

**COOPERATIVE AGREEMENT HSR08-12
BETWEEN
COUNCIL OF FRESNO COUNTY GOVERNMENTS
AND
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
FOR
PREPARATION OF THE FRESNO HIGH-SPEED TRAIN/FREIGHT RAIL CONSOLIDATION STUDY**

I. INTRODUCTION:

1. THIS COOPERATIVE AGREEMENT, is entered into by and between the Council of Fresno County Governments (Fresno COG) and the California High-Speed Rail Authority (CHSRA). The purpose of this Cooperative Agreement is to provide for funding to the CHSRA which is intended to enhance the CHSRA's study of possible rail consolidation and its impacts on the proposed high-speed rail system, and to benefit both the CHSRA and the Fresno COG with information which will allow each of the parties to consider rail consolidation in the context of high-speed rail and high-speed rail in the context of rail consolidation.
2. The CHSRA in partnership with the Federal Railroad Administration (FRA) has completed and certified a Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for a proposed California High-Speed Train (HST) network linking the major metropolitan areas of the State of California. The HST system approved by the Authority includes a BNSF alignment option with a new alignment transition just north of Fresno and combines with the UPRR alignment through Fresno as the preferred alignment through Fresno.
3. In November 2006, Fresno County voters approved a ½ cent local sales tax (Measure C) for transportation purposes. The Measure C Expenditure Plan includes an estimated \$102.5 million for the Rail Consolidation Subprogram of the Alternative Transportation Program. The Rail Consolidation Subprogram as envisioned by Fresno COG, could have an impact on, and could be affected by, the proposed high-speed train system. A potential rail consolidation alignment through the Fresno Metropolitan Area is adjacent to the UPRR, as is a portion of the proposed HST alignment in this area.
4. The parties agree that enhanced study which takes into account each party's proposed project in the context of that of the other party will assist in determining such things as the right-of-way needed to accommodate both projects along the UPRR corridor, and other factors, and will assist in allowing those determinations to be made more quickly, particularly given the fact that there are projects currently submitted and under review by the City of Fresno which may be affected by the right-of-way needs of either or both of the parties' proposed or contemplated projects.

II. LIAISON BETWEEN THE CHSRA AND FRESNO COG:

For the purpose of implementing this Agreement and providing a means of communication between the CHSRA and the Fresno COG regarding the study, each agency shall appoint a representative. The CHSRA representative is Carrie Pourvahidi, Deputy Director (916)322-1422. Clark Thompson,

Planning Coordinator (559) 233-4148 is the representative of the Fresno COG. Each agency may change representatives, in which case the agency changing its representative will notify the other agency in writing of the change and its effective date.

III. SCOPE OF SERVICES

This Agreement specifies the procedures that Fresno COG and CHSRA will follow in connection to work to be performed. CHSRA agrees to provide all services identified in Exhibit A, "Scope of Services", which is attached hereto and by this reference is incorporated into this Agreement. All work will be performed at the times and location specified therein. Both Fresno COG and CHSRA agree that each will cooperate with the other in all activities covered by this Agreement and any other supplemental agreements, provided that it is also understood that this agreement does not affect the exercise by either party of any obligations placed on it by law, including the obligations imposed on a lead agency when it conducts environmental studies and prepares environmental impact reports or studies.

The parties recognize that under state and federal law, any party preparing an environmental document has certain obligations and responsibilities with respect to the preparation of that document, and with respect to intermediate decisions which must be made in the course of preparation of the document. The parties further recognize that these are obligations and responsibilities which cannot be delegated or assigned by the preparing party to someone else or to another agency. Nothing in this agreement is intended to affect those obligations and responsibilities, nor to proscribe in any way future decisions on or related to such documents by any party to this agreement, nor to affect in any way which is contrary to the law the decision-making responsibilities of any party to this agreement. Each party to this agreement is responsible for making its own determination as to the usefulness or as to the propriety of its use of or reliance upon the work product of any other party to this agreement. It is not intended by this agreement that any party to this agreement represents or warrants that its work product is sufficient for the purposes to which another party may wish to apply that work product. This MOU does not reduce, expand, transfer, or alter in any way, any of the statutory or regulatory authorities or responsibilities of any of the Signatories.

IV. CONTRACT ADMINISTRATION

1. The Contractor(s) who will be conducting the study have been selected and retained by the CHSRA which shall direct and review the progress of these contractor(s) and will be responsible for evaluating and accepting or rejecting studies.
2. Regular coordination meetings will be held between CHSRA staff and the contractors. Representatives of the Fresno COG will be invited to attend such coordination meetings as pertain to work performed under this Agreement.
3. The CHSRA will ensure that study deliverables will be provided in an electronic format. The CHSRA will provide the Fresno COG all final reports, and summaries of those reports, as well as other pertinent information, including drawings, maps, report outlines, graphic formats, meeting minutes and other information, both in electronic and hard copy.

V. RESPONSIBILITIES OF THE FRESNO COG

1. The Fresno COG agrees to reimburse the CHSRA for the costs associated with the study which fall within the "Scope of Services". Such reimbursements shall cover costs for Task 3520 (Rail Consolidation Benefits Analysis) and Task 3530 (Rail Consolidation Implementation Issues) in their entirety (\$160,287), as well as Fresno COG's pro rata share (11.87% or \$89,713) of costs associated with other study tasks that include development and analysis of both freight rail consolidation and HST alternatives, specifically:
 - Task 3410 – Alternatives Definition
 - Task 3420 – Alignment Development
 - Task 3430 – Impacts Analysis
 - Task 3440 – Cost Estimates
 - Task 3510 – Alternatives
2. The Fresno COG shall reimburse CHSRA in the amount Not to Exceed two-hundred fifty thousand dollars, (\$250,000.00).
3. The Fresno COG agrees that the Not to Exceed amount may be adjusted either up or down by written amendment to this Agreement.
4. Fresno COG shall reimburse CHSRA within 30 calendar days of receipt of an invoice in compliance with paragraph VI. 4. below.

VI. RESPONSIBILITIES OF THE CHSRA

1. CHSRA shall be responsible for maintaining records and documentation related to work performed under this Agreement.
2. CHSRA agrees to cooperate fully with the Fresno COG and its representatives during the term of this Agreement, consistent with its legal and statutory duties and obligations.
3. CHSRA shall conduct its activities related to the Scope of Services in a good and competent manner and in compliance with all applicable federal, state and local rules and regulations.
4. CHSRA shall invoice Fresno COG on a monthly basis for payments corresponding to the work performed as specifically detailed in the Scope of Services. CHSRA shall also furnish such other information as may be requested by the Fresno COG to substantiate the invoice. Invoices shall be submitted by CHSRA on a monthly basis to the Fresno COG. The invoice containing the CHSRA's final billing under this MOU shall note that it is the final billing for purposes of paragraph VIII below. Each invoice shall include the following information:
 - a. Agreement Number;
 - b. Specify the task number for which payment is being requested;
 - c. The time period covered by the invoice;
 - d. Total monthly invoice (including project-to-date cumulative invoice amount);
 - e. The backup information included with the invoice is true, complete and correct in all material respects; and

- f. Any other information as agreed or requested by the Fresno COG to substantiate the costs listed on an invoice.
5. CHSRA shall be responsible for reviewing the consultant's invoices for accuracy, terms and completeness prior to seeking reimbursement from Fresno COG.

VII. FUNDING REQUIREMENTS

1. This Agreement is valid and enforceable only if sufficient funds are made available to CHSRA by the California State Legislature for the purpose of this study. In addition, this Agreement is subject to any additional restrictions, limitation, conditions, or any statute enacted by the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
2. It is mutually agreed that if the State Legislature does not appropriate sufficient funds for this study, this Agreement shall be amended to reflect any reduction in funds. In the alternative, in the event sufficient funds are not appropriated, either party may terminate this Agreement in the manner described.

VIII. AUDIT AND INSPECTION

CHSRA shall maintain its records related to work performed under this Agreement in accordance with generally accepted accounting principles. Upon reasonable notice, CHSRA shall permit the authorized representatives of the Fresno COG to inspect and audit all work, materials, payroll, books, accounts and other data and records of CHSRA related to this Agreement for a period of four (4) years after the final payment, or until any on-going audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of the Fresno COG's payment for CHSRA's final billing (so noted on the invoice) under the Agreement.

IX. ADDITIONAL PROVISIONS

The Fresno COG and CHSRA agree to the following mutual responsibilities:

1. Term of Agreement – This Agreement shall continue in full force and effect through September 30, 2009, unless extended by mutual written agreement or terminated earlier by mutual written consent by both parties or by either party pursuant to paragraph VII. 2 or paragraph IX. 2 hereof.
2. Termination – Either party may withdraw from this Agreement upon giving to the representative of the other party 30-days notice, or immediately in the event of a material breach. In the event of early termination, the Fresno COG shall reimburse the CHSRA for all allowable project expenses incurred up to the date of termination, including any uncancellable obligations and reasonable costs to wind up ongoing tasks.
3. Amendment – This Agreement may be amended or modified only by mutual written agreement by both parties.
4. Notices – Any notices, requests or demands made between the parties pursuant to this Agreement are to be directed as follows

To CHSRA:
California High-Speed Rail
Authority
925 L Street, Suite 1425
Sacramento, CA 95814
Attn: Carrie Pourvahidi
916-322-1422
cpourvahidi@hsr.ca.gov

To Fresno COG:
Council of Fresno County
Governments
2035 Tulare Street, Suite 201
Fresno, CA 93721
Attn: Clark Thompson
559-233-4148
clarkt@fresnocog.org

5. **Indemnification** –The CHSRA shall indemnify, defend and hold harmless the Fresno COG, its officers, directors, employees and agents from and against any and all claims (not including attorney's fees and expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by CHSRA, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.
6. **Counterparts of Agreement** – This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.
7. **Assignment** – Neither this Agreement, nor any of the parties rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either party without the written consent of the other party in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment. Notwithstanding this provision, it is understood that the work called for by this agreement in no way restricts the CHSRA's ability to select the consultants whom it will retain to perform any of the work described in this Agreement.

This Agreement shall be effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Co-Operative Agreement to be executed on the date first written above.

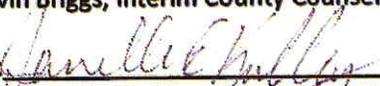
Fresno Council of Governments

California High-Speed Rail Authority

By: 
Tony Boren, Executive Director

By: 
Mehdi Morshed, Executive Director

Approved as to Legal Form
Kevin Briggs, Interim County Counsel

By: 
Janelle E. Kelley, Deputy County Counsel