

FIRST AMENDMENT TO FACILITY RELOCATION COOPERATIVE AGREEMENT

This First Amendment to Facility Relocation Cooperative Agreement (FIRST AMENDMENT) is entered into on the date of the final signature below (EFFECTIVE DATE), by and between the State of California acting by and through the California High-Speed Rail Authority (AUTHORITY), and the City of Fresno, a California municipal corporation (CITY). Together the CITY and the AUTHORITY are the "PARTIES."

RECITALS

- A. The Parties entered into that certain Facility Relocation Cooperative Agreement HSR15-10, on July 31, 2015 (ORIGINAL AGREEMENT). The ORIGINAL AGREEMENT, as amended by this FIRST AMENDMENT, shall be referred to herein as the "AGREEMENT." Capitalized terms used, but not defined in this FIRST AMENDMENT shall have the meanings given to them in the ORIGINAL AGREEMENT.
- B. The PARTIES have determined that an amendment to the ORIGINAL AGREEMENT is necessary to clarify the PARTIES' indemnification responsibilities regarding two third-party agreements that are necessary for the PARTIES to complete the FACILITY WORK contemplated in the ORIGINAL AGREEMENT.
- C. For the reasons set forth above, the PARTIES desire to enter into this FIRST AMENDMENT on the terms and subject to the conditions set forth below.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree to amend the ORIGINAL AGREEMENT as follows:

1. AMENDMENT TO SECTION 2 OF APPENDIX A TO THE ORIGINAL AGREEMENT TO ADD NEW SUBSECTION 2.1.

- A. Subsection 2.1 is hereby added to the end of Appendix A, Subsection 2 of the Original Agreement, and it reads as follows:

"2.1. TEMPORARY CROSSING AGREEMENT INDEMNIFICATION.

Union Pacific Railroad, a Delaware corporation (UPRR), requires the PARTIES to enter into two Temporary Public Road Crossing Agreements (TEMPORARY CROSSING AGREEMENTS) with UPRR, for the Shaw Avenue FACILITY RELOCATION and for the Herndon Avenue FACILITY RELOCATION, before UPRR will allow the AUTHORITY and AUTHORITY'S CONTRACTOR to construct temporary, at-grade crossings of UPRR's right-of-way while the AUTHORITY'S CONTRACTOR performs the FACILITY WORK for the Shaw Avenue and Herndon Avenue FACILITY RELOCATIONS. The PARTIES hereby acknowledge that the AUTHORITY'S obligation to indemnify and hold harmless the CITY in the manner set forth in Section 2 of Appendix A to this AGREEMENT

extends to claims by UPRR or any other railroad companies that use UPRR's property, together with their respective officers, agents and employees, arising from the AUTHORITY'S or the AUTHORITY'S CONTRACTOR'S negligence, omission or willful misconduct in the construction or maintenance of the temporary, at-grade crossings that are the subjects of the TEMPORARY CROSSING AGREEMENTS."

2. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Except to the extent modified by this FIRST AMENDMENT, all other terms and conditions of the ORIGINAL AGREEMENT are hereby ratified, are in full force and effect, and are incorporated into this FIRST AMENDMENT by this reference. In the event of a conflict between the terms of this FIRST AMENDMENT and the terms of the ORIGINAL AGREEMENT, the terms of this FIRST AMENDMENT shall control.

3. COUNTERPARTS.

This FIRST AMENDMENT may be executed in any number of counterparts. Each such counterpart shall be deemed to be an original instrument, and all of such counterparts taken together shall constitute one and the same agreement. Counterparts of this FIRST AMENDMENT may be exchanged by email or other electronic means, and any email or electronic exchange of a Party's signature or any digital signature of a Party that complies with the California Uniform Electronic Transactions Act shall be deemed to be an original signature for all purposes.

[Signatures follow.]

