



**CALIFORNIA**  
**High-Speed Rail Authority**

**Ownership & Maintenance  
Agreement**

**County of Fresno**

## **1 PARTIES**

This Ownership and Maintenance Agreement “Agreement” is entered into 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 1, Sacramento, California, 95814, hereinafter referred to as the “Authority,” and County of Fresno, a political subdivision of the State of California, whose principal place of business and mailing address is 2220 Tulare Street, 6<sup>th</sup> Floor, Fresno, California, 93721, hereafter referred to as the “County.” The Authority and the County are collectively referred to herein as the “Parties.”

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged, the Authority and the County agree as follows:

## **2 RECITALS**

The Authority is an agency of the State of California and is responsible for the High-Speed Rail Project “HSR Project”, as defined herein. To operate high-speed train service, a number of new grade separation structures will need to be constructed. Because of the proximity of the grade separation structures to the HSR alignment, all ownership and maintenance activities must be conducted in accordance with strict standards with respect to quality, security, and safety.

The Parties entered into a Cooperative Agreement on the 1<sup>st</sup> day of September 2013. The terms of the Cooperative Agreement (HSR 13-54) are incorporated as if fully set forth herein. Capitalized terms used but not identified in this Agreement shall have the definitions set forth in the Cooperative Agreement. If there is a conflict between the terms of the Cooperative Agreement and this Agreement, the terms of this Agreement shall prevail. This, however, in no way is a modification or amendment of the Cooperative Agreement.

This Agreement has been entered into by the Parties to identify and define their respective roles and responsibilities with regard to the design, construction, modification, use, and maintenance of the Grade Separation Project described in the Agreement.

## **3 DEFINITIONS**

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

### **3.1 Agreement**

The “Agreement” shall mean this Ownership and Maintenance Agreement between the Parties.

### **3.2 Authorized Representatives**

“Authorized Representatives” shall mean any individuals or the employees of a company, public agency, or other organization, which have been authorized to act on behalf of a Party pursuant to Sections 9.16 and 9.17.

### **3.3 Days**

“Days” or “days” shall mean calendar days.

### **3.4 Final Acceptance**

“Final Acceptance” shall mean the satisfaction by the Parties of the conditions provided in Section 5.6.2.



**3.5 Grade Separation Project**

“Grade Separation Project” means the project defined and described in Section 4.1.

**3.6 Grade Separation Project Manager**

“Grade Separation Project Manager” shall mean the individual designated by the Authority as its Authorized Representative in Sections 9.16 and 9.17.

**3.7 HSR Project**

“HSR Project” means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of sections 2704 et seq. of the Streets and Highways Code and sections 185030 et seq. of the Public Utilities Code.

**3.8 HSR Service**

“HSR Service” shall mean all activities occurring in the course of the operation and maintenance of the elements of the completed HSR Project.

**3.9 Non-conformance Notification**

“Non-conformance Notification” shall mean a notification provided by a Party pursuant to Section 5.4.5.

**3.10 Not Used**

**3.11 Not Used**

**3.12 Not Used**

**3.13 Project Site**

“Project Site” shall mean the physical areas designated in Appendix B.

**3.14 Not Used**

**3.15 Not Used**

**3.16 Sealed Corridor Access Policy**

“Sealed Corridor Access Policy” shall mean the Authority’s Roadway Worker Protection Program per Federal Railroad Administration regulations 49 C.F.R. Part 214 et seq.

**3.17 Not Used**

**3.18 Not Used**

**3.19 Not Used**

**4 WORK TO BE DONE**



#### **4.1 Grade Separation Project**

The Authority will design and construct a grade separation structure, including but not limited to all elements listed in Section 5.7.2.2, where the HSR crosses E. Central Ave., E. American Ave., S. Peach Ave., E. Adams Ave., E. South Ave., E. Manning Ave., E. Floral Ave., E. Nebraska Ave., E. Mountain View Ave., E. Elkhorn Ave., E. Fowler Ave., and E. Davis Ave.

#### **4.2 Location**

The Grade Separation Project is located within the County of Fresno, California.

#### **4.3 Description**

The Grade Separation Project will consist of overheads and/or underpasses. The detailed scope of work description is provided as Appendix B. Any ownership and maintenance responsibilities regarding the Grade Separation Project not identified in this Agreement will be addressed in an amendment to this Agreement or a subsequent agreement between the Parties.

#### **4.4 Grade Separation Project Uses and Use Restrictions**

The Grade Separation Project is to be used for vehicular crossings.

### **5 ROLES AND RESPONSIBILITIES OF THE PARTIES**

#### **5.1 Property Ownership, Use, and Access Rights**

##### **5.1.1 Ownership of Project Site Property**

The Authority has acquired, or is in the process of acquiring, the real properties on which the Grade Separation Project will be constructed.

##### **5.1.2 Not Used**

##### **5.1.3 Inspection Access**

The County, or its Authorized Representatives, shall have the right to enter the Project Site for the purpose of conducting inspections during the performance of construction or maintenance work by the Authority or its contractors, subject to the conditions provided in Section 5.4.5.

##### **5.1.4 Project Access for Use**

When the Authority has provided the County with a written notice of Substantial Completion, as described in Section 5.6.1, and after the Department of Public Works and Planning has issued a written acceptance of such notice, which shall not be unreasonably withheld or delayed, the County shall have the right to occupy and use the individual grade separation for vehicular crossing. The County's Maintenance Obligations, as defined in Section 6.3, shall commence at the County's written acceptance of the notice of Substantial Completion of the individual grade separation. Written acceptance of the notice of Substantial Completion shall not be construed as Final Acceptance of the individual grade separation by the County. Final Acceptance of the individual grade separation will be issued by the Department of Public Works and



Planning only after all punch list items identified in accordance with Section 5.6.1 have been addressed to the satisfaction of the County, and all other requirements of Section 5.6.2 have been met.

## **5.2 Design Work**

The Grade Separation Project design work was conducted by the Authority and its contractors.

## **5.3 Responsibility for Obtaining Governmental Approvals**

The Authority will be responsible for obtaining all government approvals for the Grade Separation Project.

## **5.4 Construction**

The Authority will be responsible for completing all construction work for the Grade Separation Project. A grading permit or voucher is not required for the Authority to construct the Grade Separation Project.

### **5.4.1 Conditions Precedent for Authority to Commence Construction Work**

Prior to commencing construction work, the Authority shall have:

- a. Confirmed that all governmental approvals required for construction have been obtained and met all conditions of such governmental approvals that are a prerequisite to commencement of such construction;
- b. Obtained or initiated the formal process of obtaining ownership or access rights to all real properties to be used during construction; and
- c. Completed the County design review processes provided under the Cooperative Agreement.

### **5.4.2 Not Used**

### **5.4.3 Not Used**

### **5.4.4 Not Used**

### **5.4.5 County Inspection Rights**

The County shall have the right to inspect the following elements of the Grade Separation Project construction or maintenance work performed by the Authority or its contractors:

- a. All Grade Separation Project elements to be owned and/or maintained by the County after completion of the Grade Separation Project;
- b. All Grade Separation Project elements constructed on County property;
- c. Any other Grade Separation Project elements otherwise subject to County permits or approval.

All County inspections are subject to the following conditions:

- a. If flagging is required to perform the inspection, either by the Authority and/or any other railroad company, then the County shall provide no less than thirty (30) days advance written notification to the Authority's Grade Separation Project Manager;
- b. If flagging is not required to perform inspection, then the County shall provide no less than fourteen (14) days advance written notification to the Authority's Grade Separation Project Manager. Notwithstanding anything to the contrary herein, preauthorized County personnel who have



- fulfilled the provisions of subdivision f below, shall be permitted onsite upon reasonable, actual notice;
- c. All notifications to the Authority's Grade Separation Project Manager required under this Section shall at a minimum include the following:
    - The names and organization of persons conducting inspections
    - The dates and duration of time for which access is requested
    - The nature and methods to be used for the planned inspection activities
    - A description of any equipment or machinery to be used
  - d. The County shall have obtained written approval for the proposed inspections from the Authority's Grade Separation Project Manager prior to entering the Project Site;
  - e. The County shall comply with any conditions specified by the Authority's Grade Separation Project Manager that accompany the inspection approval; and
  - f. All personnel participating in such inspections will be required to have completed all required safety training required by the Authority, and to comply with the Authority's safety and access policies during the inspections. The Authority's Grade Separation Project Manager will provide copies of or electronic access to Authority's current safety and access policies upon request, and registration information for parties requesting safety training.

If the County inspections indicate that there are construction work elements that are not in conformance with the requirements of the Agreement, it shall promptly provide a written Non-conformance Notification to the Authority.

Any such Non-conformance Notifications shall include an explanation of how the construction elements in question do not conform to requirements contained in specific section(s) of the Agreement or any construction standards referenced in the Agreement.

The Authority will provide a written response to all such Non-conformance Notifications within fifteen (15) days of receipt. The Authority's response will either: a) clarify its interpretation of the applicable requirements if it does not believe that the construction work needs to be changed, or b) state the nature of corrective work to be performed, or c) request a meeting with County to review the construction work in question.

If County does not agree with any interpretations of the applicable requirements provided in the Authority's response, and believes that the construction work needs to be corrected, it may request a meeting with the Authority to review the construction work in question. In any instances where the Parties are not able to resolve the construction issues to their mutual satisfaction through the processes described above, either Party may initiate the dispute resolution processes provided in Section 9.10.

#### **5.4.6 Warranty on Authority Work**

The Authority shall transfer, assign, or otherwise provide a warranty for each individual grade separation which shall provide that: 1) the grade separation conforms to the requirements of the approved plans; (2) all design for the grade separation conforms to all the professional engineering principles generally accepted as standards of the industry in the State of California, shall be suitable for its intended purpose and shall be free of errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects; (3) all materials and equipment furnished as part of the grade separation are of good quality; and (4) all grade separation work is performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State of California. The warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Authority or the Authority's contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage by the County.



Without limiting any rights or remedies of County, if any defect in any individual grade separation in violation of the foregoing warranty arises within one year after the date of Final Acceptance of that individual grade separation, the Authority shall, upon receipt of written notice of such defect and verification of such defect by a reasonable Authority inspection, remedy at its own expense, any failure to conform to the warranty set forth herein.

## **5.5 Not Used**

## **5.6 Project Completion and Close-out**

### **5.6.1 Substantial Completion**

For purposes of this Agreement, the term “Substantial Completion” means the stage of completion where the individual grade separation is fit for use for its intended purpose. The Authority will provide written notice of Substantial Completion to the County. The County may then inspect the individual grade separation, and at the time of the Department of Public Works and Planning’s issuance of the County’s written acceptance of such notice, the County shall provide a list of any punch list items which materially deviate from the ready for construction designs and specifications for those individual grade separation elements to be owned and/or maintained by the County after completion of the individual grade separation.

### **5.6.2 Final Acceptance**

After the Authority has submitted its written notice of Substantial Completion to the County, and after the Department of Public Works and Planning has issued a written acceptance of such notice, then the Authority will provide the warranty referenced in Section 5.4.6; and Authority at that time also shall request the County’s written concurrence that all punch list items identified by the County have been completed by the contractor in a reasonably timely manner and to the reasonable satisfaction of the County’s Department of Public Works and Planning. Final Acceptance shall not occur until the Department of Public Works and Planning has issued such written concurrence, which shall not be unreasonably withheld or delayed.

When the Authority has provided the written notice of Final Acceptance to its contractor, the Authority will provide the County with a written notice of Final Acceptance and a copy of the as-built drawings.

## **5.7 Completed Grade Separation Asset Ownership**

### **5.7.1 The Parties’ Respective Ownership Arrangements**

The Authority and the County will each have partial ownership rights to the completed Grade Separation Project asset, as described in Section 5.7.2. Each Party’s ownership rights will commence upon the Department of Public Works and Planning’s written acceptance of the notice of Substantial Completion of the individual grade separation by the County, which written acceptance shall not be unreasonably withheld or delayed. Provided, it is agreed and acknowledged by the Parties that written acceptance by the County of the notice of Substantial Completion of an individual grade separation prior to the County’s receipt of the full amount of the corresponding payment from the Authority pursuant to this Agreement is expressly contemplated by the Parties, and shall not constitute a waiver of the County’s right to the full amount of any such payment as remains due and owing to County under this Agreement.

### **5.7.2 Physical or Project Element Ownership Limits Descriptions**

**5.7.2.1** As between the Parties, the Authority shall own and be responsible for:



- a. All structural elements of the Grade Separation Project asset including abutments, all concrete barriers (whether within or outside of sealed access area except at E. Manning Ave. and E. Nebraska Ave. as identified in Appendix B) and the elimination of graffiti thereupon in accordance with the Authority's policy; bridge deck including wearable surface where they are one and the same, bridge deck joints and joint seals, any future spalling repairs, and crack seals;
- b. Embankments, including slope paving within the Authority's right-of-way;
- c. All retaining walls within the Authority's access-controlled right-of-way, structural backfill, and the elimination of graffiti thereupon in accordance with the Authority's policy, except the Authority will own all mechanically stabilized earth retaining walls it constructs at E. American Ave.;
- d. Authority access roads and access gates;
- e. Any and all areas with sealed or restricted access;
- f. Drainage systems including abutment and retaining wall drainage;
- g. Any attachments to overhead structures that are required for HSR operations, including but not limited to overhead catenary support assemblies, dielectric protective screens, intrusion detection or protective devices, lighting, surveillance equipment and non-roadway signage; and
- h. Pedestrian safety screening and other fences.

**5.7.2.2** As between the Parties, the County shall own and be responsible for:

- a. All roadway signage, striping, and pavement delineation including that upon the bridge deck;
- b. Retaining walls, outside the Authority's access-controlled right-of-way and eliminating graffiti thereupon;
- c. Roadway pavement;
- d. Embankments outside the Authority's right-of-way, including applying rodent and erosion control thereto, hydro-seeding, rock slope protection, flume downdrains, and County access roads and gates;
- e. All elements of the Chance Avenue box structure;
- f. Except as otherwise provided under Authority's responsibilities hereinabove, any and all areas outside the Authority's sealed or restricted access;
- g. Metal beam guardrail (including in-line terminal system, fixtures to attach metal beam guardrail to concrete structure, and transition railing); and
- h. Concrete barrier at E. Manning Ave. and E. Nebraska Ave. as identified in Appendix B.

## **6 MAINTENANCE OBLIGATIONS**

### **6.1 Initiation of Maintenance Obligations**

The County's maintenance obligations set forth herein shall commence only after the Department of Public Works and Planning has accepted the notice of Substantial Completion of the individual grade separation in writing, which shall not be unreasonably withheld or delayed. Prior thereto, all maintenance shall be the responsibility of the Authority or its contractor.

### **6.2 Authority Maintenance Obligations**

Upon initiation of maintenance obligations pursuant to Section 6.1, as between the Parties to this Agreement, the Authority will be responsible for maintaining:

- a. All structural elements of the Grade Separation Project asset including abutments, all concrete barriers (whether within or outside of sealed access area except at E. Manning Ave. and E. Nebraska Ave. as identified in Appendix B) and the elimination of graffiti thereupon in





- accordance with the Authority's policy; bridge deck including wearable surface where they are one and the same, bridge deck joints and joint seals, any future spalling repairs, and crack seals;
- b. Embankments, including slope paving within the Authority's right-of-way;
  - c. All retaining walls within the Authority's access-controlled right-of-way, structural backfill, and the elimination of graffiti thereupon in accordance with the Authority's policy, except the Authority will own all mechanically stabilized earth retaining walls it constructs at E. American Ave.;
  - d. Authority access roads and access gates;
  - e. Any and all areas with sealed or restricted access;
  - f. Drainage systems including abutment and retaining wall drainage;
  - g. Any attachments to overhead structures that are required for HSR operations, including but not limited to overhead catenary support assemblies, dielectric protective screens, intrusion detection or protective devices, lighting, surveillance equipment and non-roadway signage; and
  - h. Pedestrian safety screening and other fences.

### 6.2.1 Additional Future Obligations

The Authority has relocated or replaced irrigation facilities in County right-of-way. The Authority recognizes that the construction of grade separated overpasses would impact the County's ability to repair and replace irrigation facilities under deep embankment fill of grade separated overpasses. In the event that there is structural damage to an irrigation facility under a grade separated overpass constructed by the Authority and no casing was installed as a mitigation measure, then the Authority agrees to be responsible for any additional costs incurred by County due to the location within the embankment and the operational limitations imposed thereby, provided that the Authority concurs with the selected materials, means, and methods for such repair and/or replacement. Additional costs, if any, shall be calculated based on estimated cost comparisons between the costs of the repair project without the limitations created by the embankment compared to the costs of the repair project within the embankment as constructed.

### 6.3 County Maintenance Obligations

Upon initiation of maintenance obligations pursuant to Section 6.1, as between the Parties to this Agreement, County shall be responsible for maintaining:

- a. All roadway signage, striping, and pavement delineation including that upon the bridge deck;
- b. Retaining walls, outside the Authority's access-controlled right-of-way and eliminating graffiti thereupon;
- c. Roadway pavement;
- d. Embankments outside the Authority's right-of-way, including applying rodent and erosion control thereto, hydro-seeding, rock slope protection, flume downdrains, and County access roads and gates;
- e. All elements of the Chance Avenue box structure;
- f. Except as otherwise provided under Authority's responsibilities hereinabove, any and all areas outside the Authority's sealed or restricted access;
- g. Metal beam guardrail (including in-line terminal system, fixtures to attach metal beam guardrail to concrete structure, and transition railing); and
- h. Concrete barrier at E. Manning Ave. and E. Nebraska Ave. as identified in Appendix B.

#### 6.3.1 County Maintenance Standards



The County shall comply with Caltrans Maintenance Manual, as it may be amended, in performing its maintenance obligations; provided, however, that the County's Department of Public Works and Planning may issue revisions to said manual and will notify the Authority in writing of any revisions to said manual. In the event that such revisions are prepared, the County shall comply with Caltrans Maintenance Manual as modified thereby.

### **6.3.2 County Maintenance Records**

The County shall keep records of all maintenance, repairs, warranty work, corrective work, and component replacements it performs on the completed Grade Separation Project asset. All such records are subject to the audit provisions in Section 9.12.

### **6.3.3 Amount**

The Authority agrees to pay the County \$3,302,453.41 in accordance with the payment schedule appended hereto as Appendix A and incorporated by this reference, to compensate the County for its acceptance of perpetual ownership and maintenance responsibilities for those components of the completed Grade Separation Project expressly identified in Section 6.3 of this Agreement. This payment is due to a factual, non-speculative showing that there are actual and material costs arising out of the Authority's design specifications caused by the High-Speed Rail Project and the amount of the payment provided for herein has been specifically calculated by the Parties.

The payment to the County by the Authority for each individual grade separation project shall be made in accordance with the payment schedule, Appendix A hereto, and each such payment shall be made following written acceptance by the County of the notice of Substantial Completion of that individual grade separation and within forty-five (45) days of receipt of an undisputed invoice for such payment, as set forth in Section 5.7.1 and 8.3.3.

The County shall use these proceeds solely for the purpose of performing its maintenance obligations in accordance with this Agreement. Provided, that the County may use the cumulative proceeds of such payments for the maintenance, as necessary or appropriate, of any individual grade separations included as part of the HSR Project, without reference to the allocation attributed to each individual grade separation, as listed in Appendix A hereto.

## **6.4 Not Used**

### **6.4.1 Emergency Maintenance Procedures**

Included within a Party's maintenance obligations are maintenance activities needed to keep the completed Grade Separation Projects in safe operating condition both for the users of the Grade Separation Project asset and for the safety of HSR operations.

If at any time a Party determines, in its sole discretion, that an unsafe condition exists at or near a completed Grade Separation Project asset and that the correction of the unsafe condition falls within the other Party's maintenance obligations hereunder, the Party will immediately notify the representative of the Party with the maintenance obligation as identified in Section 9.16.

## **7 CONDITIONS APPLICABLE TO THE PERFORMANCE OF DESIGN AND CONSTRUCTION WORK**



## **7.1 Stakeholder Collaboration Agreement**

The County and Authority agree to collaborate as set forth in Appendix A of the Cooperative Agreement.

## **7.2 County Site Access Restrictions**

### **7.2.1 Sealed Corridor**

The Parties' respective rights to access the Project Site during the performance of Grade Separation Project construction work are as provided in Section 5.1.

HSR Project railroad activities may begin to occur along the segment of the HSR right-of-way that intersects with the Grade Separation Project at any time after HSR tracks have been installed. These railroad activities may involve the movement of rail-based equipment and high-speed rail testing equipment and rolling stock. In order to ensure the safety of HSR railroad operations and of persons involved in off-rail activities near the HSR right-of-way, the Authority has established a Sealed Corridor Access Policy for the right-of-way and surrounding areas once any railroad activities begin.

The County's Project Site access rights will remain as provided in Section 5.1 until such time as the rail for the HSR Project has been installed in the area of the HSR Project right-of-way that intersects with the Grade Separation Project location, at which time the Sealed Corridor Access Policy will take effect. The provisions of this Section 7.2 take precedence over any other provisions hereunder pertaining to Project Site access.

### **7.2.2 Right of Entry Permit**

Once the Sealed Corridor Access Policy is in effect, if access to the Authority's access controlled right-of-way is required for the County to perform any of its obligations, or any activities permitted hereunder, the County may request a right of entry permit from the Authority. The County may perform its maintenance obligations set forth in Section 6.3 without prior authorization from the Authority provided that access to the Authority's access-controlled right-of-way is not required.

### **7.3 Not Used**

### **7.4 Not Used**

### **7.5 Not Used**

## **7.6 Environmental Compliance for Construction**

During construction of the Grade Separation Project, the Authority will comply with all applicable environmental laws, and the specific environmental commitments provided for in the final environmental impact report/environmental impact statement for the Merced to Fresno section.

## **7.7 Limitations on County's Authority**

It is expressly understood by County that, with the exception of any specific provisions to the contrary in Appendix A to the Cooperative Agreement, or a specific written Delegation of Authority from the Authority, or in the case of situations where the County has independent legal authorities, that the County, and its representatives and contractors, have no other authority pursuant to this Agreement to provide direction to the Authority's contractors.



In any instances where the County is unable to achieve satisfactory results through its coordination efforts, it may request the assistance of the Authority, however, the Authority is not required to provide such assistance, and is not responsible for achieving the requested results, unless they are specifically a part of the Authority's obligations hereunder.

If at any time an Authority's contractor requests direction from County or its representatives and contractors, the County shall refer the request for direction to the Authority's Grade Separation Project Manager.

In any instance where an Authority's contractor claims to have been directed by a County representative, and that such direction resulted in a delay costs or other costs, the County shall be liable for any and all such costs, if it is determined that the County provided unauthorized direction to an Authority contractor. The initial determination in this regard shall be made by the Authority, subject to the dispute resolution provisions of Section 9.10.

## **7.8 Not Used**

## **7.9 Suspension of Work**

At times during the construction of the Grade Separation Project, County may identify or observe conditions involving the Authority's contractors which may warrant a suspension of the work being performed. In all such instances, the County shall notify the Authority in accordance with this Section 7.9.

The County may provide the required notification through telephone contact, however, with the exception of an immediate suspension of work required to address an emergency situation, a written notification describing the factual elements of the condition must be provided to the Authority, before a suspension pursuant to Section 7.9.1 may be initiated. All such written notifications shall be sent to the Authority's representatives as designated in Section 9.16 of this Agreement.

### **7.9.1 Suspension of Authority Work**

If the County has provided notification to the Authority of any of the conditions listed below, and the conditions are not promptly resolved, or the County determines in its sole discretion that appropriate efforts to initiate their resolution have not been promptly initiated, without further notice, the County may direct Authority contractors to immediately suspend all or part of the work they are performing in accordance with the Agreement.

- a. The Authority's contractor is performing work in a manner contrary to the requirements of the Agreement, or plans, designs, or specifications approved by the County for their work.
- b. The Authority's contractor is performing work in a manner that the County determines is hazardous to the public, the County's contractors or property, or is otherwise determined by the County not to meet the safety requirements of the Agreement.
- c. The Authority's contractor is performing work in a manner that is in violation of applicable laws, or is not in conformance with the environmental standards and any specific environmental commitments made as part of the Agreement.

## **7.10 Compensation and/or Schedule Relief Events**

### **7.10.1 Force Majeure**

Neither the County nor the Authority 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. Earthquakes exceeding 3.5 on the Richter scale;
- b. Tidal waves;
- c. Epidemics, blockades, rebellions, wars, riots, acts 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 disclosed in the Agreement;
- e. Lawsuits seeking to restrain, enjoin, challenge, or delay construction of the HSR Project or the granting or renewal of any governmental approval of the HSR Project or Grade Separation Project; or
- f. Strikes, labor disputes, work slowdowns, work stoppages, secondary boycotts, walkout, or other similar occurrence occurring within the vicinity of the Grade Separation Project where the participants in such occurrence are not under the control of the County.

All relief from performance liability due to Force Majeure events is conditioned on the following: the events were beyond the control and not due to an act or omission of the County or the Authority 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.

If any such event of Force Majeure occurs, the County 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 County 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 item 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. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence (unless the participants in such occurrence are not under the control of the County); and
- d. All other matters not caused by or beyond the control of the Authority or the County and not listed in the definition of Force Majeure above.

#### **7.10.2 Not Used**

#### **7.10.3 Authority Contractor Remedies If Impacted by Third Party**

In the event the Authority's contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the County of the claim and the County shall cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the County and the Authority's contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

### **8 COST OF WORK**

#### **8.1 Authority Cost Responsibilities**

##### **8.1.1 Authority Work**



The Authority is responsible for its costs associated with property ownership and rights acquisition pursuant to Section 5.1, and the costs of all design, construction, and maintenance work it has agreed to perform pursuant to the Agreement.

**8.2 Not Used**

**8.3 Invoicing and Payment**

For costs as described in the provisions of Sections 6 or 7, in this Agreement this Section 8.3 shall apply.

**8.3.1 Invoice Submittal Requirements**

The County will invoice the Authority for any amounts due under the terms of the Agreement, in a form approved by the Authority. Each invoice shall be submitted electronically and in hardcopy.

Each invoice shall separate all amounts due according to the provisions under which such amounts are owed pursuant to the Agreement.

**8.3.2 Not Used**

**8.3.3 Conditions for Payment by the Authority**

Payment by the Authority for any amounts invoiced by the County is conditioned on the following:

- a. Any submittals associated with invoiced amounts must have been received, and determined by the Authority to meet the requirements identified in Section 8.3.1;
- b. Any other documentation or information necessary to demonstrate entitlement to payment, as reasonably determined by the Authority.

Failure to provide the above information may result in the rejection of the invoice and require resubmission with complete data. Payment will be made within forty-five (45) days after the Authority's receipt of an undisputed invoice and a copy of the County's written acceptance of the notice of Substantial Completion. In its sole discretion, the Authority may elect to make partial payment for any portions of the invoice for which the above requirements have been satisfied.

**8.3.4 Not Used**

**8.3.5 Not Used**

**8.3.6 Not Used**

**8.3.7 Not Used**

**9 GENERAL CONDITIONS**

**9.1 Order of Precedence**

In the event of any inconsistency among the provisions of the agreements between the Parties that relate to the subject matter of this Agreement, the inconsistency shall be resolved by giving precedence in the order set forth below:

1. Amendments and change orders to this Agreement;
2. This Agreement; and



### 3. Cooperative Agreement

Notwithstanding the foregoing, in the event of a conflict among any standard or specification applicable to the HSR Project, established by references to a described publication contained in the above-referenced contract documents, the more stringent thereof shall apply regardless of the order of precedence of the documents in which such conflicting provisions are referenced.

Notwithstanding the foregoing, any environmental commitment binding on the Authority or the County shall take precedence over other conflicting provisions regardless of the order of precedence of the documents in which such conflicting provisions are referenced.

The County shall not take advantage of any apparent error, omission, inconsistency, inaccuracy, deficiency, or other defect in the Agreement documents. Should it appear that the work to be done or any matter relative thereto is not sufficiently detailed or explained in the Agreement documents, the County shall apply to the Authority in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The County shall promptly notify the Authority of all errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects that it may discover in the Agreement documents, and shall obtain specific instructions in writing from the Authority before proceeding with the work affected thereby.

#### 9.2 Survival

The dispute resolution provisions contained in Section 9.10, all provisions addressing the technical, quality, and safety standards applicable to design, construction, and maintenance work, and all other provisions which by their inherent character should survive termination of the Agreement, shall survive the termination of the Agreement.

#### 9.3 Representations and Warranties

##### 9.3.1 Authority Representations and Warranties

The Authority is an agency of the State of California, the obligations the Authority has agreed to in this Agreement are within the Authority's legislatively granted powers, and the execution of the Agreement and the performance of the Authority's obligations hereunder have been duly authorized and approved by Authority staff with appropriate authorization.

##### 9.3.2 County Representations and Warranties

The County is a political subdivision of the State of California with the full statutory power to enter into this Agreement and carry out its obligations hereunder. This Agreement has been executed by a duly authorized representative of the County and the performance of its obligations hereunder, and the expenditure of any funds it has committed to make hereunder, have been properly authorized pursuant to all required internal procedures applicable to the County.

#### 9.4 Successors and Assigns

The Agreement shall be binding upon and inure to the benefit of the Authority and the County and their permitted successors, assigns, and legal representatives.

The County shall not assign the whole or any part of this Agreement, or any monies due or to become due hereunder, without the prior written consent of the Authority, which shall not be unreasonably withheld, except that County may assign the Agreement to its successor or any entity acquiring all or substantially all of its assets.



The Authority may assign without the County's consent all or any portion of the Agreement to any Person that succeeds to the governmental powers and authority of the Authority.

None of the rights, obligations, or interests of either party under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other Party in the form of a formal written amendment.

**9.5 Not Used**

**9.6 Not Used**

**9.7 Not Used**

**9.8 Not Used**

**9.9 Not Used**

**9.10 Dispute Resolution**

The Authority and the County agree the dispute resolution process in Section 4.5 of Cooperative Agreement applies to disputes that arise pursuant to this Agreement.

**9.11 Not Used**

**9.12 Termination**

- a. Each Party reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the other Party. The Authority may terminate this Agreement upon thirty (30) days written notice to the County.
- b. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the County fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the County under this Agreement and the balance, if any, shall be paid to the County upon demand.

**9.12.1 Termination Procedures and Cost Accounting**

In the event this Agreement is terminated, the County shall be paid for the increased maintenance costs set forth in Appendix A for any individual grade separation(s) for which, at the time of termination, the County has provided written acceptance of the notice of Substantial Completion and such increased maintenance costs have not been paid.

**9.12.2 Record Retention**

For the purpose of determining compliance with Public Contract Code section 10115 et seq. and Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code section 8546.7, the County and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All Parties shall make such materials available at their respective offices at





all reasonable times during the term of the Agreement and for three (3) years from the date of any expenditures under this Agreement.

### 9.12.3 Audit Rights

The Authority, the Department of General Services, the Bureau of State Audits, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the County that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

### 9.13 Notice of External Legal Actions

Each Party agrees to promptly provide the other Party with written notice of any lawsuits, administrative proceedings, or other legal actions initiated against them which may affect the Grade Separation Project, or the other Party's interests in the Grade Separation Project.

### 9.14 Notice of Labor Disputes

If the County has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of its work under this Agreement, the County shall promptly give notice, including all relevant information, to the Authority.

### 9.15 Applicable Law and Venue

This Agreement shall be governed by and construed in accordance with the Constitution and Laws of the State of California, without regard to conflict of law principles. Venue for any arbitration action and all legal actions shall lie exclusively in Sacramento County, California.

### 9.16 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and 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, in which case service is effective on the date of actual receipt. The County 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 County:

County: County of Fresno  
Person in Charge: Steven E. White, Director, Department of Public Works and Planning  
Address: 22220 Tulare Street, 6<sup>th</sup> Floor,  
Fresno, CA 93721

With a copy to:

County: County of Fresno  
Chief Counsel: Daniel C. Cederborg  
Address: 2220 Tulare Street, Suite 500



Fresno, CA 93721

If to Authority:

Authority: California High-Speed Rail Authority  
Person in Charge: Director of Maintenance  
Address: 770 L Street, Suite 620 MS 3  
Sacramento, CA 95814

With a copy to:

Authority: California High-Speed Rail Authority  
Chief Counsel: Alicia Fowler  
Address: 770 L Street, Suite 620 MS 1  
Sacramento, CA 95814

### 9.17 Authorized Representatives

The following persons are authorized to act on behalf of a Party in performance of any duty or exercise of any right under this agreement:

- a. Any person identified in Section 9.16 above; and
- b. Any person, employee or agent of a Party, company, public agency, or other organization designated by a Party in writing. Such writing shall specifically set forth the matters relating to the Agreement such person is authorized to act on behalf of the Party providing the authorization.

### 9.18 Entire Agreement

This Agreement is intended to be the Parties' final expression and supersedes all prior oral understandings or writings pertaining to Grade Separation Project work. The Parties acknowledge that the Authority is currently in the process of finalizing new regulations which will govern certain procedural aspects of Grade Separation Project work. To the extent that any such procedure is finalized, the Authority shall immediately notify the County of the new regulation and provide a copy of said regulation to the County. The Parties will execute a formal written amendment if there are any changes to the commitments made in this Agreement. Signatories may execute this Agreement through individual signature pages provided that each signature is an original. A waiver of a Party's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.

### 9.19 Severability

If any provisions in this Agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement.

### 9.20 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds.



**9.21 Federal Requirements**

The County understands that the Authority has received federal funding from the Federal Railroad Administration (FRA) for the HSR Project and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. The County acknowledges that federal laws, regulations, policies and related administrative practices may change and that such changed requirements will apply to the HSR Project. The County shall ensure compliance by its subcontractors and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein.

Notwithstanding anything to the contrary contained in this Agreement, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The County shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of FRA requirements.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year last written.

COUNTY OF FRESNO

Signature *Ernest Buddy Mendes* Date: 6/23/20  
Typed Name: Ernest Buddy Mendes  
Typed Title: Chairman, Board of Supervisors

ATTEST:  
BERNICE E. SEIDEL  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By *Bernice E. Seidel* Deputy

Legal Review  
Signature *Michael E. Rowe* Date: 6/5/2020  
Typed Name: Daniel C. Cederborg  
Typed Title: County Counsel

*MICHAEL E. ROWE  
Principal Deputy County Counsel*

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Signature *Joe Hedges* Date: 5/19/2020  
Typed Name: Joe Hedges  
Typed Title: Chief Operating Officer

Signature *Bruce Armistead* Date: 5/20/2020  
Typed Name: Bruce Armistead  
Typed Title: Director of Operations and Maintenance



Legal Review

Signature



Date:

May 15, 2020

Typed Name: Alicia Fowler

Typed Title: Chief Counsel



**Appendix A**  
**County of Fresno Grade Separation Amounts**

<b>Construction Package 1</b>	<b>Amount</b>
American Ave Overpass Bridge	\$155,360.00
Central Ave Overpass Bridge	\$166,853.34
<b>Construction Package 2&amp;3</b>	
Adams Ave Grade Separation	\$225,889.13
South Ave Grade Separation	\$227,151.57
Manning Ave Grade Separation	\$666,625.30
Floral Ave Grade Separation	\$231,188.44
Nebraska Ave Grade Separation	\$249,267.13
Mountain View Ave Grade Separation	\$332,323.35
Elkhorn Ave Grade Separation	\$299,463.34
Fowler Ave Grade Separation	\$302,786.11
Davis Ave Grade Separation	\$252,767.56
Peach Ave Grade Separation	\$22,778.14
<b>Equipment</b>	\$170,000.00 (To be paid after first grade separation is substantially completed.)
<b>Total</b>	<b>\$3,302,453.41</b>



**Appendix B**  
**Detailed Scope of Work**

