

HSR13-54-1
 AGREEMENT NO. 13-767-1

**AMENDMENT 1 TO COOPERATIVE AGREEMENT HSR13-54
 BETWEEN CALIFORNIA HIGH-SPEED RAIL AUTHORITY AND COUNTY OF FRESNO**

THIS AMENDMENT (“AMENDMENT 1”) to Cooperative Agreement HSR13-54 between California High-Speed Rail Authority and County of Fresno, entered into and effective on the 1st day of September, 2013 (the “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 2, Sacramento, California 95814, and the County of Fresno, a Political Subdivision of the State of California, whose principal mailing address is 2220 Tulare St, 6th Floor, Fresno, CA 93721.

Pursuant to APPENDIX C, Section (B)(2), of the AGREEMENT, it is mutually understood and agreed by and between the undersigned contracting PARTIES to amend the AGREEMENT as follows:

A. SECTION 6, PERFORMANCE OF WORK, shall be amended as follows:

1. Section 6.1, AUTHORITY’S CONTRACTOR PERFORMS WORK, third paragraph only, shall be deleted and replaced with the following:

“AUTHORITY’S CONTRACTOR shall diligently undertake, or cause to be undertaken, the FACILITY WORK as specified in the TASK ORDER and/or the permit issued by the LOCAL AGENCY for that specific FACILITY WORK. The schedule and/or timeline for performance of the FACILITY WORK and the closure and reopening by AUTHORITY’S CONTRACTOR of local roads relating to such FACILITY WORK shall be set forth in an appropriate TASK ORDER and/or the permit issued by the LOCAL AGENCY for that specific FACILITY WORK. AUTHORITY and AUTHORITY’S CONTRACTOR also will be responsible to reimburse the LOCAL AGENCY for costs incurred by the LOCAL AGENCY caused by delays in completing the FACILITY WORK in accordance with the schedule and/or timeline specified in the TASK ORDER and/or the permit issued by the LOCAL AGENCY for that specific FACILITY WORK. The costs of delays may be predetermined in the form of liquidated damages in the TASK ORDER and/or the permit issued by the LOCAL AGENCY for such FACILITY WORK. In such event, it is contemplated that such costs may include, but shall not be limited to, reasonable costs incurred by the general public associated with extended use of detours, loss of use of facility, and detouring, signage, advertisement, and degradation of local roads used for purpose of detouring traffic and/or transporting construction materials.”

B. APPENDIX D, LOCAL AGENCY SPECIAL CONDITIONS, shall be amended as follows:

1. APPENDIX D, Section 1, DESIGN STANDARDS, Subsection (A) shall be deleted and replaced in its entirety with the following:

“(A). Design Speed for FACILITY WORK shall be agreed upon in future overcrossing agreements to be executed by the PARTIES for the following roads that are to remain open: E. Central Ave., E. American Ave., E. Adams Ave., E. South Ave., E. Manning Ave., E. Floral Ave., E. Nebraska Ave., E. Mountain View Ave., S. Chestnut Ave., S. Peach Ave., E. Elkhorn Ave., S. Fowler Ave., E. Davis Ave., and E. Conejo Ave.”

2. **APPENDIX D, Section 1, DESIGN STANDARDS**, Subsection (B) shall be deleted and replaced in its entirety with the following:

“(B). The following roads will be closed: E. Lincoln Ave., E. Clayton Ave., E. Malaga Ave., E. Springfield Ave., E. Huntsman Ave., S. Willow Ave, S. Topeka Ave., E. Clarkson Ave., S. Minnewawa Ave., and S. Clovis Ave.

The following roads were closed prior to the HSR Project, and remain closed: E. Jefferson Ave., E. Morton Ave., E. Sumner Ave., E. Dinuba Ave., E. Rose Ave., and E. Kamm Ave.”

3. **APPENDIX D, Section 1, DESIGN STANDARDS**, Subsection (C) shall be deleted and replaced in its entirety with the following:

“(C) Not used.”

4. **APPENDIX D, Section 1, DESIGN STANDARDS**, Subsection (F) shall be deleted and replaced in its entirety with the following:

“(F) Crossings shall remain opened to the greatest extent possible during the construction of FACILITY WORK, and at no time shall two consecutive crossings be closed. Provided, however, and notwithstanding the foregoing, the Director may, in his discretion, approve the concurrent closure of two (or more) consecutive crossings, but only if all of the following conditions have been met:

- (i) AUTHORITY has expressly requested consideration of an exception to the provision generally precluding the concurrent closure of two consecutive crossings; and
- (ii) LOCAL AGENCY and AUTHORITY have agreed in advance upon the appropriate amount of a lump-sum fee (“Consecutive Closure Fee”) to be paid to LOCAL AGENCY in consideration of the inconvenience and additional cost to the public of allowing the concurrent closure of two (or more) consecutive crossings; and
- (iii) The amount of the Consecutive Closure Fee shall be based upon calculation of the concurrent closure cost impact (daily cost impact as derived from the appropriate traffic flow data, multiplied times the estimated number of days the crossing is to remain closed); and
- (iv) Advance payment, by AUTHORITY’S CONTRACTOR, of the lump-sum fee in its entirety, is a condition precedent to issuance of the encroachment permit; and
- (v) If each of the consecutive crossings is not re-opened by the date specified in the encroachment permit, AUTHORITY’S CONTRACTOR must apply to extend the encroachment permit and a lump-sum payment of an additional fee (“Consecutive Closure Extension Fee”) must be paid in advance by AUTHORITY’S CONTRACTOR, as a condition precedent of the LOCAL AGENCY’S approval of an extension of the expiration date of the encroachment permit; and

- (vi) The amount of any such Consecutive Closure Extension Fee shall be in the amount of the previously agreed-upon daily cost impact multiplied times the estimated number of additional days (i.e., in excess of the estimated number of days originally specified in the encroachment permit) that the crossing is to remain closed.

If the Director does exercise his discretion, under the conditions specified in Paragraphs (i) through (vi) above, to approve the concurrent closure of two (or more) consecutive crossings, then if each of those crossings is re-opened to traffic sooner than the anticipated date listed in the permit (or the extended permit), an appropriate refund of a commensurate portion of the lump-sum payment will be returned to the AUTHORITY'S CONTRACTOR within forty-five (45) days after the last of those crossings is re-opened to traffic.

5. APPENDIX D, Section 2, EXISTING CONDITIONS, shall be deleted and replaced in its entirety with the following:

"AUTHORITY'S CONTRACTOR, prior to the beginning of any construction in relationship to AUTHORITY WORK or FACILITY WORK shall document the condition of all of LOCAL AGENCY'S FACILITIES which will or may be impacted, either temporarily or permanently, including but not limited to potential detour routes and haul routes. AUTHORITY'S CONTRACTOR shall thereafter provide such documentation and allow adequate time for LOCAL AGENCY review and verification thereof. Neither AUTHORITY WORK nor FACILITY WORK shall commence until DIRECTOR has issued written concurrence to AUTHORITY regarding AUTHORITY'S CONTRACTOR documentation.

Upon completion of construction operations of any/all AUTHORITY WORK or FACILITY WORK at a given location, AUTHORITY'S CONTRACTOR shall again document the condition of FACILITIES which are not otherwise reconstructed or improved as FACILITY WORK and which are impacted as a result of AUTHORITY WORK or FACILITY WORK. The post-construction testing at a given location shall be conducted by calculation of the Pavement Condition Index ("PCI") solely on the lane used by AUTHORITY'S CONTRACTOR in transporting its loaded trucks to the worksite. AUTHORITY'S CONTRACTOR shall prepare and submit to AUTHORITY a report identifying the location and extent of any damage, a copy of which shall be provided by AUTHORITY to DIRECTOR. It shall be the responsibility of AUTHORITY and AUTHORITY'S CONTRACTOR to bring such FACILITIES back to a state of repair at least equal to that originally documented by AUTHORITY'S CONTRACTOR and concurred with by DIRECTOR. AUTHORITY agrees that it shall require AUTHORITY'S CONTRACTOR to remediate the damage to LOCAL AGENCY'S FACILITIES as herein provided, and that if AUTHORITY'S CONTRACTOR fails or refuses to repair such damage promptly, then AUTHORITY shall have the necessary work performed and charge the cost thereof to AUTHORITY'S CONTRACTOR. DIRECTOR has final approval of all such remediation work as is required for returning LOCAL AGENCY'S FACILITIES to their original state of repair.

If requested in writing by the LOCAL AGENCY with respect to any of such FACILITIES as the LOCAL AGENCY shall specify, AUTHORITY and AUTHORITY'S CONTRACTOR shall be responsible to mitigate the damage to such FACILITIES through performance thereupon by AUTHORITY'S CONTRACTOR of either an overlay or road reconstruction project. To the extent such requested restoration work increases the post-construction PCI of impacted FACILITIES at that specific location to a level that significantly exceeds the state of repair as originally measured, that portion of the cost of such work may be considered a BETTERMENT. Provided, however, that: (i) the allocation of cost between the parties shall be determined in an appropriate Task Order; and (ii) payment of any monies owed by the LOCAL AGENCY for any such requested work that is determined to be a BETTERMENT shall not become due until, and may be offset by the LOCAL AGENCY partially or wholly against, the amount of reimbursable costs or damages, including any liquidated damages, owed to the LOCAL AGENCY for delays and/or road closures under or pursuant to the immediately following Section 3 of this Appendix D, once the amount of those Section 3 costs or damages has been finally determined."

6. **APPENDIX D, Section 3, SCHEDULE**, shall be deleted and replaced in its entirety with the following:

"AUTHORITY'S CONTRACTOR shall diligently undertake, or cause to be undertaken, the FACILITY WORK as specified in the TASK ORDER and/or the permit issued by the LOCAL AGENCY for that specific FACILITY WORK. The schedule and/or timeline for performance of the FACILITY WORK and the closure and reopening by AUTHORITY'S CONTRACTOR of local roads relating to such FACILITY WORK shall be set forth in an appropriate TASK ORDER and/or the permit issued by the LOCAL AGENCY for that specific FACILITY WORK. AUTHORITY and AUTHORITY'S CONTRACTOR also will be responsible to reimburse the LOCAL AGENCY for costs incurred by the LOCAL AGENCY caused by delays in completing the FACILITY WORK in accordance with the schedule and/or timeline specified in the TASK ORDER and/or the permit issued by the LOCAL AGENCY for that specific FACILITY WORK. The costs of delays may be predetermined in the form of liquidated damages in the TASK ORDER and/or the permit issued by the LOCAL AGENCY for such FACILITY WORK. In such event, it is contemplated that such costs may include, but shall not be limited to, reasonable costs incurred by the general public associated with extended use of detours, loss of use of facility, and detouring, signage, advertisement, and degradation of local roads used for purpose of detouring traffic and/or transporting construction materials."


C. **ALL OTHER TERMS AND CONDITIONS** as stated in the AGREEMENT shall remain the same and shall be unaffected by this AMENDMENT 1.

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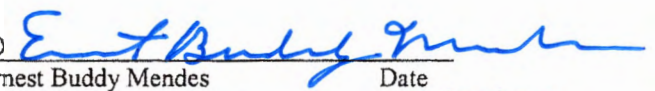
IN WITNESS WHEREOF, the PARTIES have executed this AMENDMENT 1 to be effective as of the last date written below.

AUTHORITY:

COUNTY OF FRESNO:

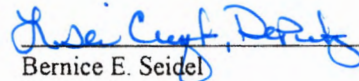

Joe Hedges
Chief Operating Officer

5/19/2020
Date


Ernest Buddy Mendes
Chairman of the Board of
Supervisors of the County of Fresno

Date
6/23/20

ATTEST:


Bernice E. Seidel
Clerk of the Board of
Supervisors of the County of Fresno

6/23/20
Date