

THIS AGREEMENT, made and entered into and is effective the date last written below, by and between the State of California, acting by and through the State Public Works Board ("PWB") on behalf and with the consent of the California High-Speed Rail Authority (the "AUTHORITY") (collectively "STATE"), and the City of Fresno, a California Municipal Corporation, whose principal mailing address for purposes of this Agreement is 2600 Fresno Street, 4th Floor, Fresno, CA 93721, (the "CITY"). The CITY and STATE are hereinafter collectively referred to as the PARTIES.

RECITALS

WHEREAS, the AUTHORITY is currently engaged in a program that has various projects under current provisions of Section 2704.04 of the Streets and Highway Code ("S&H Code") and Sections 185030 and 185511 of the Public Utilities Code throughout the State of California identified as the California High-Speed Rail Project ("PROJECT"); and

WHEREAS, the AUTHORITY requires certain RIGHT-OF-WAY OF CITY for state high-speed rail system purposes, and for public use in accordance with Public Utilities Code Section 185000, et seq., and PWB is authorized to acquire the property in accordance with Government Code Section 15853. The PROJECT will require the RELOCATION, construction, or removal of certain RIGHT-OF-WAY OF CITY; and

WHEREAS, the AUTHORITY is responsible for the relocation of CITY'S FACILITIES (including roads) and UTILITIES that are in conflict with the design or construction of the PROJECT, including the execution and funding of any required RELOCATION; and

WHEREAS, the PARTIES have also entered into a Utility Relocation Cooperative Agreement (HSR 14-35) ("UTILITY AGREEMENT") and various other agreements to facilitate and cooperate in the construction of the PROJECT within CITY; and

WHEREAS, STATE and CITY desire to enter into an agreement which establishes the contractual terms and conditions applicable to the transfer of property among the PARTIES due to the PROJECT.

ACCORDINGLY, STATE and CITY hereby agree as follows:

1. Capitalized terms used but not identified in this AGREEMENT shall have the definitions set forth in the FACILITY RELOCATION COOPERATIVE AGREEMENT entered into by and between the CITY and AUTHORITY ("FACILITY AGREEMENT"). All attachments referenced in this AGREEMENT are incorporated herein by such reference. All FACILITY WORK shall be performed in accordance with the requirements of the FACILITY AGREEMENT, and in the event of any inconsistency between the provisions of this AGREEMENT and the FACILITY AGREEMENT, the provisions of the FACILITY AGREEMENT shall prevail. All UTILITY WORK shall be performed in accordance with the requirements of the UTILITY AGREEMENT, and in the event of any inconsistency between the provisions of this AGREEMENT and the UTILITY AGREEMENT, the provisions of the UTILITY AGREEMENT shall prevail.

2. By this AGREEMENT, CITY and STATE agree and consent to the following transfer of right-of-way at no cost to either PARTY for the value of the property:

- a. Exhibit A (Existing Fee), identified in pink. Existing RIGHT-OF-WAY OF CITY owned

in fee necessary for AUTHORITY to construct the PROJECT.

- b. Exhibit A (Existing Fee-City Reserves Easement), identified in white with pink border. Existing RIGHT-OF-WAY OF CITY owned in fee necessary for AUTHORITY to construct the PROJECT that CITY, and CITY reserves easement for Street rights.
- c. Exhibit A (Replacement Fee ROW), identified in green. Replacement right-of-way to be acquired by STATE and conveyed to CITY in fee for relocated CITY roads, alleys, or other related facilities.
- d. Exhibit A (Replacement ROW for Street Rights Only), identified in white with green border. Replacement right-of-way to be acquired by STATE and conveyed to CITY in easement for street rights only for relocated CITY roads, alleys, or other related facilities.
- e. Exhibit A (Superseded Existing ROW to Mitigate), identified in purple. Superseded existing RIGHT-OF-WAY OF CITY that is required by AUTHORITY to mitigate damages to adjacent properties impacted by the PROJECT.
- f. Exhibit A (Superseded Existing ROW to Vacate), identified in yellow. Superseded existing RIGHT-OF-WAY OF CITY that is not needed for the PROJECT and will be vacated or disposed of by the CITY.
- g. Exhibit A (Existing City Owned Easement), identified in orange. Existing RIGHT-OF-WAY OF CITY owned in easement required by the PROJECT that will be abandoned/vacated by the CITY upon request of the AUTHORITY only after STATE'S acquisition of the underlying fee.

It is understood between the PARTIES that Exhibit A does not depict the legal description of all RIGHTS-OF-WAY covered by this agreement. The STATE shall provide legal descriptions and surveys in a format acceptable to the City and the County of Fresno for recordation purposes prior to requesting CITY'S acceptance of work. Exhibit A may be updated without an amendment to this AGREEMENT as agreed upon by the PARTIES in writing. Any updated Exhibit A shall be dated and executed by the DIRECTOR on behalf of the CITY and the Director of Real Property of the AUTHORITY on behalf of the STATE. Updates to Exhibit A shall be at no cost to either PARTY.

It is understood between the PARTIES that Exhibit A does not depict existing or replacement RIGHT-OF-WAY's for CITY UTILITIES. The STATE shall, provide suitable replacement right-of-way for all CITY UTILITIES as provided in the UTILITY AGREEMENT.

3. The Parties agree that property acquired by the STATE that is not necessary for the PROJECT or for CITY'S use, shall not be transferred to the CITY.

4. It is understood between the PARTIES that the right-of-way may be required in sections or units, and that both as to the acquisition of right-of-way and the construction of the PROJECT, the obligations of AUTHORITY hereunder shall be carried out as such time and for such unit or units of the PROJECT as funds are budgeted and made lawfully available for such expenditures.

5. CITY hereby grants STATE an immediate right of possession ("RP") and use of the existing RIGHT-OF-WAY OF CITY shown on Exhibit A for the purpose of constructing PROJECT. Said RP does not relieve AUTHORITY of its obligations to provide suitable replacement right-of-way and FACILITIES. Any closure, removal or restriction of CITY streets by AUTHORITY will be performed in accordance with the FACILITY AGREEMENT.

6. AUTHORITY, at no expense to CITY, agrees to acquire all rights-of-way as may be required for construction, reconstruction, or alteration of CITY'S FACILITIES and UTILITIES. See Exhibit A (Replacement ROW).

7. AUTHORITY shall reimburse CITY for CITY costs for property transfers and related tasks required by this AGREEMENT pursuant to HSR12-05, which includes such work in its scope.

8. Existing RIGHT-OF-WAY OF CITY required for construction of the PROJECT and shown on Exhibit A (Existing Fee) will be conveyed from CITY to STATE by deed or other instrument in recordable form as allowed by law. With regard to existing RIGHT-OF-WAY OF CITY required for construction of the PROJECT and shown on Exhibit A (Existing City Owned Easement), CITY will commence vacation/abandonment proceedings for such interests as requested by AUTHORITY following STATE'S acquisition of the underlying fee.

9. Replacement CITY street right-of-way acquired by STATE and shown on Exhibit A (Replacement ROW) shall be conveyed from STATE to CITY by Transfer of Jurisdiction in a format acceptable to the City and the County of Fresno for recordation purposes and subject to no liens or encumbrances that would prevent the use of the property for public street purposes.

10. Superseded existing RIGHT-OF-WAY OF CITY not required for construction of the PROJECT but required by AUTHORITY to mitigate damages to adjacent properties being affected by the PROJECT and shown on Exhibit A (Superseded Existing ROW to Mitigate) shall, if owned in fee, be conveyed from CITY to STATE, subject to all existing encumbrances; if however CITY'S right-of-way is owned in easement the CITY will commence abandonment/vacation proceedings for such interests as requested by AUTHORITY following STATE'S acquisition of the underlying fee.

11. CITY will accept control and maintenance over each of the relocated or reconstructed CITY UTILITIES and FACILITIES consistent with the UTILITY AGREEMENT, the FACILITY AGREEMENT, and the OPERATION AND MAINTENANCE AGREEMENT. CITY'S acceptance of such work shall be subject to CITY'S rights to inspect and accept work under the UTILITY AGREEMENT and the FACILITY AGREEMENT (Section 6), operative upon receipt of written notice to the CITY from AUTHORITY that the work thereon has been completed, except for any portion which is adopted by the AUTHORITY as part of the PROJECT.

12. This AGREEMENT may not be modified except with the mutual consent of the PARTIES.

13. Transfer as specified in Sections 8 and 9 above shall be completed upon completion of construction on, and the acceptance of, the affected CITY UTILITY or FACILITY.

14. Conveyance of superseded RIGHT-OF-WAY OF CITY as described in Section 10 above will be completed during construction of the PROJECT and at the time of request by AUTHORITY.

15. CITY shall commence and administer any street vacation/abandonment proceedings of RIGHT-OF-WAY OF CITY under this AGREEMENT.

16. The PARTIES have herein set forth the whole of their agreement. To the extent not otherwise agreed to in writing, the performance of this AGREEMENT constitutes the entire consideration for the subject matter of this Agreement; City's acceptance of work as set forth in the UTILTIY AGREEMENT and the FACILITY AGREEMENT shall relieve STATE of all further obligation on this account. Notwithstanding anything to the contrary, the PARTIES are not waiving any remedies that may be available under any other agreement between the PARTIES.

17. Once the AUTHORITY has been granted possession and use of the property pursuant to Section 4, AUTHORITY is entitled to undertake, at AUTHORITY'S sole expense, an inspection of the CITY'S FACILITIES; a review of the physical condition of the CITY'S FACILITIES, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the CITY'S FACILITIES; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the CITY'S FACILITIES, if any. AUTHORITY shall provide CITY copies of all inspection and/or examination reports obtained by the AUTHORITY pursuant to this Paragraph. Such reports shall be provided immediately upon AUTHORITY'S receipt of the same.

18. Notwithstanding other provisions in this AGREEMENT, AUTHORITY'S RP and use of the property including the right to remove and dispose of improvements commenced in accordance with the terms of Section 4.

(Signature Page Follows)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the PARTIES have executed this AGREEMENT.

CITY OF FRESNO

By: _____ Date: _____
Scott Mozier, Public Works Director

Approved as to form:

By: _____ Date: _____
Raj Singh Badhesha, Deputy City Attorney

STATE OF CALIFORNIA

State Public Works Board

By: _____ Date: _____
Sally Lukenbil, Deputy Director

Consent:

Director, California High-Speed Rail Authority

By: _____ Date: _____
Alan P. Glen, Director of Real Property

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED**Approved:**

Director, Department of General Services

By: _____ Date: _____
Michael P. Butler, Chief, Real Property Services Section