVICES

The AUTHORITY shall be responsible to the CITY for services rendered by the CITY or consultants in relation to FACILITY WORK and acceptance thereof. The CITY hereby consents to accepting said payment from the AUTHORITY'S CONTRACTOR in accordance with Section 5 herein.

8. APPENDICES

The following Appendices are attached to this AGREEMENT and incorporated by reference herein.

Appendix A. Special Terms and Conditions
Appendix B. City of Fresno Facility Design Criteria
Appendix B-1. Lane Requirement Chart
Appendix C. Stakeholder Collaboration

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT effective the day and year last written below.

[Signature Page Follows]

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

For

JEFF MORALES, CHIEF EXECUTIVE OFFICER

7.31.15
DATE

APPROVED AS TO FORM:

Thomas Fellenz

THOMAS FELLENZ, CHIEF COUNSEL

7/30/15
DATE

CITY OF FRESNO

SCOTT MOZIER, PUBLIC WORKS DIRECTOR

7-16-15
DATE

ATTEST:

Sherri L. Bedeutscher, Deputy

YVONNE SPENCE, CMC, CITY CLERK

7-17-2015
DATE

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

RAJ SINGH BADHESHA, DEPUTY CITY ATTORNEY

7.16.15
DATE

APPENDIX A: SPECIAL TERMS AND CONDITIONS

1. DEFAULT

In the event that the AUTHORITY materially breaches this AGREEMENT, then in addition to any other remedies which are otherwise provided for in the AGREEMENT or by law or equity, the CITY may exercise one or more of the following options:

A. Pursue a claim for damages suffered by the CITY.

B. Perform any work with its own forces or through subcontractors and seek repayment for the cost thereof.

Termination of this AGREEMENT shall not relieve either PARTY from any obligations it has pursuant to other agreements between the PARTIES, nor from any statutory obligations that either PARTY may have with regard to the subject matter hereof, nor from any obligations under this AGREEMENT.

2. INDEMNIFICATION

Each PARTY shall hold harmless, and indemnify the other PARTY and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or its officers, agents, employees, engineers, contractors or subcontractors in carrying out obligations under this AGREEMENT executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the PARTIES indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified PARTY.

For purposes of this provision, as between the AUTHORITY and the CITY, the AUTHORITY shall be responsible for all actions of the AUTHORITY'S CONTRACTOR and shall hold harmless and indemnify the CITY from any action of AUTHORITY'S CONTRACTOR.

Insurance: The AUTHORITY'S CONTRACTOR will add the CITY as an additional insured on the insurance provided by the AUTHORITY'S CONTRACTOR pursuant to its contract (HSR13-06).

3. FORCE MAJEURE

Neither the AUTHORITY nor the CITY shall be liable to the other for any failure to perform under this AGREEMENT to the extent such performance is prevented by the following:

A. Earthquake exceeding 3.5 on the Richter scale;

B. Tidal wave;

C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;

D. Discovery at, near or on the site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not discovered during the environmental review process;

E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the PROJECT or the granting or renewal of any Governmental Approval of the PROJECT; or

F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the PROJECT where each participant in such occurrence is not a CITY or an AUTHORITY related entity.

The foregoing events shall relieve a PARTY of liability only if the PARTY'S failure to perform as a result of such event is beyond its control and not due to an act or omission of the PARTY and could not have been avoided by due diligence or use of reasonable efforts and the PARTY claiming the excuse from performance has:

A. Promptly notified the other PARTY of the occurrence and its estimated duration;

B. Promptly remedied or mitigated the effect of the occurrence to the extent possible; and

C. Resumed performance as soon as possible.

To the extent applicable, if any such event of Force Majeure occurs, the CITY agrees, if requested by the AUTHORITY, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the AUTHORITY agrees to reimburse the CITY for the reasonable and actual costs of such efforts.

Force Majeure excludes:

A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;

B. Except as provided in Section C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;

C. All other matters not caused by or beyond the control of the AUTHORITY or a PARTY employee or contractor and not listed in the definition of Force Majeure above.

4. MAINTENANCE OF FACILITIES DURING PROJECT

FACILITIES shall at all times remain the property of the CITY and shall be properly

protected and maintained by the CITY, provided, however, that the CITY shall not be required to protect FACILITIES within the construction site during RELOCATION by the AUTHORITY or the AUTHORITY'S CONTRACTOR. The AUTHORITY shall be responsible for maintenance of any FACILITIES within the construction site, including during RELOCATION thereof by the AUTHORITY OR the AUTHORITY'S CONTRACTOR, the AUTHORITY'S CONTRACTOR'S operations within the construction site of the FACILITY, and until acceptance of the FACILITY by the CITY following the CITY'S permitting process.

5. AGREEMENT FINAL EXPRESSION OF THE PARTIES

This AGREEMENT constitutes the complete and final expression of the PARTIES with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the PARTIES understand and agree that AUTHORITY will have written policies and procedures which shall be applicable as written at the time of the execution of this AGREEMENT. Copies of the AUTHORITY'S policies and procedures will be provided to the CITY as soon as practicable after they become available. This AGREEMENT cannot be modified except by an instrument, in writing, signed by each of the PARTIES.

Should any provision of the AUTHORITY'S policies and procedures conflict with this AGREEMENT, this AGREEMENT shall govern to the extent permitted by law, with the exception of safety requirements for the HSR RIGHT-OF-WAY.

6. GOVERNING LAW AND VENUE

This AGREEMENT shall be governed by the laws of the State of California. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

Venue for any action shall lie exclusively in Sacramento County, California pursuant to Public Utilities Code Section 185038.

7. NOTICES

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail, and for time calculations purposes shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The CITY shall have a continuing obligation to notify the AUTHORITY of the appropriate persons for notices to be sent pursuant to this AGREEMENT. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the CITY:

City of Fresno
Scott Mozier, Director Department of Public Works
2600 Fresno Street, 4th Floor
Fresno, CA 93721
Facsimile: (559) 488-1045

If to the AUTHORITY:

California High-Speed Rail Authority
Thomas Fellenz, Chief Counsel
770 L Street, Suite 620 MS 1
Sacramento, CA 95814
E-mail: Thomas.Fellenz@hsr.ca.gov

8. HAZARDOUS MATERIAL

Upon discovery of HAZARDOUS MATERIAL in connection with FACILITY WORK, both the CITY and the AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action.

A. The AUTHORITY will pay, in its entirety, those costs for additional necessary effort undertaken within HSR RIGHT-OF-WAY to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL found as a consequence of that FACILITY WORK.

B. The AUTHORITY will pay, in its entirety those costs for additional necessary efforts undertaken within the area of the replacement property right located outside HSR RIGHT-OF-WAY which is required to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL.

C. Each PARTY to this AGREEMENT retains the right to pursue recovery of its share of any such HAZARDOUS MATERIAL related costs from the other PARTY or third parties in accordance with existing law, except that the AUTHORITY may not pursue recovery from the CITY and the CITY will not pursue recovery from the AUTHORITY, in locations where Phase II testing has confirmed no HAZARDOUS MATERIAL is present.

9. SUCCESSORS AND ASSIGNS

This AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors and assigns of the PARTIES.

10. STATE AND FEDERAL FUNDS

No funds or resources are allocated or encumbered as against this AGREEMENT and the AUTHORITY'S obligations and duties are conditioned upon sufficient funds being made available to the AUTHORITY by the United States Government or the California

State Legislature for the purpose of this PROJECT.

11. AUDIT

The CITY agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this AGREEMENT. The CITY agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The CITY agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the CITY agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this AGREEMENT. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

12. TIMELINESS

Time is of the essence in this AGREEMENT.

13. UNENFORCEABLE PROVISION

In the event that any provision of this AGREEMENT is unenforceable or held to be unenforceable, then the PARTIES agree that all other provisions of this AGREEMENT have force and effect and shall not be affected thereby.

APPENDIX B: CITY OF FRESNO DESIGN CRITERIA

1. CITY'S FACILITIES

The CITY'S FACILITIES shall at all times remain the property of the CITY and shall be properly protected and maintained by the CITY; provided, however, that the AUTHORITY shall be responsible for protection and maintenance of the CITY'S FACILITIES during the AUTHORITY'S possession and until acceptance by the CITY. Maintenance of the CITY'S FACILITIES after acceptance will revert to the CITY.

2. FORMER CITY FACILITIES WITHIN AUTHORITY RIGHT-OF-WAY

All RIGHT-OF-WAY OF CITY, which becomes and remains AUTHORITY RIGHT-OF-WAY or disposed of by the AUTHORITY as excess, shall be cleared and grubbed of all CITY FACILITIES to a depth of one foot, unless otherwise agreed to in writing by the PARTIES. The CITY will consider all deviation requests by the AUTHORITY pertaining to this provision in good faith.

3. DESIGN STANDARDS

FACILITY WORK performed by the AUTHORITY'S CONTRACTOR shall:

(1) Conform to the adopted edition of CITY Public Works Standards and Specifications, including any adopted addendum(s).

(2) Conform to the CITY'S standard specifications, standards of practice, or construction methods applied to comparable facilities constructed by or for the CITY at its own expense, which are in effect as of the date of the specific permit application for FACILITY WORK ("CITY STANDARDS"); and

(3) Comply with all RELOCATION requirements as outlined in the applicable Final Environmental Impact Reports, unless otherwise mutually agreed to in writing by the DIRECTOR and the AUTHORITY. In addition, the AUTHORITY'S CONTACTOR shall do all the following:

a) Where CITY STANDARDS do not address particular construction standards, at the approval of the DIRECTOR, FACILITY WORK shall be constructed pursuant to the latest adopted edition of the Caltrans standard specifications.

b) Any deviations from CITY STANDARDS, whether advisory or mandatory, shall be approved by the DIRECTOR. Approval of one deviation does not constitute approval to any other deviation.

c) In conjunction with the AUTHORITY'S CONTRACTOR'S collaboration with the CITY'S Public Works Department, FACILITY WORK shall be designed pursuant to CITY STANDARDS.

d) Design Speed for FACILITY WORK shall be established by applicable CITY STANDARDS, unless otherwise requested by the AUTHORITY and approved in writing by the DIRECTOR.

e) The AUTHORITY'S CONTRACTOR shall remove remnant FACILITIES that had purpose and use prior to FACILITY RELOCATION and will no longer have purpose and use after FACILITY RELOCATION unless otherwise approved in writing by the DIRECTOR.

f) Roadway shoulder widths shall be designed to the more stringent of CITY STANDARDS or San Joaquin Valley Air Pollution Control District Rule 8061.

g) Design and construction for storm water mitigation necessary during construction of the PROJECT shall be the responsibility of the AUTHORITY'S CONTRACTOR and shall not become the responsibility of the CITY. Concentration or collection of storm water shall be avoided wherever possible. In areas or overcrossings where concentration and collection of storm water is not unavoidable, the AUTHORITY'S CONTRACTOR shall design and construct storm water storage facilities such as ponds and ditches, unless other arrangements are made with Fresno Metropolitan Flood Control District or otherwise agreed to in writing. Maintenance of all such storm water storage facilities shall become the responsibility of the AUTHORITY'S CONTRACTOR or its designee.

h) Embankment for all grade separated structures shall be designed to prevent or mitigate erosion.

i) The AUTHORITY'S CONTRACTOR shall submit as-built drawings and computer aided design and drafting files of all CITY FACILITIES to the CITY at the conclusion of FACILITY WORK. As-built drawings shall be of Mylar material.

j) All staging areas shall be outside RIGHT-OF-WAY OF CITY. If any staging areas are located on private property, the AUTHORITY'S CONTRACTOR shall submit proof of the land owner's approval to use property as a staging area upon the CITY'S request.

k) The AUTHORITY and the AUTHORITY'S CONTRACTOR hereby acknowledge the CITY, or the CITY'S representative, shall inspect all the CITY'S FACILITIES.

4. TRAFFIC

The AUTHORITY and the AUTHORITY'S CONTRACTOR shall conform to the following:

a) The AUTHORITY'S CONTRACTOR shall develop, implement, maintain, and update Traffic Management Plans ("TMPs") to address PROJECT related construction impacts to the CITY'S surface transportation network. The AUTHORITY'S CONTRACTOR shall work closely with the CITY'S traffic engineering staff to develop TMPs. TMPs shall address all of the following, but not limited to: Public Information, Motorist Information, Incident Management, Construction Management, Demand Management, and Alternate Routes (or Detours). The AUTHORITY and the AUTHORITY'S CONTRACTOR acknowledge the CITY will not issue a street work permit, which permits FACILITY WORK in the RIGHT-OF-WAY OF CITY to commence, until a TMP is accepted and approved by the DIRECTOR.

b) Where FACILITY WORK will cause delays on major roadways at any moment, the AUTHORITY'S CONTRACTOR shall deploy a network of Portable Changeable Message Signs ("PCMS") to advise motorists of lane closures or detours ahead. Actual number and locations of signs shall be defined in the TMP.

c) All existing traffic signals affected by FACILITY WORK shall maintain actuation and connectivity with the CITY'S traffic operations center so that the traffic signal is not placed on fixed timing, unless otherwise approved by the CITY. If an affected traffic signal is not connected to the traffic operations center at time of construction commencement, the maintenance of connectivity requirement does not apply.

d) Adjacent major CITY streets shall not be under construction at the same time, unless otherwise approved in writing by the DIRECTOR. Major CITY streets are all streets classified as an expressway, super arterial, arterial, and collector as defined in the latest adopted CITY General Plan.

e) Minimum number of lanes to be maintained and allowable closures, unless otherwise approved by the DIRECTOR, are depicted in Appendix B-1.

f) Where complete closures are permitted on a major CITY street, the number of operational lanes of adjacent major streets shall not be reduced, unless otherwise approved in writing by the DIRECTOR, irrespective of Appendix B-1.

g) Detours. All major street detours not specified in Subsection j shall only utilize public streets that are paved, striped, and in a safe condition to carry anticipated volume of traffic. The AUTHORITY shall require the AUTHORITY'S CONTRACTOR to maintain the detour routes in a safe condition adequate to carry anticipated traffic volumes and construction vehicles weights or shall be upgraded prior to implementation of a detour route. Upgrading of detour routes may include but is not limited to: widening of streets, pavement rehabilitation or

replacement, storm water mitigation, signing and striping installation, traffic signal installation(s), rights-of-way acquisition, and temporary construction easements or a combination thereof. The CITY shall determine appropriate detour upgrades with the input of the AUTHORITY and will only identify upgrades that are the minimum necessary to accommodate the additional traffic generated by the proposed detour. These upgrades to the CITY'S FACILITIES as a result of a detour route(s) shall not be considered a BETTERMENT.

h) Where feasible, detours will utilize streets identified as truck routes within the CITY. If non-truck routes must be utilized and the detour route is not equipped to handle increased heavy vehicle traffic, the AUTHORITY and the CITY shall jointly develop a pre-detour mitigation strategy for each proposed non-truck route detour. Identification of suitable mitigation will be required before the CITY will approve the TMP. The AUTHORITY shall be responsible for accelerated pavement degradation caused by the increased truck traffic on detour routes. The amount of accelerated pavement degradation will be measured using Pavement Condition Indices ("PCI") for each non-truck route street used for detours prior to and upon completion of FACILITY WORK. Upon determination of PCI numbers calculated by the CITY and approved by the AUTHORITY, a finding of lower PCI numbers of post FACILITY WORK, shall indicate, with agreement by the AUTHORITY and the CITY, that lower PCI's have been caused by the detour. Upon finding that detour(s) have accelerated the natural deterioration of the streets used for detours, the AUTHORITY shall compensate the CITY a dollar amount representing the lost life of affected streets as determined by the agreed to pre-detour PCI.

i) If an approved detour route is in use during FACILITY construction and the actual vehicle delay is greater than the forecasted vehicle delay, The AUTHORITY and the AUTHORITY'S CONTRACTOR shall mitigate excessive vehicle delay. At the request of the CITY, the AUTHORITY'S CONTRACTOR shall prepare traffic analysis of the detour route(s) to identify actual vehicle delay.

j) Hauls. Haul routes are defined herein as routes used for the extraordinary delivery of specific materials to or from the jobsite. Extraordinary hauls are defined but not limited to the import and export of embankment materials, delivery of Portland cement concrete and asphalt concrete, and delivery of steel or pre-cast beams for bridge construction to the job site. Haul routes shall be identified in the TMP along with the number of daily truck trips anticipated. Where feasible, haul routes will utilize streets identified as truck routes within the CITY. If non-truck routes must be utilized and the haul route is not equipped to handle increased heavy vehicle traffic, the AUTHORITY and the CITY shall determine suitable mitigation consistent with Subsection h.

k) Proposed detours shall address and mitigate any impacts to emergency services response times

5. SCHEDULE

The AUTHORITY and the AUTHORITY'S CONTRACTOR shall conform to the following:

a) The AUTHORITY'S CONTRACTOR shall diligently undertake, or cause to be undertaken, FACILITY WORK.

b) The AUTHORITY'S CONTRACTOR shall provide the CITY'S construction management department with schedule updates commencing with the initial FACILITY WORK and completion of FACILITY WORK.

APPENDIX B-1: LANE REQUIREMENT CHART

No.	Crossing	Lanes to Maintain Open During Non-Peak hours (Each Way)				Lanes to Maintain Open During Peak Hours, 7am-9am & 4pm-6pm (Each Way)				Complete Street Closure Allowed
		4	3	2	1	4	3	2	1	
1	Herndon Ave			X				X		NO
2	Shaw Ave			X				X		NO
3	Ashlan Ave*									
4	Clinton Ave*									
5	McKinley Ave				X				X	YES
6	Olive Ave				X				X	NO
7	Belmont Ave				X				X	NO
8	Stanislaus St				X				X	YES
9	Tuolumne St				X				X	YES
10	Fresno St				X				X	YES
11	Tulare St				X				X	YES
12	Ventura Ave				X			X		YES
13	Church Ave				X				X	YES
14	Jensen Ave				X			X		NO
15	North Ave				X				X	YES
16	Central Ave				X				X	YES
17	Golden State Blvd				X				X	NO

*Not applicable

APPENDIX C: STAKEHOLDER COLLABORATION

In order to accomplish PROJECT(S) through the most effective means available, PARTIES will collaborate as agreed to in Section 5.3 "STAKEHOLDER COLLABORATION." As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the STAKEHOLDERS to resolve issues that may arise during the performance of FACILITY WORK.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the PROJECT(S), the STAKEHOLDERS agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the PROJECT:

A. *"Issues Resolution Ladder" (IRS)* – a hierarchy of those individuals within the PROJECT including the STAKEHOLDERS and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.

B. *"Stakeholder Collaboration Implementation Plan"* – the intention of this plan is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of FACILITY WORK to be addressed by the STAKEHOLDERS.

C. *"Stakeholder Charter"* – the charter will express the vision for the project, a statement of mutual goals, and positive behavior practices, and will be a visual reminder of mutual commitment to the collaborative vision, goals, and relationship. The charter will be signed by all STAKEHOLDERS.

The AUTHORITY shall be responsible for the organization of the Initial Kick-Off Workshop.

STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the stakeholder relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve PROJECT issues.