

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered as of the date last written below (“Effective Date”) by and between the State of California, acting by and through the California High-Speed Rail Authority, 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 County of Fresno, a Political Subdivision of the State of California, whose principal mailing address is 2220 Tulare Street, 6th Floor, Fresno California 93721, hereinafter referred to as “Local Agency”. Authority and Local Agency may be referred to in the singular as a “Party” or collectively as the “Parties”.

RECITALS

A. Authority and Local Agency entered into a certain Cooperative Agreement HSR13-54 on September 1, 2013 (the “Cooperative Agreement”), which is hereby incorporated by reference and attached hereto as Exhibit A.

B. Authority and Local Agency entered into a certain Amendment 1 to the Cooperative Agreement on June 23, 2020 (“Amendment 1”), which is hereby incorporated by reference and attached hereto as Exhibit B.

C. The Parties acknowledge the Pavement Damage (as defined in section 2.20 of Amendment 2 to the Cooperative Agreement) to the Local Agency’s road surfaces as a result of the Authority and the Authority’s Contractor’s detour and haul routes for the Project and/or Facility Work for Construction Package 1 and Construction Package 2-3. Local Agency and Authority disagree as to the manner and to the extent of alleged Pavement Damage to the Local Agency’s road surfaces resulting from or relating to the Project and/or Facility Work and the Authority’s Contractor’s use of the Local Agency’s roads for detour and haul routes, and responsibility for any remediation work required to repair the Pavement Damage of the Local Agency’s roads, and for returning the Local Agency’s roads to their original state of repair. The disputes and matters referenced in this Recital C shall be collectively referred to as the “Disputed Matters”.

D. The Parties desire to resolve and settle their disagreements with respect to the Disputed Matters by entering into this Settlement Agreement and Amendment 2 to the Cooperative Agreement (“Amendment 2”), which is hereby incorporated by reference and attached as Exhibit C.

NOW, THEREFORE, incorporating by reference each of the foregoing Recitals, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, and each of them, hereby agree as follows:

TERMS

1. **Definitions.** Except as specified in this Settlement Agreement, any capitalized terms used but not defined herein shall have the meanings set forth for them in the Cooperative Agreement, Amendment 1, and Amendment 2.
2. **Responsibilities of the Parties.** The Authority and the Authority’s Contractor shall remain responsible for construction activities and Facility Work as agreed

upon by the Parties in the Cooperative Agreement, Amendment 1, and Amendment 2. The Authority and the Authority's Contractor shall have no responsibility to provide documentation to the Local Agency regarding the Pavement Damage which has occurred or may occur, either temporarily or permanently, including but not limited to potential detour routes and haul routes in relation to Construction Package 1 and Construction Package 2-3. The Local Agency shall apply the Consideration (defined in Section 4 of this Settlement Agreement) received to the repair of Pavement Damage caused by the Authority's Contractor, but shall not be obligated to return the Local Agencies roads to their original state of repair. The Authority and the Authority's Contractor shall have no responsibility to remediate any Pavement Damage to the Local Agency's roads resulting from or relating to the Authority or the Authority's Contractor's past, present or future (but not later than December 2027) haul routes and/or detour routes for the Project and/or Facility Work for Construction Package 1 and Construction Package 2-3.

3. **Release.** Except as to any obligations or rights created by this Settlement Agreement and/or by Amendment 2, Local Agency hereby fully and irrevocably releases, acquits, and discharges Authority, and each of its past, present and future officers, directors, employees, agents, representatives, attorneys, successors, predecessors, affiliates, subsidiaries, parent entities and assigns, and Authority's Contractor, and each of its past, present and future officers, directors, employees, agents, representatives, attorneys, successors, predecessors, affiliates, subsidiaries, parent entities and assigns (each an "Authority-Related Released Party"), from any and all past, present and future claims, actions, demands, obligations, damages, causes of action, remedies, costs, expenses, compensations, debts, liabilities and defenses of any kind or nature whatsoever, actual or alleged, known or unknown, suspected or unsuspected, that Local Agency has, may have, or claim to have (collectively, "Local Agency Claims") based on, arising out of, related to or in connection with the Disputed Matters. The Local Agency Claims that are released under this Paragraph 3 are sometimes collectively referred to as the "Released Local Agency Claims." This Settlement Agreement and the Released Local Agency Claims shall not operate to change or otherwise modify the Authority's and the Authority's Contractor's obligations under the Cooperative Agreement, Amendment 1, and Amendment 2 with respect to any other construction activities and Facility Work that has or has not begun.
4. **Consideration.** In consideration of the Released Local Agency Claims, the Authority shall pay Local Agency the total sum of Three Million Seven Hundred Thousand USD (\$3,700,000.00), which shall be due and paid by the Authority to the Local Agency upon execution of Amendment 2 by the parties (the "Consideration").
5. **Amendment 2.** This Settlement Agreement is effective contingent upon the Parties entering into Amendment 2. The Parties acknowledge that this Settlement Agreement will change the roles and responsibilities of the Parties as originally contemplated in the Cooperative Agreement and Amendment 1 only with respect to the Disputed Matters referenced in the above sections. The Parties have prepared Amendment 2 to reflect these changed roles and responsibilities and acknowledge that Amendment 2 shall be executed simultaneously with this Settlement Agreement.

6. **Attorneys' Fees and Costs.** Each Party shall bear its own costs, expenses, and attorneys' fees related to the Disputed Matters, this Settlement Agreement, and Amendment 2.

General Release

7. With respect to any and all Released Local Agency Claims, Authority and Local Agency stipulate and agree that, upon the Effective Date, and the Local Agency's receipt of the Consideration, Local Agency shall expressly waive the provisions, rights and benefits equivalent to California Civil Code § 1542 (to the extent it applies to the Disputed Matters), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Provided however, the foregoing provision shall not be deemed to turn a specific release into a general release, and Local Agency shall expressly waive rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code § 1542. Local Agency may hereafter discover facts in addition to or different from those that Local Agency now knows or believes to be true with respect to the Released Local Agency Claims, but Local Agency shall expressly have, upon the Effective Date, and receipt of the Consideration, fully, finally and forever settled and released any and all Released Local Agency Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts regarding the Disputed Matters. Local Agency acknowledges that the foregoing waiver was separately bargained for and a key element of the Settlement Agreement of which this release is a part.

8. **Indemnification.** As to the Disputed Matters and Released Local Agency Claims, 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 willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Settlement 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. As to all other construction activities, Facility Work, and Projects contemplated in the Cooperative Agreement, Amendment 1 and Amendment 2, that have or have not begun, the Parties agree that each shall continue to hold harmless and indemnify the other Party pursuant to the Indemnification terms set forth in Appendix A, Section 2, of the Cooperative Agreement, which remains unchanged by this Settlement Agreement.

9. **Successors and Assigns.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
10. **No Admission of Liability.** The Parties recognize that this Settlement Agreement is entered into to reach a final compromise of Disputed Matters, and that this Settlement Agreement, the payment or acceptance of any money pursuant to it, and the granting or acceptance of a waiver of costs pursuant to it, do not represent an admission of liability by any Party.
11. **Drafting Presumption.** This Settlement Agreement has been and shall be construed to have been drafted by all Parties to it so that the rule of construing ambiguities against the drafter shall have no force or effect.
12. **Headings; Interpretation.** The headings used in this Settlement Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Settlement Agreement. When used in this Settlement Agreement, the terms “include,” “includes” and “including” shall mean without a limitation by reason of enumeration. When used in this Settlement Agreement, the singular or plural shall be deemed to include the other wherever the Settlement Agreement so indicates or would otherwise require.
13. **Severability.** The Parties acknowledge and agree that if a court, or other officer that has appropriate legal jurisdiction over this Settlement Agreement and the Parties, deems any term, part, or condition of this Settlement Agreement to be invalid or unenforceable, it shall not affect the remainder of this Settlement Agreement, which shall remain in full force and effect.
14. **Entire Agreement.** This Settlement Agreement (together with the Cooperative Agreement, Amendment 1, and Amendment 2) contains the entire understanding of the Parties relating to its subject matter and supersedes all prior and collateral agreements, understandings, statements, and negotiations of the Parties. The Parties acknowledge that no representations, inducements, promises, or agreements, oral or written, with reference to the subject matter of this Settlement Agreement have been made other than as expressly set forth in this Settlement Agreement (together with the Cooperative Agreement, Amendment 1, and Amendment 2).
15. **Authorization.** Each of the Parties represents and warrants that (a) it is fully authorized to enter into this Settlement Agreement, (b) it has read this Settlement Agreement and fully understands each of the provisions of this Settlement Agreement, (c) it has relied on the advice and representation of legal counsel of its own choosing with respect to the matters set forth in this Settlement Agreement, to the extent said Party has determined that legal counsel is necessary or advisable, (d) it has signed this Settlement Agreement voluntarily, without any duress or undue influence by or on behalf of anyone, and (e) the terms of this Settlement Agreement are contractual and binding, and not merely recitals. Furthermore, each individual executing this Settlement Agreement on behalf of a Party, or as counsel for a Party, represents that he or she is duly authorized to do so.
16. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, all of which shall be deemed to constitute one and the same

instrument.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement to be effective as of the last date written below.

Authority:

Ian Choudri
Chief Executive Officer

Date

County of Fresno:

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

Date

Attest:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: _____
Deputy

For accounting use only:

Fund: 0010
Subclass: 11000
Org: 4510
Account: 4375