



**Resource Management
Agency
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One
PETE VANDER POEL
District Two
AMY SHUKLIAN
District Three
EDDIE VALERO
District Four
DENNIS TOWNSEND
District Five

AGENDA DATE: November 19, 2019

| | | | | |
|---|-----|-------------------------------------|-----|-------------------------------------|
| Public Hearing Required | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Scheduled Public Hearing w/Clerk | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Published Notice Required | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Advertised Published Notice | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Meet & Confer Required | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Electronic file(s) has been sent | Yes | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/> |
| Budget Transfer (Aud 308) attached | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Personnel Resolution attached | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s) | Yes | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/> |
| CONTACT PERSON: Celeste Perez PHONE: (559) 624-7000 | | | | |

SUBJECT: Ownership and Maintenance Agreement with the California High-Speed Rail Authority

REQUEST(S):
That the Board of Supervisors:

1. Approve the Ownership and Maintenance Agreement with the California High-Speed Rail Authority for the California High-Speed Rail Project which allows the parties to identify and define respective roles and responsibilities with regards to the post-construction modification, use, ownership, and maintenance of the grade separation structures; and
2. Authorize the Chairman to sign four (4) copies of the Ownership and Maintenance Agreement.

SUMMARY:
The California High-Speed Rail Authority (CHSRA) has requested that Tulare County enter into a Ownership and Maintenance Agreement (Attachment A) with the CHSRA to allow the parties to identify and define respective roles and responsibilities with regards to the post-construction modification, use, ownership, and maintenance of the grade separation structures in accordance with the requirements set forth in the Cooperative Agreement (Tulare County Agreement No. 27430) between the County and the CHSRA.

As part of the High-Speed Rail (HSR) Project, CHSRA will design and construct individual grade separations crossing County roadways. The project will include three (3) overhead structures in Tulare County, which will take Avenues 56, 88, and 120 over the HSR lines. Further, Avenues 144 and 136 will cross under an elevated

SUBJECT: Ownership and Maintenance Agreement with California High-Speed Rail Authority

DATE: November 19, 2019

section of the HSR line and an underpass structure will be constructed that will allow Avenue 24 to cross under the HSR lines as well.

Upon substantial completion of each individual grade separation, the County will occupy and use structures for vehicular and pedestrian traffic and will be responsible for all maintenance set forth in Section 5.7 and summarized in Appendix A of the subject agreement. In general, the CHSRA will be responsible for the maintenance of the grade separation structures and the County will be responsible for the road surfaces leading to the structures.

Project Background

The Fresno-Bakersfield segment of the HSR Project is approximately 118 miles long and includes an approximate 23-mile stretch that transects a southwestern portion of Tulare County. The alignment generally enters Tulare County from the north, southeast of the City of Corcoran, then heads southeasterly toward the City of Wasco, exiting Tulare County west of Road 80.

Tulare County has entered into a series of agreements with CHSRA for reimbursement of costs associated with the Project. These agreements include: Master Agreement, Cooperative Agreement, Utility Agreement #1, Sub-Utility Agreements 1.01-1.09, Sub-Utility Agreement 1.10, Sub Utility Agreements 2.01-2.05, and Right of Way Transfer Agreement.

As part of the HSR project, approximately 12.5 miles of County roadway improvements were identified by Resource Management Agency staff. Thus far, approximately 6.5 miles of roadway improvements have been completed as part of the HSR Project. In addition, construction has commenced on the Avenue 88 overhead structure. Substantial completion of the remaining work in Tulare County is anticipated by the CHSRA, at this time, to occur before 2021.

FISCAL IMPACT/FINANCING:

There will be No Net County Cost to the General Fund.

Costs for review and negotiation of the terms of the Ownership and Maintenance Agreement will be fully reimbursed by the project through provisions of the previously executed Master Agreement with CHSRA (Agreement No. 26274). Construction of the grade separation structures is fully funded by the CHSRA. Ongoing operations and maintenance costs will be covered through the general road fund. It is not expected that ongoing maintenance costs related to these improvements will be significant.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Safety and security includes the goal of improving and maintaining the transportation infrastructure. The California High-Speed Rail Project will ultimately provide an alternative mode of transportation for the residents of California. Identifying

SUBJECT: Ownership and Maintenance Agreement with California High-Speed Rail Authority

DATE: November 19, 2019

ADMINISTRATIVE SIGN-OFF:



Reed Schenke, P.E.
Director

cc: County Administrative Office

Attachment(s): Attachment A – Ownership and Maintenance Agreement
Attachment B – Typical Over/Under Crossing Exhibits

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF OWNERSHIP AND) Resolution No. _____
MAINTENANCE AGREEMENT WITH THE) Agreement No. _____
CALIFORNIA HIGH-SPEED RAIL)
AUTHORITY)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD NOVEMBER 19, 2019,
BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Approved the Ownership and Maintenance Agreement with the California High-Speed Rail Authority for the California High-Speed Rail Project which allows the parties to identify and define respective roles and responsibilities with regards to the post-construction modification, use, ownership, and maintenance of the grade separation structures; and
2. Authorized the Chairman to sign four (4) copies of the Ownership and Maintenance Agreement.

Attachment A

Ownership and Maintenance Agreement

1 PARTIES

This Ownership and Maintenance Agreement, is entered into this 19th day of November, 2019, the “Agreement,” 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 MS3, Sacramento, California, 95814, hereinafter referred to as the “Authority,” and the County of Tulare, a political subdivision of the state of California, hereafter referred to as the “County,” whose principal place of business and mailing address is 5961 S Mooney Blvd, Visalia, CA 93277. The Authority and the County are referred to herein individually as a “Party” and collectively as the “Parties.”

Now and therefore, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged, the Authority and the County agree as follows:

2 RECITALS

The Authority is an agency of the State of California and is responsible for the High-Speed Rail Project, the “HSR Project,” as defined herein. To operate high-speed train service, a number of new grade separation structures will need to be constructed and existing grade separation structures may need to be modified. Because of the proximity of the grade separation structures to the HSR alignment, all ownership and maintenance activities must be conducted in accordance with strict standards with respect to quality, security and safety.

This Agreement has been entered into by the Parties to identify and define their respective roles and responsibilities with regard to post-construction modification, use, ownership, and maintenance of the Grade Separation Project described in the Agreement.

3 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

3.1 Agreement

The “Agreement” shall mean this Ownership and Maintenance Agreement between the Parties.

3.2 Authorized Representatives

“Authorized Representatives” shall mean any individuals or the employees of a company, public agency or other organization, which have been authorized to act on behalf of a Party, or to enforce provisions of this Agreement, pursuant to Sections 9.16 and 9.17.

3.3 Days

“Days” or “days” shall mean calendar days.

3.4 Not Used

3.5 Grade Separation Project

“Grade Separation Project” means the projects defined and described in Section 4.1.



3.6 Grade Separation Project Manager

The individual designated by the Authority as its Authorized Representative in Sections 9.16 and 9.17.

3.7 HSR Project

“HSR Project” means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code.

3.8 HSR Service

“HSR Service” shall mean all activities occurring in the course of the operation and maintenance of the elements of the completed HSR Project.

3.9 Not Used

3.10 Non-conformance Notification

“Non-conformance Notification” shall mean a notification provided by a Party pursuant to Section 5.4.5.

3.11 Not Used

3.12 Not Used

3.13 Not Used

3.14 Project Site

“Project Site” shall mean the physical areas designated in Section 4.1 for the activities to be conducted by the Parties under the Agreement, as may be applicable at any given time.

3.15 Not Used

3.16 Sealed Corridor Area

“Sealed Corridor Area” shall mean the area designated by the Authority as the Sealed Corridor, as described in Section 7.2.

3.17 Sealed Corridor Access Policy

“Sealed Corridor Access Policy” shall mean the Authority’s Roadway Worker Protection Program per Federal Railroad Administration regulations 49 C.F.R. Part 214 et seq.

3.18 Not Used

3.19 Substantial Completion

“Substantial Completion” shall mean the satisfaction by the Parties of the conditions provided in Section 5.6.1.



4 WORK TO BE DONE

4.1 Grade Separation Project

The Authority will design and construct individual grade separations located at each of the following HSR Project sites crossing County roadways: Avenue 24, Avenue 56 (County Road J22), Avenue 88, Avenue 120 (Hesse Ave.) and Avenue 136 (the “Grade Separation Project”).

4.2 Location

The Grade Separation Project is located within the County of Tulare. Each individual grade separation will cross over or under the HSR alignment. No current grade separations exist at the intersections where the HSR Project will cross the County roadways identified above.

4.3 Description

The Grade Separation Project is identified and attached in Appendix A and will carry a County roadway over or under the HSR track. A detailed scope of work describing each structure is attached as Appendix A.

4.4 Project Uses

Each individual grade separation will be used for vehicular traffic and pedestrian crossing if permitted by County standards.

5 ROLES AND RESPONSIBILITIES OF THE PARTIES

5.1 Property Ownership, Use and Access Rights

5.1.1 Ownership of Project Site Property

The Authority has acquired, or is in the process of acquiring, the real properties on which the Grade Separation Project will be constructed.

5.1.2 Not Used

5.1.3 Inspection Access

Subject to Section 7.2, the County, or its Authorized Representatives, shall have the right to enter the Project Site for the purpose of conducting inspections during the performance of construction or maintenance work by the Authority or its contractors, subject to the conditions provided in Section 5.4.5.

5.1.4 Project Access for Use and Maintenance

Upon the date identified in the notice of Substantial Completion described in Section 5.6.1, the County shall occupy and use such individual grade separation for vehicular and pedestrian traffic and performing County’s maintenance obligations, as set forth in Section 6.2.

5.2 Design Work

The Grade Separation Projects design work will be conducted by the Authority and its contractors. Appendix A is at a minimum at 60 % design for each individual grade separation.



5.3 Responsibility for Obtaining Governmental Approvals

The Authority will be responsible for obtaining all government approvals for the Grade Separation Project.

5.4 Construction

The Authority will be responsible for completing all construction work for the Grade Separation Project.

5.4.1 Conditions Precedent for Authority to Commence Construction Work

Prior to commencing construction work, the Authority shall have:

1. Confirmed that all governmental approvals required for construction have been obtained and have met all conditions of such governmental approvals that are a prerequisite to commencement of such construction;
2. Obtained or initiated the formal process of obtaining ownership or access rights to all real properties to be used during construction; and
3. Completed the County design review processes provided for hereunder for the portions of the work to be constructed.

5.4.2 Not Used

5.4.3 Not Used

5.4.4 Not Used

5.4.5 County Inspection Rights

Subject to Section 7.2, County shall have the right to inspect the following elements of each individual grade separation construction or maintenance work performed by the Authority or its contractors:

1. All grade separation elements to be owned and/or maintained by the County after completion of each individual grade separation;
2. All grade separation elements constructed on County property, if any.
3. Any grade separation elements otherwise subject to County permits or approval.

All County inspections are subject to the following conditions:

1. If flagging is required to perform the inspection, either by the Authority and/or any other railroad company, then the County shall provide no less than thirty (30) days advance written notification to the Authority's Grade Separation Project Manager;
2. If flagging is not required to perform inspection, then preauthorized County personnel who have fulfilled the provisions of subdivision 6 below shall be permitted on HSR Property upon reasonable, actual notice to the person in charge of the site being inspected;
3. All notifications to the Authority's Grade Separation Project Manager required under this section shall at a minimum include the following:
 - The names and organization of persons conducting inspections
 - The dates and duration of time for which access is requested
 - The nature and methods to be used for the planned inspection activities
 - A description of any equipment or machinery to be used
4. The County shall comply with any conditions specified by the Authority's Grade Separation Project Manager that accompany the inspection approval; and
5. All personnel participating in such inspections will be required to have completed all required safety training required by the Authority, and to comply with the Authority's safety and access



policies during the inspections. The Authority's Grade Separation Project Manager will provide copies of or electronic access to the Authority's current safety and access policies upon request, and registration information for Parties requesting safety training.

If the County inspections indicate that there are construction work elements that are not in conformance with the requirements of the Agreement, it shall promptly provide a written Non-conformance Notification to the Authority.

Any such Non-conformance Notifications shall include an explanation of how the construction elements in question do not conform to requirements contained in specific section(s) of the Agreement or any construction standards referenced in the Agreement.

The Authority will provide a response to all such Non-conformance Notifications within fifteen (15) days of receipt. The Authority's response will either: a) clarify its interpretation of the applicable requirements if it does not believe that the construction work needs to be changed, b) state the nature of corrective work to be performed, or c) request a meeting with County to review the construction work in question.

If the County does not agree with any interpretations of the applicable requirements provided in the Authority's response, and believes that the construction work needs to be corrected, it may request a meeting with the Authority to review the construction work in question. In any instances where the Parties are not able to resolve the construction issues to their mutual satisfaction through the processes described above, either Party may initiate the dispute resolution processes provided in Section 9.10.

5.4.6 Warranty on Authority Work

The Authority shall transfer, assign, or otherwise provide a warranty for each individual grade separation which shall provide that: (1) the grade separation conforms to the requirements of the approved plans; (2) all design for the grade separation conforms to all the professional engineering principles generally accepted as standards of the industry in the State of California, shall be suitable for its intended purpose and shall be free of errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects; (3) all materials and equipment furnished as part of the grade separation are of good quality; and (4) all grade separation work is performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State of California. The warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Authority or the Authority's contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage by the County.

Without limiting of any rights or remedies of the County, if any defect in any grade separation in violation of the foregoing warranty arises within one (1) year after the date of Substantial Completion identified in the notice of Substantial Completion described in Section 5.6.1. for the individual grade separation, the Authority shall, upon receipt of written notice of such defect and verification of such defect by a reasonable Authority inspection, remedy at its own expense, any failure to conform to the warranty set forth in herein.

5.5 Not Used

5.6 Project Completion and Close-out

5.6.1 Substantial Completion

"Substantial Completion" means the stage of completion at which the individual grade separation is fit for its intended use. The Authority or the Authority's contractor shall submit a written notice of Substantial Completion for an individual grade separation to the County. The Authority or Authority's Contractor will request the County's written acceptance of the notice of Substantial Completion for an individual grade



separation. The County shall not unreasonably withhold or delay its written acceptance. The notice of Substantial Completion for an individual grade separation shall include the following information:

1. Date of Substantial Completion;
2. Remaining punch list items of work and their respective anticipated completion dates; and
3. Warranty information for the project as a whole as well as any elements which may carry their own warranty.

Together with the written notice of Substantial Completion on an individual grade separation, the Authority or the Authority's contractor shall provide the following additional documents:

1. Submittal Log/Log of Materials Used;
2. Material Testing Summary; and
3. Inspection Records.

County shall accept ownership and maintenance as of the Date of Substantial Completion in the notice of Substantial Completion of the constructed individual grade separation.

5.7 Completed Grade Separation Asset Ownership

The Parties agree that the Authority and the County will each have partial ownership rights to the completed Grade Separation Project asset, as described in Section 5.7.1.

5.7.1 The Parties' Respective Ownership Arrangements

5.7.1.1. The Authority shall own:

- (a) All structural elements of each Grade Separation Project, including bridge deck and approach slabs;
- (b) Embankments within the Authority's right-of-way;
- (c) Retaining walls;
- (d) Any and all areas with sealed or restricted access;
- (e) Drainage below structure;
- (f) Drainage on structure constructed as part of the HSR Project;
- (g) Attachments to overhead structures required to support HSR operations, e.g., overhead contact system (OCS);
- (h) Intrusion detection and/or protection fences;
- (i) Surveillance equipment;
- (j) HSR Project lighting;
- (k) HSR utilities;
- (l) HSR Project Fencing, including protective solid fencing on HSR structures;
- (m) Concrete traffic barriers;
- (n) Bridge numbering and signage; and
- (o) Conduits and openings for future utilities on the structure.

5.7.1.2 County shall own:

- (a) All roadway surfaces, excluding bridge deck and approach slabs;
- (b) Pavement delineation;
- (c) Embankments outside the Authority's right-of-way;
- (d) Signage not included as part of Section 5.7.1;
- (e) Non HSR Project fencing;



- (f) Guardrails;
- (g) Roadway drainage and pumps; and
- (h) Traffic signals, if applicable.

6 MAINTENANCE OBLIGATIONS

6.1 Initiation of Maintenance Obligations

The County's maintenance obligation shall commence upon receipt of the notice of Substantial Completion of each individual grade separation as set forth in Section 5.6.

6.2 Maintenance Obligations

Unless otherwise provided herein, the Party owning a grade separation element described in Section 5.7.1 shall be responsible for all maintenance and other liability related to ownership of grade separation element to keep it in a safe and operational state.

6.2.1 County Maintenance Standards

The County shall comply with American Association of State Highway and Transportation (AASHTO) standards, as it may be amended from time to time, in performing its maintenance obligations.

6.2.2 County Maintenance Records

The County shall keep records of all maintenance, repairs, warranty work, corrective work and component replacements it performs on each completed Grade Separation Project asset for a minimum duration of 3 years from date of completion. All such records are subject to the audit provisions in Section 9.12.3.

7 CONDITIONS APPLICABLE TO THE PERFORMANCE OF DESIGN AND CONSTRUCTION WORK

7.1 Stakeholder Collaboration Agreement

The County and Authority agree to collaborate as set forth in Appendix B of the Cooperative Agreement attached hereto as Appendix B.

7.2 County Site Access Restrictions

7.2.1 Sealed Corridor

The Parties' respective rights to access the Project Site during the performance of Grade Separation Project construction work are as provided in Section 5.1 and Section 5.4.5.

HSR Project railroad activities may begin to occur along the segment of the HSR right-of-way that intersects with the Grade Separation Projects at any time after HSR tracks have been installed. These railroad activities may involve the movement of rail-based equipment and high-speed rail testing equipment and HSR trains. In order to ensure the safety of HSR railroad operations and of persons involved in off-rail activities near the HSR right-of-way, the Authority has established a Sealed Corridor Access Policy for the right-of-way and surrounding areas once any railroad activities begin.

The County's Project Site access rights will remain as provided in Section 5.1 and Section 5.4.5 until such time as the rail for the HSR Project has been installed in the area of the HSR Project right-of-way that



intersects with each Grade Separation Project location, at which time the Sealed Corridor Access Policy will take effect, the provisions of this Section 7.2 take precedence over any other provisions hereunder pertaining to Project Site access. The location of the Sealed Corridor Area for each Grade Separation Project is shown in Appendix A.

7.2.2 Right of Entry Permit

Once the Sealed Corridor Access Policy is in effect, if access to the Sealed Corridor Area is required for the County to perform any of its obligations, or any activities permitted hereunder, the County may request a right of entry permit from the Authority.

7.2.3 Authority Sealed Corridor Rights

The Authority and its Authorized Representatives shall have the right to accompany any County staff or the County's contractor staff for whom a Sealed Corridor Area right of entry permit has been granted at any and all times.

The approved right of entry permit will identify the names of one or more Authority representatives with oversight responsibility for any County activities conducted under a right of entry permit. These designated Authority representatives shall have the right at all times, to direct the County to immediately, or within a specified time, discontinue or suspend all or any part of their activities, and remove all staff, equipment and materials from the Sealed Corridor Area:

- a) if the Authority representatives have reason to believe that the County may not be in compliance with any of the safety-related requirements of a right of entry permit or that any activities or omissions of the County are otherwise unsafe or potentially unsafe, or
- b) if the Authority representatives determine that such direction is required in its sole discretion for any reason relating to the Authority's obligations to operate and maintain the safety of HSR Service.

The County recognizes and agrees that the Authority's obligations to operate and maintain the safety of HSR Service may at times need to take precedence over any rights the County has been granted through a right of entry permit. Accordingly, the County hereby accepts the Authority's unilateral right to direct the County to discontinue or suspend all or any part of its activities under a right of entry permit, as provided in the preceding paragraphs, and agrees to bear any costs associated with any such direction, whether or not such direction was related to any action or omission of the County.

In any instances where the County believes that Authority's representatives have issued any such directions on an arbitrary basis, or that any such directions were not reasonably related to the Authority's obligations to operate and maintain the safety of HSR Service, the County may initiate the dispute resolution provisions provided in Section 9.10. to determine if any costs associated with an Authority direction to discontinue or suspend the County's activities under a right of entry permit should be borne by the Authority.

For the avoidance of doubt, because the Authority's safety related obligations are of the highest priority, the above provisions include the County's obligation to bear all costs associated with any direction by a designated Authority representative to discontinue or suspend all or any part of its activities in the Sealed Corridor Area under a right of entry permit, when such representatives had any reasonable grounds to believe that the County may not be in compliance with the safety-related requirements of a right of entry permit, or that any activities or omissions of the County were unsafe or potentially unsafe, even if it is subsequently determined that such direction from the Authority was given in error.

7.3 Not Used

7.4 Railroad Protective Services for County Work



If the County work hereunder meets the requirements for Authority-provided railroad protective services, the County shall follow the procedures for requesting Authority-provided railroad protective services.

The County is responsible for determining if its work meets the requirements for railroad protective services from an external railroad. If the County work requires railroad protective services from an external railroad, the County shall be responsible for securing these services at its cost. The Authority may have established standing arrangements with railroads in operation near the HSR alignment. The County may make inquiries with the Authority to determine if the Authority's arrangements with the external railroad for railroad protective services can be extended to the County.

In any instances where concurrent Authority work and County work both require railroad protective services from an external railroad, the County and the Authority shall discuss coordination of these services, and determine whether there are any opportunities for cost sharing. Any arrangements made between the County and the Authority concerning railroad protective services pursuant to this Section shall be recorded in writing.

7.5 Not Used

7.6 Environmental Compliance for Construction

7.6.1 Authority Compliance

During construction, the Authority will comply with all applicable environmental laws, and the specific environmental commitments provided for in the following documents: Final Environmental Impact Report/Environmental Impact Statement for the Fresno to Bakersfield project section.

7.7 Limitations on Authority

It is expressly understood by the County that, with the exception of any specific provisions to the contrary in the Cooperative Agreement, or a specific written Delegation of Authority from the Authority, its rights to suspend work pursuant to Section 7.9, or in the case of situations where the County has independent legal authorities, that it, and its representatives and contractors, have no other authority pursuant to this Agreement to provide direction to the Authority's contractors.

In any instances where the County is unable to achieve satisfactory results through its coordination efforts, it may request the assistance of the Authority, however, the Authority is not responsible for achieving the requested results, unless the requested results are specifically part of the Authority's obligations hereunder.

If at any time an Authority contractor requests direction from County or its representatives and contractors, the County shall refer the request for direction to the Authority's Grade Separation Project Manager.

7.8 Not Used

7.9 Suspension of Work

At times during the construction of the Grade Separation Projects, either of the Parties may identify or observe conditions involving the other Party's contractors which may warrant a suspension of the work being performed. In all such instances, the party which observes the condition shall notify the Party whose contractor is involved.

The Parties may provide the required notification through telephone contact, however, with the exception of an immediate suspension of work required to address an emergency situation, a written notification describing the factual elements of the condition must be provided to the Party whose contractor is involved,



before a suspension pursuant to Section 7.9.2 may be initiated. All such written notifications shall be sent to the Parties' Authorized Representatives designated under the Agreement.

7.9.1 Not Used

7.9.2 Suspension of Authority Work

If the County has provided notification to the Authority of any of the conditions listed below, and the conditions are not promptly resolved, or the County determines in its sole discretion that appropriate efforts to initiate their resolution have not been promptly initiated, without further notice, the County may direct Authority contractors to immediately suspend all or part of the work they are performing in accordance with the Agreement.

- a. Conditions specified in temporary construction easement(s) granted by the County, if any, are not being met.
- b. The Authority's contractor is performing work in a manner contrary to the requirements of the Agreement, or plans, designs, or specifications approved by the County for their work.
- c. The Authority's contractor is performing work in a manner that the County determines is hazardous to the public, the County's contractors or property, or is otherwise determined by the County not to meet the safety requirements of the Agreement.
- d. The Authority's contractor is performing work in a manner that is in violation of applicable laws, or is not in conformance with the environmental standards and any specific environmental commitments made as part of the Agreement.

7.10 Compensation and/or Schedule Relief Events

7.10.1 Force Majeure

Neither the County nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquakes exceeding 3.5 on the Richter scale;
- B. Tidal waves;
- C. Epidemics, blockades, rebellions, wars, riots, acts of terrorism or civil commotion;
- D. Discovery at, near or on the Project Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed in the Agreement;
- E. Lawsuits seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any governmental approval of the Project; or
- F. Strikes, labor disputes, work slowdowns, work stoppages, secondary boycotts, walkout or other similar occurrence occurring within the vicinity of the Project where the participants in such occurrence are not under the control of the County.

All relief from performance liability due to Force Majeure events is conditioned on the following: the events were beyond the control and not due to an act or omission of the County or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the Party claiming the excuse from performance has:

- A. Promptly notified the other Party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and



C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the County agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the County for the reasonable and actual costs of such efforts.

Force Majeure excludes:

A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;

B. Except as provided in item C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;

C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless the participants in such occurrence are not under the control of the County); and

D. All other matters not caused by or beyond the control of the Authority or the County and not listed in the definition of Force Majeure above.

7.10.2 Not Used

7.10.3 Authority Contractor Remedies if Impacted by Third Party

In the event the Authority's contractor makes any claim against the Authority relating to facility work, the Authority will notify the County of the claim and the County shall cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the County and the Authority's contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

8 COST OF WORK

8.1 Authority Cost Responsibilities

8.1.1 Authority Work

The Authority is responsible for its costs associated with property ownership and rights acquisition pursuant to Section 5.1, and the costs of all design, ownership and maintenance work it has agreed to perform pursuant to the Agreement.

8.1.2 County Work to be Paid for by the Authority

All work to be performed by the County and to be reimbursed by the Authority, including review and inspection, will be detailed in and reimbursed pursuant to a utility agreement as set forth in the Cooperative Agreement.

8.2 Not Used

8.3 Not Used

9 GENERAL CONDITIONS

9.1 Order of Precedence



In the event of any inconsistency among the provisions of the Agreement documents, the inconsistency shall be resolved by giving precedence in the order set forth below:

1. Amendments to this Agreement;
2. The Agreement; and
3. The Terms of the Cooperative Agreement.

Notwithstanding the foregoing, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the agreement documents to a described publication, the more stringent standard or specification applies regardless of the order of precedence of the documents in which such conflicting provisions are referenced.

Notwithstanding the foregoing, any environmental commitment binding on the Authority or the County shall take precedence over other conflicting provisions regardless of the order of precedence of the documents in which such conflicting provisions are referenced.

The County shall not take advantage of any apparent error, omission, inconsistency, inaccuracy, deficiency or other defect in the Agreement documents. Should it appear that the work to be done or any matter relative thereto is not sufficiently detailed or explained in the Agreement documents, the County shall apply to the Authority in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The County shall promptly notify the Authority of all errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects that it may discover in the Agreement documents, and shall obtain specific instructions in writing from the Authority before proceeding with the work affected thereby.

9.2 Not Used

9.3 Representations and Warranties

9.3.1 Authority Representations and Warranties

The Authority is an agency of the State of California, the obligations the Authority has agreed to in this Agreement are within the Authority's legislatively granted powers, and the execution of the Agreement and the performance of the Authority's obligations hereunder have been duly authorized and approved by Authority staff with appropriate authorization.

9.3.2 County Representations and Warranties

The County is a political subdivision of the State of California with the full statutory power to enter into this Agreement and carry out its obligations hereunder. This Agreement has been executed by a duly authorized representative of the County and the performance of its obligations hereunder, and the expenditure of any funds it has committed to make hereunder, have been properly authorized pursuant to all required internal procedures applicable to the County.

9.4 Successors and Assigns

The Agreement shall be binding upon and inure to the benefit of the Authority and the County and their permitted successors, assigns and legal representatives.

The County shall not assign the whole or any part of this Agreement, or any monies due or to become due hereunder, without the prior written consent of the Authority, which shall not be unreasonably withheld, except that County may assign the Agreement to its successor or any entity acquiring all or substantially all of its assets.



The Authority may assign without the County consent all or any portion of the Agreement to any person that succeeds to the governmental powers and authority of the Authority.

None of the rights, obligations or interests of either Party under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other Party in the form of a formal written amendment.

9.5 Not Used

9.6 Not Used

9.7 Not Used

9.8 Not Used

9.9 Not Used

9.10 Dispute Resolution

The Authority and County will follow the dispute resolution process in Section 4 of the Cooperative Agreement.

9.11 Not Used

9.12 Termination

The Authority and County may terminate this agreement upon mutual written consent or upon the Authority's convenience.

9.12.1 Termination Procedures and Cost Accounting

In the event this Agreement is terminated, the County shall be paid for the value of the work completed, and for termination costs.

Within thirty (30) days of the date the County is notified of the termination of this Agreement for the convenience of the Authority, the County shall prepare and submit a cost proposal including the costs for the completed work and the termination costs to the Authority's Grade Separation Project Manager.

9.12.2 Record Retention

For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the County and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All Parties shall make such materials available at their respective offices at all reasonable times during the term of the Agreement and for three (3) years from the date of any expenditures under this Agreement.

9.12.3 Audit Rights

The Authority, the Department of General Services, the Bureau of State Audits, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records,



and documents of the County that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

9.13 Notice of External Legal Actions

Each Party agrees to promptly provide the other Party with written notice of any lawsuits, administrative proceedings or other legal actions initiated against them which may affect the Grade Separation Projects, or the other Party's interests in the Grade Separation Projects.

9.14 Notice of Labor Disputes

If the County has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of its work under this Agreement, the County shall promptly give notice, including all relevant information, to the Authority. The County agrees to insert this paragraph in any contract under which a labor dispute may delay the timely performance of this Agreement; each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the contractor, as the case may be, of all relevant information concerning the dispute.

9.15 Applicable Law and Venue

This Agreement shall be governed by and construed in accordance with the Constitution and Laws of the State of California, without regard to conflict of law principles. If any provision of this Agreement is found by any court or other legal authority to be null or void, the remainder of the Agreement shall continue in full force and effect.

Venue for any and all equitable or legal actions brought against the Authority shall lie exclusively in Sacramento County, California.

9.16 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The County shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:



If to County:

O&M Party: County of Tulare
Person in Charge: Director, Resource Management Agency
Address: 5961 S Mooney Blvd
Visalia, CA 93277

If to AUTHORITY:

Authority: California High-Speed Rail Authority
Person in Charge: James A. Labanowski
Address: 770 L Street, Suite 620
Sacramento, CA 95814

With a copy to:

Authority: California High Speed Rail Authority
Person in Charge: Chief Counsel
Address: 770 L Street, Suite 620 MS 1
Sacramento, CA 95814

9.17 Authorized Representatives

The individuals identified in Section 9.16, and any individuals or the employees of companies, public sector agencies, or other organizations, which are subsequently designated by either Party in a written authorization sent to the other Party, which explains and describes the specific matters relating to the Agreement for which these designated individuals or employees of companies, public sector agencies, or other organizations are authorized to act on behalf of the Party providing the authorization agreement.

9.18 Final Expression of the Parties' Entire Agreement

This Agreement is intended to be the Parties' final expression and supersedes all prior oral understanding or writings pertaining to each Grade Separation Project work. The Parties acknowledge that the Authority is currently in the process of finalizing new regulations which will govern certain procedural aspects of each Grade Separation Project work. To the extent that any such procedure is finalized, the Authority shall immediately notify the County of the new regulation and provide a copy of said regulation to the County. The Authority shall pay for any damages suffered by or costs incurred by the County for activities that may be required by the County to meet its obligations hereunder as a result of any changes to the Authority's policies and procedures that take effect after the execution of the Agreement. The Parties will execute a formal written amendment if there are any changes to the commitments made in this Agreement. Signatories may execute this Agreement through individual signature pages provided that each signature is an original. A waiver of a Party's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.



9.19 Severability

If any provisions in this Agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement.

9.20 State Funds

No state funds or resources are allocated or encumbered as against this Agreement.

Intentionally left blank



IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.

County of Tulare:

Signature _____ Date: _____

Typed Name: Kuyler Crocker

Typed Title: Chairman, Board of Supervisors

ATTEST: JASON T. BRITT, County Administrative Officer/
Clerk of the Board of Supervisors of the County of Tulare

By: _____ Date: _____

Deputy Clerk

Approved as to Form:

COUNTY COUNSEL

By: [Signature] _____ Date: 10/29/19

Deputy

Matter No. 20161526

California High-Speed Rail Authority:

Signature _____ Date: _____

Typed Name: _____

Typed Title: _____

AUTHORITY Legal Review

Signature _____ Date: _____

Typed Name: _____

AUTHORITY Legal Counsel



APPENDIX A

**PROJECT ELEMENTS – COUNTY AND AUTHORITY OWNERSHIP AND MAINTENANCE
RESPONSIBILITY MATRIX**

| AVENUE 24 GRADE SEPARATION | | | | |
|-----------------------------------|-----------|----------------------------|--------|---|
| Project Elements | Ownership | Maintenance Responsibility | | Notes |
| | | Authority | County | |
| Avenue 24 Underpass | Authority | X | | <p>HSR shall own and maintain the following:</p> <ul style="list-style-type: none"> • All structural elements of each Grade Separation Project, • Embankments within the Authority’s right-of-way; • Retaining walls in HSR ROW; • Any and all areas with sealed or restricted access; • Drainage on structure constructed as part of the HSR Project; • Intrusion detection and/or protection fences; • Surveillance equipment; • HSR Project lighting; • HSR utilities; • HSR Project fencing, including protective solid fencing on HSR structures; • Concrete traffic barriers; • Bridge numbering and signage; and • Conduits and openings for future utilities on the structure. |
| Avenue 24 Underpass | County | | X | <p>COUNTY shall own and maintain the following:</p> <ul style="list-style-type: none"> • All roadway surfaces, • Pavement delineation; • Retaining walls outside of HSR ROW; • Embankments outside the Authority’s right-of-way; • Signage other than bridge signage; • Non HSR Project fencing; • Guardrails; • Roadway drainage and pumps; and • Traffic signals, if applicable. |



AVENUE 56 (COUNTY ROAD J22) GRADE SEPARATION

| Project Elements | Ownership | Maintenance Responsibility | | Notes |
|--------------------|-----------|----------------------------|--------|--|
| | | Authority | County | |
| Avenue 56 Overpass | Authority | X | | <p>HSR shall own and maintain the following:</p> <ul style="list-style-type: none"> • All structural elements of each Grade Separation Project, including bridge deck and approach slabs; • Embankments within the Authority’s right-of-way; • Retaining walls in HSR ROW; • Any and all areas with sealed or restricted access; • Drainage below structure; • Attachments to overhead structures required to support HSR operations, e.g., overhead contact system (OCS); • Intrusion detection and/or protection fences; • Surveillance equipment; • HSR Project lighting; • HSR utilities; • HSR Project fencing, including protective solid fencing on HSR structures; • Concrete traffic barriers; • Bridge numbering and signage; and • Conduits and openings for future utilities on the structure. |
| Avenue 56 Overpass | County | | X | <p>COUNTY shall own and maintain the following:</p> <ul style="list-style-type: none"> • All roadway surfaces, excluding bridge deck and approach slabs; • Pavement delineation; • Retaining walls outside of HSR ROW; • Embankments outside the Authority’s right-of-way; • Signage other than bridge signage; • Non HSR Project fencing; • Guardrails; • Roadway drainage and pumps; and • Traffic signals, if applicable. |



AVENUE 88 GRADE SEPARATION

| Project Elements | Ownership | Maintenance Responsibility | | Notes |
|--------------------|-----------|----------------------------|--------|--|
| | | Authority | County | |
| Avenue 88 Overpass | Authority | X | | <p>HSR shall own and maintain the following:</p> <ul style="list-style-type: none"> • All structural elements of each Grade Separation Project, including bridge deck and approach slabs; • Embankments within the Authority’s right-of-way; • Retaining walls in HSR ROW; • Any and all areas with sealed or restricted access; • Drainage below structure; • Attachments to overhead structures required to support HSR operations, e.g., overhead contact system (OCS); • Intrusion detection and/or protection fences; • Surveillance equipment; • HSR Project lighting; • HSR utilities; • HSR Project fencing, including protective solid fencing on HSR structures; • Concrete traffic barriers; • Bridge numbering and signage; and • Conduits and openings for future utilities on the structure. |
| Avenue 88 Overpass | County | | X | <p>COUNTY shall own and maintain the following:</p> <ul style="list-style-type: none"> • All roadway surfaces, excluding bridge deck and approach slabs; • Pavement delineation; • Retaining walls outside of HSR ROW; • Embankments outside the Authority’s right-of-way; • Signage other than bridge signage; • Non HSR Project fencing; • Guardrails; • Roadway drainage and pumps; and • Traffic signals, if applicable. |



AVENUE 120 (HESSE AVE.) GRADE SEPARATION

| Project Elements | Ownership | Maintenance Responsibility | | Notes |
|---------------------|-----------|----------------------------|--------|--|
| | | Authority | County | |
| Avenue 120 Overpass | Authority | X | | <p>HSR shall own and maintain the following:</p> <ul style="list-style-type: none"> • All structural elements of each Grade Separation Project, including bridge deck and approach slabs; • Embankments within the Authority’s right-of-way; • Retaining walls in HSR ROW; • Any and all areas with sealed or restricted access; • Drainage below structure; • Attachments to overhead structures required to support HSR operations, e.g., overhead contact system (OCS); • Intrusion detection and/or protection fences; • Surveillance equipment; • HSR Project lighting; • HSR utilities; • HSR Project fencing, including protective solid fencing on HSR structures; • Concrete traffic barriers; • Bridge numbering and signage; and • Conduits and openings for future utilities on the structure. |
| Avenue 120 Overpass | County | | X | <p>COUNTY shall own and maintain the following:</p> <ul style="list-style-type: none"> • All roadway surfaces, excluding bridge deck and approach slabs; • Pavement delineation; • Retaining walls outside of HSR ROW; • Embankments outside the Authority’s right-of-way; • Signage other than bridge signage • Non HSR Project fencing; • Guardrails; • Roadway drainage and pumps; and • Traffic signals, if applicable. |



AVENUE 136 GRADE SEPARATION

| Project Elements | Ownership | Maintenance Responsibility | | Notes |
|----------------------|-----------|----------------------------|--------|---|
| | | Authority | County | |
| Avenue 136 Underpass | Authority | X | | <p>HSR shall own and maintain the following:</p> <ul style="list-style-type: none"> • All structural elements of each Grade Separation Project, • Embankments within the Authority’s right-of-way; • Retaining walls in HSR ROW; • Any and all areas with sealed or restricted access; • Drainage on structure constructed as part of the HSR Project; • Intrusion detection and/or protection fences; • Surveillance equipment; • HSR Project lighting; • HSR utilities; • HSR Project fencing, including protective solid fencing on HSR structures; • Concrete traffic barriers; • Bridge numbering and signage; and • Conduits and openings for future utilities on the structure. |
| Avenue 136 Underpass | County | | X | <p>COUNTY shall own and maintain the following:</p> <ul style="list-style-type: none"> • All roadway surfaces, • Pavement delineation; • Retaining walls outside of HSR ROW; • Embankments outside the Authority’s right-of-way; • Signage other than bridge signage; • Non HSR Project fencing; • Guardrails; • Roadway drainage and pumps; and • Traffic signals, if applicable. |



Appendix B
Cooperative Agreement



COOPERATIVE AGREEMENT
BETWEEN
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
AND
COUNTY OF TULARE

PARTIES:

THIS AGREEMENT, entered into as of the date last written below (the "Agreement") 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, hereinafter referred to as the "Authority", and County of Tulare, a political subdivision of the State of California, whose principal mailing address is 2800 W Burrel Ave, Visalia, CA 93219-4582 hereinafter referred to as the "Local Agency".

RECITALS:

WHEREAS, Local Agency owns, operates, and maintains Facilities, as defined herein. Utilities or facilities not owned by Local Agency may be located within the right-of-way of Local Agency by virtue of statewide franchises, specific franchise agreements, encroachment permits issued by Local Agency, common use agreements, or under the auspices of other legal instrument. Such utilities may be operated under regulations of the California Public Utilities Code ("CPUC") and referred to as "Utilities", as defined herein; and

WHEREAS, Authority is currently engaging in a program that has various projects under current provisions of Section 2704.04 of the Streets & Highways Code and Sections 185030 and 185511 of the Public Utilities Code throughout the State of California identified as the California High-Speed Rail Projects hereinafter referred to as the "HSR Project," and from time to time the HSR Project involves constructing, reconstructing, or otherwise changing an existing improvement or installing a new improvement where Facilities of Local Agency are located; and

WHEREAS, HSR Project may require the protection, relocation, installation, or removal of the Facility, or some combination thereof, including any submittal review, inspection, environmental mitigation, certification or other oversight activity; and

WHEREAS, protection, relocation, installation or removal of Facilities may impact Local Agency; and

WHEREAS, Authority and Local Agency desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Facility Work;

NOW AND THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Local Agency agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

1.1. Authority's Contractor. "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work or any other work.

1.2. Betterment. "Betterment" shall mean any upgrading of a replacement Facility that is made solely for the benefit of and at the election of the Local Agency, including an increase in the capacity, capability, level of service, efficiency, duration or function of the replacement Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

Any upgrading necessary for safe and effective construction of the HSR Project; replacement devices or materials that meet equivalent standards although they are not identical; replacement devices or materials no longer regularly manufactured with the next highest grade or size; any upgrading required by applicable laws; replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or any upgrading required by the applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Local Agency at its own expenses, which are in effect as of the date of execution of the applicable Grade Separation Agreement and/or Utility Agreement.

1.3. Grade Separation Agreement. "Grade Separation Agreement" means any agreement executed by Authority and Local Agency detailing the design and maintenance specific to a particular grade separation.

1.4. Utility Agreement. "Utility Agreement" means a subsequent agreement by which the Authority or Authority's Contractor provides the Local Agency funds and/or sets forth, among other things, the schedule, cost, cost apportionment, billing, payment, documentation, documentation retention, accounting and coordination as it relates to the Facility Work. The term "Utility Agreement" includes and incorporates any work indicated in a sub-utility agreement to a Utility Agreement.

1.5. Days. "Days" means calendar days, unless otherwise stated.

1.6. Facility. "Facility" or "Facilities" means any road, street, bridge, or grade separation owned and operated by Local Agency. The term "Facility" or "Facilities" includes traffic signals, street lights, and railroad crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, crossing equipment, communication facilities owned or used by Local Agency, Local Agency irrigation controller equipment, or Local Agency transit shelters shall be deemed to provide service to such facilities. Electrical transmission facilities not serving said Facilities are not covered under the terms of this section.

1.7. Facility Work. "Facility Work" means all those activities related to the Relocation of a Local Agency's Facilities.

- 1.8. Hazardous Material.** “Hazardous Material(s)” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste or other material of any nature whatsoever which may give rise to liability under state or federal law.
- 1.9. High-Speed Rail Property.** “High-Speed Rail Property” means any real property or an interest therein, including any right-of-way, previously or hereafter acquired by the Authority.
- 1.10. HSR Project.** “HSR Project” refers to the projects under current provisions of Section 2704.04 of the Streets & Highways Code and Sections 185030 and 185511 of the Public Utilities Code.

Any portion of the HSR Project for which design and construction work, including Facility Work, is performed, managed, contracted or directed (by Notice to Owner or otherwise) by another State agency, local government or local agency, directly or indirectly, is specifically excluded from the definition of HSR Project.

- 1.11. HSR Right-of-Way.** “HSR Right-of-Way” means any access controlled right-of-way for the HSR Project.
- 1.12. Notice to Owner.** “Notice to Owner” means written notice from the Authority to Local Agency for the Relocation of Facilities, demanding Local Agency to remove, protect, alter, replace, reconstruct, support, or any other rearrangement or modification, the specifically identified Facilities to accommodate a particular segment of the proposed HSR Project.
- 1.13. Partners.** “Partners” means cities, counties, the Authority, the Authority’s Contractor, and any other third party entities affected by the HSR Project, including regulatory agencies, local agencies, and public and private facility owners.
- 1.14. Party.** “Party” refers to the Authority or the Local Agency, as the context may require and “Parties” means the Authority and the Local Agency, collectively.
- 1.15. Railroad Right-of-Way.** “Railroad Right-of-Way” means the right-of-way of any rail line registered with the California Public Utilities Commission, except for High-Speed Rail right-of-way.
- 1.16. Relocation.** “Relocation” means alteration, removal, relocation, replacement, reconstruction, support, abandonment, protection or any other rearrangement of Facilities that are necessary in order to accommodate or permit construction of the HSR Project.
- 1.17. Right-of-Way of Local Agency.** “Right-of-Way of Local Agency” means a property right held by the Local Agency in the form of either a recorded or fully executed deed in the usual form or other recorded, fully executed valid instrument that conveys a permanent property right to the Local Agency for the Facility to be located in a defined area of real property or prescriptive rights, including but not limited to a defined area within High-Speed Rail Property that is subject to a recorded Joint Use Agreement (JUA) or Consent To Common Use Agreement (CCUA).
- 1.18. Utility.** “Utility” refers to any pole, pole line, pipeline, conduit, cable, aqueduct, or other structure used for public or privately owned utility services, or used by a mutual organization supplying water or telephone services to its members.

2. SCOPE OF WORK

2.1. Work to be Completed

The work actually performed under this Agreement shall be all work necessary to accomplish Relocation of existing Facilities as necessitated by Authority's HSR Project.

A. Road Closures

Roads to be closed are identified in Appendix A.

B. Facility Work

Facility Work specific to any road closures do not require a Utility Agreement and will be performed pursuant to all of the applicable Local Agency's standards, including but not limited to the standards detailed in Appendix A, unless otherwise agreed to by the Parties in writing. Other Facility Work will be detailed in subsequently executed Utility Agreement(s).

C. Utility Agreement

Authority and Local Agency will enter into a Utility Agreement which will set forth, among other things, scope of work, schedule, cost, cost apportionment, billing, payment, documentation, documentation retention, accounting and coordination as it relates to Facility Work.

D. Betterment

Any work considered Betterment shall be agreed upon in advance by the Parties and detailed in a Grade Separation and/or Utility Agreement along with costs and allocation of responsibility for such costs to the Local Agency.

2.2. Performance of Work

All Facility Work or portion thereof may be performed by the Local Agency or the Authority. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in a Grade Separation Agreement and/or Utility Agreement for that work.

A. Authority Performs Work

When all or a portion of Facility Work is to be performed by the Authority, the Local Agency shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with the Grade Separation Agreement and/or Utility Agreement(s).

The Authority shall submit a written notice of substantial completion of Facility Work to the Local Agency.

Upon receipt of the written notice of substantial completion of Facility Work from the Authority, Local Agency shall accept ownership and maintenance of the constructed Facilities.

B. Local Agency Performs Facility Work

When all or a portion of the Facility Work is to be performed by the Local Agency, the Local Agency agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to: (i) perform work with its own forces, or (ii) cause the work to be performed by a contractor, employed by Local Agency pursuant to a written contract, or (iii) cause the work to be performed through a contract with a qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Owner, or as otherwise agreed upon in the specific Grade Separation and/or Utility Agreement, the Local Agency shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the agreed upon schedule.

The Local Agency shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of the Facility Work.

2.3. Partnering

In signing this Agreement, the Local Agency agrees to collaborate with the Authority, the Authority's Contractor (if applicable), and any other affected third-party entities, including regulatory agencies, local agencies, and other facility owners, hereinafter referred to as "Partners", to identify collaborative methods for resolving issues that may arise as part of the Facility Work.

Partners will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HSR Project. During the initial workshop, Partners will develop procedures and agreements (including Utility Agreements) as specified in Appendix B, "PARTNERING," incorporated herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise.

Reimbursement to the Local Agency for the cost of participation in the initial workshop and subsequent partnering meetings shall be made by either the Authority or the Authority's Contractor, to be determined by Authority.

3. LIABILITY AND PAYMENT FOR WORK

3.1. Liability

A. Unless otherwise agreed to, liability for the cost of Facility Work shall be determined as follows:

- i. When the Authority requires Local Agency to remove any Facility lawfully maintained in any High-Speed Rail Property to a location entirely outside High-Speed Rail Property, the Authority shall pay the reasonable and necessary cost of the removal. This includes both the cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.
- ii. When the Authority requires Local Agency to remove any Facility lawfully maintained outside High-Speed Rail Property to another location entirely outside High-Speed Rail Property, the Authority shall pay the reasonable and necessary cost of removal. This includes

the cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.

- iii. After initial construction of the HSR Project and upon Local Agency's request, the Local Agency shall pay the reasonable and necessary cost of removal when the Relocation of a Facility from one point in High-Speed Rail Property to another point in that property, including Relocation in any service road of the High-Speed Rail Property or from one point of crossing of the High-Speed Rail Property to another reasonable point of crossing. This includes the cost of removal and the cost of Relocation to another point in High-Speed Rail Property.
 - iv. When the Authority requires a publicly owned Facility to relocate within High-Speed Rail Property any Facility lawfully maintained in that property that was not used for high-speed rail purposes at the time the Facility was originally installed, the Authority shall pay the cost of Relocation.
 - v. A permit containing a contractual obligation that was accepted by the Local Agency for maintenance or minor improvement of the Facility after the property became High-Speed Rail Property shall not constitute a contractual obligation to relocate a Facility at its own expense within the meaning of this section.
 - vi. Publicly owned sewers and fire hydrants and any street lighting structure, whether publicly or privately owned, in any High-Speed Rail Property shall be relocated, where necessary, at the expense of the Authority.
- B. Nevertheless, Local Agency will be liable for Facility work where:
- i. Facility Work is a Betterment; or
 - ii. The Local Agency is unable to produce documentation of Right-of-Way of Local Agency's where its Facility is located.

3.2. Cost of Facility Work

If the Authority has cost liability, then reimbursable costs shall be the costs of actual and necessary Facility Work including reasonable and actual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way required to perpetuate existing rights involved in the Relocation, except:

- A. The Authority shall be entitled to credits as follows:
 - i. The amount of any Betterment.
 - ii. If a new Facility or portion thereof is constructed to accomplish such Relocation, an amount bearing the same proportion to the original cost of the displaced Facility or portion thereof as its age bears to its normal expected life.

3.3. Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Local Agency of the claim and the Local Agency will cooperate with the Authority in

assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Local Agency and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Local Agency under this Agreement, the Authority may withhold reimbursement to the Local Agency until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.4. Hazardous Materials

Upon discovery of Hazardous Material in connection with the Relocation, both Local Agency and Authority shall immediately confer to explore all reasonable alternatives and agree on a course of action.

Authority will pay, in its entirety, those costs for additional necessary effort undertaken by Local Agency to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such conditions are attributable to Local Agency's existing installation or operation.

Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with law.

4. DISPUTES

The Authority and the Local Agency agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HSR Project impacting Facilities a hierarchy of individuals within each Party's organization to whom issues may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HSR Project and the Facility Work.

In the event the Local Agency disagrees with a determination or direction made by the Authority in connection with the Facility Work, the Local Agency shall provide prompt written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve the potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If the dispute persists after the conclusion of such partnering, then the Local Agency may request a written statement from the Authority concerning its decision. The request must be made within 14 days after the conclusion of such partnering. The request shall clearly state, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The Authority shall provide written notice of such decision, including a copy to the Local Agency. Authority's failure to provide a written decision shall be deemed denial of Local Agency's objection. The Authority's decision shall be final and conclusive unless, the Local Agency appeals such decision by written notice to the Authority, on or before 28 days from the date of such decision, or if no written decision is received from the Authority, 42 days from the Local Agency's written objection.

If the Local Agency appeals the Authority's decision, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall either issue a modified decision within two weeks from the date of the hearing, or if no hearing is requested then from the date of Local Agency's notice of appeal, such prior decision shall be deemed affirmed.

At all times during the course of the dispute resolution process, the Local Agency shall continue with or permit the continuance of the Facility Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of this Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

5. GENERAL CONDITIONS

5.1. Default

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by law, the Local Agency may pursue a claim for damages.

In the event that the Local Agency breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any necessary work with its own forces or through Authority's Contractor and seek repayment for any additional cost for which it would not have been otherwise liable.

5.2. Termination

Either Party, upon six month's written notice, may terminate this Agreement, except that, notwithstanding that termination, the provisions of this Agreement shall remain in full force and effect with respect to any Relocation of Facilities required under a Grade Separation/Utility Agreement/Notice to Owner issued prior to the Agreement termination.

5.3. Insurance

Prior to the Facility Work being performed under this Agreement, Authority will require Authority's Contractor to name Local Agency, its officers, agents, officials, and employees as additional insured and to provide a waiver of subrogation in favor of the Local Agency for each insurance policy where such coverage is provided for "Indemnified Persons" pursuant to the Authority's contract with Authority's Contractor (HSR 13-57).

5.4. Indemnification

A Party ("Indemnifying Party") shall hold harmless, and indemnify the other Party ("Indemnified 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 that arise out of or as a result of any negligent act or omission or willful misconduct of the Indemnifying Party or its officers,

agents, employees, engineers, contractors or subcontractors in carrying out Indemnifying Party's obligations under this Agreement for the performance of Facility Work, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Indemnified Party or their respective agents and servants who are directly responsible to such Indemnified Party.

5.5. Affected Facility and Right of Way

Whenever affected Facilities will remain within the existing Right-of-Way of Local Agency and these Facilities also will fall within the High-Speed Rail Property, Authority and Local Agency shall execute an easement or a Consent to Common Use Agreement which shall also confirm any prior rights held by Local Agency in said Right-of-Way of Local Agency.

Whenever affected Facilities will be relocated from the existing Right-of-Way of Local Agency to a new location that falls outside such existing Right-of-Way of Local Agency and not in Railroad Right-of-Way or in public right-of-way, the Authority shall convey a new right-of-way for such relocated Facilities as will correspond to the existing Right-of-Way of Local Agency. For such Relocations, the Authority shall issue, or cause to be issued, to Local Agency, without charge to Local Agency or credit to Authority, appropriate replacement rights in the new location mutually acceptable to both Authority and Local Agency for those rights previously held by Local Agency in its existing private right-of-way. In discharge of Authority's obligations under this Paragraph, in the event that the new location falls within the High-Speed Rail Property, Authority and Local Agency shall execute a Joint Use Agreement for joint use of said new area which agreement shall also confirm any prior rights held by Local Agency in said Right-of-Way of Local Agency. In consideration for these replacement rights being issued by Authority, Local Agency shall subsequently convey to Authority, or its nominee, within Authority's right-of-way, all of its corresponding right, title and interest within Local Agency's existing private right-of way so vacated.

If the existing Right-of-Way of Local Agency includes fee title, Authority shall acquire from Local Agency, for just compensation under State law, those property rights required by Authority for the public railway by separate transaction, leaving to Local Agency those remaining property rights appropriate for the placement and operation of Facilities in the Right-of-Way of Local Agency.

If any replacement real property rights are required in Railroad Right-of-Way, then the Authority will make reasonable efforts to obtain those rights for the Local Agency. Nevertheless, if Authority cannot obtain those replacement real property rights Local Agency shall obtain those rights.

5.6. Applicability

Except as otherwise provided, this Agreement applies to the Relocation of Facilities to accommodate or permit construction of the HSR Project.

5.7. Modification.

This Agreement may be amended, changed or altered by mutual consent of the Parties in writing.

5.8. Severability.

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

5.9. Time is of the Essence.

Time shall be of the essence of this Agreement.

5.10. Successors and Assigns.

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties.

5.11. Agreement Final Expression of the Parties.

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations.

5.12. Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Any provision herein found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions herein.

Venue for any action shall lie exclusively in Sacramento County, California pursuant to Public Utilities Code Section 185038.

5.13. Audits

Local Agency agrees that the Authority, the Department of General Services, the State Auditor, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Local Agency agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Local Agency agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Local Agency agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, CCR Title 2, Section 1896).

5.14. Notices

All required notices may be sent by first class United States Mail, hand delivery, or express mail. Each Party shall have a continuing obligation to notify the other Party of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to LOCAL AGENCY:

| | |
|-------------------|-----------------------------|
| County of Tulare: | _____ |
| | RESOURCE MANAGEMENT AGENCY |
| Person in Charge: | _____ |
| | Michael C. Spata, Director |
| Address: | _____ |
| | 5961 South Mooney Boulevard |

Visalia, CA 93277

If to AUTHORITY:

Authority: CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800

Sacramento, CA 95814

5.15. State and Federal Grant Conditions

No State or Federal funds or resources are allocated or encumbered as against this Agreement and Authority's obligations and duties expressed herein are conditioned upon sufficient funds being made available to the Authority by the California State Legislature or the United States Government for the purpose of the HSR Project.

Parties agree that Utility Agreements and other agreements requiring payment from the Authority will be subject to additional State and Federal requirements.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year last written below.


COUNTY OF TULARE:

By  Date 11.17.15
Steve Worthley
Chairman, Tulare County Board of Supervisors


Approved as to form:

By 
Jennifer Takehana
Deputy County Counsel
Matter No. 20151792

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

By  Date: 12/17/2015
Frank Vacca
Chief Program Manager

Approved as to form:

By  Date: 12/18/15
Thomas Fellenz
Chief Counsel

APPENDIX A

LOCAL AGENCY'S SPECIAL CONDITIONS

1. DESIGN STANDARDS

Authority's Contractor shall conform to the following Facility Work standards and criteria, unless otherwise agreed to by the parties in writing.

- A. The following roads will be grade separated: Avenue 24, Avenue 56 (County Road J22), Avenue 88, Avenue 120 (Hesse Ave.) and Avenue 136.
- B. The following road(s) will be closed: Avenue 108 (Angiola Drive), Avenue 112, and Avenue 128. The grade separations identified in item A above will be constructed prior to the closure of any roads, unless otherwise agreed to by the Parties in writing.
- C. The following road(s) will be open: Avenue 144.
- D. Unless otherwise agreed to in this Agreement or other written agreements by the Parties, the County of Tulare Improvement Standards ("COTIS") or the American Association of State Highway and Transportation Officials ("AASHTO") will be applied to the Facility Work. In the event of a conflict between COTIS and AASHTO, the more stringent standard shall apply.

APPENDIX B

PARTNERING

In order to effectively accomplish the HSR Project, a collaborative relationship will be formed as agreed to by Parties in Section 2.3 “PARTNERING” As part of this collaborative relationship, a cooperative management team will be developed to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Partners to resolve issues that may arise during the performance of Facility Work.

1. INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HSR Project the Partners agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HSR Project:

“Issues Resolution Ladder” (IRL) – a hierarchy of those individuals within the HSR Project including the Partners and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.

“Partnering Implementation Plan” (PIP) – the intention of the PIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of partnering meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Partners.

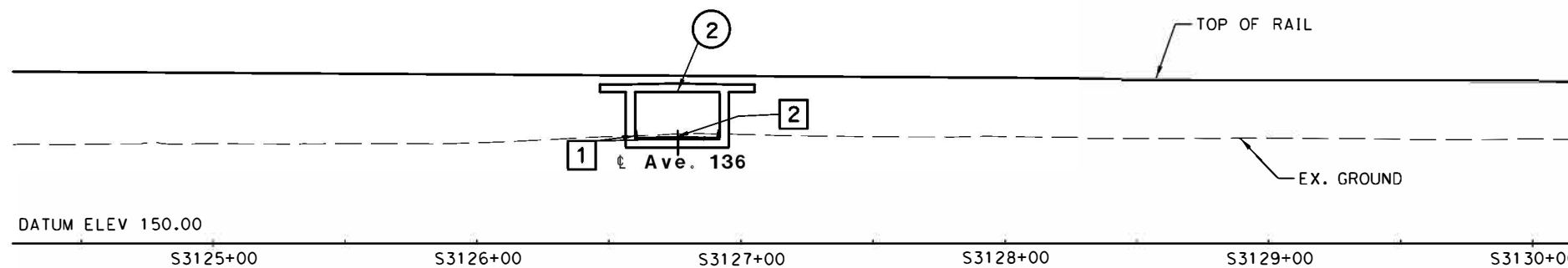
“Partner” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the partner vision, goals and relationship. The charter will be signed by all Partners.

2. PARTNERING MEETINGS

The purpose of the partnering meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the issues.

Attachment B

Typical Under/Over Crossing Exhibits



ELEVATION

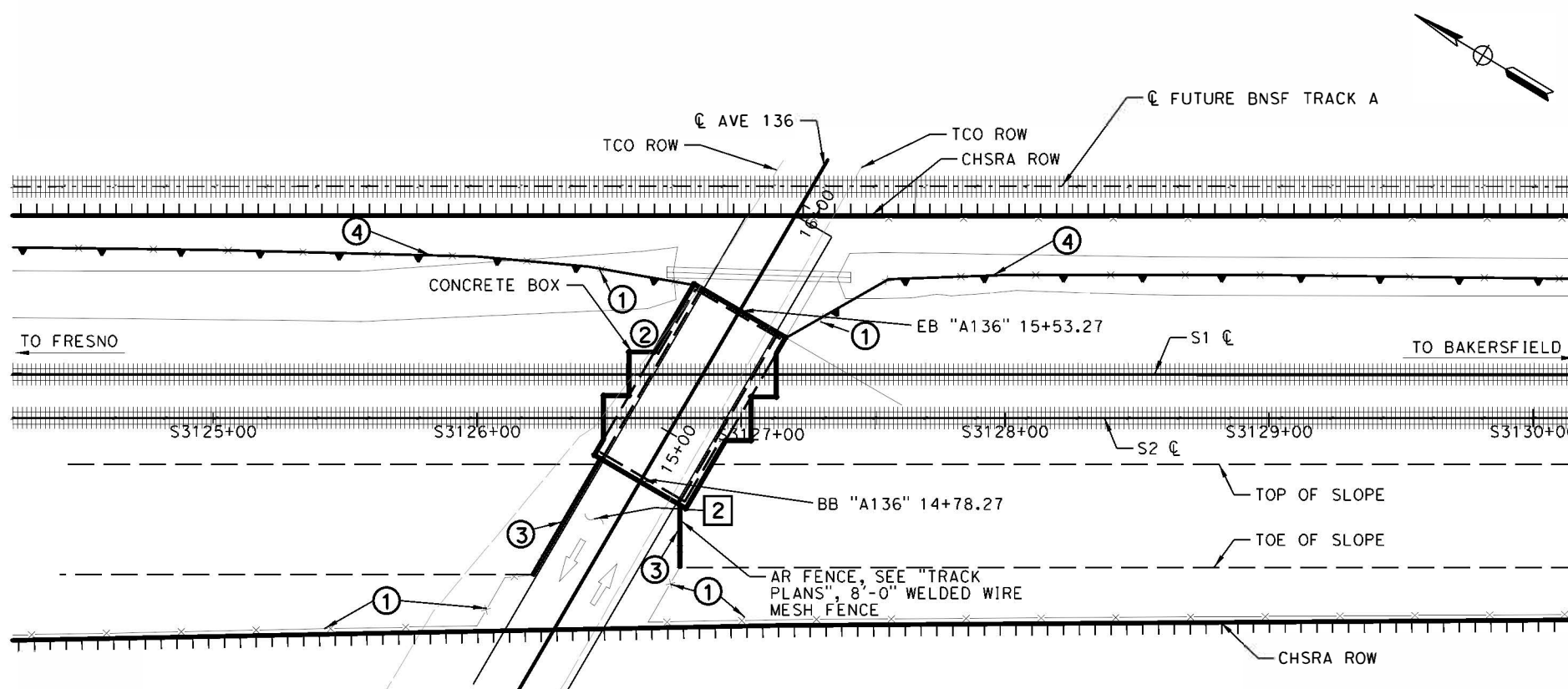
CHSRA MAINTENANCE RESPONSIBILITIES:

- ① AR FENCE
- ② CONCRETE BOX
- ③ RETAINING WALLS
- ④ IPB RETAINING WALLS

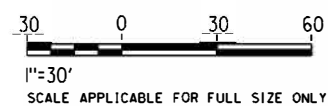
TCO MAINTENANCE RESPONSIBILITIES:

- ① GUARDRAIL/TERMINAL/TRANSITION
- ② ROADWAY PAVEMENT

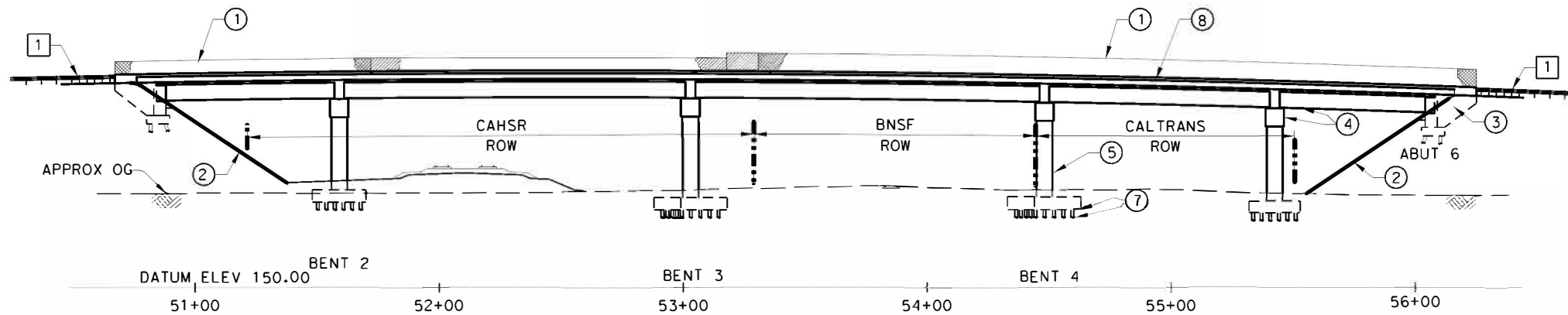
* COUNTY RESPONSIBLE FOR MAINTENANCE WITHIN COUNTY ROW EXCEPT FOR BRIDGE ELEMENTS NOTED AS CHSRA MAINTENANCE RESPONSIBILITY HEREIN



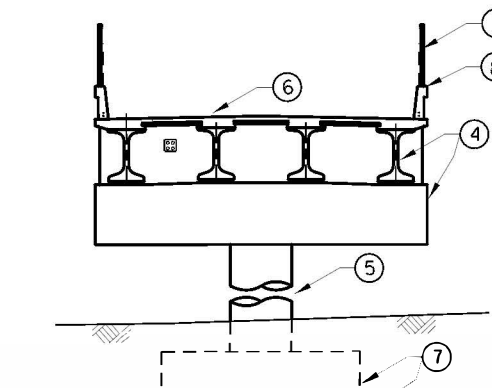
PLAN



**TYPICAL UNDERCROSSING EXHIBIT
TULARE COUNTY MAINTENANCE**



ELEVATION
SCALE: 1" = 30'



TYPICAL SECTION
SCALE: 1" = 10'

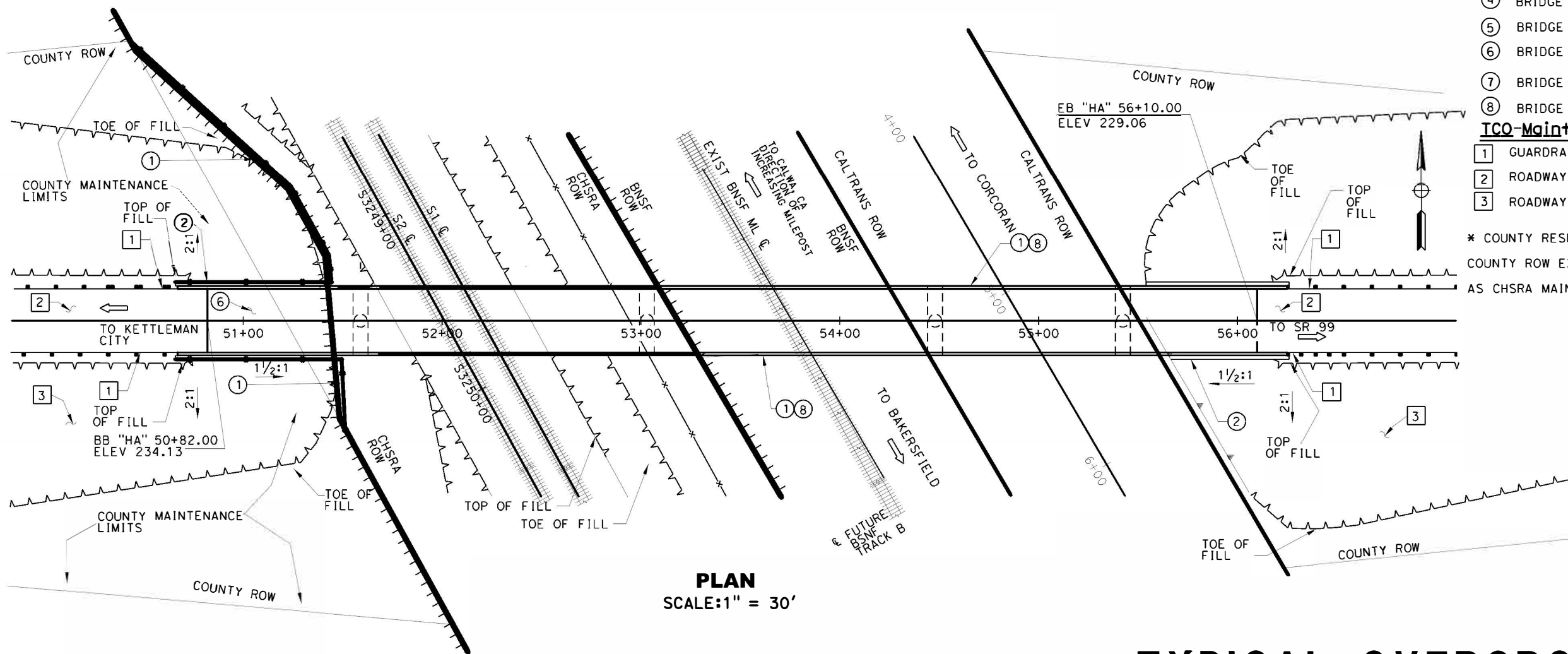
CHSRA Maintenance Responsibilities:

- ① FENCING
- ② SLOPE PAVING
- ③ BRIDGE ABUTMENT
- ④ BRIDGE SUPERSTRUCTURE
- ⑤ BRIDGE COLUMN
- ⑥ BRIDGE DECK
- ⑦ BRIDGE FOUNDATION
- ⑧ BRIDGE BARRIER

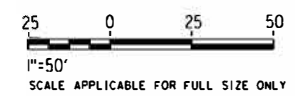
TCO Maintenance Responsibilities:

- ① GUARDRAIL/TERMINAL/TRANSITION
- ② ROADWAY PAVEMENT
- ③ ROADWAY EMBANKMENT

* COUNTY RESPONSIBLE FOR MAINTENANCE WITHIN COUNTY ROW EXCEPT FOR BRIDGE ELEMENTS NOTED AS CHSRA MAINTENANCE RESPONSIBILITIES HEREIN.



PLAN
SCALE: 1" = 30'



TYPICAL OVERCROSSING EXHIBIT
TULARE COUNTY MAINTENANCE