



# County of Fresno

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## Legislation Details (With Text)

**File #:** 20-0557 **Name:** Ownership and Maintenance Agreement & Amendment to Cooperative Agreement with High Speed Rail Authority

**In control:** Public Works & Planning

**On agenda:** 6/23/2020 **Final action:** 6/23/2020

**Enactment date:** **Enactment #:** Agreement No. 13-767-1, Agreement no. 20-242

**Title:** Approve and authorize the Chairman to execute Amendment No. 1 to the Cooperative Agreement (Agreement No. 13-767) with California High Speed Rail Authority; authorize the Director of the Department of Public Works and Planning, in his/her discretion, to approve requested concurrent closures of consecutive crossings on behalf of the County, in accordance with the specific conditions outlined in Appendix D of the Cooperative Agreement with California High Speed Rail Authority, as amended; and approve and authorize the Chairman to execute an Ownership and Maintenance Agreement with the California High Speed Rail Authority for the High Speed Rail Project

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Agenda Item, 2. Attachment A (Agreement No. 13-767), 3. Agreement A-13-767-1 with California High Speed Rail Authority, 4. Agreement A-20-242 Ownership and Maintenance, 5. Appendix B (Exhibits A through K) to Ownership and Maintenance Agreement

Date	Ver.	Action By	Action	Result
6/23/2020	1	Board of Supervisors	Approved as Recommended	Pass

**DATE:** June 23, 2020

**TO:** Board of Supervisors

**SUBMITTED BY:** Steven E. White, Director  
Department of Public Works and Planning

**SUBJECT:** Ownership and Maintenance Agreement & Amendment to Cooperative Agreement with High Speed Rail Authority

### RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute Amendment No. 1 to the Cooperative Agreement (Agreement No. 13-767) with California High Speed Rail Authority;**
- 2. Authorize the Director of the Department of Public Works and Planning, in his/her discretion, to approve requested concurrent closures of consecutive crossings on behalf of the County, in accordance with the specific conditions outlined in Appendix D of the Cooperative Agreement with California High Speed Rail Authority, as amended; and**
- 3. Approve and authorize the Chairman to execute an Ownership and Maintenance Agreement with the California High Speed Rail Authority for the High Speed Rail Project.**

Approval of the first recommended action will authorize the execution of Amendment No. 1 to the existing Cooperative Agreement between the California High Speed Rail Authority (HSRA) and the County. Approval

of this amendment would modify those provisions of the Agreement relating to damages for delay in the re-opening of closed County roads and mitigation of damages to County roads caused by transport of materials to the project jobsites by the Authority's contractor. In addition, the amendment would allow HSRA, under certain specified conditions, to seek the discretionary approval of a request for concurrent closure of consecutive crossings within the County, and define the process and conditions for requesting the discretionary approval of such concurrent consecutive closures. Approval of the second recommended action will authorize the Director of the County's Department of Public Works and Planning (Department), or his/her designee, to approve in writing on the County's behalf, a request by HSRA to allow concurrent consecutive crossings in accordance with the conditions specified in Appendix D, Subsection 1(F) to Agreement No. 13-767, as amended by your Board's approval of the first recommended action. Approval of the third recommended action will authorize execution of an Ownership and Maintenance Agreement with the California High Speed Rail Authority (HSRA), which essentially defines the roles of the parties, and their respective ownership and maintenance responsibilities, with regard to the grade separation components of the High Speed Rail Project (Project) in Fresno County, both during construction and following project completion. This item pertains to locations in Districts 1 and 4.

#### ALTERNATIVE ACTION(s):

If the Board determines that either the proposed Amendment to the Cooperative Agreement or the Ownership and Maintenance Agreement should not be approved, then construction of HSRA's Project within the County's jurisdiction will be delayed.

#### FISCAL IMPACT:

There is no increase in Net County Cost associated with this item. Costs to the County will be offset through existing reimbursement agreements, and through the Ownership and Maintenance Agreement and the Cooperative Agreement, as amended.

#### DISCUSSION:

##### Amendment to Cooperative Agreement

On December 10, 2013, the Board approved Cooperative Agreement No. 13-767 (Exhibit A), and Reimbursement Agreement No. 13-766 with HSRA. The Cooperative Agreement establishes the general procedures governing interaction between the parties pertaining to the anticipated impacts of the project on County facilities. The Agreement includes provisions describing the task order process and provides for the allocation and delegation of responsibility for making reimbursement payments relating to facility relocation work.

In addition to revising the list of roads that will require closure, your Board's approval of the proposed Amendment to the Cooperative Agreement will clarify the responsibilities of the HSRA and its design-build contractor with regard to each of the following:

- The amended language will define more explicitly the responsibilities of HSRA and its contractor to ensure the appropriate calculation and mitigation of damage to County roads resulting from its contractor's transport of materials used in the construction of the Project.
- The current provisions regarding County's entitlement to damages for delay in the re-opening of closed roads in accordance with the projected schedule for completion of work on specific crossings, which may be predetermined in the form of liquidated damages, will be modified to provide that such schedule shall be specified in either or both the Task Order(s) and/or the permit(s) issued by the County for such work by HSRA's contractor.
- The current provisions, which prohibit concurrent closure of consecutive crossings, will be modified to allow HSRA, under certain specified conditions, to seek the discretionary approval of a request for concurrent closure of consecutive crossings. Included among those conditions is the advance payment

by HSRA or its contractor, prior to issuance of the encroachment permit, of a concurrent closure fee, in an amount to be agreed upon by HSRA and the Director of the Department, in consideration of the further inconvenience and additional cost to the public of allowing such concurrent closures.

The extended closure of roads is not merely a public inconvenience, but also results in tangible financial detriment, as the lost use of public access to the road and extended use of detours results directly in lost time and additional transportation costs for the County's residents. Use of other roads to detour traffic for the duration of the road closure also results in deterioration to those roads constituting the detour route. For this reason, the fee received for the discretionary approval of any concurrent closures will be directed into the Road Fund as reimbursement for those costs.

#### Ownership and Maintenance Agreement

The Ownership and Maintenance agreement sets forth the respective roles and responsibilities of the parties with regard to the design, construction, use and maintenance of the grade separation project, with particular emphasis on the rights and duties of the parties both during construction and following completion of each individual grade separation component comprising that overall project. The project will require overpasses or grade separations at the following twelve (12) locations: American, Central, Adams, South, Manning, Floral, Nebraska, Mountain View, Elkhorn, Fowler, Davis, and Peach Avenues, each of which will be intersected by the proposed High Speed Rail corridor. The Department anticipates increased maintenance costs related to signage, striping, retaining walls and maintenance of embankments outside the HSRA's right of way, and also to roadway pavement, guardrails and barriers which will be installed during construction. The Agreement accordingly provides for payment by HSRA to the County, in the total cumulative amount of \$3,302,453.41, in consideration of the County's acceptance of specifically defined ownership and maintenance responsibilities following completion of the project, in a separately negotiated amount for each of the twelve grade separation component structures referenced above.

#### OTHER REVIEWING AGENCIES:

A copy of the Agenda Item was provided to the HSRA.

#### REFERENCE MATERIAL:

BAI #59, September 22, 2015  
BAI #52 December 10, 2013  
BAI #35 August 28, 2013  
BAI #11 October 11, 2011  
BAI #6 September 20, 2011

#### Attachments Included and/or on file:

Attachment A (Agreement No. 13-767)  
On file with Clerk - Amendment No. 1 to Agreement No. 13-767  
On file with Clerk - Ownership and Maintenance Agreement  
Appendix B (Exhibits A through K) to Ownership and Maintenance Agreement

#### CAO Analyst:

Debbie Paolinelli