

Attachment E: Draft Contract**Exhibit A: Scope of Work****1. BACKGROUND, GOALS AND PURPOSE**

- 1.1. The California High-Speed Rail Authority (Authority) is responsible for planning, designing, building and operation of the first high-speed rail system in the nation. California high-speed rail will connect the mega-regions of the state, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands. By 2029, the system will run from San Francisco to the Los Angeles basin in under three hours at speeds capable of over 200 miles per hour. The system will eventually extend to Sacramento and San Diego, totaling 800 miles with up to 24 stations. In addition, the Authority is working with regional partners to implement a state-wide rail modernization plan that will invest billions of dollars in local and regional rail lines to meet the state's 21st century transportation needs.
- 1.2. The Authority may enter into agreements with private and public entities for design, construction and operation of high-speed rail trains, including all tasks and segments thereof pursuant to California Public Utilities Code Section 185036. Additional authority for a state agency to enter into a contract agreement includes but is not limited to, Public Contract Code Sections 10335, et seq.
- 1.3. This Agreement (Agreement) is between the Authority, an agency of the State of California, and _____, a _____.
- 1.4. To facilitate the construction of the California High-Speed Rail Project (Project), the Authority requires the Contractor to perform work as described in Section 2 of this Exhibit.
- 1.5. All inquiries during the term of this Agreement shall be directed to the project representatives identified below:

AUTHORITY	CONTRACTOR
Contract Manager (ACM):	Contract Manager:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
e-mail:	e-mail:

- 1.6. The Authority Contract Managers may be changed without amendment (As specified in Exhibit D, Section 1).

2. SCOPE OF WORK

- 2.1. About this Section



This section describes the scope of work, deliverables, and key dates the Contractor shall be asked to perform under the direction of the Authority Contract Manager (ACM).

2.2. Description of Services

The Contractor will provide Right-of-Way (ROW) and real property services, as requested by Task Orders (TOs), for properties located in specified areas of the First Construction Segment (FCS), which extends through the Central Valley counties of Madera, Fresno, Tulare, Kings and Kern. Additionally, subject to all requisite environmental approvals, work may extend to the north of the FCS, including the alignment up to the city of Merced through the “Wye” configuration and south to Bakersfield, along approved alignments and alignments currently being evaluated. Work may also include early acquisition activities, in compliance with environmental law, between Merced and San Jose. The Contractor may be working with Federal Railroad Administration (FRA), California Public Works Board (PWB), California Department of Transportation (Caltrans), Department of General Services (DGS), Department of Finance (DOF), partnering agencies, and other consultant teams on the California High-Speed Train Design-Build Project under the direction of the Authority’s Director of Real Property. Contractor may provide a portion or all of the services described herein as specifically requested by TOs.

The services will be performed primarily in California’s Central Valley in the Counties of Merced, Madera, Fresno, Kings, Tulare and Kern. The Authority requires that the Contractor maintain a temporary or permanent office in one of these counties staffed and open for business during normal business hours throughout the term of the Agreement, or to designate an Authority office address as its point of beginning for all travel expenses. The Contractor shall maintain all records related to this Agreement in its approved office location, and shall allow the Authority to access those records during normal business hours.

All associate or journeyman level acquisition and relocation agents shall have a minimum of three years of experience performing the duties under the Scope of Work that are assigned to them. All acquisition and relocation staff working at this level must have the appropriate licenses and a minimum of three years of experience performing these duties under the provisions of the Uniform Act. The Contractor must provide assurances that all acquisition and relocation agents performing at associate or journey level and above have the required experience.

ROW engineering and surveying services, including preparation of appraisal maps, legal descriptions, exhibits and plats, staking and boundary marking, shall be provided by the Authority or another third-party service provider. The Contractor shall cooperate with the engineering and surveying services provider on receipt of the necessary documents and services.

Contractor shall be assigned Work through Task Orders (TOs). TOs shall designate the parcel, group of parcels, or limits of work assigned to a Contractor; the services the Contractor is to provide drawn from the services; a schedule for performance; and the maximum compensation for the TO. The Authority reserves the right to reimburse Contractor based on time expended or based on a fixed price lump sum for milestones completed, or any combination thereof. The Authority also reserves the right to retain a portion of any time and materials payment until the successful completion of the TO. The Authority shall not reimburse Contractor for time or materials to rework or correct inaccurate, substandard, defective, or



rejected Work. Contractor and their subcontractors must have a record keeping system capable of segregating time spent correcting inaccurate, substandard, defective, or rejected Work.

TOs shall be developed and assigned to Contractor at the absolute discretion of the Authority. TOs may be assigned to Contractor on a rotational basis, based on Contractor's performance on prior TOs, Contractor's workload and staff availability, or invitations by the Authority to submit TO-specific proposals. The Authority reserves the right to withdraw TOs from a Contractor and to reassign or self-perform the Work, compensating the Contractor only for services performed on the TO prior to the date the TO is withdrawn.

Task 1: Administration and Project Management

The Contractor shall manage a team capable of undertaking all work assignments identified in this Scope of Work. All contract tasks performed by the team shall be directed by the Contractor and assigned and authorized by the ACM.

The Contractor shall fully cooperate with the other contractors and with employees of the Authority and its representatives, and shall carefully adapt scheduling and work performance under this contract to accommodate other contractor work, heeding any direction that may be provided by the Authority. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor. If the Contractor asserts that any of Authority's other contractors have interfered with the work, then the Contractor's sole remedy shall be to seek recourse against such other contractors.

This is a "Task Order" Contract and no work shall be undertaken unless authorized by the Authority through a specific written document called a Task Order (TO). TOs specifying the tasks, deliverables, parcels or locations, schedule for delivery, and costs shall be used for all work assignments. TOs for technical tasks shall be made on an as-needed basis. It is anticipated that TOs may include up to a maximum of 200 parcels, however the number of parcels included in a TO is entirely at the discretion of the Authority. The specific task(s) and the degree of effort for each task will vary.

At the direction of the Authority, and to meet overall project schedules, the Contractor shall provide project management services for all functions and tasks under this Agreement. Project Management may consist of, but is not limited to the following:

- Participate in the preparation of TOs in accordance with clauses in this Agreement, using the TO template provided at the Kick-Off Meeting.
- Monitor and Track each TO and the overall Agreement. Monitor the fiscal status of each TO and the overall contract, prevent cost overruns, determine if each TO is on schedule, determine that all deliverables have been submitted and accepted and track the start, progress and closure for each TO.
- Manage plans, schedules, coordinate and manage the real property functions and tasks required under this Agreement at the direction of the Authority to meet the Authority's overall project schedules, and ensure completion of functions and tasks based on project timelines.

Task 1.1: Attend Kick-Off Meeting



Attend a “kick-off” meeting with the ACM and the Authority’s Office of Procurement and Contracts. Prior to the kick-off meeting, the ACM shall provide an agenda to all potential meeting participants. The ACM shall designate the date of this meeting to be held at Authority headquarters. The Contractor shall bring their Project Manager, Delivery Manager, and others designated by the ACM to this meeting. The administrative and technical aspects of this Agreement shall be discussed at the meeting.

The administrative portion of the meeting shall include, but not be limited to, the following:

- Terms and conditions of the Agreement;
- Task Order procedures.
- Invoicing.
- Recordkeeping and data entry requirements.

The technical portion of the meeting shall include, but not be limited to, the following:

- The ACM’s expectations for accomplishing tasks described in the Scope of Work;
- An updated Schedule of Deliverables (if necessary);
- Processes for submitting, reviewing and approving Progress Reports, Task Deliverables and Final Report.

Task 1.2: Progress Reports

The Contractor shall prepare progress reports on a weekly basis that include project schedules, progress by task-to-date, description of the progress, including identification of problems, proposed solutions and revised completion dates if necessary and earned value reporting. The progress shall also indicate, in percentage form for each task, the amount of work completed and the budget expended to date, and any anticipated cost overruns. Each progress report is due to the ACM within five working days after the end of the weekly reporting period.

Contractor shall use the Authority’s ROW Management Information System (ROWMIS) software to prepare and report project schedules and progress. Other reports may be submitted utilizing software considered typical for the type of report, though the Authority may specify formatting and software requirements for other types of reports.

The Project Manager shall manage the baseline ROW Acquisition plans assigned to it for acquisition of real property and other ROW activities for each construction contract. The Project Manager is required to coordinate through the Authority as needed with each DB Construction Contractor(s) to mitigate against any changes in construction schedule or ROW acquisition schedule. Each party shall proactively work together to reduce overall schedule risk when changes occur.



The Project Manager shall also provide information, reporting, and assistance to the ACM on issues related to, but not limited to, complex negotiations, program scheduling and budgeting, condemnation and eminent domain proceedings, and ROW Project Certifications as required for Design-Build Contractor(s).

The Project Manager shall meet bi-weekly with the ACM or as requested by the ACM for progress updates, resolution discussions, direction and planning purposes. These meetings may be attended by other Authority and DB Contractor staff and shall coordinate design and construction requirements with ROW activities.

Task 1.3: Risk Management

The Project Manager shall also develop a process that identifies risks to Project delivery and cost or issues that may impact the Program goals. The process shall evaluate, select, and implement options to mitigate risk, given Project constraints and objectives. The Project Manager shall coordinate with the Authority to report on potential risks at the bi-weekly meeting and proactively implement risk mitigation measures. AMEXW10

Task 1.4: Quality

The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all reports, deliverables and other services furnished under this Contract. The Contractor shall provide quality management and first-level review of reports and documentation; comment on the content of products and deliverables; ensure that tasks are completed efficiently, on schedule, and within the budget; review and approve all invoices and provide audit and accounting services for all TOs. The Contractor's Quality Management System shall follow the principles of ISO 9001.

Task 1.4.1: Quality Plan

The Contractor is required to prepare and submit a Quality Plan at the outset of the project, and shall conform to the procedures and standards outlined in the approved plan. The Quality Plan shall address the requirements listed in Task 1.4: Quality. The major elements of the Quality Plan are defined between sections 1.4, 1.4.1 and the principles of ISO 9001. The designated Quality Manager shall have primary responsibility for implementing the Quality Plan and assuring compliance.

Task 1.5: Safety

The Authority is committed to providing a safe and secure travel and work environment. Therefore, safety, accident prevention, and security breach prevention must be incorporated into the performance of every employee task. All Authority and Contractor personnel are charged with the responsibility for ensuring the safety and security of employees, contractors, emergency responders, and the public who come in contact with the Authority. Each individual and organization is responsible for hazard and vulnerability management, for applying the processes that are designed to ensure safety and security, and for maintaining established safety and security standards, consistent with their position and organizational function. Through a cooperative team effort and the systemic application of safety and security principles, the California High-Speed Rail shall be designed, constructed, tested, and placed into service in a safe and secure manner.



Task 1.5.1: Safety Plan

The Contractor is required to prepare and submit a Safety Plan at the outset of the project, and shall conform to the procedures and standards outlined in the approved plan. The Plan should address every aspect and phase of work conducted by the Contractor and its subcontractors in the course of performing the scope of work and in every work setting.

Task 1.5.2: Property Checklist

The Authority's Division of Safety and Security has prepared a checklist for reviewing property uses around and within the Authority ROW. Contractor shall review all acquisitions for potential safety and security issues and complete the checklist. If necessary, Contractor shall meet with ACM and Safety and Security staff to discuss revisions to acquisition documents to address safety concerns.

Task 1.6: Administer Subcontracts

A Subcontractor is defined as a firm or individual expert or contractor with ROW expertise to supplement the Contractor's expertise. The Contractor, in conjunction with the Subcontractors, is referred to as the Contractor Team. The Authority reserves the right to use some or all of the Subcontractors belonging to the Contractor Team, and to remove, approve and/or designate additional Subcontractors during the contract term. The Contractor shall manage and coordinate all Subcontracts and is responsible for the quality of all Subcontractor work and activities, and the Authority shall assign all work to the Contractor.

- Any Subcontractor whose work within the proposal would be essential to completion of the Tasks in this agreement must be identified specifically in the proposal.
- When Subcontractors are hired or replaced in conjunction with the contract, the Contractor must comply with the Authority's Small Business Participation Program Plan, as set forth in this RFP and the other certifications and licensing requirements of any subcontract over \$25,000.
- Any addition or substitution of Subcontractors for subcontracts over \$50,000 must be approved in writing by the Authority's Contracts Manager in advance of commencing any work by the Subcontractor. The Contractor should present the qualifications of the Subcontractor as it did in the Proposal.
- The Contractor shall work directly with and report to the ACM on subcontract status and Subcontractor work assignments and progress. The Contractor shall ensure that the ACM has necessary access to and communication with all involved Subcontractors and the Contractor shall facilitate and coordinate, as necessary, the Subcontractors' access to and communication with the ACM.
- The Contractor shall ensure that all Subcontractors provide the ACM with copies of all final, approved work statement deliverables and progress reports. All scope of work deliverables from the Contractor team must be submitted as drafts for review by the ACM.



- The Contractor shall provide oversight and management of all Subcontractor contracts, work products, and performance. That may include, but not be limited to, the following responsibilities:
 - Establish and maintain contractual agreements with entities performing the work.
 - Develop project schedules and assign work; assure timely delivery.
 - Manage Subcontractor activities in accordance with the Subcontractor clauses in this Agreement.
 - Provide oversight and review of reports and documentation.
 - Comment on the content of products and deliverables.
 - Ensure that tasks are completed efficiently, on schedule, and within the budget.
 - Perform QA/QC on all deliverables submitted to the Authority. Assure that all Subcontractor documents, files, diaries and records are complete, accurate and in accordance with applicable standards, laws, and regulations. Approve deliverables by signature.
 - Review and approve all invoices and provide audit and accounting services for Subcontractors.
 - Ensures that work and work products satisfy all requirements of applicable laws, statutes, regulations, Authority policies, and Authority procedures.
 - Ensure that all persons working under this contract have appropriate licenses for the work assigned.
 - Direct Subcontractor to meet with and exchange project information with other participating agencies as directed by Authority.
 - Have Subcontractors available to prepare exhibits for and make presentations at meetings with private landowners, public agencies, and utilities as needed.
 - Resolve Subcontractor issues.
 - Provide prompt payment to Subcontractors.

Task 1.7 Prepare and Submit Invoices

The Contractor shall provide invoices in accordance with the Budget Detail/Cost Proposal and Payment Provisions (Exhibit B to the Contract) and Invoice Clauses in the Contract using the process determined by the ACM. Expenses will be recorded by Task Order. Depending on the Payment Provisions, further detail shall be required by parcel or by the task numbers as outlined in this RFP.

The Contractor shall require Subcontractors to provide invoices that correctly identify expenses charged to each contract Task Order. The Contractor shall provide all Subcontractor invoices for which



Contractor is seeking compensation to the ACM, showing funds authorized, invoices submitted, and status.

Task 1.8: Information and Project Tracking Systems

A web-based ROW database has been developed by the Authority (referred to herein as ROWMIS) and is used as the primary means for tracking progress and data on the project. The Authority also uses a web-based document sharing platform (SharePoint). Contractor shall update the Authority's database with progress data on a schedule and format determined by the Authority, but not less than weekly. Deliverables and ROW documents shall be uploaded to the document sharing platform no less than weekly.

Contractor shall be responsible for maintaining data relevant to Project, Task, and schedule management and deliverables including but not limited to property information, ownership, vesting, owner / tenant contact information, appraisal details, acquisition, offers to purchase, RON packages, ROW contracts, Agreements for Possession and Use, Permits to Enter or other possession documents, relocation, condemnation, status comments, and forecasts. The ROWMIS is also available for Contractor use and capable of generating a variety of data and status reports.

Task 1.9: Provide a Final Contract Report

The Contractor shall prepare a draft final report that includes all tasks for review and approval by the ACM. The Contractor shall also provide an executive summary of the work that took place under this agreement. The format and contents shall be specified by the ACM. The draft final report must be delivered to the ACM at least 60 days before the termination date of this contract. Once agreement has been reached on the draft final report, the Contractor shall submit the final report accompanied by the final invoice.

Task 1.10: Participate in a final meeting

- Meet with the Authority to discuss the overall contract and its closeout. The final meeting must be completed during the term of this Agreement. The ACM shall determine the appropriate meeting participants. The meeting shall include a discussion of Final invoicing and release of retention, and
- Preparation of a schedule for completing the closeout activities for this Agreement.

There will be written documentation of the meeting agreements, and a schedule for completing closeout activities.

Task 2: Appraisals

The Contractor shall provide appraisal services for the fair market value of the real property to be acquired. The Contractor shall mail or deliver to the property owner a letter, in a format for Limited English Proficient individuals and in a form prescribed by the Authority and in compliance with Title VI requirements, notifying the property owner of the intent to appraise (i.e., Notice of Decision to Appraise)



and of the property owner's right to accompany the appraiser during the appraiser's inspection of the property. All work shall be performed in compliance with the Guidelines, Standards and Requirements shown below.

All appraisals and appraisal reviews shall meet the requirements of 49 CFR Part 24, Section 24.103 and Section 24.104 that are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). Appraisals and appraisal reviews shall be promptly delivered to the Authority, and in no event shall delivery occur more than 30 days from the appraisal's date of value.

Task 2.1 Hazardous waste.

The appraisal must consider the impact on value that hazardous waste present on the site may have. Therefore, the appraisal assignment is not complete without conducting an Environmental Site Assessment as described in Task 3. To complete the appraisal process, Phase I ESAs will be required, and if indicated, Phase II reports will be required. All pertinent information included in technical reports prepared in support of the environmental review process shall be considered when performing this subtask. Phase I ESAs shall comply with American Society for Testing and Materials International (ASTM) Practice E1527-0513. The Authority's ROW Manual and the Caltrans ROW manual provide further guidance.

Task 2.2 Appraisal Review.

For all appraisals with value conclusions over \$25,000, the Contractor shall provide appraisal review services developing and reporting an opinion about the quality of another appraiser's work. Appraisal reviews shall be subcontracted to a person or firm that is independent from the Contractor or Subcontractor that prepared the appraisal assigned for review. Personnel performing a review may not have prepared any of the appraisals for the project. Reviewers working under this contract must be appraisers who meet all the qualifications of appraisers required under this contract, and who also meet the USPAP Competency Rule. Appraisal reviews shall meet all USPAP requirements and standards.

Task 2.3 Appraisal of Residential Properties

The Authority encourages use of the Uniform Residential Appraisal Report form (URAR) for appraising total acquisitions of improved single family residential properties and two to four unit residential properties. This includes properties improved with mobile homes as realty. The URAR form appraisal may be used only if the land's highest and best use conforms to the existing use. The acquisition may include excess property providing an appropriate allocation of land and improvement values between excess and right of way is made. When using the form appraisal, a Parcel Appraisal Page must still be included in the appraisal report for each parcel appraised, together with any other forms that are pertinent to the appraisal.

Task 2.4 Appraisal Waiver

For acquisitions valued under \$25,000, the Authority has a policy allowing and encouraging an alternative valuation process. This Waiver Valuation process can be conducted by Acquisition agents, and shall be considered at the outset of the appraisal process for all eligible properties. The Contractor shall evaluate



all parcels assigned for appraisal for whether a waiver could apply, and prepare a candidate list for review with the ACM.

Task 2.5 Additional Appraisal Services

The Contractor shall provide other appraisal and valuation determination services as required, and in conformance with 2.1 herein, which may include, but not be limited to the following:

- Appraisal of Furniture, Fixtures and Equipment
- Appraisal of Special Use Properties
- Appraisal of Railroad Property
- Appraisal of Loss of Business Goodwill
- Securing “Expert Witness” Appraisals
- Appraisal Revisions and/or Updates
- Memoranda of Appraisal Update (MAU)
- Confirmation of Fair Market Value (CMV) in Support of Condemnation
- Appraisal of Parcels for Environmental Mitigation Purposes
- Identification of personal property not included in the valuation of the real estate

Task 2.6 Personal Property and Improvements Pertaining to Realty

In addition to preparing and supplying the Parcel Occupancy Data form after the first contact with the owner, the appraiser will be REQUIRED to invite the assigned relocation agent to accompany the appraiser during the inspection of the property, for the purpose of identifying and reaching an agreement with the owner on machinery, equipment and fixtures and or improvements pertaining to the realty and the ownership of these items (owner or tenant).

Task 2.7 Appraisal Guidelines, Standards and Requirements

The Authority’s ROW Manual, with additional reference to Caltrans’ ROW Manual Chapter 7 and other Chapters as required, shall be utilized for direction and guidance for all work performed under this task, except as provided for in existing Authority policy and/or procedure.

Appraisals will generally conform where appropriate to the appraisal assignment to the Caltrans ROW Manual Chapter 7, specifically but not limited to the provisions of 7.03.02.00 which requires separation of values for Land and improvements for both the ROW being acquired and for any excess land also being acquired. Where excess is to be acquired, the valuation of the required ROW and the excess will be



the primary appraisal. However, the appraisal report shall include an alternative value which estimates the value of only the required ROW and the net severance damages to the remainder(s).

The appraiser's attention is specifically drawn to the following sections of the Caltrans Right-of-Way Manual that must be considered or adhered to as appropriate for the appraisal assignment:

7.01.04.02- Jurisdictional exceptions

7.03.04.01- Uneconomic in the market

7.03.04.02- Uneconomic to the owner

7.03.06.00- Allocation between excess and right-of-way (form RW 7-9)

7.03.07.00- Excess Parcel Inventory (form RW 7-13)

7.03.08.00- Rental Rates (exhibit 7-ex-3)

7.04.04.00- Mineral, water, oil and gas rights

7.04.06.00- Lease Hold Interests "Bonus Value"

7.04.08.00- Access Rights

7.04.12.07- Valuation-Hazardous Waste

7.07.14.00- Tenant or Lessee owned improvements
7.01.12.00- Responsibility for Providing RAP information
Task 2.7 Appraisal Acceptance and Approval

Task 2.8 Revisions to Appraisal Reports

Completed and reviewed appraisal reports will be submitted to the Authority for acceptance and then forwarded to Department of General Services along with the Phase I ESA for review and comment. Any questions raised or revisions requested by DGS will be addressed by the Appraiser and returned within two weeks. The Appraisal task is not complete until DGS has approved the appraisal and set the amount of Just Compensation.

Task 2.9 Recordkeeping

The appraisal process and all work activities and property owner contacts shall be documented in a parcel diary and in the ROWMIS.

Task 3: Phase I and Phase II Environmental Site Assessments (ESA)

The Contractor shall prepare a complete work plan to document assumptions and limiting conditions that are normal to this type of work. For partial acquisitions, the work will be limited to the acquisition areas only and not the entire parcel to the extent feasible or applicable.



Evaluation reports shall be submitted to the ACM for approval and logged in the ROWMIS and posted to SharePoint as described in Task 1.6.

Task 3.1: Phase I Environmental Site Assessments

Phase I ESAs will be required. The site assessment shall be prepared by a qualified individual or firm as outlined in ASTM E1527-013. The report shall be completed and posted to SharePoint, and the Appraiser for the property shall be provided with the report for use in valuation.

Task 3.2: Phase II Environmental Site Assessments

Phase II ESAs may be required, when applicable and indicated in the preceding Phase I report. Phase II ESAs will be performed in accordance with ASTM Standard E1903-11. The Contractor shall prepare a work plan for Phase II investigations prior to beginning work and review it with the ACM.

Task 4: Land Rights and Real Property Acquisition/Condemnation

The Contractor shall provide land rights and real property acquisition services, including but not limited to:

- Performing and coordinating all phases of property rights acquisition.
- Assuring all phases of the acquisition process are coordinated to meet all project schedules.
- Documenting the process and all work activities and property owner contacts in a parcel diary and in the ROWMIS.
- Maintaining all necessary records and documents, and preparing status reports throughout the acquisition process.
- Ordering Preliminary Title Reports prior to the acquisition process and coordinating all acquisition title requirements.
- Developing, presenting, and negotiating all phases of the acquisition process using Authority standard documents.
- Obtaining ROW Contracts, Possession and Use Agreements, and Rights of Entry.
- Preparing Administrative Settlement Memoranda.
- Coordinating all phases of escrow.
- Obtaining subordination agreements and clearing title exceptions.
- Providing condemnation support, including Resolution of Necessity package preparation, which includes a litigation guarantee and current appraisal assurance or CMV.



- Coordinating with Caltrans Legal during Eminent Domain process.
- Ensuring non-discrimination in all phases of acquisition.
- Ensuring compliance with the Environmental Justice Policy and Guidelines.

All work shall be performed in compliance with the Guidelines, Standards and Requirements shown below.

The Authority is subject to California's Property Acquisition Law (Government Code sections 15850-15866) and does not have the same exemptions as Caltrans. This means that all property to be acquired by the Authority must first be Site Selected by the Public Works Board; that all appraisals are reviewed by the Department of General Services; that the amount of Just Compensation is determined by DGS based on reviewed appraisals; that ROW contracts and Administrative Settlements are reviewed by DGS and approved by the Public Works Board; and that RONS are adopted by the Public Works Board. The Authority uses Caltrans legal staff to conduct Eminent Domain proceedings. These review procedures must be accommodated and incorporated in the Contractor's schedule, and coordination with and assistance to the Partner Agencies is included in the Scope of Work. Any further relevant information in this regard will be provided after contract execution.

Task 4.1 First Written Offer.

Purchase documents, known collectively as the First Written Offer (FWO), include at a minimum a cover letter explicitly stating the offer being made, Authority Acquisition brochure "Your Property, Your High-Speed Rail Project," "What is Title VI?" hand out, "Private Property & High Speed Rail: Your Questions Answered" hand out, summary of the fair market value appraisal (or a copy of the fair market value appraisal report, upon request), three copies of a ROW Contract, appraisal map, deeds, receipt of offer form, Certification of Tenants form, and Payee Data Record form. The purchase documents must also include all required Relocation Assistance Program (RAP) documents if RAP is applicable.

The Agent presenting the FWO shall first complete the Authority's FWO quality control check sheet to confirm the required documents are included, and have it reviewed by internal quality controls. The Agent will make note in the Parcel Diary of all the required documents that have been presented.

Within one week of receiving approval of Just Compensation based on appraisal, the contractor shall order a Litigation Guarantee in an amount to match the approved fair market value. The contractor shall also meet and deliver the Purchase documents to the property owner within one week of receiving the approved Just Compensation amount based on appraisal, or in the case of out of town owners or unavailable owners, mail the Purchase documents.

Task 4.2 Negotiations.

The Contractor shall contact the property owner or their authorized representative, in the language understood by the owner, by phone or in-person, at least once a week, working toward owner signature on the purchase documents. Contractor shall perform negotiations with a minimum of four in-person field visit contacts and within 30 days of mailing or delivering the purchase documents. Performance of



negotiations includes explaining the fair market value appraisal, supplying answers to owner questions, supplying maps, project plans, or other exhibits requested by landowner, looking at additional data or sales provided by owner, and obtaining owner signature(s) on the deed and three copies of the ROW Contract.

If owner signature(s) have not been obtained within the 30 days of mailing or delivering the purchase documents, or if negotiations reach an impasse prior to 30 days, the Contractor shall provide a completed and Quality checked Resolution of Necessity (RON) Request to the Authority for processing. Negotiations with the owner are to continue until the filing of an action in eminent domain. After adoption of the RON, communications with the owner and continued negotiations will be coordinated with Authority's Legal Team.

If the owner counters with a reasonable offer to sell, the Contractor shall provide the Authority a written report within three days describing all owner contacts, owner concerns and requests and how they were addressed by the Contractor, other information or comments received or transmitted during the contacts, reasons why owner declined to sign, and any property owner requested or Contractor recommended conditions under which property owner will sign. Authority will respond within one week to any request.

Task 4.3 Signatures.

Within one week of Contractor receipt of Authority concurrence with Contractor's recommended or property owner's requested conditions of settlement or Authority's counterproposal, Contractor shall obtain owner signature(s) on the purchase documents with the terms approved by Authority. A reasonable extension may be granted if the property owner is unavailable during that week.

Task 4.4 Acquisition Quality Control Package

Within one week of receiving owner signatures on the purchase documents, contractor shall submit to the Authority a completed standard Acquisition Quality Control (AQC) package via overnight delivery and post it to SharePoint. The AQC package shall at a minimum include:

- The original signed and notarized deed
- The ROW Contract or Possession and Use Agreement with original signature(s)
- Title Report
- Appraisal Map
- Current Appraisal/Just Compensation approval
- Administrative Settlement Memo (if required)
- Signed Escrow Instructions which follow standard Authority instructions for clearing title at close of escrow and matching the ROW Contract or Possession and Use Agreement
- Copy of Public Works Board Site Selection
- Parcel Diary
- Owner Certification of Tenants/Occupants
- Memo regarding Excess Purchase
- Acquisition Invoice
- Copy of Offer Letter and receipt for delivery



- Construction Memo
- Property Management Plan
- Federal Participation memo
- Signed and completed Payee Data Record
- All applicable documents noted on the AQC checklist
- Certification and checklist from the Contractor's Quality Manager that the package is complete to all applicable standards

The AQC package is reviewed and approved by HSR, DGS, and DOF. If the AQC package is returned to Contractor because it is incorrect or incomplete, the Contractor shall use its best efforts to return the corrected and completed package within 10 days.

Upon the Authority's return to Contractor of one fully approved and executed settlement package, Contractor shall distribute the executed ROW Contract within five working days to owner. Contractor shall monitor and assure that escrow closure is prompt, and shall respond to any escrow questions or issues to assure prompt escrow closure.

Task 4.5 RON Package and Condemnation Support

Contractor shall provide acquisition agent support and document preparation for all phases of condemnation when necessary, including Resolution of Necessity package preparation.

Task 4.5.1 Resolution of Necessity Package

Fifteen days after the initiation of negotiations, it is the responsibility of the Contractor to insure that it has performed the following: received the necessary exhibits and legal descriptions as required for the Resolution of Necessity (RON) package; requested the necessary Litigation Guarantee as required by Task 4.1; and ensured that delivery of the required Litigation Guarantee is scheduled prior to submittal with the RON Package. If the appraisal or Memorandum of Appraisal Update date of value will be more than six months old at the time of submittal of the RON Package, the Contractor is responsible for timely requesting from the appraiser a Confirmation of Market Value (CMV), which must be included in the RON Package. The legal descriptions are required to separate out the portion of the property required for ROW from any portion that is excess or an uneconomic remainder and proposed for condemnation. An assessment of owner's intentions regarding excess land (if any), and whether the owner intends to grant a Possession and Use Agreement (PAU) will be documented in the parcel diary. The package shall also include a descriptive statement for inclusion in the Public Works Board agenda, identifying the property location and how it will be used for the high-speed rail project.

The Contractor will quality check the RON package before submittal, using the Authority's checklist to assure that all documents are included and up to standard.

Task 4.5.2 Communication with Owner prior to RON adoption

The Contractor must explain to the owner by the end of 30 days of negotiations that the Authority's schedule requires the Contractor to begin preparation for eminent domain if the Contractor and the owner



do not reach an agreement or the owner does not grant a PAU. The Contractor shall clearly explain the RON and condemnation processes and also explain that the owner will be receiving a notice of a RON hearing from the Public Works Board (PWB) in approximately two to three weeks, however, it will be approximately three months before any action is filed with the courts. During this time negotiations will continue in good faith and shall include a minimum of five additional meetings with the owner. The Contractor shall explain the RON process and emphasize that valuation will not be considered when the PWB considers passing a RON, as only the four items specified in the Code of Civil Procedure Section 1245.230, et. seq., will be considered.

Task 4.5.4 Litigation support

The Authority currently uses Caltrans Legal staff for eminent domain cases. After adoption of the RON, the eminent domain case will be assigned to an attorney. The Contractor will provide the assigned attorney with necessary documents and information including the last offer (or recommended settlement amount) and demand made by the Agent and the Owner; whether additional negotiations or Owner contact have occurred, and the Agent's plan to continue that negotiation. If requested, Contractor will schedule a field inspection of the parcel(s).

Within two weeks of assignment and prior to filing for condemnation, Legal will contact the Owner to reach out to the Owner (or Owner's counsel), to discuss settlement. Once the eminent domain suit is filed, Contractor must immediately notify the property owner of impending service. Before Legal files the Order of Possession (OP) package, Contractor must verify that no other agreements or contracts have been established. As the litigation progresses, Contractor will inform Legal of any further negotiations or agreements.

Contractor will be asked to provide additional support for litigation and coordinate with Legal. Services may include but not be limited to:

- Obtaining or serving as expert witness.
- Participating in appraisal review meeting.
- Attending settlement conference.

Task 4.6 Guidelines, Standards and Requirements

The Authority's Right-of-Way Manual and Caltrans' Right-of-Way Manual Chapters 8 and 9, and other Chapters as required, shall be utilized for direction and guidance for all work performed under this Task, except as provided for in existing Authority policy and/or procedure.

Task 5: Property Management and Parcel Delivery

After obtaining possession of acquired property and prior to delivery to the DB, Contractor shall provide all required services to conform to all landlord responsibilities as identified in existing leases or good business practices, and to maintain property in condition as good as or better than neighborhood



standards. The range of property management services will be defined in the Property Management Plan or as requested by the Authority.

Contractor shall also be responsible for preparing the property for delivery to the DB, including preparation of Construction Memoranda.

5.1 Property Management Plan.

Prior to obtaining possession, the Contractor will prepare a parcel-specific Property Management Plan outlining the tasks necessary to adequately perform the property management services, including an anticipated schedule and budget. The Property Management Plan (PMP) will describe the site improvements and their condition, and will identify specific maintenance and property management tasks and a schedule for performance. For occupied properties, the PMP will also include lease agreements and details relevant to maintenance, and will have information about current tenants. For improved properties that are unoccupied, the PMP will also outline plans for demolition. In most cases, the DB contractor will undertake demolition. The Contractor will coordinate with ACM and DB to facilitate site preparation, demolition, and cleanup.

5.2 Maintenance and Repair Services

The Contractor will provide, as needed and directed, outdoor maintenance (weed control, trash pickup, fence repair, landscape maintenance); rodent and pest control; exterior maintenance of vacant buildings. For occupied properties, the Contractor will assure conformance to lease terms and obligations, as well as good business and landlord practices.

5.3 Property Clean-Ups, Board-Ups, and Security Services

Services may include, but are not limited to:

- Removing trash, unwanted materials, weeds and trimming back overgrown vegetation.
- Draining swimming pools
- Securing structures (board-up windows, doors and any other unsecured openings to bar entrance to a commercial or residential building)
- Security patrol
- Installation of security lighting
- Securing perimeter of structure or property with chain link fencing.
- Trimming trees and bushes four feet above ground level.

5.4 Utility Coordination

Services may include, but are not limited to:

- Arranging utility services or cutoff as needed
- Assuring turn-on and turn-off of electric, gas, water, sewer, garbage pickup, and other utilities as required
- Notifying utility provider of correct owner and responsible party information



- Assuring payment of utilities by requesting direct payment from Authority Accounting to Utility provider, collecting from tenant and paying utilities when that's not possible
- Prepare and submit monthly report on utility payments by property

5.5 Tenant services

Services may include but are not limited to:

- Rent collection on behalf of Authority.
- Preparation of necessary interim rental agreements.

5.6 ROW Clearance and Parcel Delivery

After the Authority obtains legal possession of the property and tenants (if any) have vacated, the Contractor will prepare the property for ROW certification and delivery to the DB Contractor. The Services may include but are not limited to:

- Coordinate shut-off of utility services.
- Verify the property is vacated.
- Update the Authority database.
- Provide information necessary to ensure delivery of ROW Certification(s).
- Prepare Construction Memoranda and delivery package as required for Design-Build Contractor(s). The Parcel Delivery package is to be prepared prior to certification, and after review and approval by the Authority, uploaded to the document sharing site.

Task 6: Relocation Assistance

The Contractor shall adhere to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended) (Uniform Act) and Title 49 Code of Federal Regulations (CFR) Part 24; and will provide Relocation Assistance Program (RAP) services that ensure displaced persons are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

The Contractor's assigned Project Manager and/or Relocation Manager shall plan, organize, and implement all activities required by the Uniform Act and Title 49 CFR Part 24 on a schedule dictated by and designed to meet all project construction and other schedules. Relocation Assistance tasks to be performed under this contract include, but are not limited to:

- Relocation planning which includes preparing a Relocation Impact Study, Last Resort Housing Plan, and Cost Estimate for the project;
- Relocation assistance services which provide Relocation Advisors to implement the Relocation Program and provide affected occupants all information and assistance to identify replacement sites;
- Housing valuation studies to establish maximum Replacement Housing Payments and update the studies to keep the costs current;



- Site searching services to provide continuing site availability to affected occupants, and provide residential relocation assistance services, including a Relocation Advisor for each household;
- Assist displaced persons in the execution of proper Relocation Claim forms to ensure that they get all benefits to which they are entitled and promptly process the claims to the Authority for payment.
- Non-residential relocation assistance services for each affected non-residential occupant; and,
- Additional work that may include court and/or appeals related services in connection with any service provided to a RAP client and/or in support of a condemnation process.

The Authority's Right-of-Way Manual, supplemented by Caltrans' Right-of-Way Manual Chapter 10 and other Chapters as required, shall be utilized for direction and guidance for all work performed under this Task, except as provided for in existing Authority policy and/or procedure.

Task 7: Other Real Property Services

Services under this contract may include all real property services that would reasonably be performed by the Authority, and may include real property services not specified above, based on the needs of the Authority. These real property services may include, but are not limited to:

- Obtaining Agreements for Possession and Use;
- Obtaining Permits to Enter (PTE)s for environmental and/or preliminary engineering purposes;
- Obtaining Permits to Enter and Construct (PEC) and Rights of Entry (RE);
- Obtaining Temporary Construction Easements (TCE);
- Obtaining agreements for road or railroad relocations;
- Coordinating project site visits with regulatory agencies;
- Negotiating damage contracts for damages to private property such as gates, fences, driveways during construction;
- Negotiating borrow agreements;
- Drafting and securing utility agreements, managing the process for review and processing multiple relocation agreements;,,
- Obtaining encroachment permits;
- Coordinating the issuance of encroachment permits;



- Identifying and clearing existing encroachments;
- Demolition and clearance of improvements;
- Negotiating ground lease agreements;
- Completing real property acquisition estimates;
- Providing escrow and title services (to include title insurance and may include litigation guarantees); and,
- Obtaining subordinations.

3. TERM

The term of this Agreement is five years as identified in Section 2 of the Standard Agreement (STD 213).

4. AMENDMENT

4.1 This Agreement may be modified by contract amendment with mutual consent of the parties to the extent allowable by law. The amendment shall be made in accordance with GTC 610, Section 2 Amendment. The entire not to exceed amount from the RFP that was the basis for this Agreement, may also be transferred between separate Agreements awarded from the RFP, and as necessary.

4.2 No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved by the Contract Manager. No oral understanding or agreement not incorporated in agreement is binding on any of the parties.

4.3 The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the Authority's Contract Manager.

4.4 There shall be no change in the Contractor's Contract Manager or key members of the project team, as listed in the Cost Proposal, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

4.5 This provision is in addition to the Amendment requirements contained in the GTC-610. If this provision conflicts with the GTC-610, the terms of the GTC-610 control over the terms of this clause.

5. NTP

5.1 Contractor shall commence work after Agreement execution and a Notice to Proceed (NTP) has been provided by the Authority Contract Manager.



Exhibit B: Budget Detail and Payment Provisions

1. BUDGET CONTINGENCY CLAUSE

- 1.1. It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A. In this event, the Authority shall have no liability to pay any funds whatsoever to the successful Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provision of this Agreement.
- 1.2. After execution or commencement of this Agreement, if the funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this project, the Authority shall have the option to either: 1) cancel this Agreement with no further liability occurring to the Authority; or 2) offer an Agreement amendment to the Contractor to reflect the reduced amount.
- 1.3. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.

2. INVOICING AND PAYMENT

- 2.1. For services satisfactorily rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices by the Authority Contract Manager, the Authority agrees to reimburse the Contractor for actual hours worked according to the rates in the attached Budget Detail. The Contractor agrees to reimburse all subcontractors with the same payment structure. The Budget Detail, which is the Rate Sheet provided by the Contractor, is attached as Attachment B-1 to this Agreement. The rates in the Budget Detail are the binding maximum rates for the term of the Agreement.
 - 2.1.1. No payment shall be made in advance of services rendered.
 - 2.1.2. The total amount payable by the Authority for this Agreement shall not exceed the amount on the Std. 213. It is understood and agreed that this total is an estimate and the actual amount of work requested by the Authority may be less.
 - 2.1.3. Provide one original and two copies of the invoice for payment. Invoices shall be submitted no more than monthly in arrears and no later than 30 calendar days after completion of each billing period:

Financial Operations Section
California High-Speed Rail Authority
770 L Street, Suite 620 MS3
Sacramento, CA 95814
accounting@hsr.ca.gov



(1 original and 1 copy)

AND

The Contractor shall also submit (electronically) one additional copy of invoice and supporting documentation to the Authority's Contract Manager or designee at the address identified in Exhibit A if requested by the Authority.

3. PAYMENT REQUEST FORMAT

- 3.1. The date of "invoice receipt" shall be the date the Authority receives the paper copy.
- 3.2. A request for payment shall consist of, but not be limited to, the following:
 - 3.2.1. Invoice Cover Fact Sheet (ICFS) that summarizes billing by Task Order.
 - 3.2.2. Agreement number, date prepared, and billing period.
 - 3.2.3. The Contractor's loaded hourly labor rates by individual, inclusive of fees. Each invoice shall include actual hours incurred and cumulative hours incurred to date.
 - 3.2.4. Other direct costs, including special equipment if requested by the Authority (subject to applicable requirements and rules), travel, miscellaneous, and materials. Costs for special equipment shall not exceed standard costs for similar equipment.
 - 3.2.5. An indication if the Contractor is certified as a California Certified Small Business, Disabled Veteran Business Enterprise, or Disadvantaged Business Enterprise. Subcontractor and vendor invoices shall also indicate whether a subcontractor or vendor is a California Certified Small Business, Disabled Veteran Business Enterprise, or Disadvantaged Business Enterprise.
 - 3.2.6. Backup documentation for audit purposes, and the Contractor shall retain back-up documentation for audit purposes available to the Authority upon request. The Contractor shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify all subcontractor services and expenses invoiced for payment under this Agreement.
 - 3.2.7. Receipts for travel, including departure and return times.
 - 3.2.8. The following by task (as specified in the Budget Detail and by reference to Task Orders, when applicable): cumulative amounts, budgeted per Agreement, billed to date, current billing, and balance of funds.
 - 3.2.9. Documentation to support the progress of the work performed during the billing period.
 - 3.2.10. A narrative that documents the progress of the work during the billing period.
 - 3.2.11. Any other deliverables due during the billing period.



3.2.12. Subcontractors' and vendors' invoices.

4. TRAVEL AND PER DIEM RATES

- 4.1. The Contractor shall be reimbursed for approved travel and per diem expenses using the same rates provided to non-represented state employees. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates at the following website: <http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>.
- 4.2. All travel not specified in a work plan and/or Task Order requires written authorization from the Authority's Contract Manager prior to travel departure. Travel expenses are computed from the Contractor's approved office location or the Authority office closest to the Work, if the Contractor does not have an approved office location in the area identified in Exhibit A. Travel to the Contractor's approved office from other locations is not reimbursed under this Agreement unless specifically authorized.
- 4.3. The Contractor must retain documentation of travel expense in its financial records. The documentation must be listed by trip and include dates and times for departure and return.
- 4.4. No international travel is authorized under this Agreement.

5. COST PRINCIPLES

- 5.1. The Contractor agrees to comply with procedures in accordance with 48 C.F.R., Federal Acquisition Regulations System, Chapter 1, Part 31, *et seq.*, to determine the allowability of individual items of cost.
- 5.2. The Contractor agrees to comply with 49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 5.3. Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 C.F.R. Part 31, as amended, or 49 C.F.R. Part 18, are subject to repayment by the Contractor to the Authority.
- 5.4. Any subagreement in excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions of this clause.

6. PROMPT PAYMENT ACT

- 6.1. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

7. EXCISE TAX

- 7.1. The State of California is exempt from federal excise taxes, and no payment will be made for any federal excise taxes levied on the Contractor. The Authority will only pay for any state or local sales or use taxes on the services rendered to the Authority pursuant to this Agreement. For clarification on excise tax exemptions, refer to the State Administrative Manual section 3585.



8. INVOICE DISPUTES

- 8.1. Payments shall be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of the Agreement. If the invoice is disputed, the Contractor will be notified via a Dispute Notification Form, or with other written notification within 15 working days of receipt of the invoice; the Contractor will be paid the undisputed portion of the invoice.

9. PAYMENT RETENTION CLAUSE

- 9.1. Ten percent (10%) of any progress payments that may be provided for under this Agreement shall be withheld per Public Contract Code Section 10346 pending satisfactory completion of services under the Agreement.



Exhibit C: General Terms and Conditions (GTC-610)**GTC 610**

Under the California High-Speed Rail Authority's standardized agreement process, a hardcopy of Exhibit C, GTC 610, is not included in the standard agreement package. As indicated on the Std. 213, a copy of Exhibit C can be found at the internet site: <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>

If you do not have internet access, or otherwise cannot access the GTC 610, please contact the Office of Procurement and Contracts below to receive a copy:

OPAC
(916) 324-1541
770 L Street, Suite 620 MS3
Sacramento, California 95814

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Exhibit D: Special Terms and Conditions

1. CONTRACT MANAGEMENT

- 1.1. The Contractor's Contract Manager is responsible for the day-to-day project status, decisions and communications with the Authority's Contract Manager. The Contractor may change its Contract Manager by giving written notice to the Authority, but the Authority reserves the right to approve any substitution of the Contract Manager. This approval shall not be unreasonably withheld.
- 1.2. The Authority may change its Contract Manager at any time by giving written notice to the Contractor.

2. SUBCONTRACTS

- 2.1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Authority and any subcontractors, and no subcontract shall relieve the Contractor of his or her responsibilities and obligations under this Agreement. The Contractor agrees to be as fully responsible to the Authority for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Contractor. The Contractor's obligation to pay its subcontractor is an independent obligation from the Authority's obligation to make payment to the Contractor. As a result, the Authority shall have no obligation to pay or enforce the payment of any moneys to any subcontract.
- 2.2. The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be contracted without written authorization by the Authority's Contract Manager, except that which is expressly identified in the Budget Detail attached to this Agreement as Attachment B-1.
- 2.3. Unless specifically noted otherwise, any subagreement in excess of \$25,000 entered into as a result of this Agreement shall contain all the applicable provisions stipulated in this Agreement.
- 2.4. The Contractor shall pay its subcontractors within 10calendar days from receipt of each payment made to the Contractor by the State.
- 2.5. Any substitution of subcontractors must be approved in writing by the Authority's Contract Manager in advance of assigning work to a substitute subcontractor.
- 2.6. Contractor shall submit monthly progress reports on small businesses (SB), including microbusinesses (MB), DBE, and DVBE utilization to the Authority in accordance with the Authority's Revised Small and Disadvantaged Business Enterprise Program for Professional Services Contracts.

3. CONFIDENTIALITY OF DATA

- 3.1. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to



- the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- 3.2. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor further disclose such information or disseminate the same on any other occasion.
 - 3.3. The Contractor shall not comment publicly to the press nor any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel, including subcontractors, affiliates, and vendors, involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative Committee.
 - 3.4. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
 - 3.5. Any subagreement entered into as a result of this Agreement shall contain all of the provisions of the Confidentiality of Data clause.

4. CONFIDENTIALITY CLAUSE

- 4.1. The terms and conditions of this Agreement and the Work described herein, including communication with third parties, are to be held confidential between the parties to this Agreement and shall not be disclosed to anyone else, except as shall be necessary to effectuate Agreement terms or comply with state or federal law. Any disclosure in violation of this section shall be deemed a material breach of this Agreement.
- 4.2. Contractor agrees to hold Confidential Information in confidence in accordance with the terms of this Agreement and agrees to use Confidential Information solely in accordance with the terms of this Agreement. "Confidential Information" shall include all non-public business-related information, written or oral, disclosed or made available to the Contractor directly or indirectly, through any means of communication by the Authority or any of its consultants, affiliates, or representatives of the Contractor.
- 4.3. Contractor agrees to include in all subcontracts and enforce the requirements of this Confidentiality Clause. This provision is intended for the benefit of the Authority.

5. CONFLICT OF INTEREST

- 5.1. The Contractor and its employees, and all of its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code and Organizational Conflict of Interest Policy.
- 5.2. The Contractor may be required to submit an Economic Interest Statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Authority's Legal Department, in consultation with the Authority Contract Manager or its designee, determines is a designated employee under the Political Reform Act subject to the requirements and restrictions of the Act. Such determination will be based on the nature of the work to be performed by the employee or subcontractor. Each employee and subcontractor determined to be



a designated employee under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Authority's staff who performs the same nature and scope of work as the Contractor.

6. SETTLEMENT OF DISPUTES

- 6.1. The parties agree to use their best efforts to resolve disputes concerning a question of fact arising under this Agreement in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.
- 6.2. To the extent not inconsistent with law, rules, and regulations, any dispute that is not disposed of by mutual agreement in section 6.1 above will be decided by the Authority's Chief Engineer, who may consider any written or verbal evidence submitted by the Contractor. The decision of the Chief Engineer, issued in writing will be the final decision of the Authority. The final decision of Authority is not binding on the Contractor.
- 6.3. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.
- 6.4. Neither the pendency of a dispute nor its consideration by the Authority's Chief Engineer will excuse the Contractor from full and timely performance in accordance with the terms of this Agreement.

7. TERMINATION

- 7.1. Termination for Cause: In accordance with section 7 of the GTC 610, the Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor.
- 7.2. Termination for Convenience: The Authority reserves the right to terminate this Agreement upon thirty (30) calendar day's written notice to the Contractor if terminated for convenience of the Authority.
- 7.3. Termination Issues for Subcontractors, Suppliers, and Service Providers: The Contractor shall notify any subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to by the Authority in writing.
- 7.4. Contractor Claims Against this Agreement Under Early Termination: The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement, or its early termination, upon acceptance by the Contractor of payment for costs actually incurred for work performed prior to receipt of the notice of termination and actual costs incurred as a result of termination.



8. NON-WAIVER

- 8.1. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. No remedy available in this Agreement is intended to be exclusive of any other remedy, and every remedy shall be cumulative and shall be in addition to every other remedy provided therein or available at law or in equity. The failure of the Authority to enforce any provision of this Agreement or require performance by the Contractor of any provision shall in no way be construed to be a waiver of those provisions, affect the validity of this Agreement in whole or in part, or the right of the Authority to subsequently enforce any such provision.

9. HEADINGS AND RULES OF CONSTRUCTION

- 9.1. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

10. STOP WORK

- 10.1. The Authority's Contract Manager may, at any time, by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Agreement.
- 10.2. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- 10.3. The Contractor shall resume the stopped work only upon receipt of written instruction from the Authority's Contract Manager canceling the stop work order.
- 10.4. An equitable adjustment shall be made by the Authority based upon a written request by the Contractor for an equitable adjustment. Such adjustment request must be made by the Contractor within 30 days from the date of receipt of the stop work notice.

11. NONDISCRIMINATION COMPLIANCE

- 11.1. During the performance of this Agreement, the Contractor and its Subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. The Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 11.2. The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Section 12900, *et seq.*) the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, Section 11000, *et seq.*), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.



- 11.3. The Contractor shall permit access by representatives of the Department of Fair Employment and Housing to the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.
- 11.4. The Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 11.5. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all Subcontracts to perform Work under this Agreement.



Exhibit E: Additional Provisions

1. ORDER OF PRECEDENCE

- 1.1. The Work to be performed under this Agreement shall be in accordance with the scope of work as detailed in Exhibit A, and the Contractor's Proposal dated [DATE] which is attached hereto as Attachment 1. In the event of any inconsistencies or ambiguities in this Agreement the following documents shall be used to interpret the Agreement in the order of precedence stated:
- a) Terms of this Agreement and any amendments.
 - b) Approved Task Orders.
 - c) Contractor's Proposal dated [DATE].
 - d) Request for /Proposals for Right-of-Way Services dated [DATE], RFP No. HSR1#-##.

2. INDEMNIFICATION

- 2.1. Contractor agrees to indemnify, defend, and hold harmless the Authority, Federal Railroad Administration, State of California, their officers, agents and employees from any and all claims, demands, costs, or liability to the extent caused by the negligence of wrongful acts, errors or omissions of the Contractor. The Contractor will reimburse the Authority for any expenditure, including reasonable attorney fees incurred by the Authority in defending against claims ultimately determined to be due to negligent or wrongful acts, errors or omissions of the Contractor. The Contractor's indemnification herein with regard to third parties shall arise only to the extent caused by the negligence or wrongful acts, errors or omissions of the Contractor with regard to such third parties. Parsons Brinkerhoff, Inc. is an intended third party beneficiary of this indemnity clause.
- 2.2. This provision is in addition to the Indemnification requirements contained in the GTC-610. If this provision conflicts with the GTC-610, the terms of the GTC-610 control over the terms of this clause.

3. EVALUATION OF THE CONTRACTOR

- 3.1. An evaluation of the Contractor's performance will be performed whenever the Authority deems it appropriate to do so. A copy of the evaluation will be sent to the Contractor for comment. The evaluation, together with the comments, shall be retained by the Authority. Contractor performance evaluations may be considered in the evaluation of future solicitations.
- 3.2. Performance of the Contractor under this Agreement shall be evaluated. At the conclusion of the contract, the evaluation shall be prepared on Contract/Contractor Evaluation Sheet, Std. 4. A copy of any negative evaluation for contracts over \$5,000 shall be sent to the Department of General Services, Office of Legal Services.

4. OWNERSHIP OF DATA



- 4.1. During the term of this Agreement and upon completion of any and all work under this Agreement, all intellectual property rights, ownership and title to all report, documents, plans, specifications, electronic documents and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data.
- 4.2. "Generated data" is data that the Contractor has collected, collated, recorded, deduced, read out, or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model, or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Authority's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Authority, unless and only to the extent that it is specifically provided otherwise in this Agreement. "Generated data," as defined herein, shall not include proprietary data, as defined below.
- 4.3. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Authority access to and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, including in a scientific manner to the satisfaction of scientific persons when applicable, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

5. FORCE MAJEURE

- 5.1. Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, or public regulating utility or governmental statutes or regulations superimposed after the fact. The Contractor shall not be liable for damages of such delay or failure, if a delay or failure to perform by the Contractor arises out of a default of its subcontractor, and if such default arises out of the following:
 - a) Causes beyond the control of both the Contractor and subcontractor, and
 - b) Without the fault or negligence of either of them.
- 5.2. However, with respect to supplies or services to be furnished by the subcontractor that were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule, the Contractor and its subcontractors will be held liable for damages of such delay or failure.

6. PREVAILING WAGES



- 6.1. Pursuant to the provisions of Section 1773 of the Labor Code, the Authority will obtain the general prevailing rate of wages (which includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) as applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification, or type of worker concerned. Copies of the prevailing rates of wages are on file at Authority's offices, and will be furnished to the Contractor and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, the Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations. If there is any conflict between the state prevailing wage, the federal prevailing wage and the Authority's Community Benefits Agreement, the highest rate shall be paid.

7. STANDARD OF CARE

- 7.1. The Contractor, in performing its professional services under this Agreement, owes the Authority the following duties of care (The Contractor's "Standard of Care"):
- 7.1.1. The duty to have that degree of learning and skill ordinarily possessed by reputable professionals practicing in the same or a similar locality and under similar circumstances;
- 7.1.2. The duty to use the care and skill ordinarily possessed by reputable members of the professions practicing in the same or similar locality under similar circumstances; and
- 7.1.3. The duty to use reasonable diligence and his or her best judgment in the exercise of skill and the application of learning.

8. DAMAGES DUE TO ERRORS AND OMISSIONS

- 8.1. The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Agreement. A Contractor may be liable for Authority costs resulting from errors or deficiencies in designs furnished under its Agreement.
- 8.2. When a modification to a construction contract is required because of an error or deficiency in the services provided under this Agreement, the Authority Contract Manager (with the advice of technical personnel) shall consider the extent to which the Contractor may be reasonably liable.
- 8.3. Authority Contract Manager shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Authority's interest. The Authority Contract Manager shall include in the Agreement file a written statement of the reasons for the decision to recover or not to recover from the firm.

9. LEGAL NOTICE

- 9.1. This clause is not intended to apply to normal, daily communication between the parties related to the progress of work. This clause applies to situations where notice is required to be given by the



Agreement or the parties are asserting their legal rights and remedies. This section is not intended to replace any other applicable legal requirements.

- 9.2. Any communication, notice, or demand of any kind whatsoever which any party may be required or may desire to give or to serve upon another must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

Contractor: Name Title Company Address Telephone	Authority: Thomas Fellenz, Chief Counsel California High-Speed Rail Authority 770 L Street, Suite 620 MS1 Sacramento, CA 95814 Telephone: (916) 324-1541
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- 9.3. The project representatives identified in Exhibit A, Section 1.5. shall be notified via email when a notice is sent.
- 9.4. Notice shall be effective when received, unless a legal holiday for the State commences on the date of attempted delivery. In such cases, the effective date shall be postponed until the next business day.

10. LICENSES AND PERMIT

- 10.1. The Contractor shall be an individual or firm licensed to do business in California and shall obtain at its sole expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

This includes but is not limited to the following: (1) Certified Real Estate Appraiser license from the California Office of Real Estate Appraisers; and (2) California Real Estate Broker or Salesperson License issued by the California Bureau of Real Estate.

- 10.2. If the Contractor is located within the State of California, a business license from the city/county in which the Contractor is headquartered is necessary; however, if the Contractor is a corporation, a copy of the incorporation documents/letter from the Secretary of State's Office can be submitted. If the Contractor's headquarters is located outside the State of California, the Authority requires a copy of the business license or incorporation papers for the company's respective state showing that the company is in good standing in that state, and proof of registration as a foreign corporation qualified to do business in California.
- 10.3. In the event any license(s) and/or permit(s) expire at any time during the term of this Contract, Contractor agrees to provide the Authority a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), the Authority may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.
- 10.4. All subcontractors shall be licensed to the same level as the Contractor, if required for their position.



11. INSURANCE

Without limiting the Contractor's indemnification of the Authority, and prior to commencement of the Work, the Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the Authority.

11.1. Workers' Compensation Insurance

The Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)).

11.2. General Liability Insurance

The Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than three million dollars (\$3,000,000) per occurrence and three million dollars (\$3,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Limits may be achieved by any combination of primary and excess or umbrella liability insurance.

11.3. Automobile Liability Insurance

The Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident. Limits may be achieved by any combination of primary and excess or umbrella liability insurance.

11.4. Professional Liability (Errors & Omissions) Insurance

The Contractor shall maintain professional liability insurance that covers the Work to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement.

11.5. Environmental Professional Liability Insurance

Environmental Professional Liability Insurance shall be written on a form acceptable to Authority providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. This coverage may be arranged in combination with Professional Liability insurance or as a stand-alone policy. The policy limit shall be no less than one million dollars (\$1,000,000) per claim and in the aggregate. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." If the insured is using sub consultants, the Policy must include work performed "by or on behalf" of the insured. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement. The cost of such



insurance shall be included in Contractor's Cost Proposal. Insurance as required in this paragraph above may not exclude:

- (a) Bodily injury;
- (b) Property damage;
- (c) Pollution conditions arising out of environmental work;
- (d) Asbestos-related claims;
- (e) Testing, monitoring, measuring operations, or laboratory analyses.

11.6. Other Provisions or Requirements

11.6.1. Proof of Insurance

The Contractor shall provide certificates of insurance to the Authority as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. All certificates and endorsements must be approved by the Authority's Contract Manager prior to commencement of work. Current certification of insurance shall be kept on file with Authority at all times during the term of this contract. The Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.6.2. Duration of Coverage

The Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The Contractor agrees to maintain professional liability insurance for a period of no less than three years after completion of the work.

11.6.3. Authority's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the Authority has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the Authority will be promptly reimbursed by the Contractor or the Authority will withhold amounts sufficient to pay premium from the Contractor's payments. In the alternative, the Authority may cancel this Agreement.

11.6.4. Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact the business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Authority's Contract Manager.

11.6.5. Waiver of Subrogation



Workers' compensation insurance policies must be endorsed to waive the insurer's right of subrogation. All other insurance coverage maintained or procured pursuant to this agreement, except for professional liability, shall specifically allow the Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss or, in the alternative, shall be endorsed to waive subrogation against the Authority, its elected or appointed officers, agents, officials, employees and volunteers. The Contractor hereby waives its own right of recovery against the Authority, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

11.6.6. Enforcement of Contract Provisions (non estoppel)

The Contractor acknowledges and agrees that any actual or alleged failure on the part of the Authority to inform the Contractor of non-compliance with any requirement imposes no additional obligations on the Authority nor does it waive any rights hereunder.

11.6.7. Requirements not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. All insurance coverage and limits provided by the Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

11.6.8. Notice of Cancellation

The Contractor agrees to oblige its insurance agent or broker and insurers to provide to the Authority with 30days notice of cancellation (except for nonpayment, for which 10days notice is required) or nonrenewal of coverage for each required coverage.

11.6.9. Additional Insured Status

General liability policies shall provide or be endorsed to provide the Authority and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

11.6.10. Authority's Right to Revise Specifications

The Authority reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Contractor 90days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the Authority and Contractor may renegotiate the Contractor's compensation.

11.6.11. Self-insured Retentions



Any self-insured retentions must be declared to and approved by the Authority. The Authority reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the Authority.

11.6.12. Timely Notice of Claims

The Contractor shall give the Authority prompt and timely notice of claims made or suits instituted that arise out of or result from the Contractor's performance, and that involve or may involve coverage under any of the required liability policies.

11.6.13. Additional Insurance

The Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and performance of the Work.

11.6.14. Subcontractors

To the extent that the Contractor engages the services of subcontractors, the Contractor agrees to require the same insurance as required of the Contractor, except as to limits. The limits for subcontractors shall be no more than one million dollars (\$1,000,000) in coverage on insurance for which a limit is specified above.

12. COMPUTER SOFTWARE:

- 12.1. For contracts in which software usage is an essential element of performance under this Contract, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- 12.2. The Contractor shall comply with all applicable Authority policies and procedures related to the access and use of Authority software and databases.

13. EQUIPMENT RENTAL CONTRACTS:

- 13.1. The State shall not be responsible for loss or damage to rented equipment arising from causes beyond the control of the State. The State's responsibility for repairs and liability for damage or loss to such equipment is restricted to that made necessary or resulting from the negligent act or omission of the State or its officers, employees, or agents.

14. OWNERSHIP/INVENTORY/DISPOSITION OF STATE EQUIPMENT

- 14.1. The following is applicable to equipment purchased or furnished by other agencies and equipment purchased by the Contractor where such expense is charged to and/or reimbursed from Agreement funds.



- 14.2. No equipment shall be purchased under the auspices of the Agreement without prior written authorization of the Authority. All equipment of any kind, purchased or reimbursed with Agreement funds or furnished by the Authority under the terms of this Agreement and not fully consumed in the performance of this Agreement, shall be considered the property of the Authority.
- 14.3. The Authority may, at its option, repair any damage or replace any lost or stolen items and deduct the cost thereof from the Contractor's invoice to the Authority, or require the Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Authority with no expense to the Authority.
- 14.4. The Contractor should maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment should include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment (SAM Section 8600). A copy of the inventory record must be submitted to the Authority on request by the Authority.

15. CONTINGENT FEE

- 15.1. The Contractor warrants by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

16. NON ELIGIBLE ALIEN CERTIFICATION

- 16.1. In accordance with 8 U.S. Code Section 1621, the Contractor certifies by execution of this Agreement, that they are not an alien who is not:
- a) a qualified alien (as defined in 8 U.S. Code Section 1641),
 - b) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or
 - c) an alien who is paroled into the United States under Section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for less than one (1) year.

17. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

- 17.1. By entering into this Agreement that mentions or refers to the California Environmental Quality Act (CEQA), Environmental Impact Report (EIR) and state environmental permitting laws/agencies and initially authorizes related work, the Authority does not: (a) waive the Authority's rights regarding the application of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), including the defense that ICCTA preempts CEQA's application to the



High-Speed Rail (HSR) project; or (b) create an implied agreement that CEQA and/or such environmental permitting requirements apply to the HSR project.



Exhibit F: Supplemental Terms and Conditions for Contracts Using Federal Funds

The Project is financed in part with Federal assistance provided by FRA and therefore Federal laws, regulations, policies, and related administrative procedures apply. The Contractor must comply with all applicable Federal laws, regulations, policies, and related administrative practices. The most recent of such Federal laws, regulations, policies and related administrative practices at the time will govern the contract for ROW Services, unless FRA issues a written determination otherwise. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the selected Proposer and the Authority execute the contract, but may apply to the contract for ROW Services. The Contractor must ensure compliance by its Subcontractors with and include appropriate flow down provisions in its each of its lower-tier subcontracts as required by applicable Federal laws, regulations, policies, and related administrative practices. Some Federal requirements applicable to the Contractor are identified elsewhere in the RFP. This identifies Federal requirements contained in the Grant/Cooperative Agreement between FRA and the Authority, which are applicable to the Contractor and are not addressed elsewhere in the RFP that served as the basis for this Agreement.

1. FEDERAL REQUIREMENTS

The Contractor understands that the Authority has received Federal funding from the Federal Railroad Administration (FRA) for the Project and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. The Contractor acknowledges that federal laws, regulations, policies, and related administrative practices may change and that such changed requirements will apply to the Project. The Contractor shall ensure compliance by its subcontractors and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein.

Notwithstanding anything to the contrary contained in this Agreement, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of FRA requirements.

2. COMPLIANCE WITH FEDERAL REQUIREMENTS

The Contractor's failure to comply with Federal Requirements shall constitute a breach of this Agreement.

3. FEDERAL PROCUREMENT STANDARDS

The Contractor agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. Section 18.36 and with applicable supplementary U.S. Department of Transportation (U.S. DOT) or FRA directives or regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Contractor's technical specifications and requirements.

4. FEDERAL LOBBYING ACTIVITIES CERTIFICATION



The Contractor certifies, to the best of its knowledge and belief, that:

- 4.1. No state or federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any state or Federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress in connection with the awarding of any State or Federal agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal agreement, grant, loan, or cooperative agreement.
- 4.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 4.3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- 4.4. The Contractor also agrees that by signing this document, it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

5. DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of 2 C.F.R. Part 1200. As such, the Contractor is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689; "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Contractor must verify that each subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" at <http://www.sam.gov/portal/public/SAM/>. The Contractor shall obtain appropriate certifications from each such subcontractor and provide such certifications to the Authority.

The Contractor's signature affixed herein shall also constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:



1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Have not had one or more public transactions (federal, state, and local) terminated within the preceding three years for cause or default;
3. Has not been convicted within the preceding three years of any of the offenses listed in 2 C.F.R. Section 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period; and
4. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses listed in 2 C.F.R. Section 180.800.

Should the Contractor or any subcontractor become excluded or disqualified as defined in this section during the life of the Agreement, the Contractor shall immediately inform the Authority of this exclusion or disqualification.

The Contractor shall include a term or condition in the Agreement documents for each lower-tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor will review the “Excluded Parties Listing System,” will obtain certifications from lower-tier subcontractors, and will include a similar term or condition in each of its lower-tier covered transactions.

6. SITE VISITS

The Contractor agrees that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and for other reasons. If any site visit is made by FRA on the premises of the Contractor or any of its subcontractors under this Agreement, the Contractor shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Contractor or subcontractor.

7. SAFETY OVERSIGHT

To the extent applicable, the Contractor agrees to comply with any Federal regulations, laws, or policies and other guidance that FRA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

8. ENVIRONMENTAL PROTECTION

The Contractor and any subcontractor under this Agreement shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

- 8.1. Clean Air: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Sections 7401 *et seq.* The Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority



shall, in turn, report each violation as required to assure notification to the FRA and the appropriate Environmental Protection Agency Regional Office.

- 8.2. Clean Water: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.
- 8.3. Energy Conservation: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6421 *et seq.*)
- 8.4. Agreement Not To Use Violating Facilities: The Contractor agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Contractor shall promptly notify the Authority if the Contractor or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.
- 8.5. Environmental Protection: The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. Sections 4321 *et seq.*
- 8.6. Incorporation of Provisions: The Contractor shall include the above provisions (A) through (F) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with federal assistance provided by the FRA.

9. CIVIL RIGHTS

The following requirements apply to this Agreement:

- 9.1. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d; Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102; Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132; and 49 U.S.C. Section 306, the Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Agreement. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.
- 9.2. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Agreement:
 - i. Race, Color, Religion, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, the Contractor agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL)



- regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” including 41 C.F.R 60 *et seq.* (which implements Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.
- ii. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.
- iii. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. Further, in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794, the Contractor also agrees that it will comply with the requirements of U.S. Department of Transportation, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

The Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, and to comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. Section 290 dd), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FRA, modified only if necessary to identify the affected parties.

10. ARRA FUNDED PROJECT



Funding for this Agreement has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All Contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the Agreement if any Contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

11. ENFORCEABILITY

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

12. PROHIBITION ON USE OF ARRA FUNDS

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

13. ACCESS AND INSPECTION OF RECORDS

- A. In accordance with ARRA Sections 902, 1514, and 1515, the Contractor agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:
- i. Access and reproduce any books, documents, papers and records of the Contractor that directly pertain to, and involve transactions relating to, this Agreement for the purposes of making audits, examinations, excerpts and transcriptions; and
 - ii. Interview any officer or employee of the Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA.
- B. Pursuant to 49 C.F.R. Section 18.26(i)(11), 49 C.F.R. Section 19.26, or A-133 (whichever applicable), the Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. The Contractor shall notify the Authority not less than six months prior to disposal of any books, records, accounts and reports required under this Agreement.



- C. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. Section 552(a).

The Contractor shall include this provision in all lower-tier subcontracts.

14. WHISTLEBLOWER PROTECTION

The Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors, including the state, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- A. Gross mismanagement of a contract relating to ARRA funds;
- B. Gross waste of ARRA funds;
- C. A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- D. An abuse of authority related to implementation or use of ARRA funds; or
- E. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

The Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

15. FRAUD AND FALSE CLAIMS ACT

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. Part 13), as amended, 31 U.S.C. Section 3801 *et seq.*, and the U.S. DOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to this Project. Upon execution of this Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FRA assisted project, for which Work is being performed under this Agreement. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as cited above on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FRA, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 or any other applicable law on the Contractor, to the extent the federal government deems appropriate.



The Contractor agrees that it shall promptly notify the Authority and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

The Contractor agrees to include the above paragraphs in each subcontract financed in whole or in part with Federal assistance provided by the FRA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to the provisions.

16. WAGE RATE REQUIREMENTS

Payment of prevailing wages on the Project is required by 49 U.S.C. Section 24405(c)(2) and ARRA section 1606. For Project components that use or would use rights-of-way owned by a railroad, the Contractor shall comply with the Provisions of 49 U.S.C. Section 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act (45 U.S.C. Section 151, *et seq.*) are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Contractor shall comply with the provisions of 40 U.S.C Sections 3141, *et seq.* The Contractor shall also comply with the Copeland “Anti-Kickback” Act provisions of 18 U.S.C. Section 874 and 29 C.F.R. Part 3.

When prevailing wage rates apply, the Contractor must submit, with each invoice, a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Contract Manager.

- A. If there is any conflict between the state prevailing wages, the federal prevailing wages and the Authority’s Community Benefits Agreement, the highest rate shall be paid.
- B. Any sub-agreement entered into as a result of this Agreement shall contain all of the provisions of this clause.

17. REPORTING REQUIREMENTS

Contractor agrees, if requested by the Authority in writing, to provide the Authority with the following information:

- 17.1. The total amount of funds received by the Contractor during the time period defined in the Authority’s request;
- 17.2. The amount of funds actually expended or obligated during the time period requested;
- 17.3. A detailed list of all projects or activities for which funds were expended or obligated, including:
 - i. The name of the project or activity;
 - ii. A description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity.



- 17.4. For any contracts or subcontracts equal to or greater than \$25,000:
- i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number, if known;
 - v. The location of the entity receiving the contract;
 - vi. The primary location of the contract, including city, state, congressional district, and county;
 - vii. The DUNS number, or name and zip code for the entity headquarters, if known;
 - viii. A unique identifier of the entity receiving the Agreement and the parent entity of Contractor, should the entity be owned by another; and
 - ix. The names and total compensation of the five most highly compensated officers of the company if received:
 - 80 percent or more of its annual gross revenues in Federal awards;
 - \$25,000,000 or more in annual gross revenue from Federal awards and;
 - If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986;
- 17.5. Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this Agreement by amendment.

18. REPRINTS OF PUBLICATIONS

Whenever an employee of a Contractor-Related Entity writes an article regarding the Project or otherwise resulting from work under this Agreement that is published in a scientific, technical, or professional journal or publication, the Contractor shall ensure that the Authority is sent two (2) reprints of the publication, clearly referenced with the appropriate identifying information.

An acknowledgment of FRA support and a disclaimer must appear in any publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

“This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement FR-HSR-0009-10-01-05, dated December 5, 2012. Any opinions, findings, and conclusions or



recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT.”

19. PROPERTY, EQUIPMENT AND SUPPLIES

- 19.1. The Contractor agrees that Project property, equipment, and supplies shall be used for the Project activity for the duration of its useful life, as determined by the FRA. Should the Contractor unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Contractor agrees that the FRA may require the Contractor to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The Contractor further agrees to notify the Authority when any Project property or equipment is withdrawn from use in the Project activity or when such property or equipment is used in a manner substantially different from the representations made by the Contractor in its justification for purchase of the property or equipment.
- 19.2. The Contractor agrees to comply with the property standards of 49 C.F.R. Sections 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued.
- 19.3. The Contractor agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that the FRA may issue.
- 19.4. The Contractor agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to the FRA, upon request, such information as may be required to assure compliance with this section.
- 19.5. The Contractor agrees that the FRA may:
 - i. Require the Contractor to transfer title to any property, equipment, or supplies financed with FRA assistance, as permitted by 49 C.F.R. Sections 19.30 through 19.37 inclusive.
 - ii. Direct the disposition of property or equipment financed with FRA assistance as set forth by 49 C.F.R. Sections 19.30 through 19.37 inclusive.
- 19.6. Unless expressly authorized in writing by the Authority, the Contractor agrees to refrain from:
 - i. Executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect the Authority’s or the FRA’s interest in any Property or equipment; or
 - ii. Obligating itself in any manner to any third party with respect to Project property or equipment.

The Contractor agrees to refrain from taking any action or acting in a manner that would adversely affect the FRA’s interest or impair the Authority’s continuing control over the use of Project property or equipment.



20. MAINTENANCE

If any Project property, equipment, or supplies are not used for the Project for the duration of its useful life, as determined by the FRA, whether by planned withdrawal, misuse or casualty loss, the Contractor agrees to notify the Authority immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. Sections 19.30 through 19.37 inclusive.

21. FLY AMERICA

No international travel is authorized under this Agreement.

22. SMALL BUSINESS/DISADVANTAGED BUSINESS ENTERPRISES

The Authority encourages the Contractor to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals, also known as Disadvantaged Business Enterprises (DBE), in carrying out the contract. The Authority has established a Revised Small and Disadvantaged Business Enterprise (SB/DBE) Program for Professional Services Contracts, and an overall 30 percent goal for small business utilization, to include within the 30 percent goal, a 10 percent goal for DBE and three percent Disabled Veteran Business Enterprise (DVBE) in the Authority's contracting and procurement program. The SB/DBE Program is in compliance with the Best Practices of 49 C.F.R. Part 26, Executive Order S-02-06, Military and Veterans Code 999 and Title VI of the Civil Rights Act of 1964 and related statutes.

The Authority has established a 30 percent Small Business (SB) goal as described above. The Contractor is expected to make efforts to meet the goal and provide a SB Performance Plan on how the goal will be met throughout the duration of this Agreement. For more detailed information regarding what components should be in the SB Performance Plan see the Revised SB/DBE Program for Professional Services Contracts. The Authority's SB/DBE Program requirements, including the SB Performance Plan expectations, SB utilization reporting, Substitution/Termination processes, Prompt Payment Provisions, Recognized SB Roster of Certifying Agencies, and other performance related factors, are included in the Authority's Revised Small and Disadvantaged Business Enterprise Program for Professional Services Contracts – August 2012. The document is on the Authority's Small Business web page:

http://www.hsr.ca.gov/Programs/Small_Business/index.html

The Contractor shall also comply with 41 C.F.R. Part 60, Best Practices of 49 C.F.R. Part 26, Executive Order 11246 and Title VI of the Civil Rights Act of 1964 and related statutes.

23. FLOOD HAZARDS

The Contractor agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. Section 4012(a), with respect to any construction or acquisition Project.

24. PATENT RIGHTS



- 24.1. If any invention, improvement, or discovery of the Contractor or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify the Authority immediately and provide a detailed report. The rights and responsibilities of the FRA, third party contractors and the Authority with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- 24.2. If the Contractor secures a patent with respect to any invention, improvement, or discovery of the Contractor or any of its third party contractors conceived or first actually reduced to practice in the course of or under this Project, the Contractor agrees to grant the FRA a royalty-free, non-exclusive, and irrevocable license to use and authorize others to use the patented device or process for Federal Government purposes.
- 24.3. The Contractor agrees to include the requirements of the “Patent Rights” section of this Agreement in its third party contracts for planning, research, development, or demonstration under this Project.
- 24.4. “Proprietary data” is data that the Contractor has identified in a satisfactory manner as being under the Contractor’s control prior to commencement of performance of this Agreement, and that the Contractor has reasonably demonstrated as being of a proprietary nature by reason of copyright, patent, or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to “proprietary data” shall remain with the Contractor throughout the term of this Agreement and thereafter.
- 24.5. “Generated data” is data that the Contractor has collected, collated, recorded, deduced, read out, or postulated for utilization in the performance of this Agreement. “Generated data,” as defined herein, shall not include data developed solely from preexisting or proprietary data owned by the Contractor prior to the execution of this Agreement. Any electronic data processing program, model, or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Authority’s expense, together with complete documentation thereof, shall be treated in the same manner as “generated data.” “Generated data” shall be the property of the Authority, unless and only to the extent that it is specifically provided otherwise in this Agreement.

25. RIGHTS IN DATA AND COPYRIGHT

- 25.1. The term “subject data” used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes, but is not limited to, graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.



- 25.2. The following restrictions apply to all subject data first produced in the performance of this Agreement:
- i. Except for its own internal use, the Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the FRA.
 - ii. As authorized by 49 C.F.R. Section 18.34, or 49 C.F.R. Section 19.36, as applicable, the FRA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes:
 - a. Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or other third party contract, irrespective of whether or not a copyright has been obtained; and
 - b. Any rights of copyright to which a Grantee, subgrantee, or a third party contractor purchases ownership with federal assistance.
- 25.3. The FRA may make available to any FRA Grantee, subgrantee, third party contractor, or third party subcontractor, either the FRA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as the FRA may direct.
- 25.4. To the extent permitted by State law, the Contractor agrees to indemnify, save and hold harmless the FRA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the FRA for any such liability arising out of the wrongful acts of employees or agents of the FRA.
- 25.5. The Contractor agrees to include the requirements of this section in its lower-tier subcontracts for planning, research, development, or demonstration under the Project.

26. SIGNAGE

The Contractor is strongly encouraged to post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased or rehabilitated rail cars announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs or plaques will be consistent with guidance issued by the Office of Management and Budget and/or the Department of Transportation and approved by the FRA.

