

Attachment E: Sample Agreement, including Exhibit A (Scope of Work) through Exhibit F

EXHIBIT A: SCOPE OF WORK

1 BACKGROUND, PURPOSE, DEFINITIONS AND ACRONYMS

- 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. The California High-Speed Rail System (System) will connect the mega-regions of the State, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands. 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 sections 185034 and 185036. Additional authority for a state agency to enter into this 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 _____ (Contractor).
- 1.4 The Authority and the Contractor (collectively, the Parties) desire to enter into this Agreement to engage the Contractor to perform the general Consulting Services set forth in this Agreement and to establish the framework for which the Parties shall negotiate the terms and conditions of the Franchise Agreement for operation of the System.
- 1.5 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 A.
- 1.6 All inquiries during the term of this Agreement will be directed to the Project representatives (Contract Managers) identified below:

AUTHORITY	CONTRACTOR
Contract Manager:	Contract Manager:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
Email:	Email:

The Contract Managers may be changed without amendment subject to the provisions of Exhibit A, Section 6.4.

1.7 Definitions

Whenever used in this Agreement, the following terms have the definitions indicated:

Authority – California High-Speed Rail Authority which may include the Authority's consultants and other representatives.

Authority Board – California High-Speed Rail Authority Board of Directors.

Business Day – Monday through Friday, except for federal or State holidays, between the hours of 8:00 a.m. and 5:00 p.m., Pacific Time.

Contract – The written agreements between the Authority and the Contractor setting forth the Parties' obligations including, but not limited to, the performance of the Services. The Contract includes: (i) the Pre-Development Agreement, and any amendments; (ii) the Franchise Agreement, and any amendments; (iii) approved Task Orders; (iv) the Contractor's Proposal; (v) the Contractor's Statement of Qualifications; (vi) the RFP; and (vii) the RFQ, all of which constitute one instrument.

Disabled Veteran Business Enterprise (DVBE) – A for-profit business concern that meets the certification requirements set forth in California Military and Veterans Code Section 999(b)(7) including but not limited to at least 51 percent owned by a veteran of the United States Military who has at least a 10 percent service-connected disability. To be counted towards meeting the goals of the Small Business Program, a Disabled Veteran Business Enterprise must be certified by the California Department of General Services.

Disadvantaged Business Enterprise (DBE) – A for-profit business concern that meets the requirements of Title 49, Part 26.61 through 26.73 inclusive of the Code of Federal Regulations including but not limited to at least 51 percent owned by individuals who are both socially and economically disadvantaged. To be counted towards meeting the goals of the Small Business Program, a Disadvantaged Business Enterprise must be certified by the California Uniform Certification Program.

First Phase – The initial part of the Contract governed by this Pre-Development Agreement pursuant to which the Contractor, specifically including its identified Key Personnel, will work alongside the Authority and its advisors on the design, development and procurement of the commercial aspects of high-speed rail passenger train operations.

Franchise Agreement – The contract governing the Second Phase.

Guarantor – Any Person that is the obligor under any guarantee of an obligation of the Contractor in favor of the Authority.

Initial Operations Period – The period of time commencing on the first day of revenue passenger service and ending on the stated termination date of the Franchise Agreement.

Interim Financial Plan – Initial projections of System revenues and operating costs (as detailed in Attachment 2 to this Exhibit A) to be delivered by the Contractor during the First Phase.

Key Personnel – Those individuals identified in Section 2 of this Agreement.

Microbusiness (MB) – A for-profit Small Business concern that meets the certification requirements set forth in California Government Code Section 14837(d) and California Code of Regulations Sections 1896.4 (Definitions) and 2894.12 (Eligibility) including but not limited to its principal office is located in California, its owners reside in California, it not be dominant in its field and it have an average gross revenue of \$3.5 million or less over the previous three tax years. To be counted towards meeting the goals of the Small Business Program, a Microbusiness must be certified by the California Department of General Services.

Person – Any individual, corporation, company, joint venture, partnership, trust, unincorporated organization, or governmental agency including the Authority.

Pre-Development Agreement – This Agreement governing the First Phase management and pre-operations Consulting Services.

Project – The California High-Speed Rail Project.

Proposal – The proposal submitted by the Contractor in response to the RFP.

Request for Proposals (RFP) – The Request for Proposals for Early Train Operator issued by the Authority dated April 28, 2017, RFP No. 16-13, with addenda.

Request for Qualifications (RFQ) – The Request for Qualifications for Early Train Operator issued by the Authority dated December 16, 2016, RFQ. No. 16-13, with addenda.

Second Phase – The second part of the Contract to be governed by a Franchise Agreement negotiated and executed during the First Phase, pursuant to which the Contractor will prepare for and initially operate the System.

Second Phase Financial Plan – Projections of System revenues and operating costs (as detailed in Attachment 2 to this Exhibit A) to be delivered by the Contractor and approved by the Authority during negotiations of the Franchise Agreement.

Services or Consulting Services – All of the work required under this Agreement as described in Section 2, and other duties and services to be furnished and provided by the Contractor.

Small Business – A for-profit business concern that meets the certification requirements set forth in California Government Code Section 14837(d) and California Code of Regulations Section 1896.4 (Definitions) and 2894.12 (Eligibility) including but not limited to that its principal office is located in California, its owners reside in California, it not be dominant in its field and it have average gross revenue of \$14 million or less over the previous three tax years. To be counted towards meeting the goals of the Small Business Program, a Small Business must be certified by the California Department of General Services.

State – The State of California.

Statement of Qualifications (SOQ) – The SOQ submitted by the Contractor in response to the RFQ.

System – The intercity high-speed rail service throughout the State as defined under provisions of Sections 2704 *et seq.* of the Streets and Highways Code and Sections 185030 *et seq.* of the Public Utilities Code.

Subcontractor/Subconsultant – Any Person with whom the Contractor has entered into a Subcontract for any part of the Services, or with whom any Subcontractor/Subconsultant has further subcontracted any part of the Services, at all tiers.

V2V System – The high-speed rail service connecting the Silicon Valley to the Central Valley as described in the Authority's 2016 Business Plan.

1.8 Acronyms

For purposes of this Agreement, the following abbreviations have the meanings set forth below. Additional capitalized terms are defined in context.

CEQA	California Environmental Quality Act
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DVBE	Disabled Veteran Business Enterprise
FRA	Federal Railroad Administration
HSR	High-speed rail
ICCTA	Interstate Commerce Commission Termination Act of 1995
NTP	Notice to Proceed
O&M	Operations and Maintenance
RFP	Request for Proposals
RFQ	Request for Qualifications
SB	Small Business
SOQ	Statement of Qualifications
U.S. DOT	United States Department of Transportation
V2V	Silicon Valley to the Central Valley

2 SCOPE OF WORK

This Agreement governs the period between execution of this Agreement and execution of the Franchise Agreement and is intended to provide the framework for collaboration between the Parties. This Agreement does not establish and shall not be construed as, a legal partnership between the Parties.

During the term of this Agreement, the Parties will work collaboratively on the Services set forth in this Section 2 and shall negotiate in good faith to execute the Franchise Agreement, subject to the terms and conditions of this Agreement. The Franchise Agreement to be negotiated pursuant to this Agreement shall be based upon and in substantial accordance with all requirements of the RFP and the Proposal submitted by the Contractor. Unless otherwise agreed upon in writing by the Parties, the terms of the final Franchise Agreement must be at least as favorable to the Authority as those set forth in the RFP and the Proposal.

The specific scope of work is as follows:

First Phase

The First Phase will be governed by this Agreement pursuant to which the Contractor, specifically including its identified Key Personnel, will work alongside the Authority and its advisors on the design, development and procurement of the commercial aspects of high-speed rail passenger train operations. The primary focus of work will be in relation to future passenger services in the Valley-to-Valley (V2V) segment of the System and its subsequent extension to San Francisco; additional work may also relate to other extensions of the System.

The First Phase Services to be provided by the Contractor will fall broadly into two categories:

- General Consulting Services; and

Exhibit A: Scope of Work

- Production of Specified Deliverables.

Separately, the Authority and the Contractor will negotiate the terms and conditions of a Franchise Agreement for the provision of the Second Phase services.

Interface with the Authority

During the First Phase, the Contractor will be providing advisory services to the Authority and its contractors. In doing so, the Contractor will work alongside the Authority and its other advisers including the Rail Delivery Partner and advisors reporting directly to Authority senior staff. As the Contractor will initially have a relatively small team, its focus will be on providing key expertise and supporting senior decision makers, leveraging existing capabilities within the Authority's integrated organization.

The Authority's intent is to engage the Contractor in all decisions that have the potential to impact the future enterprise value of the business. Overall, the aim will be to fully integrate the Contractor within the Authority alongside the Rail Delivery Partner and other advisors (and with the Authority's reporting requirements).

During the First Phase, all infrastructure procurements will be issued and awarded directly by the Authority. Governance during the Second Phase will be determined by the Franchise Agreement subject to negotiation between the Parties and Authority Board approval.

First Phase Term

The term of the First Phase (which is governed by this Agreement) is six (6) years, subject to extension by mutual agreement of the Parties, the termination provisions in Exhibit D, Section 8 of this Agreement, or the earlier execution of the Franchise Agreement. The Authority expects to enter into a Franchise Agreement with the Contractor for the performance of the Second Phase services before the expiration of the Agreement. At an appropriate time during the First Phase, estimated to be 3-4 years after the effective date of the Agreement, the Authority and the Contractor will negotiate and execute a Franchise Agreement to govern the provision of the Second Phase services. Mobilization and the establishment of the Train Operating Company ("TOC") and subsequent commencement of revenue services will occur during the Second Phase.

Key Personnel

The Contractor must provide personnel with sufficient experience and training to competently manage and perform the Services during both the First Phase and the Second Phase (Key Personnel). Key Personnel for the First Phase shall include the following:

1. **[INSERT NAME]; Project Manager/Director** – This individual will be responsible for day-to-day activities and will be the liaison with the Authority's representative. This individual should have demonstrated experience with a leadership role on a high profile and visible project, the ability to interface with senior level decision makers, political officials and the public, and experience managing a team of highly-skilled individuals within the transportation industry.
2. **[INSERT NAME]; Lead Procurement Advisor** – This individual will be responsible for advising on all commercial elements of procuring the System, including advising on Authority procurements for track and system infrastructure, rolling stock and station construction.

3. **[INSERT NAME]; Lead Commercial Advisor** – This individual will be responsible for advising on and developing ridership, revenue and operating cost forecasts and overall commercial strategy of System development, including ancillary revenue opportunities at or near the stations. In the long-term, this individual may be responsible for managing finances during the Second Phase operations.
4. **[INSERT NAME]; Lead Operating Manager** – This individual will be responsible for advising during the First Phase on the interface and management of the operations and maintenance requirements for the System, as well as oversight and administration of those requirements through the Second Phase. Experience in managing and implementing a program for a high-speed rail and/or intercity passenger train system is preferred.

The Contractor shall also identify and submit to the Authority for review and approval other personnel needed to perform the Services for the First Phase.

During the First Phase, Key Personnel shall be physically located at the Authority's office in Sacramento, California or other locations in California as identified by the Authority, and as necessary to perform the Services required under this Agreement.

General Consulting Services

Payments to the Contractor for the following general consulting services will be provided as specified in Exhibit B to this Agreement (including Attachments).

The Contractor shall provide Consulting Services to the Authority on the procurement of Rolling Stock, Track and Systems and Stations and ancillary revenue opportunities, and assist with the associated contract oversight and delivery by relevant infrastructure providers through construction and Authority acceptance of the assets. Detailed scope of work will be provided through periodic issuance of task orders as provided in Section 4 of Exhibit A that will detail whether Contractor self-performs or manages each identified activity.

The Contractor will provide Consulting Services on the following:

1. Procurements relevant to revenue operations (such as Rolling Stock, Track and Systems, Energy and Stations) and ancillary revenue opportunities. Such consultation shall include, but not be limited to:
 - A. Payment and performance regimes; and
 - B. Commercial approach to issues directly affecting the enterprise value and net revenues of the System.
2. Optimization of whole life, capital and life cycle costs associated with Rolling Stock, Track and Systems and Stations.
 - A. The Contractor will support or perform planning efforts to optimize whole life, capital, maintenance and life cycle costs related to System operations. These efforts will include whole life cost modeling that accounts for day-to-day operating and maintenance costs, capital rehabilitation, replacement and renewal costs. The Contractor will be expected to participate in the development of an operating and cost management plan that recognizes the relationship between these costs and seeks to optimize them over time.
 - B. The Contractor will support or provide analysis of supplemental capital investments related to financial and operating performance, including but not limited to identifying supplemental

sources of capital funding, opportunities to increase ridership and revenue or reduced operating costs.

3. Station design and operations.
 - A. Station design and operations will be part of overall operations planning. The Contractor will support individual station layout and design plans for all stations along the System and any ancillary revenue forecasts and development opportunities. The Contractor will also support the commercial strategy for the stations, such as the recruitment of food vendors, other retail and rental car companies where applicable. The Contractor will work with Authority planning staff to ensure station exteriors are designed to accommodate operating requirements, such as parking capacity and curb and bus space; and incorporate connectivity to other transportation providers in or near the station. The Contractor will work with Authority staff to ensure station design achieves high-performance criteria, including by not limited to, net-positive energy and Leadership in Energy and Environmental Design (LEED) certification Version 4 at the platinum level.
 - B. The Contractor will also develop individual station operating plans that include ticket revenue collection, staffing plans, emergency evacuation procedures, and approach to safety and security, and all other operating details required for successful operations.
4. Rolling Stock fleet size and design and interior layout.
 - A. As part of the Rolling Stock procurement, the Contractor will take a leading role in determining the interior layout of the trains, including seats per train car, location of bathrooms, first-class amenities, color and design, human health and environmental quality of materials, dining car design/availability, and other details required during the procurement.
 - B. The Contractor will also support the process to determine Rolling Stock fleet size for the initial order and any subsequent orders.
5. Fare integration and inter-operability between transportation operators connecting with or to the System.
 - A. The System must provide seamless connectivity with other transportation operators across the state, such as local and regional bus service, Caltrain, Metrolink and Amtrak. The Contractor will take a leading role in ensuring that fare integration and scheduling compatibility are available to customers on day 1 of System operations. Planning efforts will include participating in joint planning efforts with other state, local, regional and transit entities for the development of statewide integration.
 - B. The Contractor will explore the opportunities for enhancing overall ridership and revenue through partnerships with other rail and transit providers and reflect implementation of such opportunities, which may include but not be limited to the following: through-ticketed and bundled services and travel, sale of capacity on high-speed rail trains or operation of additional trains focused on meeting regional travel needs in exchange for a suitable payment, and joint capital investments in pursuit of enhanced ridership and revenue for both high-speed rail and its partners.
6. Security and safety arrangements for the System.
 - A. Safety and security are paramount to the success of the System and must be among the highest priorities for the Contractor. The Contractor will take a central role in developing safety and security procedures for both staff and customers. The Contractor will assist the

Authority in drafting safety and security policies that the TOC will adhere to and in developing safety and security procedures for train operators, maintenance staff and station staff in the event of a natural disaster, terrorist act, criminal activity, accident or any other situation that could put the well-being of staff or customers at risk, including interface with federal, state and local homeland security and law enforcement agencies.

7. Operations control systems including dispatching responsibilities.
 - A. The Contractor will help determine the location of control centers and a dispatching framework that aligns with the Track and Systems procurement. There will be several areas across the state where track is expected to be shared between the System and other passenger rail operators, such as Metrolink and Caltrain.
 - B. The Contractor will help establish the approach to interfacing with dispatching provided by others in blended service segments of the system, including identifying joint dispatching approaches, dispatch monitoring or other suitable approaches to interacting with host railroads (such as Caltrain, SCRRRA and BNSF) that control their own dispatching.
8. Service planning and scheduling for both the System and connecting buses that the Authority expects will be run by the Contractor.
9. Opportunities to maximize System revenues, including ancillary revenue opportunities (i.e. real estate development, land value capture, lease of right of way, vertical or longitudinal telecommunications, parking, transit-oriented development, advertising, sponsorships, naming rights, renewable energy systems, district infrastructure, and on-train passenger revenues).
 - A. The Contractor will review, identify, evaluate and forecast one-time and sustainable ancillary revenue opportunities as well as provide input into and, where necessary, assist in the development of strategies to capture such opportunities.
 - B. The Contractor will provide a market-specific analysis of ancillary revenue opportunities at each V2V System station.
10. Ridership and passenger revenue forecasting.
 - A. The Contractor will manage and maintain all ridership and passenger revenue modeling and forecasting. The Contractor will develop its own model or take over management and development of the Authority's existing travel demand model, and enhance the model to capture the benefits achieved by improved operations and improved integration with other rail and transit services. Forecasting will be a critical data point in determining a service plan for system operations.
 - B. The Authority also uses such forecast data to support its biannual Business Plans, funding plans, environmental documentation, greenhouse gas emissions reduction forecasts, station area planning and data requests from internal and external stakeholders. In addition to data required to inform an operating and service plan, the Contractor will support other Authority travel demand forecasting needs, including, but not limited to:
 - i. System-wide ridership demand and revenue forecasts with sensitivity analyses broken down by geographic market, demographics, and trip duration; and
 - ii. Comparison of "No Build" and "Build" forecast scenarios, where applicable, that includes conventional rail ridership on non-HSR systems, changes in vehicle-miles traveled, and other competing mode diversion data.

- C. The Contractor will also document all modeling specifications, which must be viewed as valid, industry-standard and defensible during public and other external reviews.
11. Operations and maintenance (O&M) cost forecasting.
 - A. The Contractor will manage and maintain all O&M cost modeling and forecasting. The Contractor will develop its own model or take over management and development of the Authority's existing O&M cost model.
 - B. The Authority requires system-wide O&M cost forecasting for its biannual Business Plans and environmental documentation. The Contractor will provide system-wide O&M forecasts with sensitivity analyses for each Business Plan. Forecasting must also include pre-operations costs, costs by geographic section, the location of maintenance and dispatching facilities and the number of personnel required by cost category.
 - C. The Contractor will also document all modeling specifications, which must stand up to external review.
 12. Contractor required insurances and interface with insurances provided for under long term design-build-maintenance contracts and Authority insurances.
 13. Preferred revenue collection systems.
 - A. The Contractor will review, analyze and recommend a system for revenue collection that may include any combination of online ticketing, ticket vending machines, ticket counters, mobile phone apps, on-board ticketing or any other revenue collection mechanism, and assist the Authority in pursuing inter-operability of the collection system with other collection systems and technologies. The Contractor shall also participate in any CalSTA-funded efforts to ensure a full interface is possible with any revenue collection approach that develops under such efforts.
 14. Marketing and branding strategy for the system.
 - A. The Contractor will develop a marketing and branding plan for the system that considers marketing channels, advertising material and messaging, sponsorships, naming rights, timing for rolling out key information (such as fares, schedules and connectivity), and any other key strategic decisions relating to promoting the service and attracting customers.
 15. Risk management including risk registers in the Authority Risk Management System.
 16. Provision of other Services identified by the Authority for future operations and management of the System.

Key Deliverables

The Contractor will produce and deliver a range of deliverables during the First Phase which will underpin the planning for the Second Phase operations and establishment of a TOC.

Key deliverables for the First Phase include:

1. Mobilization plan for the First Phase to be delivered within thirty (30) days of issuance of the NTP.
2. Calculation of ridership and passenger revenue forecasts under various scenarios and analysis of the associated impact on the Financial Plan.
3. Ancillary revenue scenario analysis and implementation proposal and analysis of the associated

impact on the Financial Plan.

4. Calculation of operations and maintenance cost estimates under various scenarios and analysis of the associated impact on the Financial Plan.
5. Analysis and report on preferred revenue collection systems.
6. Integration plan for State wide rail service.
7. Mobilization plan for pre-operations testing and training.
8. Preparation of a safety plan for operation of the System that is consistent with applicable laws and regulations.
9. Plan to market and brand the System.
10. Interim Financial Plan for the System.
11. Formal concurrence on procurement process/documents reviewed under the General Consulting Services before being implemented.

Negotiation of the Franchise Agreement and Second Phase Financial Plan

A key milestone during the First Phase will be the formal commencement of negotiations on the Franchise Agreement to govern the Second Phase services. A draft term sheet for the Franchise Agreement is included as Attachment 1 to this Exhibit A. Such negotiations will commence only after key milestones for the System have been achieved including, but not limited to:

1. Issuance by the Authority of a full draft Franchise Agreement.
2. Execution of a Rolling Stock contract.
3. Execution of a Track and Systems contract.
4. Delivery of the Interim Financial Plan for the System.
5. Delivery by the Contractor of certain other identified key deliverables (such as the Mobilization plan for pre-operations testing and training).
6. Other conditions precedent as agreed to by the Parties.

During the negotiations, the Contractor will be required to develop a Second Phase Financial Plan approved by the Authority. The Second Phase Financial Plan will include financial projections of revenues and operating costs for the System (as detailed in Attachment 2 to this Exhibit A). The Authority expects such financial projections to be closely based on relevant First Phase deliverables such as the Interim Financial Plan and other forecast revenue and cost projections. The Authority intends that the Franchise Agreement negotiations with the Contractor will result in an agreement concerning the level of required risk transfer and the Contractor's financial commitment and associated financial return.

Within six months after the commencement of the Franchise Agreement negotiations, the Contractor will be required to submit its proposed Second Phase Financial Plan.

The Authority intends that the term of the Franchise Agreement will be as short as possible to allow the transition through revenue ramp-up to a mature operational business. Following this period, the Authority intends to re-procure, or enter into a long term concession for, subsequent high-speed rail operations. The Second Phase Financial Plan must include the entire Second Phase and will determine the expected duration of the ramp-up period.

The Contractor will not be paid by the Authority for any work or costs associated with the negotiation of the Franchise Agreement or the development and approval of the Second Phase Financial Plan.

3 NOTICE TO PROCEED

- 3.1 The Authority will issue a Notice to Proceed (NTP) to the Contractor to commence work after the execution of the Agreement by both Parties.

4 TASK ORDERS

- 4.1 The Authority Contract Manager will assign specific work to the Contractor through the issuance of task orders describing in detail the Services to be performed and, as applicable, the time for the work to be performed and method to ensure timely execution. Tasks shall state, as applicable, the method of compensation. The Contractor will only perform work that is assigned in an authorized task order.
- 4.2 For each task order required by the Authority, the Contractor will provide a basic staffing plan showing all deliverables, resources needed to accomplish the task and costs associated with such resources.
- 4.3 The Authority requires its professional consultants to provide Services of the highest quality within a constrained schedule. It is acknowledged by the Contractor that time is of the essence in the performance of each assigned task. The Services and any defined deliverables shall be completed and delivered to the Authority or its agent in a prompt and timely manner.
- 4.4 For each task order, the Contractor may be required to propose performance targets and measures suitable for measuring performance. The Authority may grant the Contractor a longer term for the Franchise Agreement or other similar performance-based incentive for successful performance of such targets and measures during the First Phase.

5 TERM

- 5.1 The term of this Agreement is six (6) years as identified in Section 2 of the Standard Agreement (STD. 213), subject to extension by mutual agreement of the Parties, the termination provisions in Exhibit D, Section 8 of this Agreement, or the earlier execution of the Franchise Agreement.

6 PERSONNEL

- 6.1 The Contractor agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through outside Subconsultants and to make available qualified professional personnel in sufficient strength to meet the requirements of the Authority.
- 6.2 The Key Personnel listed in Section 2 of this Exhibit B will be assigned by the Contractor to perform the Services required under this Agreement, as appropriate.
- 6.3 It is the intent of the Parties that the Key Personnel listed in Section 2 of this Exhibit B be engaged to perform their specialty for all such Services required by this Agreement and that they be retained for the life of this Agreement to the extent practicable and to the extent that such Services maximize the quality of work performed hereunder.

- 6.4 If the Contractor decides to replace any of the Key Personnel listed in Section 2 of this Exhibit B, the Contractor shall notify the Authority in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Contractor and approved in writing by the Authority, which approval shall not be unreasonably withheld. Qualifications for such replacement personnel shall be greater than or equal to those of the replaced Key Personnel.
- 6.5 If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form (to be obtained from the Authority's Contract Manager) or written request on the Contractor's letterhead, a copy of the resume for the additional or substituted personnel, and a copy of the certified payroll for that person.
- 6.6 If, during the term of this Agreement, the Authority determines that the performance of an approved Key Personnel or a Subconsultant is not acceptable, the Authority shall notify the Contractor and give the Contractor the time which the Authority considers reasonable to correct such performance. Thereafter, the Authority may require the Contractor to reassign or replace such Key Personnel or Subconsultant. If the Authority notifies the Contractor that a Key Personnel or Subconsultant should be replaced, the Contractor will use its best efforts to replace such Key Personnel or Subconsultant within fifteen (15) Business Days of the Authority's notice.
- 6.7 Actions taken by the Authority under this Section shall not relieve the Contractor of its responsibility for contractual or professional deficiencies, errors or omissions.
- 6.8 If, at any time during the term of this Agreement, any Key Personnel or replacement approved by the Authority is not engaged to perform his or her specialty for all Services required by this Agreement, then the Authority shall be entitled to collect liquidated damages from the Contractor in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) per year for each such Key Personnel or replacement, and to enforce any other right inherent to the Authority under this Agreement including, without limitation, the termination rights provided in Exhibit D, Section 8.

7 AMENDMENT

- 7.1 This Agreement may be modified by amendment with mutual consent of the parties as to time and amount and other provisions to the extent allowable by law. The amendment shall be made in accordance with Exhibit C: GTC-4/2017, Section 2, Amendment.
- 7.2 No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and all necessary approvals have been obtained. No oral understanding or agreement not incorporated in writing is binding on any of the parties.
- 7.3 The Contractor shall only commence work covered by an amendment after the amendment is executed and a NTP has been provided by the Authority's Contract Manager.
- 7.4 This provision is in addition to the amendment requirements contained in the Exhibit C: GTC-4/2017. If this provision conflicts with the Exhibit C: GTC-4/2017, the terms of the Exhibit C: GTC-4/2017 control over the terms of this clause.

**California High-Speed Rail
Authority**

Early Train Operator

Franchise Agreement

Term Sheet

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY
 EARLY TRAIN OPERATOR
 FRANCHISE AGREEMENT -- TERM SHEET**

This term sheet addresses certain key terms to be included and reflected in the Franchise Agreement and sets forth the baseline requirements of the Authority as to those terms, subject to amendment and modification during the Pre-Development Phase of the Project (including in respect of any related defined terms set forth in the RFP). The capitalized terms used in this Term Sheet have the meanings given or generally described in this Term Sheet, or if not so defined or described, in the Pre-Development Agreement or in Section 2.2 of the Request for Proposals (Number 16-13).

PARTIES:	The Parties to the Franchise Agreement will be: <ul style="list-style-type: none"> • The California High-Speed Rail Authority (“the “Authority”); and • The Early Train Operator (the “Operator”)
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NATURE OF AGREEMENT:	Except as specifically set forth in the Franchise Agreement with respect to any rights of the Operator (or an affiliate) to pursue ancillary real estate development opportunities at or adjacent to stations, the Franchise Agreement will be a services agreement only and will not grant the Operator (or any affiliate) any interest in the real property owned by the Authority and comprising the System (or adjacent thereto).
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DURATION OF THE AGREEMENT:	<p>The term of the Franchise Agreement will be the shortest term possible to provide for satisfaction of the Second Phase Financial Plan proposed by the Operator and approved by the Authority prior to the effective date of the Franchise Agreement (the “Second Phase Financial Plan”) and to allow for the transition from “ramp-up” operations to a mature operational business.</p> <p>The specific duration of the Franchise Agreement will be included as an element of the Second Phase Financial Plan.</p> <p>The Authority currently intends that upon the termination of the Franchise Agreement it will re-procure a new franchise agreement, or enter into a long term concession for all or portions of the operations, maintenance and management of the System.</p>
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CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THE FRANCHISE AGREEMENT:	<p>The Franchise Agreement will become effective upon the satisfaction of the various conditions precedent set forth therein, which conditions shall include the following:</p> <ul style="list-style-type: none"> • Approval by the Authority of the Second Phase Financial Plan;
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		<ul style="list-style-type: none"> • Approval by the Authority of the Second Phase Mobilization Plan; • Delivery and acceptance testing, to the mutual satisfaction of the Parties, of a specified number of a High Speed Trains as agreed upon by the Parties during the First Phase negotiations of the Franchise Agreement; • Substantial completion and performance testing, to the mutual satisfaction of the Parties, of the High Speed Train test track; • The Operator’s hiring of sufficient staff and employees that, in the determination of the Parties, will allow the Operator to satisfy operational ramp-up requirements; • Delivery by the Operator to the Authority of performance security of the type(s), in the amount(s) and meeting the credit-worthiness standards required by the Authority;
<p>PERIODS COMPRISING THE FRANCHISE AGREEMENT:</p>		<p>The Franchise Agreement will comprise two periods: the Pre-Operations Period and the Initial Operations Period.</p>
<p>SERVICES DURING THE PRE-OPERATIONS PERIOD:</p>		<p>The Pre-Operations Period will commence upon the effectiveness of the Franchise Agreement as described above.</p> <p>Within approximately [__] months of the effective date of the Franchise Agreement, the Operator will establish and mobilize the “Train Operating Company” (or “TOC”) that will operate and/or manage the various elements of the System summarized below and more fully described in the Franchise Agreement.</p> <p>During the Pre-Operations Period, the Operator will provide the following services: support the testing of Track and Systems; support the testing of High Speed Trains; procurement of fare box and revenue collection system(s); marketing and branding of the System; establish various funds and accounts required for the collection and payment of System revenues (as well as ancillary, non-transportation revenues); train personnel to operate and manage the System; lead responsibility for obtaining required certifications from the Federal Railroad Administration; and other services as agreed to by the Parties .</p> <p>Any testing of Track and Systems and of High Speed Trains</p>

		undertaken by the Operator will ensure compliance with the requirements of the applicable procurement documents and of applicable federal and state legal and regulatory requirements.
TRAIN OPERATING COMPANY:		<p>The Operator will ensure that the TOC is staffed with personnel of sufficient number and appropriate experience to provide these required services to or for the benefit of the Authority.</p> <p>The TOC will be incorporated and headquartered in California and shall be authorized to do business in California.</p> <p>The TOC will be a single purpose entity whose purpose will be limited to operating and managing the System and operating and managing the high-speed rail stations, all in accordance with the provisions of the Franchise Agreement.</p> <p>The corporate organizational documents of the TOC will contain “single purpose entity” covenants and provisions customary and standard for large-scale rail infrastructure projects.</p> <p>If the Operator is granted the right to develop ancillary real estate projects at or adjacent to the high-speed rail stations, the Operator will establish an affiliate(s) for this purpose that will satisfy lender/rating agency “bankruptcy remoteness” requirements.</p>
COMPENSATION DURING PRE-OPERATIONS PERIOD:		The Operator will be compensated for certain “pass-through” costs of mobilization and training of TOC staff and certain capital equipment purchased during the Pre-Operations Period, all in amount(s) and at time(s) to be agreed upon by the Authority and the Operator and included as an element of the Second Phase Financial Plan.
PRE-OPERATIONS PERIOD ADJUSTMENTS :		During the Pre-Operations Period, the Authority and the Operator will review the Second Phase Financial Plan, and the various deliverables specified in the Scope of Services included as Section 2 to Exhibit A of the Pre-Development Agreement and make any adjustments to such deliverables that are jointly determined to be required as a result of the implementation of the Pre-Operations Period services described above. Changes to the Second Phase Financial Plan shall be approved only as provided below under “CHANGES TO SECOND PHASE FINANCIAL PLAN.”
COMMENCEMENT OF INITIAL OPERATIONS PERIOD:		The Initial Operations Period shall commence upon satisfaction of the various conditions precedent to be agreed

		<p>upon by the Parties during the negotiation of the Franchise Agreement.</p> <p>The Franchise Agreement shall include terms concerning the extent to which of any services provided by the Operator during the Pre-Operations Period will continue to be provided during the Initial Operations Period and the compensation to be provided to the Operator for such services.</p>
<p>SERVICES DURING THE OPERATIONS PERIOD:</p>		<p>During the Initial Operations Period, the Operator will provide the following services:</p> <ul style="list-style-type: none"> • All required passenger train operations including, but not limited to, scheduling (within parameters agreed with the Authority), staffing, training, fare-setting (within parameters agreed with the Authority), ticketing and fare collection, customer service, safety programs, incident management, hiring and qualification of staff consistent with an organization and recruitment program established during First Phase, labor relations and compliance with all applicable federal, state and local regulatory requirements. • Management of specified elements of the System (which may include High Speed Trains and Track and Systems) to be agreed with the Authority, which may require assignment to the Operator of the Authority's rights and obligations under previously executed contracts. • Management and maintenance of high-speed rail stations, as and to the extent agreed to agreed to by the Parties. • Dispatching of High Speed Trains if agreed to with the Authority and the Track and Systems Contractor. • Collection of System revenues including, but not limited to, fare box revenues and agreed-upon ancillary revenues (i.e., food, retail, parking, wi-fi, naming rights, advertising revenues, and to the extent agreed by the Parties, revenues from real estate development at or adjacent to stations). • Responsibility for payment of operating and maintenance costs.

		<ul style="list-style-type: none">• System administration including, but not limited to, accounting, recordkeeping, office management, payroll and human resources.• System safety planning and management and system security coordination.• Management of the Authority's compliance with environmental and permitting obligations, including any required mitigation measures.• Operation and maintenance of all environmental systems and permits including, but not limited to, proper disposal of any waste or hazardous materials relating to operations.• Management of System marketing and branding, consistent with policies established by the Authority• Customer service and public information including, but not limited to, promotion of schedules, routes, delays and service disruptions, staffing of telephone and on-line information hotlines and response to customer complaints.• Consultation on the design, development and operation of System expansion and future routes and high-speed rail stations.• Consultation on ancillary real estate development opportunities at or adjacent to stations.• Implementation and management of a comprehensive program to meet or exceed the Authority's Small Business/Disadvantaged Business Program Requirements.• Ridership and passenger revenue forecasts.• Operations and maintenance cost estimates.• Service planning for the System, including operation of connecting bus services and integration with other transportation operators regarding routes, schedule, ticketing, fare collection and related considerations.• Integration with ride-sharing, car rentals, autonomous vehicles and other transportation
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		<p>service providers, including future “transportation network companies” (or similar/equivalent transportation providers).</p> <ul style="list-style-type: none"> • Management and implementation of policy for safe storage of bicycles both on trains and at stations. • Provision of other specified and related services associated with the operations and management of the System, as agreed to by the Parties.
NAMING RIGHTS:		<p>Naming rights with respect to any and all aspects of the System (i.e., train line or segments thereof, stations, High Speed Trains) may be granted by the Operator only with the approval of the Authority in its sole discretion.</p>
COLLECTION AND APPLICATION OF SYSTEM REVENUES:		<p>The Operator will collect and deposit all System revenues in an account(s) with a fiduciary financial institution(s) approved by the Authority.</p> <p>The Operator will apply, or cause to be applied, all System revenues in accordance with the requirements and payment priorities of the Second Phase Financial Plan, including without limitation and as applicable, the System Administration Fee to be paid to the Authority in the amount specified in the Second Phase Financial Plan (which amount will be sufficient to fund Authority administrative expenses (staff salaries, etc.) during the duration of the Franchise Agreement).</p> <p>After the Operator has made all required payments and funding of all required reserves (i.e., operating, maintenance, capital repairs), and provided that all "restricted payment conditions" have been satisfied: (i) the Operator will be permitted to withdraw remaining System revenues, subject to applicable restrictions set forth in the Second Phase Financial Plan; and (ii) the Operator will make any revenue share payments to the Authority specified in the Second Phase Financial Plan.</p>
CHANGES TO SECOND PHASE FINANCIAL PLAN:		<p>During the Pre-Operations Period, the Parties must both agree to any changes to the Second Phase Financial Plan.</p> <p>During the Initial Operations Period, changes to the Second Phase Financial Plan may be proposed by the Operator but will become effective only if approved by the Authority in its sole discretion.</p>
PASSENGER TRAIN OPERATIONS:		<p>Passenger train operations will be provided by the Operator in accordance with an Operation Plan proposed by the</p>

		<p>Operator and approved by the Authority. The Operations Plan will include provisions relating to the following:</p> <ul style="list-style-type: none"> • Minimum specification of the passenger services and capacity to be provided by the Operator; • Provisions regarding the development of the service timetable, as well as Authority and other stakeholder consultation rights on any material alterations to the timetable; • Nature and extent of the Operator’s required prior notice to and consultation with the Authority and other stakeholders before any changes in fares; • Operator requirements, if any, for co-ordination and/or integration with state-wide passenger train fare policy; • Train plan/diagram that will govern operation and dispatching of the trains and train formations; • “Capacity planning” to ensure that the Operator can meet the target passenger demand contained in its service level commitments as well as a Capacity Mitigation Plan in the event that the Operator is unable to satisfy these commitments; • Operation of connecting bus services and integration with other transportation operators regarding routes, schedule, ticketing, fare collection and related considerations; and • Any other elements agreed to by the Parties;
<p>SMALL BUSINESS/DISADVANTAGED BUSINESS ENTERPRISES:</p>		<p>The Franchise Agreement will require the Operator to meet or exceed the agreed-upon goals set forth for these programs in the Franchise Agreement.</p>
<p>PASSENGER SERVICE REQUIREMENTS:</p>		<p>The Franchise Agreement will specify the passenger service levels required to be satisfied by the Operator, including the Operator’s common carrier obligations.</p> <p>The Operator will be required to conduct annual surveys of passenger satisfaction. The obligations to be measured in these surveys will be determined jointly by the Authority and the Operator but will specifically include achievement of these passenger service level requirements..</p> <p>The Franchise Agreement will also specify the level of</p>

		<p>passenger satisfaction required to be demonstrated by such surveys and the obligation imposed on the Operator to prepare a remedial plan in the event that such required levels are not achieved, such remedial plan to include specific actions, remedies and milestones to be satisfied by the Operator, all as more fully described below under “REMEDIAL PLANS AND REMEDIAL AGREEMENTS.”</p>
<p>PASSENGER INFORMATION:</p>		<p>The Franchise Agreement will include provisions related to the following rights of the Authority and obligations of the Operator:</p> <ul style="list-style-type: none"> • Operator’s obligation to provide detailed and specified information regarding passengers and ridership as reasonably requested by the Authority; • Authority’s right to require the Operator to manual count some or all passenger services and supply the details of such counts; • Authority’s right to audit passenger counts; • Technology allowed for obtaining passenger and ridership information; and • Privacy protections for personal data processed by the Operator, as well as procedures in the event of a security breach, all consistent with requirements under state and federal privacy laws.
<p>PERFORMANCE STANDARDS, INCENTIVES, AND PAYMENT DEDUCTIONS:</p>		<p>During the negotiations of the Franchise Agreement, the Authority and the Operator will jointly develop applicable performance specifications.</p> <p>In addition, the Franchise Agreement will specify relevant benchmarks/metrics of Operator performance and system availability. It is expected that these benchmarks will include, but may not be limited to, passenger service cancellations, passenger service delays, incidents involving passenger safety, failures of ticketing equipment, train operations having less than scheduled passenger carrying capacity and “mission critical system failures.”</p> <p>The Franchise Agreement will specify the required service levels that the Operator must satisfy for each performance and system availability benchmark and the requirements for the Operator to report to the Authority on its performance of these required performance and service levels.</p>

		<p>Consistent with the Second Phase Financial Plan:</p> <p>(1) The Franchise Agreement will specify the amounts payable by the Operator in the event of failure to achieve any performance or system availability benchmark; the circumstances under which repeated failure to achieve such benchmark will result in one or more of the following: increased amount(s) of service deductions payable by the Operator, the preparation by the Operator of a Remedial Performance Plan; an Event of Default by the Operator.</p> <p>(2) The Franchise Agreement will specify any annual or aggregate limits on the amounts payable by the Operator for failure to achieve required performance or service levels.</p> <p>(3) The Franchise Agreement will specify the ability of the Operator to “earn back” all or any portions of previously imposed payment deductions based upon consistent superior performance, including the timeframe in which such superior performance must be demonstrated.</p> <p>(4) Payment deductions may be subject to escalation on an annual basis.</p>
<p>REMEDIAL PLANS AND REMEDIAL AGREEMENTS:</p>		<p>If the Authority reasonably believes that the Operator is violating or likely to violate any material term or provision of the Franchise Agreement, it will notify the Operator and the Operator will be required to develop and submit a remedial plan to ensure compliance with such term or provision.</p> <p>The Operator’s remedial plan shall be submitted within the time period requested by the Authority and shall include an explanation of the reason(s) for the violation or likely violation of the relevant term, the measures proposed to ensure its compliance with such term and the time frame for implementation.</p> <p>If the Authority determines that it is appropriate, it may require the Operator to enter into a remedial agreement with the Authority to implement such measures.</p> <p>Any remedial plan and remedial agreement shall be prepared by the Operator at its own cost.</p>
<p>AGREEMENT MANAGEMENT PROVISIONS:</p>		<p>The Parties will hold franchise performance meetings on a schedule to be mutually agreed upon and at such other times as requested by the Authority with appropriate advance notice to the Operator.</p>

	<p>At franchise performance meetings, the Operator will prepare and present such reports and information as are reasonably requested by the Authority.</p> <p>The Operator shall prepare accurate and complete records of all information required to be provided under the Franchise Agreement. This information shall be maintained for such periods after its preparation as are specified in the Franchise Agreement.</p> <p>The Operator will upon request allow Authority representatives and advisers to copy and inspect records and information relating to performance and implementation of the Franchise Agreement. The Operator will also provide Authority representatives and advisers with access to its premises where such information is stored.</p> <p>If any inspection of such information reveals that information provided by the Operator to the Authority was, in the opinion of the Authority, materially inaccurate, the cost of any such inspection will be paid by the Operator.</p>
<p>OPERATOR BUSINESS PLANS: ANNUAL FORECASTS</p>	<p>Prior to the commencement of the Initial Operations Period, the Operator shall prepare and deliver its initial business plan to the Authority. This initial business plan shall be consistent in all material respects with the Second Phase Financial Plan (unless expressly approved by the Authority in its sole discretion) and shall include a description of how the Operator will meet its obligations under the Franchise Agreement (supported where appropriate by operational plans), summary of plans for marketing and developing the System and forecasts of profit and loss, cash flow and balance sheet, and such other information as reasonably requested by the Authority.</p> <p>Subsequently, the Operator shall prepare and deliver to the Authority annual business plans in advance of each applicable franchise year. Each annual business plan shall be consistent in all material respects with the Second Phase Financial Plan (unless expressly approved by the Authority in its sole discretion) and shall also include a description of how the Operator will meet its obligations under the Franchise Agreement (supported where appropriate by Operation Plans), summary of plans for marketing and developing the System and forecasts of profit and loss, cash flow and balance sheet, and such other information as reasonably requested by the Authority.</p> <p>Commencing with the second year of the Initial Operations Period, the annual business plan shall also include a projection or forecast of System financial performance over</p>

		<p>the full term of the Initial Operations Period, compared to relevant metrics of such financial performance set forth in the Second Phase Financial Plan; provided, however that the preparation and delivery such forecast or projection shall not relieve the Operator of any financial or commercial obligations set forth in or required by the Second Phase Financial Plan.</p> <p>The Authority may at any time require the Operator to prepare a business action plan in respect of any aspect of a business plan. A business action plan may include measures relating to timetable and train service development, station facility improvement; performance management improvement; customer service improvement; improvements in passenger safety and improvements in the quality or efficiency of service delivery.</p>
<p>FINANCIAL INFORMATION:</p>		<p>The Operator shall deliver to the Authority periodic financial reporting information, which shall include for the relevant reporting period statements of profit and loss, cash flow and balance sheet; a comparison of actual performance against forecasted performance for the applicable reporting period; and such other information as reasonably requested by the Authority.</p> <p>The Operator shall also deliver annual financial statements, prepared and audited in accordance with generally accepted accounting principles, containing such information as will be prescribed by the Authority.</p>
<p>SAFETY INFORMATION:</p>		<p>The Operator shall comply with safety, hazard management, incident reporting and oversight and auditing requirements established by the Authority.</p> <p>The Operator shall cooperate with any request from a competent authority for provision of information and/or preparation of reports detailing its compliance with applicable safety obligations requirements and obligations.</p> <p>The Operator shall promptly notify the Authority of any formal notification relating to safety issues received from the Federal Railroad Administration, the National Transportation Safety Board or other federal or state agency with jurisdiction over Authority safety issues.</p>
<p>LICENSES AND PERMITS:</p>		<p>The Operator shall obtain at its sole cost and expense all licenses and permits required by law for performing any of the services required under the Franchise Agreement.</p> <p>In the event any license(s) and/or permit(s) expire at any</p>

		<p>time during the term of the Franchise Agreement, the Operator will provide the Authority a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date.</p> <p>In the event the Operator 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 the Franchise Agreement upon occurrence of such event.</p> <p>All subcontractors of the Operator shall be licensed for services they are conducting if licensing would be required of the Operator for those services.</p>
<p>OPERATOR’S INSURANCE REQUIREMENTS:</p>		<p>During the negotiations of the Franchise Agreement, the Authority and the Operator shall jointly agree on the insurance coverages, amounts and limitations/exclusions to be required to be provided by the Operator during the term of the Franchise Agreement.</p>
<p>HANDBACK PROCEDURES:</p>		<p>As a part of the negotiation of the Franchise Agreement, the Parties will develop a Handback Plan designed to ensure that at the end of the term of the Franchise Agreement, all elements of the System for which the Operator has operating and management responsibility will be in the “Handback Operating Condition” (as defined and described in the Handback Plan) for subsequent use and operation by the successor operator. These elements shall include, but not be limited to, ticketing and fare collection equipment.</p> <p>The Handback Plan will contain applicable milestones by which the Operator must undertake certain actions to ensure this standard is satisfied and will also specify any performance security to be provided by the Operator to achieve compliance with the Handback Plan.</p>
<p>TRANSITION PLAN:</p>		<p>As a part of the negotiation of the Franchise Agreement, the Parties will develop a Transition Plan designed to ensure that upon termination of the Franchise Agreement, whether at the end of its stated term or as a result of early termination, there will be seamless continuity of services previously provided by the Operator and orderly turnover of control of those services to a successor operator. The Transition Plan will include provisions for the co-operation requirements to be undertaken by the Operator and the Authority and the financial obligations, including performance security, to be satisfied by the Operator and the successor operator.</p>

KEY PERSONNEL:		<p>The Franchise Agreement will set forth a schedule of the Operator’s Key Personnel and their respective duties. Key Personnel shall include but not be limited to the following: (i) chief executive officer; (ii) train service delivery manager; (iii) chief operating officer; (iv) chief financial officer; and (v) system safety and security manager.</p> <p>The Franchise Agreement will also specify the procedures for notice by the Operator and approval by the Authority for replacement of any Key Personnel.</p>
ASSIGNMENT BY THE OPERATOR:		<p>The Franchise Agreement will prohibit any assignment by the Operator of its rights and obligations under the Franchise Agreement during the term of the Franchise Agreement.</p>
OPERATOR CHANGE OF CONTROL:		<p>The Franchise Agreement will define an Operator Change of Control and will further provide for the ability of the Authority to withhold its approval of an Operator Change of Control if it is determined by the Authority (or the Authority has been advised that the Federal Railroad Administration or other governmental authority with jurisdiction has determined) that the proposed transaction (i) is prohibited by or would result in a violation of applicable law; or (ii) is likely to result in a material adverse change in the operations of the System. The Franchise Agreement will also specify the circumstances under which an Operator Change of Control that is not approved by the Authority will constitute an Event of Default.</p>
ASSIGNMENT BY THE AUTHORITY:		<p><u>The</u> Authority shall have the right to transfer or assign any or all of its interest in the Franchise Agreement to another governmental authority; <i>provided</i> that any such transfer or assignment shall not materially limit or reduce any of the Operator’s rights, benefits, remedies or privileges under the Franchise Agreement and is compliance with applicable law.</p>
EVENTS OF DEFAULT		<p>Events of Default (the definition of which will be subject to agreement by the Parties during the negotiation of the Franchise Agreement) in respect of each Party and related remedies, relationships with required compensation and other necessary and appropriate provisions will be agreed to by the Parties during the negotiation of the Franchise Agreement.</p> <p>The Operator’s failure to satisfy any pre-determined operational standards or performance benchmark metrics may result in an Event of Default if they reach specified levels over a specified period(s) of time during the term of</p>

		<p>the Franchise Agreement.</p> <p>The ability of the Parties to cure an Event of Default, and any limitations on such ability, will be subject to agreement by the Parties during the negotiation of the Franchise Agreement.</p>
TERMINATION; TERMINATION PAYMENTS		<p>Details regarding termination rights and termination payments, if applicable, to be paid by under various scenarios will be agreed to by the Parties during the negotiation of the Franchise Agreement.</p>
EXTENSION OF TERM OF THE FRANCHISE AGREEMENT:		<p>An “Extended Force Majeure Event” or other “Operator Relief Event” (the definitions of which will be agreed to by the Parties during the negotiation of the Franchise Agreement) affecting the operations of the System may entitle the Operator to an extension of the term of Franchise Agreement to compensate for the net negative impact on its revenues and/or expenses as a result of such Event. The methodology for calculating such extension will be determined during the negotiation of the Franchise Agreement.</p>
FORCE MAJEURE:		<p>The Franchise Agreement will provide for a definition of Force Majeure Events which is expected to be substantially similar to the following:</p> <p>(a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the work; (b) embargoes instituted by a governmental person; (c) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the System; (d) nuclear explosion, radioactive or chemical contamination, unless the source of the explosion, contamination, radiation or contaminated material is brought to or near the System by the Operator; (e) fire, explosion, earthquake, floods and landslides caused by natural events, or tidal wave; (f) terrorism; or (g) any federal or state-declared emergency relating to the System;</p> <p>Notwithstanding the foregoing, an event will not constitute a Force Majeure Event under the Franchise Agreement if such event is otherwise specifically addressed in the Franchise Agreement or arises by reason of any of the following: (1) the negligence or willful misconduct of such Party or persons for whom such Party is responsible (the “Related Parties”); (2) any act or omission by such Party or the Related Parties in breach of the provisions of the Franchise Agreement; (3) any strike, labor dispute or labor</p>

		<p>protest directed solely at such Party (or any Related Party) or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of such Party (or any Related Party); (4) market conditions or economic conditions affecting such Party's ability to meet its financial obligations or the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities, other than as a result of the events described in the prior paragraph; or (5) weather conditions, other than the events described in the prior paragraph.</p>
<p>OPERATOR EMERGENCY RESPONSE OBLIGATIONS; SUSPENSIONS OF SERVICE:</p>		<p>The Franchise Agreement will specify the circumstances that constitute an actual or reported emergency, danger, threat or similar event that have caused (or present imminent potential to cause) injury to individuals, damage to property, or threat to public safety or the environment.</p> <p>The Franchise Agreement will also specify the ability of the Authority to take such actions, and to direct the Operator to take actions, as the Authority (or other government agency with jurisdiction) determines necessary to respond to or to rectify such emergency, danger, threat or similar event.</p> <p>The Authority may order the Operator to suspend all or selected elements of the services specified under the Franchise Agreement for any period that the Authority deems appropriate. The Parties will agree during the negotiation of the Franchise Agreement the circumstances, if any, under which a suspension will entitle the Operator to an extension of the term of the Franchise Agreement and the circumstances under which the Operator will be entitled to treat a suspension as a termination for convenience.</p>
<p>APPROVED SECURED PARTIES; RIGHTS OF SECURED PARTIES</p>		<p>The Operator shall be permitted to pledge or collaterally assign its interest in the Franchise Agreement as security for repayment of any financing transaction implemented to fund the Operator's obligations under the Franchise Agreement but only to a security party approved by the Authority, in its sole discretion, in advance and in writing.</p> <p>The Franchise Agreement will set forth the rights and obligations of any approved secured party in connection with curing an Operator Event of Default, all of which must be consistent with the continued operation of the System at the service levels contemplated by the Franchise Agreement.</p>
<p>INDEMNIFICATION:</p>		<p>The Franchise Agreement will provide for indemnification protections substantially similar to the following:</p>

	<p>The Operator will defend, indemnify and hold harmless the State, the Authority, the Federal Railroad Administration, and their respective officers, directors, employees, agents, servants, representatives, consultants, successors, assigns and subsidiaries from and against any third party claims, losses, liabilities (including without limitation environmental liabilities), penalties, fines, demands, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs and expenses incidental thereto (including costs of defense and attorney's fees) arising out of or relating to or resulting from:</p> <ul style="list-style-type: none">• The breach or alleged breach of or failure or alleged failure by the Operator to perform the Franchise Agreement or any subcontract thereunder by any Operator-Related Entity;• The failure or alleged failure by the Operator to comply with any applicable law;• The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault, of the Operator;• The (a) injury, or death of any person, including any of Operator's employees, agents or subcontractors, or (b) damage to or loss (including loss of use) of any private party, including property of the Parties, arising out of or in any degree directly or indirectly caused by or resulting from supplies, material, deliverables, products or equipment supplied by, or from activities of, or work performed by the Operator;• Any service or design, or product called for in any service or design, provided by the Operator that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret or other proprietary right of a third party;• Any and all stop notices and/or liens filed in connection with the work, including all expenses and attorney's fees incurred in discharging any stop notice or lien;• Any release or threatened release of hazardous materials by the Operator or where the removal or handling of hazardous materials involved negligence, willful misconduct, or breach of the Franchise Agreement by
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		<p>the Operator; or</p> <ul style="list-style-type: none"> The claim or assertion by any other contractor of the Authority of inconvenience, disruption, delay or loss caused by the Operator interfering with or hindering the progress or completion of work being performed by other contractor or failure of the Operator to cooperate reasonably with other contractors.
<p>INTELLECTUAL PROPERTY:</p>		<p>The Franchise Agreement will provide for intellectual property protections substantially similar to the following:</p> <p>Intellectual Property Definitions</p> <p>Intellectual Property means all rights, title and interest in (i) patents, (ii) inventions (whether patentable or not); (iii) trademarks, service marks trade names, trade dress, logos and fictitious business names; (iv) design rights; (v) utility models; (vi) copyright (including software); (vii) database rights; (viii) know-how (including trade secrets and confidential business information which is contained on any media); and in each case for such rights, whether registered or unregistered, and including (A) any pending applications or rights to apply for registrations of any of these rights, and (B) any similar or analogous rights to any of these rights, whether arising or granted under the laws of the United States of America or of any other country, territory or jurisdiction.</p> <p>Background Inventions means all Intellectual Property owned by the Operator (or any Operator-Related Entity) prior to the commencement of negotiations for the Franchise Agreement and not for the purposes of the Franchise Agreement.</p> <p>Third Party IP means all Intellectual Property owned by any Person other than the Operator (or any Operator-Related Entity) or the Authority.</p> <p>Subject Inventions means all Intellectual Property and/or work created, authored and/or invented by the Operator (or any Operator-Related Entity) after commencement of negotiations for the Franchise Agreement and for the purposes of the Franchise Agreement.</p> <p>Authority Rights to use IP</p> <p>At no additional cost to Authority, Operator grants, pays for and delivers to Authority an irrevocable, perpetual, fully paid-up right and non-exclusive license to use, exploit, manufacture, have manufactured, distribute, import, reproduce, perform, prepare derivative works, adapt and</p>

	<p>display the Background Inventions, Subject Inventions or Third Party IP solely in connection with the “Allowable Uses,” which are limited to:</p> <ul style="list-style-type: none"> (a) the operation and management of the System, as well as high-speed rail stations and ancillary revenue operations; (b) the use, maintenance, repair or manufacture of any deliverables under the Franchise Agreement; and (c) equipment acquisitions by Authority related to clauses (a) and (b) above. <p>Delivery of IP into Escrow Operator will identify all Background Inventions, Subject Inventions and Third Party IP in connection with the Allowable Uses and deliver the same into escrow, under an Escrow Agreement. Operator is responsible to pay for and maintain the escrow for the duration of the Franchise Agreement. Execution of the Escrow Agreement and delivery of the Background Inventions, Subject Inventions and Third Party IP into escrow is a condition to execution of the Franchise Agreement.</p> <p>Subcontractor IP Obligations Operator will cause all subcontractors to:</p> <ul style="list-style-type: none"> 1. Identify and disclose Background Inventions, Third Party IP and Subject Inventions owned by the subcontractor in connection with the Allowable Uses; 2. Secure and deliver written licenses to grant an irrevocable perpetual, fully paid-up right and all license to use, exploit, manufacture, distribute, copy, adapt and display the Background Inventions, Third Party IP and Subject Inventions owned by the subcontractor in connection with the Allowable Uses; and 3. Submit and deliver the escrow materials. <p>Release of IP from Escrow The Background Inventions, Subject Inventions and Third Party IP (including escrowed IP from subcontractors) are subject to release from escrow due to Operator’s default under the Franchise Agreement.</p>
<p>REPRESENTATIONS AND WARRANTIES:</p>	<p>The Franchise Agreement will require each Party to provide customary and appropriate representations and warranties, in each case as of the effective date of the Franchise Agreement and subject in each case to customary and</p>

	<p>appropriate qualification. Subject to agreement between the Parties during the negotiation of the Franchise Agreement, representations and warranties to be made by the Operator will address, without limitation, the following:</p> <ul style="list-style-type: none">• due authorization, valid existence and good standing;• power and authority to execute and deliver the Franchise Agreement and perform its obligations thereunder;• due authorization to enter into the Franchise Agreement;• the Franchise Agreement constitutes a valid and binding obligation of the Operator, enforceable against the Operator in accordance with its terms, subject to customary bankruptcy and other enforceability exceptions;• the Franchise Agreement and the performance by the Operator of its obligations thereunder will not conflict with any applicable law, corporate formation documents or material agreements;• no pending or threatened material action, suit, proceeding, investigation or litigation;• proper licenses and registrations to perform the services under the Franchise Agreement;• services to be performed by personnel who are skilled, experienced and competent in respective trades and professions, with licensed and appropriate supervision;• no conflicts of interest;• good standing as to bidding, proposing and contracting with government agencies;• right to use Intellectual Property;• no material adverse change in financial condition since execution of the Pre-Development Agreement; and• full disclosure of ownership of the Operator. <p>Subject to agreement between the Parties during the negotiation of the Franchise Agreement, representations and warranties to be provided by the Authority will address, without limitation, the following:</p> <ul style="list-style-type: none">• power, right and authority to execute and deliver the Franchise Agreement (and any other related documentation) and to perform its obligations thereunder;• due authorization to enter into the Franchise
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		<p>Agreement and due execution and delivery of such documentation;</p> <ul style="list-style-type: none"> • no pending or threatened material action, suit, proceeding, investigation or litigation; • Franchise Agreement constitutes the legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, subject to customary bankruptcy and enforceability exceptions; and • Franchise Agreement and the performance by the Authority of its obligations thereunder will not conflict with any applicable Law, or material agreement.
<p>PARTIES' GENERAL STANDARD OF PERFORMANCE:</p>		<p>The Operator shall perform its obligations under the Franchise Agreement in accordance with the degree of skill, diligence, prudence and foresight exercised by a skilled and experienced high-speed train operator.</p> <p>The Operator shall co-operate with the Authority and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the Franchise Agreement.</p> <p>The Authority shall reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the Franchise Agreement.</p>
<p>COMPLIANCE WITH APPLICABLE LAWS:</p>		<p>The Operator shall at all times operate the System, and perform its services and obligations described in the Franchise Agreement, in accordance with all applicable federal, state and local laws and regulations.</p>
<p>DISPUTE RESOLUTION PROCESS:</p>		<p>The Parties will use informal dispute resolution procedures, including partnering, to attempt to resolve disputes concerning the Franchise Agreement without resorting to formal legal processes. These informal dispute resolution procedures will be specified in the Franchise Agreement.</p> <p>Either party may refer the dispute to binding arbitration if the dispute is not resolved through this informal dispute resolution procedure.</p> <p>For a dispute that is appealed to binding arbitration, the parties will seek to appoint a panel of three arbitrators. If the parties cannot agree on a panel, then each party will appoint one arbitrator, who will then select a third arbitrator who will serve as the chairperson of the arbitral tribunal.</p>

		<p>The decision of the arbitrators will be binding on the parties and any judgment on the award may be entered in the Superior Court for Sacramento County.</p> <p>In the event that substantially related or similar disputes have arisen between the Authority and another Authority contractor(s), the Authority may consolidate pending arbitrations or join such other contractor(s) in arbitration with the Operator.</p>
GOVERNING LAW:		<p>The Franchise Agreement will be governed by the Laws of the State of California.</p>

The summary of terms set forth in this Term Sheet does not include all material terms of the Franchise Agreement or the proposed transaction between the Parties and, except as set forth in the introduction to this Term Sheet is not intended to be, nor shall it be construed or considered to be, a binding agreement or obligation on the part of any Party. Rather, this Term Sheet is intended only to set forth an indicative outline of certain contemplated baseline terms and conditions from which the definitive Franchise Agreement (and any related ancillary agreements) will be drafted by counsel to the Authority for submission to the Parties for review and further negotiation. In particular, it is recognized and agreed that the on-going project development and negotiations process set forth in the RFP and in the Pre-Development Agreement (attached as Exhibit A to the Pre-Development Agreement) may result in changes in the transaction (including the structure thereof), as to which this Term Sheet is not meant to be dispositive.

ATTACHMENT 2 TO EXHIBIT A: INTERIM AND SECOND PHASE FINANCIAL PLANS

The Contractor shall propose a plan of finance for the Franchise Agreement that forecasts operating costs, revenues, operating loss/profit and required sources of funding and/or financing to ensure the TOC is sufficiently financially robust to deliver services until the end of the Franchise Agreement. Contractor shall also propose a Franchise Agreement term. The primary focus will be in relation to future passenger services in the V2V segment of the System and its subsequent extension to San Francisco. The same format should apply to both the Interim Financial Plan and the Second Phase Financial Plan.

For purposes of the Second Phase Financial Plan, the Second Phase shall itself be comprised of two phases:

- Phase 2a to consist of mobilization and establishment of the TOC, recruitment and training of drivers and other staff and completion of all acceptance and certification procedures required to commence revenue service operations; and
- Phase 2b to consist of Initial Operations Period including ramp-up.

The Interim Financial Plan and the Second Phase Financial Plan shall contain:

1. A narrative describing how the Contractor will manage the development and operation of the commercial aspects of high-speed rail passenger train operations (specifically, for both phases). In addition, the Contractor will provide a summary of the major factors that will be considered in the development of a financial plan for both phases, including at a minimum a discussion of the following topics:
 - a. Describe the scope of pre-operations and costs expected during Phase 2a.
 - b. Describe expected operating costs during Phase 2b including all costs associated with operations ramp-up (e.g., own costs (self-performed activities), costs for maintenance of Track and Systems and Rolling Stock, electric traction costs and all other operating costs). Explain inflation assumptions for each item.
 - c. Discuss all sources of revenue that the Contractor is anticipating, including passenger fare-box and revenue management strategies, as well as approach to maximizing ancillary revenues.
 - d. Discuss the sources of funding and/or financing the Contractor intends to secure for the operation and maintenance of the Project, including sources to fund:
 - i. Phase 2a costs; and
 - ii. Any initial forecast operating losses in Phase 2b.

Also discuss the associated risks of securing financial commitments and the status of any anticipated or known commitments.

- e. Describe the approach the Contractor will take to ensure continuity of service during any period of operating loss, including a discussion of any expected reserves, lines of credit, letters of credit, contingent equity, parent company support, and debt or equity financing sources and their availability for the operation and maintenance of high-speed rail passenger train operations.
- f. Describe as necessary the financial terms the Contractor believes will be necessary to secure such a funding and/or financing package for the operation and maintenance of high-speed rail passenger train operations explaining clearly any anticipated recourse

- to, or support from, the Authority.
- g. Detail the Contractor's proposal for the Franchise Agreement term, explaining what return to the Contractor is forecast to be generated through the end of the term.
 - h. Provide a description and discussion of the availability of security, bonding, insurance or parent guarantees that may be required to deliver Phase 2b successfully.
 - i. Describe any limitations on the Contractor's return and/or any revenue sharing with the Authority
2. An electronic Preliminary Cash Flow Model which will include the Contractor's expected performance of its financing, operations, maintenance, and other obligations. The format of the Preliminary Cash Flow Model is at the discretion of the Contractor, but must comply with the following minimum requirements:
- a. Compatible with Microsoft Excel Version 2010 for Windows XP or later operating system.
 - b. No password protection (including password protected macros, or hidden rows columns, cells or sheets).
 - c. Dynamic calculations with no hardcoded outputs.
 - d. All outputs presented in nominal and real U.S. Dollars.
 - e. Consistent with the narrative information described in Item (1) above.
 - f. A summary schedule of the expected costs associated with Phase 2a and the waterfall priority of payments.
 - g. A summary schedule of values for the revenues and operating and maintenance costs in Phase 2b.
 - h. An annual summary of cash flows during Phase 2b using a December 31 year end, including at least the following level of detail:
 - i. Passenger revenues;
 - ii. Ancillary and other revenues;
 - iii. Staff costs;
 - iv. Insurance and bonding costs;
 - v. Movements in cash reserves such as maintenance and lifecycle;
 - vi. System administration costs;
 - vii. Other Contractor self-funded costs;
 - viii. Electric traction costs;
 - ix. Track and system maintenance and lifecycle costs; and
 - x. High Speed Train maintenance and lifecycle costs.

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, if applicable, 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 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 compensate the Contractor through one of two payment methods: (1) cost reimbursable milestones (with ceiling) or (2) fixed price milestones as defined in the applicable Task Order. The Contractor agrees to compensate all Subcontractors with the same payment structure.

Rates shall not exceed the rates identified in Exhibit B, Attachment 1.

- 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 in Section 3 of the STD. 213. It is understood and agreed that this total is the maximum amount payable to the Contractor and the actual amount of work requested by the Authority may be less.
- 2.1.3 Provide one paper original and two copies of the invoice for payment. Invoices shall be submitted no more than monthly in arrears and no later than thirty (30) calendar days after completion of each billing period or upon completion of a task to:

Financial Office
California High-Speed Rail Authority
770 L Street, Suite 620 MS 3
Sacramento, CA 95814

accountspayable@hsr.ca.gov

(1 original and 2 copies)

AND

The Contractor shall also submit (electronically) one additional copy of the invoice and supporting documentation as directed by the Authority's Contract Manager.

3 INVOICE FORMAT

- 3.1 The Authority will accept computer generated or electronically transmitted invoices. The date of "invoice receipt" shall be the date the Authority receives the paper copy at the address listed in Section 2.1.3 of this Exhibit, unless otherwise directed by the Authority. The Authority Contract Manager will provide a template of the required invoice prior to the first invoice submission.
- 3.2 An invoice shall consist of, but not be limited to, the following:
 - 3.2.1 Agreement number, date prepared, and billing period.
 - 3.2.2 The Contractor's hourly rates by individual. Each invoice shall include actual hours incurred, cumulative hours incurred to date, and budgeted hours.
 - 3.2.3 Actual other direct costs, including special equipment and software if requested by the Authority, miscellaneous, and materials.
 - 3.2.4 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. Invoices shall also include any other Certified Small Business, Disabled Veteran Business Enterprise, or Disadvantaged Business Enterprise information requested by the Authority for reporting purposes.
 - 3.2.5 Backup documentation to support invoices. The Contractor shall retain additional copies of back-up documentation for audit purposes and provide such documentation 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.
 - 3.2.6 By Task Order: cumulative amounts, budgeted per Agreement, billed to date, current billing, and balance of funds.
 - 3.2.7 A narrative that documents the progress of the work by Task Order during the billing period.
 - 3.2.8 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/excluded 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 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. Travel to the Contractor's approved office from other locations will be reimbursed only upon express written approval by the Authority.
- 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.

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 2 C.F.R. Part 200, Subpart E, and 2 C.F.R. Part 1201.
- 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, 2 C.F.R. Part 200, Subpart E or 2 C.F.R. Part 1201, 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 section 927, *et seq.*

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 fifteen (15) Business 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 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 all Services under the Agreement. The Contractor shall submit an invoice for the payment of any withheld amounts.

ATTACHMENT 1 TO EXHIBIT B – BILLING RATES

[INSERT]

EXHIBIT C: GENERAL TERMS AND CONDITIONS

GTC 4/2017

Under the California High-Speed Rail Authority's standardized agreement process, a hardcopy of Exhibit C, GTC 4/2017, 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 4/2017, please contact the Office of Procurement and Contracts below to receive a copy:

Contracts and Procurement Branch
(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 without an amendment.

2 SUBAGREEMENTS

For purposes of this section, Subcontractor and Subconsultant are used interchangeably, and the provisions of this section apply to subagreements with both Subcontractors and Subconsultants.

- 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 subcontracted without written authorization by the Authority's Contract Manager, except that which is expressly identified in Exhibit B, Attachment 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 seven (7) Business 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.

All applicable Contractors shall submit monthly progress reports on Small Businesses (SB), including microbusinesses (MB), DBE and DVBE utilization to the Authority. The Authority and Contractors will keep a running tally of actual invoiced amounts by Small Businesses for work committed to them during the Agreement performance. The Monthly SB Invoice Report Summary and Verification will be used to keep the running tally. The SB Invoice Report Summary and Verification reporting requirements captures SB utilization at all tiers. This requirement shall also include any amended portion of the Agreement.

All Contractors shall submit the SB Invoice Report Summary and Verification as an attachment to and as verified by the invoice cover fact sheet submitted with each invoice. Civil penalties for knowingly providing incorrect information on SB Invoice Report Summary and Verification, are in the minimum amount of \$2,500 and the maximum amount of \$25,000. An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment. (Military and Veterans Code section 999.5(d)).

The Monthly SB Invoice Report Summary and Verification is designed to capture and verify the following information:

1. Name of each Small Business participating under the respective Agreement.
2. Type of work assignment designated to each Small Business.
3. The eligible dollars committed to each Small Business.
4. The eligible dollars invoiced to each Small Business during the reporting period.
5. The dollars invoiced to date for each Small Business.
6. The dollars invoiced to the small business as a result of a change order or other cost modification.
7. The dollars invoiced to date as a percentage of the total commitment to each Small Business.
8. The tier hierarchy of each Subcontractor.
9. An Authorized Contractor's Signature that certifies under penalty of perjury that it has complied with all SB Program requirements, including prompt payment and retainage requirements per state laws and the best practices of 49 C.F.R. Part 26.29, as applicable.

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 to further disclose such information or to disseminate the same on any other occasion.
- 3.3 The Contractor shall not comment publicly to the press or 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 REPORTING REQUIREMENTS

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

- 5.1 The total amount of funds received by the Contractor during the time period defined in the Authority’s request.
- 5.2 The amount of funds actually expended or obligated during the time period requested.
- 5.3 A detailed list of all projects or activities for which funds were expended or obligated, including:
 1. The name of the project or activity;
 2. A description of the project activity;
 3. An evaluation of the completion status of the project or activity; and
 4. An estimate of the number of jobs created and/or retained by the project or activity.
- 5.4 Any other information reasonably requested by the Authority or required by state or federal law or regulation.

6 CONFLICT OF INTEREST

- 6.1 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.

- 6.2 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.

7 SETTLEMENT OF DISPUTES

- 7.1 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.
- 7.2 To the extent not inconsistent with law, rules, and regulations, any dispute involving work assigned through a task order that is not disposed of by mutual agreement in Section 7.1 above will be decided by the Authority's Contract Manager, who may consider any written or verbal evidence submitted by the Contractor. The decision of the Contract Manager, issued in writing will be the final decision of the Authority. The final decision of Authority is not binding on the Contractor.
- 7.3 To the extent not inconsistent with law, rules, and regulations, any dispute involving the obligation to negotiate and execute a Franchise Agreement in good faith that is not disposed of by mutual agreement in Section 6.1 above may be referred to binding arbitration to take place in Sacramento County, California. Any such arbitration proceeding shall be *de novo*.
- 7.3.1 The Party requesting arbitration shall file notice of the demand for arbitration in writing with the other Party. Within thirty (30) calendar days after delivery of the request for arbitration, the Parties shall seek to jointly appoint a panel of three arbitrators. Each Party shall appoint one arbitrator of its choosing, and jointly appoint a mutually agreeable third arbitrator. If the Parties are unable to agree upon the selection of the third arbitrator, then either party may petition the Superior Court of Sacramento County to select such arbitrator.
- 7.3.2 Unless the Parties otherwise agree, arbitrations shall be conducted in accordance with the procedures for arbitrations under Public Contract Code sections 10240 *et seq.* (the "State Arbitration Act"), and implementing regulations set forth in California Code of Regulations, Title 1, Chapter 4, sections 1300 *et seq.*
- 7.3.3 The decision of the arbitrators shall be based upon the relevant facts, circumstances and equities of the case, as well as the pertinent provision(s) of the Agreement and applicable law, and shall be set forth in writing.
- 7.3.4 The arbitrators shall not have the power to award punitive damages, rescind or reform this Agreement, or void any limitations on liability contained in this Agreement.
- 7.3.5 The prevailing party in arbitration shall be awarded its reasonable investigation costs, attorneys' fees, court costs, expert witness costs, consultant's costs, and other reasonable costs attendant to the arbitration. The arbitration panel will be specifically required to name the prevailing party pursuant to the award. However, if the award is simply monetary, the award shall be a single lump sum award and shall not separate the damages from the costs.

- 7.3.6 The decision of the arbitrators shall be binding on the Parties and judgment on the award rendered by the arbitrators may be entered in the Superior Court of California for Sacramento County.
- 7.4 In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.
- 7.5 Neither the pendency of a dispute nor its consideration by the Authority's Contract Manager will excuse the Contractor from full and timely performance in accordance with the terms of this Agreement.

8 TERMINATION

- 8.1 Execution of the Franchise Agreement: This Agreement shall terminate upon expiration or execution and delivery of the Franchise Agreement, whichever occurs first.
- 8.2 Termination for Cause: Notwithstanding anything else to the contrary, in accordance with Section 7 of Exhibit C: GTC 4/2017, the Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor including, without limitation, the Contractor's failure to negotiate or execute the Franchise Agreement in good faith. In the event of a termination for cause, the Authority, in its sole discretion, may as liquidated damages immediately draw upon the Contractor's bond required pursuant to Exhibit E, Section 8, and the Contractor shall be prohibited from competing for any future work relating to the Franchise Agreement without the Authority's express written permission.
- 8.3 Termination for Failure to Achieve Certain Milestones: Notwithstanding anything else to the contrary, either Party has the right to terminate this Agreement upon thirty (30) calendar days written notice if the Parties, acting in good faith, reach an impasse in their negotiation of the Franchise Agreement or if key milestones are not achieved by dates agreed upon by the Parties.
- 8.4 Termination for Convenience: Notwithstanding anything else to the contrary, the Authority reserves the right to terminate this Agreement for convenience upon thirty (30) calendar days written notice to the Contractor.
- 8.5 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.

- 8.6 **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 or mailing, as applicable, of the notice of termination and actual costs incurred as a result of termination, including the costs of preparing Project files for return to the Authority as required by Section 15 of this Exhibit D. Except for the termination payment discussed in this Section 8.6, in no event shall the Contractor have the right, and the Contractor expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, lost profits or any other damages) from the Authority under this Agreement or any action related to this Agreement, nor shall the Contractor have any other right or remedy against the Authority, including any action for specific performance, the filing of a lis pendens, or otherwise.
- 8.7 In the event of termination of this Agreement, the Contractor shall cooperate in all respects with the Authority. Such cooperation shall include, but not be limited to, delivery of any documents referred to herein, and assisting the Authority during a transition to another contractor or other third-party, if applicable.
- 8.8 In the event of termination of this Agreement, the Authority reserves the right to proceed with the work contemplated hereunder. The Contractor specifically acknowledges and agrees that neither this Agreement nor any approval of the work under this Agreement nor any performance of such work nor expenditure of any monies thereon shall grant or shall be deemed to have granted any rights in the Contractor to enter into the Franchise Agreement.

9 NON-WAIVER

- 9.1 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.

10 HEADINGS AND RULES OF CONSTRUCTION

- 10.1 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.

11 STOP WORK

- 11.1 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 in this Agreement.
- 11.2 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.
- 11.3 The Contractor shall resume the stopped work only upon receipt of written instruction from the Authority Contract Manager canceling the stop work order.

- 11.4 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 thirty (30) calendar days from the date of receipt of the stop work notice.

12 NONDISCRIMINATION COMPLIANCE

- 12.1 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 race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

13 EVALUATION OF THE CONTRACTOR

- 13.1 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.
- 13.2 Performance of the Contractor under this Agreement shall be evaluated. At the conclusion of the Agreement, the evaluation shall be prepared on Contract/Contractor Evaluation Sheet, STD. 4. A copy of any negative evaluation for agreements over \$5,000 shall be sent to the Department of General Services, Office of Legal Services.

14 OWNERSHIP OF DATA

- 14.1 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.
- 14.2 Any subagreement in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions in this clause.

15 SCOPE OF CONTRACTOR'S AUTHORITY

- 15.1 The Contractor shall have no authority to act on behalf of the Authority other than as expressly provided in this Agreement. The Contractor is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the Authority. The Contractor lacks any authority to bind the Authority on any contractual matters. Final approval of all contractual matters that purpose to obligate the Authority must be executed by the Authority in accordance with the Authority's rules and applicable law.

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, which is attached hereto as Attachment 1. All documents listed in this Section below are specifically incorporated by reference into this Agreement. 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:
1. Terms of this Agreement and any amendments.
 2. Approved Task Orders.
 3. Contractor's Proposal.
 4. Contractor's SOQ.
 5. Request for Proposals for Early Train Operator dated [REDACTED] RFP No. [REDACTED], with addenda.
 6. Request for Qualifications for Early Train Operator dated December 16, 2016 RFQ No.16-13, with addenda.

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 or 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 Exhibit C: GTC-4/2017. If this provision conflicts with Exhibit C: GTC-4/2017, the terms of Exhibit C: GTC-4/2017 control over the terms of this clause.

3 STANDARD OF CARE

- 3.1 The Contractor, in performing its professional Services under this Agreement, owes the Authority the following duties of care (the Contractor's "Standard of Care"):
- 3.1.1 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;
 - 3.1.2 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
 - 3.1.3 The duty to use reasonable diligence and his or her best judgment in the exercise of skill and the application of learning.

4 COORDINATION AND COOPERATION

- 4.1 The Parties agree to cooperate with each other, and to exercise reasonable efforts to cause their respective contractors to cooperate with each other, fairly, reasonably, and in good faith in all respects in connection with this Agreement, and to identify and coordinate their efforts and interfere as little as possible with each other's activities being undertaken with respect to the development of the System. In particular, the Contractor agrees to perform under this Agreement in such a manner and at such times that the Authority or any other contractor or Authority personnel who has work to perform, or contracts to execute on behalf of the Authority, can do so without unreasonable delay.
- 4.2 Such coordination shall include, at a minimum, regular progress and review meetings with the Authority and other agents as directed by the Authority. Such coordination may also include reviews of documents required in connection with the Services provided under this Agreement. The Contractor shall update the Authority regularly on the progress of all work and progress toward achievement of applicable schedules.

5 DAMAGES DUE TO ERRORS AND OMISSIONS

- 5.1 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 or other work products furnished under its Agreement.
- 5.2 When a modification to a construction Agreement 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.
- 5.3 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.

6 LEGAL NOTICE

- 6.1 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.
- 6.2 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:		Authority:	Thomas Fellenz
Title:		Title:	Chief Counsel
Company:		Company:	California High-Speed Rail Authority
Address:		Address:	770 L Street, Suite 620 MS1 Sacramento, CA 95814
Telephone:		Telephone:	(916) 324-1541

6.3 The Project representatives identified in Exhibit A, Section 1.6 shall be notified via email when a notice is sent.

6.4 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.

7 LICENSES AND PERMITS

7.1 The Contractor shall be an individual or firm authorized to do business in California and shall obtain at its sole expense all license(s) and permit(s) required by law, including professional licenses and registrations, Certificates of Status, etc., for accomplishing any work required in connection with this Agreement.

7.2 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 that state's equivalent documentation) 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.

7.3 In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, Contractor agrees to provide the Authority a copy of the renewed license(s) and/or permit(s) within thirty (30) calendar 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.

7.4 All Subcontractors shall be licensed for the Work they are conducting if licensing would be required of the Contractor for that Work.

8 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.

8.1 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 \$5 million per occurrence and \$5 million general aggregate. Limits may be achieved by any combination of primary and excess or umbrella liability insurance.

8.2 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 \$1 million combined single limit for each accident. Limits may be achieved by any combination of primary and excess or umbrella liability insurance.

8.3 Workers' Compensation Insurance

The Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least \$1 million per accident, \$1 million per employee/policy limit for bodily injury by disease.

8.4 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 \$5 million per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement.

8.5 Other Provisions or Requirements

8.5.1 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 insurance policies, 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 Agreement. The Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

8.5.2 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.

8.5.3 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.

8.5.4 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), unless otherwise approved by the Authority's Contract Manager.

8.5.5 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.

8.5.6 Enforcement of Agreement 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.

8.5.7 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.

8.5.8 Notice of Cancellation

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

8.5.9 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.

8.5.10 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 ninety (90) calendar days 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.

8.5.11 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. Any approved self-insured retentions and any deductibles shall be the responsibility of the Contractor and the Authority shall have no obligation for any deductible or self-insured retention.

8.5.12 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.

8.5.13 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.

8.5.14 Subcontractors

To the extent that the Contractor engages the services of Subcontractors, the Contractor agrees to require the same workers' compensation, general liability and auto liability insurance as required of the Contractor, except as to limits. In addition, the Contractor shall require any additional insurance relevant to the work and expertise of the Subcontractor, including professional liability, pollution liability or other forms of coverage as appropriate. Limits shall be at the discretion of the Contractor, but shall be in accordance with custom and practice as appropriate for the locale and type of work to be performed.

9 BONDING

The Contractor shall provide security as described in this clause. Notwithstanding any other provision of, performance by a surety or Guarantor of any of the obligations of the Contractor hereunder shall not relieve the Contractor of any of its obligations hereunder.

9.1 Bond

The Contractor shall provide to the Authority and maintain at all times during the term of the Agreement a Bond in the amount of One Million Dollars (\$1,000,000.00). The bond required hereunder shall be provided by a surety:

- Registered with the California State Insurance Commissioner,
- Appearing on the current Authorized Insurance List in the State of California published by the Office of the Insurance Commissioner, and
- With an A.M. Best and Company rating level of A- or better and Class VIII or better, or as otherwise approved by the Authority in its sole discretion.

The Authority may require any sureties to appear and qualify themselves at any time. If the Authority determines, in its sole discretion, that a surety is not qualified, the Authority may, upon written demand, require the Contractor to furnish a replacement bond or bonds, at no additional cost, from a qualified surety acceptable to the Authority. Until the replacement bond or bonds are furnished, payments on the Agreement shall stop.

9.2 Additional Bond Security

The Contractor shall promptly furnish additional security required to protect the Authority and persons supplying labor or materials under this Agreement in the following situations:

- If any surety upon any bond furnished with this Agreement becomes unacceptable to the Authority; or
- If any surety fails to furnish reports on its financial condition as required by the Authority.

10 COMPUTERS AND COMPUTER SOFTWARE

10.1 The Contractor shall provide its own computer equipment to perform the First Phase Services. The Contractor's quoted price is expected to include all such equipment costs.

10.2 For agreements in which software usage is an essential element of performance under this Agreement, 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.

10.3 To the extent that the Contractor procures or develops any software in connection with performing Services under this Agreement that is not owned by the Authority, the Contractor hereby grants to the Authority and the Authority accepts from the Contractor, a perpetual, irrevocable, royalty-free, non-exclusive, license to use such software in the conduct of the Authority's own business.

11 EQUIPMENT RENTAL AGREEMENTS

11.1 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.

12 CONTINGENT FEE

12.1 The Contractor warrants by execution of this Agreement, 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.

13 THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

- 13.1 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 Project; or (b) create an implied agreement that CEQA and/or such environmental permitting requirements apply to the Project.

ATTACHMENT 1 TO EXHIBIT E: CONTRACTOR'S PROPOSAL

[INSERT]

EXHIBIT F: FEDERAL TERMS AND CONDITIONS

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.

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal government, the Federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

Notwithstanding anything to the contrary contained in this Agreement, all Federal Railroad Administration (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 applicable Procurement Standards requirements set forth at 2 C.F.R. Part 200, 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. All individuals making site visits must comply with the Contractor’s safety standards. If an individual fails to comply with Contractor’s safety standards, that individual may be removed from the work site.

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, including but not limited to the following:

- 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. sections 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. sections 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; Section 504 of the Rehabilitation Act of 1974, as amended, 29 U.S.C. section 794; 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 **Access Requirements for Individuals with Disabilities:** The Contractor agrees to comply with, and assure that any Subcontractor under this Agreement complies with, all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. sections 12101 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794; 49 U.S.C. section 5301(d); and any other applicable Federal regulations, including any amendments thereto.
- 9.3 **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this Agreement:

1. 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.
2. 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.
3. 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, cited in FR-HSR-0009-10-01-06 as sections 290 dd-3 and 390 ee-3), 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 may be 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

1. 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:
 - a. 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
 - b. Interview any officer or employee of the Contractor or any of its Subcontractors regarding the activities funded with federal funds appropriated or otherwise made available by ARRA.
2. Pursuant to 2 C.F.R. sections 200.333 through 200.337 inclusive, 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 Agreement, 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.
3. 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 understands that the requirements of the Privacy Act, including the civil and criminal penalties for violations of that Act, apply to the individuals involved with the maintenance of federal records, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement.

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:

1. Gross mismanagement of a contract relating to ARRA funds;
2. Gross waste of ARRA funds;
3. A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
4. An abuse of authority related to implementation or use of ARRA funds; or
5. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) 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 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 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.”

17 LABOR PROVISIONS

49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this Agreement shall be considered a “rail carrier,” as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, U.S.C., and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. 231 *et seq.*), the Railway Labor Act (43 U.S.C. 151 *et seq.*), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*) To the extent required by 49 U.S.C. 24405(b) and other laws referenced above, the Contractor shall reflect these provisions in its agreements funded in whole or in part by this Agreement with entities operating rail services over such rail infrastructure.

18 LABOR PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the applicable protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836 with respect to employees affected by actions taken in connection with the Project. The Contractor also agrees to include the applicable protective arrangements established by the U.S. DOL under 45 U.S.C. 836 in its arrangements with entities operating rail services over rail infrastructure constructed as part of this Agreement.

19 PROPERTY, EQUIPMENT AND SUPPLIES

The Contractor must comply with the property, equipment and supplies management standards and procedures in 2. C.F.R. sections 200.310 through 200.316, inclusive. The Contractor may use its own management standards so long as such standards comply with 49 C.F.R. sections 19.30 through 19.37, inclusive.

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 2 C.F.R. sections 200.310 through 200.316 inclusive.

21 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. section 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier, and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

22 RECYCLING CERTIFICATION

The Contractor shall comply with all applicable requirements of section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. section 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

23 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 Agreement. 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 ten percent goal for DBE and 3 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.

In collective consideration of commercially useful function (CUF) standards set forth by Government Code section 14837, California Code of Regulations section 1896.4(h), Military and Veteran Code section 999(b)(5) and 49 C.F.R. Part 26.55 (c)-(d), the Authority will uniformly apply

CUF Best Practices standards. A SB, DBE, DVBE or Microbusiness (MB) is deemed to perform a CUF if the business meets the following standards:

1. Performs a CUF when a SB/MB/DBE/DVBE is responsible for the execution of a distinct element of work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
2. Performs work that is normal for its business services and functions.
3. Be responsible, with respect to materials and supplies used for the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing and paying for the material itself.
4. A SB/MB/DBE/DVBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SB/MB/DBE/DVBE participation.
5. A SB/MB/DBE/DVBE does not perform a CUF if it subcontracts a greater portion of the work that would be expected by normal industry practices. A DBE does not perform a CUF if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.

The Contractor shall provide quarterly SB utilization reports to reflect the level of Small Business, including DBE and DVBE utilization on the contract, including any amended portion of the Contract.

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.

24 EXISTING INTERCITY RAIL

49 U.S.C. section 24405(d) requires any entity providing intercity passenger railroad transportation on an FRA-funded project to comply with certain requirements with respect to its employees and the employees of preexisting intercity rail passenger services. The Contractor shall comply with the applicable provision of 49 U.S.C. section 24405(d) to the extent it is or becomes a provider of intercity passenger railroad transportation. If it is not the operator or provider of the intercity passenger rail services benefitting from the Project funded under this Agreement, then it shall notify its selected operator of the requirements imposed by section 24405(d).

25 PATENT RIGHTS

- 25.1 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.

- 25.2 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.
- 25.3 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.
- 25.4 “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.
- 25.5 “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.

26 RIGHTS IN DATA AND COPYRIGHT

- 26.1 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. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.
- 26.2 The following restrictions apply to all subject data first produced in the performance of this Agreement:
1. 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, until such time as the FRA may have either released or approved the release of such data to the public.
 1. As authorized by 2 C.F.R. section 200.315, 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.
- 26.3 When the FRA provides assistance for a Project involving planning, research or development, it is generally the FRA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless the FRA determines otherwise, the Contractor understands and agrees that, in addition to the rights set forth in preceding portions of this Section of the Agreement, 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.
- 26.4 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.
- 26.5 Nothing contained in this Section on rights in data, shall imply a license to the FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to the FRA under any patent.
- 26.6 The requirements of this Section of this Agreement do not apply to material furnished to the Contractor by the FRA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by the Contractor at the time of delivery of such work.
- 26.7 The Contractor agrees to include the requirements of this section in its lower-tier subcontracts for planning, research, development, or demonstration under the Project.