California High-Speed Train Project

Request for Proposal for Design-Build Services

RFP No.: HST 11-16
Book 2, Part B: General Provisions

ADDENDUM 1

Revision No.	Date	Description
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1	4/27/2012	Addendum

Note: Signatures apply for the latest technical memorandum revision as noted above.

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PART B – General Provisions

1 Definitions

As used throughout this Contract, the following terms shall have the meaning set forth below:

- **Agreement** – Any document between the Authority and third party(s) on any issue which assigns responsibilities reflects a mutual understanding and is signed by all parties. The term Agreement includes but is not limited to Memoranda of Understanding, Master Agreements, Contracts and Task Orders.
- **Alternative Technical Concept (ATC) –** Any concept submitted by the Contractor and accepted by the Authority, which differs from the requirements of the Contract Documents provided in the RFP and results in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation as determined by the Authority in its sole discretion and is not merely the result of reduced quantities, performance or reliability.
- **Authority –** California High-Speed Rail Authority.
- **Authority-Directed Change –** Any change in the Work (including changes in the standards applicable to the Work) that the Authority has directed the Contractor to perform as described in the "Authority-Directed Changes" clause (Section 17.1) of the General Provisions.
- **Authority Provided Approvals –** Governmental Approvals listed in the Approach for Obtaining ICS Environmental Approvals and Permits in Book 3 for which the Authority is the responsible party for obtaining.
- **Authority Representative –** Any person or persons authorized in writing to act for the Authority.
- **Cash Flow Curve –** The cap on the aggregate amount of payments which may be made at any specified time under the Contract. The Cash Flow Curve is attached to the Signature Document.
- **Change Order –** A written order from the Authority that includes direction, instructions, interpretation, or determinations that causes a change in the Contractor's obligations under the Contract.
- **Change Order Proposal –** A written request from the Contractor to increase the Contract Price and/or the Utility/Third Party Provisional Sum or extend a Completion Deadline.
- **Completion Deadline –** The Substantial Completion Deadline and/or Final Acceptance Deadline, as the case may be.
- **Contract –** Collectively, the Contract Documents which establish the respective rights and obligations of the Authority and the Contractor with respect to the Project, including but not

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limited to the performance of the Work, the furnishing of labor and materials, and the basis of payment.

- **Contract Documents –** The documents listed in the "Order of Precedence" clause (Section 36) of the General Provisions.
- **Contractor –** The Proposer that enters into the Contract with the Authority.
- **Contract Price –** The amount shown as the Contract Price in the Signature Document, subject to adjustment as set forth in the Contract Documents.
- **Contractor-Related Entity –** The Contractor; if the Contractor is a joint venture, partnership or limited liability company, any joint venture member, partner or member of the Contractor; Subcontractors; their employees, agents and officers; and all other Persons for whom the Contractor may be legally or contractually responsible.
- **Coordination** – The act or state of coordinating or of being coordinated
- **Critical Path** - The sequence of the schedule activities that predicts or defines the longest duration of the Project.
- **Days –** Calendar days, unless otherwise stated.
- **Disputes Resolution Board (DRB) –** The board described in the "Disputes" clause (Section 51) of the General Provisions.
- **Employee –** A person working for the Contractor or any subcontractor or subconsultant of the Contractor who may be directly engaged in the performance of work under the Authority's Contract. Employee includes any person paid to perform work or provide goods or services for the Contractor.
- **Escrowed Proposal Documents (EPDs) –** The meaning set forth in the "Escrowed Proposal Documents" clause (Section 25) of the General Provisions.
- **Final Acceptance –** The meaning set forth in the "Final Acceptance" clause (Section 7.18) of the General Provisions.
- **Final Acceptance Deadline –** The meaning set forth in the Special Provisions.
- **Final Environmental Documents** Final EIR/EIS, Record of Decision, and Authority Approval Resolution.
- **Force Majeure – The meaning set forth** in Section 7.17.
- **Governmental Approval –** Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.
- **Governmental Person –** Any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity, other than the Authority.

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- **Grant/Cooperative Agreement –** Agreement No. FR-HSR-009-10-01-01 and Agreement No. FR-HSR-0037-11-01-00 between the Authority and the Federal Railroad Administration (FRA) providing terms for expenditure of federal funds provided for the Project.
- **Hazardous Materials -** Shall mean any:
  - Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as the "State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect,
  - Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court,
  - Petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles and
  - Asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground)s.
- **Indemnified Persons –** The meaning set forth in the "Indemnification and Infringement" clause (Section 28) of the General Provisions.
- **Interim Guidance –** FRA, High-Speed Intercity Passenger Rail ("HSIPR") Program; Notice, 74 Fed. Reg. 29900 (June 23, 2009).
- **Items of Archeological, Geological or Biological Significance --** Historical, archaeological or paleontological objects, features, sites, human remains or migratory avian species.
- **Law –** Any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, criteria, standard,

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policy requirement or other governmental restriction or any similar form of decision or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Person, which is applicable to the Work or the Project, whether now or hereafter in effect.

- **Lead Engineering Firm –** The member of the Proposer Team, whether a single entity or a joint venture, that is primarily responsible for the design and engineering of the Project.
- **Licensed Professional Engineer –** An engineer licensed in the State of California pursuant to the Professional Engineers Act (Business and Professions Code Section 6700 et seq.).
- **Notice to Proceed (NTP) –** One or more written directives from the Authority to the Contractor authorizing the Contractor to begin prosecution of the Work or a portion of the Work as specified therein, as may be further described in the Special Provisions.
- **Open Government Laws –** Collectively, the Public Records Act, the Bagley-Keene Open Meeting Act (Gov. Code Section 11120 et seq.), the Ralph M. Brown Act (Gov. Code Section 54959 et seq.), the Freedom of Information Act (5 U.S.C. § 552, as amended by Pub. L. No. 104-231, 110 Stat. 3048), and other applicable federal open records laws.
- **Party –** The Contractor or the Authority, as the context may require, and "Parties" means the Contractor and Authority, collectively.
- **Person –** Any individual, corporation, company, joint venture, partnership, trust, unincorporated organization, or governmental agency, including the Authority.
- **Preliminary Design –** Authority furnished engineering documents set forth in Book 3.
- **Project –** As described in the Scope of Work in Book 2, Part C.
- **Proposal –**The proposal submitted by the Contractor in response to this Request for Proposal, including any revisions thereto. If the RFP requested submittal of best and final offers, the term "Proposal" means the best and final offer submitted by the Contractor, including any revisions thereto.
- **Proposal Due Date –** The date on which the Proposals were due as set forth in the Instructions to Proposers. If best and final offers were requested, the term "Proposal Due Date" means the date on which best and final offers were due as set forth in the Instructions to Proposes.
- **Public Records Act –** The California Public Records Act, Government Code Section 6250 et seq.
- **Reference Documents –** The documents identified in the RFP as Book 4.
- **Site –** Those areas designated in the Right-of-Way Acquisition Plan as set forth in Book 3 by the Authority for performance of Work and such additional areas as may, from time to time, be designated in writing by the Authority for the Contractor's use in performance of the Work. For purposes of insurance with respect to the construction Work (subject to any notification and other requirements imposed by the insurer(s) for approval),

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indemnification, safety and security requirements and payment for use of equipment, the term "Site" shall also include:

- The field office sites
- Any property used for bonded storage of material for the Project approved by Authority
- Staging areas dedicated to the Project and
- Areas where activities incidental to the Project are being performed by the Contractor or Subcontractors, but excluding any permanent locations of the Contractor or such Subcontractors.

- **Small Business Administration (SBA) –** The United States Small Business Administration.
- **Small Business Concern –** For the purpose of this Project and in order to be as inclusive as possible to small businesses, the Authority recognizes a Small Business Concern to include certified Small Businesses (SB), Disadvantaged Business Enterprises (DBE), Disabled Veteran Business Enterprises (DVBE), and Microbusinesses, as set forth below:
  - **Disadvantaged Business Enterprise (DBE) –** A DBE is a for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged. In the case of a corporation, 51 percent of the stock is owned by one or more such individuals; and, whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and has been certified as a Disadvantaged in accordance with 49 C.F.R. Part 26. The Authority recognizes DBE certifications issued by the California Unified Certification Program (CUCP). Refer to the Authority's Small and Disadvantaged Business Enterprise Program for the Roster of Certifying Agencies, located in Book 3, Part A.
  - **Disabled Veteran Business Enterprise (DVBE) –** A for-profit small business concern that is at least 51 percent owned by a veteran of the United States Military who has at least a 10 percent service-connected disability. To qualify as a Disabled Veteran Business Enterprise, the business must have received the appropriate certification issued by the California Department of General Services.
  - **Microbusiness (MB) –** A for-profit small business concern with gross annual receipts of less than $3,500,000; or, if the small business is a manufacturer, with 25 or fewer employees. The Authority recognizes Microbusiness certifications issued by the California Department of General Services.
  - **Small Business (SB)** – A for profit small business that meets the requirements and eligibility criteria set forth by the U.S. Small Business Administration and California Department of General Services for certification as a Small Business.

    For 100 percent State-funded contracts, a Small Business is independently owned and operated, with its principal office located in California, and with owners living in California, has grossed $14 million or less over the previous three (3) tax years, and is not dominant in its field of operations. This certification is issued by the California

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Department of General Services. The Small Business participation under a strictly state-funded contract will be counted toward the Authority's overall Small Business utilization goal.

- **State –** The State of California.
- **Subcontractor –** Any Person with whom the Contractor has entered into a subcontract for any part of the Work, or with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.
- **Substantial Completion –** The meaning set forth in the "Substantial Completion" clause (Section 7.16.1) of the General Provisions.
- **Substantial Completion Deadline –** The meaning set forth in the Special Provisions.
- **Total Contract Price –** The amount shown as the Total Contract Price in the Signature Document, subject to adjustment as set forth in the Contract Documents.
- **Value Engineering Change Proposal (VECP) –** The meaning set forth in the "Description of the Value Engineering Change Proposal (VECP) clause (Section 24.1) of the General Provisions.
- **Work –** All services, labor, materials, and other efforts to be provided and performed by the Contractor including, but not limited to, the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, implementation of the Contractor's extended warranty for the Project after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction of the Project, and to ensure the Project's ultimate readiness for passenger rail operations, except for those efforts which the Contract specifies will be performed by the Authority or other Persons.
- **Working Day –** Each day during which the Authority conducts regular business. See the "Authority Designated Holidays" clause (Section 14) of the General Provisions.

2 Termination Due to Non-Appropriation of Funds

The Authority is not bound by the terms hereof or obligated to make any payment hereunder for Work performed in any fiscal year for which funds have not been appropriated for the Contract. The Contractor is not obligated to perform Work, and correspondingly is not entitled to any compensation for Work performed, in any fiscal year for which funds have not been appropriated for the Contract.

In the event that non-appropriation of funds results in stoppage of Work, the Contractor agrees to resume performance of the Work without any modification to the terms and conditions

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hereof, provided that an appropriation therefor is approved within 120 days after the start of the fiscal year in question. Any such work stoppage shall be considered a suspension for convenience under Section 39.2 of these General Provisions. If funds are not appropriated before expiration of such 120-day period, the Contract shall be deemed to have been terminated for convenience under Section 40.

Notwithstanding anything to the contrary contained in this Section 2, if the Contract is terminated due to non-appropriation of funds, the Contractor shall be entitled to compensation only for Work performed in the fiscal year in which funds were appropriated.

3 Notice to Proceed and Prerequisites for Start of Construction

3.1 Notice to Proceed

The Contractor shall not proceed with any Work required under this Contract without a NTP from the Authority for such Work. Any Work performed or expenses incurred by the Contractor prior to the Contractor's receipt of Notice to Proceed for such Work shall be entirely at the Contractor's risk. Unless otherwise stated, any deadline in the Contract Documents with reference to the Notice to Proceed shall refer to the first Notice to Proceed if more than one Notice to Proceed is contemplated.

3.2 Prerequisites for Start of Construction

The Contractor shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed:

- The Authority has issued NTP.
- All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed.
- All insurance policies, OCIP enrollments and payment and performance bonds required to be delivered to Authority hereunder have been submitted to the Authority as applicable and remain in full force and effect.
- All necessary rights of access for such portion of the Project have been obtained.
- Released for construction documents have been issued for that portion of the Work and approved by the Authority.
- Any additional conditions for construction set forth in the Contract Documents have been fully satisfied.

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4 Key Personnel, Subcontractors, and Outside Associates or Consultants

4.1 Key Personnel

The Signature Document identifies the key personnel. The Authority shall have the right to review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. The Contractor shall notify the Authority in writing of any proposed changes in any key personnel, and shall include a resume of the proposed new key personnel. The Contractor shall not change any key personnel without the prior written approval of the Authority.

4.2 Superintendence by Contractor

At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall directly superintend the Work or assign and have on the Site a competent superintendent who is satisfactory to the Authority and has authority to act for the Contractor.

4.3 Subcontractors

In addition to any other requirements under this Contract for the submission of any subcontract agreement, the Contractor shall provide to the Authority one (1) copy of all executed subcontracts associated with this Contract, including any changes or modifications to subcontracts, within three (3) days of their execution.

No subcontractor shall be permitted to perform work associated with the subcontract until the subcontractor (or the Contractor on the subcontractor's behalf) complies with the insurance requirements specified elsewhere in this Contract, and has furnished satisfactory evidence of insurance to the Authority.

Pursuant to Section 6109 of the Public Contract Code, no Subcontractor shall perform Work if that Subcontractor is ineligible to perform work on public works projects pursuant to Section 1777.1 or 1777.7 of the Labor Code.

4.3.1 Subletting and Subcontracting Fair Practices Act

Except in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq., the Contractor shall not have the right to make any substitution of identified Subcontractors (whether identified in the Proposal or at a later date) with a price in excess of ½ of 1% of the difference between:

- The Total Contract Price and
- The amount bid for design services

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4.3.2 Compliance with Authority Subcontracting Policy

The Contractor shall, prior to soliciting any bids for performance of work or labor or rendering of services in or about the construction of the Project or for special fabrication and installation of a portion of the Work, submit to the Authority for its review and approval (which approval will not be unreasonably withheld) a reasonable procedure for the conduct of the bidding and approval process applicable to all subcontracts (or combination of subcontracts with a single Subcontractor) with a price in excess of one-half (½) of 1 percent of the difference between the following:

- The Total Contract Price and
- The amount bid for design services.

Such procedure shall include times for each step of the process and shall provide that award of any subcontract will go to the lowest responsive bid by a responsible bidder approved by the Authority (which approval shall not be unreasonably withheld). The Contractor shall promptly notify the Authority in writing of the identity of each Subcontractor selected.

Except with Subcontractors listed in the Proposal or Subcontractors selected in accordance with the foregoing procedure the Contractor shall not enter into any subcontracts (or combinations of subcontracts with a single Subcontractor) with a total price in excess of one-half (½) of 1 percent of the difference between the following:

- The Total Contract Price
- The amount bid for design services

4.4 Removal of Contractor Personnel

The Authority may require, in writing, that the Contractor remove or terminate any Contractor employee, subcontractor, consultant, or supplier that the Authority deems objectionable. If the Authority requires removal or termination without cause, the Contractor may request an equitable adjustment in accordance with the terms and conditions of the "Changes" clause (Section 17) of the General Provisions. The Authority shall be deemed to have removed or terminated a person for cause if the Authority determines, in its sole discretion that such Person is not performing the Work properly and skillfully, or is disruptive, intemperate, or disorderly. In such cases Contractor is not entitled to a Contract Price adjustment.

5 Independent Contractor

The Contractor at all times shall be an independent contractor. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract requirements. There shall be no contractual relationship between any subcontractor or supplier of the Contractor and the Authority by virtue of this

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Contract. No provision of this Contract shall be for the benefit of any party other than the Authority and the Contractor.

6 Compliance with the Law

The Contractor shall comply with all Laws. To the extent there is a change in one or more applicable Laws after the date 30 days prior to the Proposal Due Date, excluding:

- Any change in Law proposed or otherwise reasonably foreseeable 30 days prior to the Proposal Due Date,
- Any change in Law relating to taxes and
- Any change in Law that does not require a material modification in the Work or does not require the Contractor to obtain a new major environmental approval (unless the Project or the Contractor is specifically targeted by the change in Law), and such change has the effect of increasing the cost or time of performance of the Work,

then the Contractor may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

Before complying with a change in Law that would require a change in Project design or construction, the Contractor shall promptly provide notice of such change in Law to the Authority and receive direction from the Authority to comply with the change in Law. The Authority shall be entitled to a decrease in the Contract Price for any change in Law that reduces the cost of the Work. Nothing in the Contract Documents shall be construed to permit work not conforming to applicable Laws. Whenever the Contract Documents require higher standards than the minimum required by applicable Laws, the Contract Documents shall take priority.

6.1 Registration of Designers

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the Work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the State of California in the particular professional field involved.

6.2 Design According to Regulatory and Statutory Requirements

In addition to complying with the design requirements, the Contractor warrants that its design and specifications meet all applicable Laws. In case of differing requirements, the more stringent requirements shall apply. The Contractor shall fully indemnify, defend and hold harmless the Indemnified Persons from claims and costs arising out of errors and omissions relating to such Laws.

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6.3 California Professional Engineers Act

Contractor shall specifically be responsible for providing licensed professional engineering services necessary to meet the requirements of the Professional Engineers Act (Business and Professions Code Sections 6700-6799).

The Authority does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Contract, the Contractor acknowledges that the Authority has no such intent. The Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firms or individuals will perform the design services required by the Contract Documents. Any references in the Contract Documents to Contractor's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Contractor shall "furnish" the design for the Project. The terms and provisions of this clause shall control and supersede every other provision of all Contract Documents.

6.4 Assignment of Causes of Action

The Contractor's attention is directed to the following requirements in Public Contract Code 7103.5:

> (b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

6.5 Child and Family Support Obligations

The Contractor acknowledges the policy of the State set forth in Public Contract Code 7110(a). Public Contract Code 7110(a) provides:

It is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

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The Contractor acknowledges that, to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

6.6 Notification of Third Party Claims

Each Party shall each provide timely notification to the other Party of the receipt of any third party claim relating to the Contract.

7 Performance of the Work

The Contractor shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering principles and construction and manufacturing practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, suitable for its intended purpose, free from defects and in accordance with the terms and conditions set forth in the Contract Documents. Except for materials, services and efforts otherwise specifically excluded from the Contractor's scope of work in the Contract Documents, all materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the Substantial Completion Deadline and Final Acceptance Deadline (respectively) shall be the Contractor's sole responsibility; and, subject to the terms of the "Changes" clause (Section 17) of the General Provisions, the cost of all such materials, services and efforts is included in the Contract Price.

The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Authority. Nor does the Authority assume responsibility for any understanding reached or representation made concerning conditions, which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

7.1 Self-Certification and Compliance

The Contractor shall be responsible for self-certifying performance of the Work in accordance with the standards and requirements set forth in the Contract Documents, and consistent with industry standards of care for the Work performed. In each Submittal, the Contractor shall demonstrate how the Work is being performed to these standards and requirements.

7.2 Site Investigation and Conditions Affecting the Work

The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work and that it has investigated and satisfied itself as to the general and local conditions, which can affect the Work or its cost, including, but not limited to, the following:

- Conditions bearing upon transportation, disposal, handling, and storage of materials.

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- The availability of labor, water, electric power, and roads.
- Uncertainties of weather, flooding patterns, and water drainage, or similar physical conditions at the site.
- The conformation and conditions of the ground.
- The character of equipment and facilities needed preliminarily to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, access to the site, and territory surrounding the Site and examination of reasonably available records with respect to the Site. Including all exploratory work done by the Authority as well as from the drawings and specifications made a part of this Contract.
- Any failure of the Contractor to take the actions described and acknowledged in this Section 7.2 will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to perform the Work successfully without additional expense to the Authority.

7.3 Responsibility of the Contractor for Design

The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this Contract, regardless of the fact that certain conceptual design work occurred and was provided to the Contractor prior to the date of execution of the Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services, and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

Neither the Authority's review, acceptance of, nor payment services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The Contractor shall be and remain liable to the Authority in accordance with applicable law for all damages to the Authority caused by the Contractor's negligent performance of any of these services furnished under this Contract. The rights and remedies of the Authority provided for under this Contract are in addition to any other rights and remedies provided by Law.

The Authority's approval of design documents for construction as described in the Scope of Work (Book 2, Part C) shall constitute approval of the design by the Authority for purposes of Government Code section 830.6, but shall not be deemed to relieve the Contractor of liability for the design.

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The Contractor specifically acknowledges and agrees that:

- The Preliminary Design is preliminary and conceptual in nature and has not been signed or sealed.
- The Contractor is not entitled to rely on the Reference Documents, except to the extent the Contract Documents expressly allow the Contractor to rely on such documents under the "Differing Site Conditions" clause (Section 22) of the General Provisions.
- The Contractor is responsible for correcting any errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects in the Preliminary Design through the design and/or construction process without any increase in the Contract Price or extension of a Completion Deadline if the Contractor elects to use the Preliminary Design.
- The Contractor's warranties and indemnities hereunder cover errors, omissions, inconsistencies and other defects in the Project, even though they may be related to errors, omissions, inconsistencies and other defects in the Preliminary Design.

The Contractor understands and agrees that the Authority shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Contractor-Related Entity by reason of any use of any information contained in the Reference Documents (except to the extent the Contract Documents expressly allow the Contractor to rely on such documents under the "Differing Site Conditions" clause (Section 22) of the General Provisions) or any action or forbearance in reliance thereon.

Contractor will design and construct the Project in conformity with the HST Design Criteria Manual (subject to any variances requested by Contractor and approved by Authority during the performance of the Contract).

7.3.1 Drawings and Other Data

All designs, drawings, specifications, notes, and other works developed in the performance of this Contract shall become the sole property of the Authority and may be used on any other Authority design or construction project without additional compensation to the Contractor. Use by the Authority of the design documents on other projects does not confer any liability on the Contractor. The Authority shall be considered the "person for whom the Work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three (3) years after Final Acceptance, agrees to furnish all retained works on the request of the Authority. Unless otherwise provided in this Contract, the Contractor shall have the right to retain copies of all works beyond such period.

7.3.2 Title to Submittals

All information, drawings, or other submittals required to be furnished by the Contractor to the Authority under this Contract shall become the sole property of the Authority upon preparation thereof. All other documents prepared or obtained by the Contractor in connection with the

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performance of its obligations under the Contract shall become the property of the Authority upon the Contractor's preparation or receipt thereof.

7.3.3 Specifications and Drawings

The Contractor shall keep on the Site a copy of the drawings and specifications and shall at all times give the Authority access thereto.

The organization of the specifications into divisions, sections, and articles, and the arrangement and titles of Project drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of work to be performed by any trade.

7.4 Notice and Approval of Restricted Designs

In the performance of this Contract, the Contractor shall make, to the extent practicable, maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Authority, the Contractor shall not furnish, in the performance of the Work called for by this Contract, a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. As to any such design or specification, the Contractor shall report to the Authority giving the reason or reasons why it is considered necessary to so restrict the design or specification.

7.5 Coordination with Other Contracts

The Authority and third parties such as Utilities, Railroads, Cities, Counties, and other Governmental Persons may award contracts for work at or near the Site. The Contractor shall fully cooperate with the other contractors and with employees of the Authority, and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the said other contract work, heeding any direction that may be provided by the Authority. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor. If the Contractor asserts that any of Authority's other contractors have interfered with the Work, then the Contractor's sole remedy shall be to seek recourse against such other contractors.

7.6 Coordination with Railroads and California Public Utilities Commission (CPUC)

The Contractor shall comply with all railroad requirements when working within or adjacent to railroad right-of-way.

Contractor shall obtain railroad approval of any design and construction activities that are within railroads right-of-way or impacting railroad operational activities.

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Contractor shall obtain a CPUC Order authorizing grade separation of railroads before any grade separation is constructed. CPUC requires railroad approval of grade separation before it issues its Order.

7.7 Permits, Fees, and Notices

Except for Authority-Provided Approvals, the Contractor shall secure and pay for, as part of the Contract Price, all required Governmental Approvals.

The Contractor shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.

If a change in an Authority-Provided Approval from the draft requirement set forth in the Contract has the effect of increasing the cost or time of performance of the Work, then the Contractor may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

In the event of a suspension, termination, interruption, or nonrenewal of any Authority-Provided Approval (except for modifications to such approvals or any new such approvals required to allow the Contractor's design concepts to be incorporated into the Project), the Contractor may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

If the Contractor observes that portions of the Contract Documents are at variance with applicable Laws, the Contractor shall promptly notify the Authority in writing. If the Contractor performs work known to be contrary, or should have known to be contrary, to applicable Laws without prior notice to the Authority, the Contractor shall assume full responsibility for the Work and shall bear the attributable costs.

The Contractor is subject to Laws pertaining to off-site Work such as utility connections, fire protection systems, and encroachment upon federal, State, private, city, county, or railroad property.

7.8 Warranty

In addition to any other warranties in this Contract, the Contractor warrants that:

- The Work conforms to the requirements of the Contract Documents.
- All design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State, shall be suitable for its intended purpose and shall be free of errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects. The construction Work furnished pursuant to the Contract Documents was performed in a workmanlike manner and

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conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State.

- Materials and equipment furnished under the Contract Documents are of good quality and, except if otherwise expressly set forth in the Contract Documents, when installed, are new.
- The Project is fit for the purposes intended.

7.8.1 Subcontractor Warranties

The Contractor shall obtain from all Subcontractors, manufacturers and suppliers warranties that would be given in normal commercial practice; require all such warranties to be executed, in writing, for the benefit of the Authority, ; and enforce all warranties for the benefit of the Authority, if directed by the Authority. In no case whatsoever shall other warranties decrease the warranty provisions specified in the Contract. All such warranties from Subcontractors, manufacturers and suppliers shall:

- Be written so as to survive all inspections and tests by the Authority and the Contractor and
- Run directly to and be enforceable by the Contractor and/or the Authority, any assignee by the Authority and their respective successors and assigns.

The Contractor hereby assigns to the Authority all of the Contractor's rights and interest in all warranties which are received by the Contractor from any of its Subcontractors, manufacturers and suppliers.

7.8.2 Remedy

The Contractor shall remedy at its own expense any failure to conform to the Contract requirements or any defect as well as any damage to real or personal property owned or controlled by the Authority, when the damage is the result of the Contractor's failure to conform to Contract requirements or any defect of equipment, material, workmanship, or design furnished.

If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Authority shall have the right to replace, remove, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

7.8.3 Authority Notification to Contractor

The Authority shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

7.8.4 No Limitation of Liability

The foregoing warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law, and shall not limit the Contractor's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud;

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provided, however, that, upon expiration of the warranties, the Contractor shall have no further liability to the Authority hereunder for patent construction defects.

7.8.5 Assignment of Warranty

The Contractor's warranties and all warranties from subcontractors, manufacturers and suppliers shall be assignable by the Authority to any Person in the Authority's sole discretion, immediately upon providing written notice to the Contractor.

7.8.6 Handover

At Final Acceptance the Contractor shall provide the Authority with all applicable training, operations, and warranties.

7.8.7 Warranty Service

Within six months after NTP the Contractor shall submit to the Authority a comprehensive Warranty Service Plan. The plan shall describe how any constructed or purchased Project elements shall be serviced by the Contractor after Final Acceptance. The Plan shall include:

- Inspection frequencies
- Warranty service activities
- Reporting
- Repair practices and timings
- Safety and Security addressing at a minimum:
  - Security measures to preserve the integrity of the site
  - The monitoring of established protection measures including fencing, access control, locks, alarms, intrusion detection, lighting, and any other security requirements that may be applicable
  - The applicable requirements set forth under Section 26 of these General Provisions

7.9 Protection of Existing Site

The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Site, which are not to be removed. The Contractor shall remove trees only when specifically authorized by the Authority to do so and shall avoid damaging vegetation that will remain in place. The Contractor shall remove trees only when specifically authorized to do so and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut in accordance with Clearing and Grubbing specification.

The Contractor shall protect from damage all existing improvements and utilities including both of the following:

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- Improvements and utilities at or near the Site, and
- Improvements and utilities on adjacent property of a third party.

The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. At completion of work Contractor shall restore the site to condition required by the Final Environmental Documents. If the Contractor fails or refuses to repair the damage promptly, the Authority may have the necessary work performed and charge the cost to the Contractor.

7.10 Operations and Storage Areas

The Contractor shall confine all operations (including storage of materials) on Authority premises to areas authorized or approved by the Authority. The Contractor shall hold and save the Indemnified Persons, free and harmless from liability of any nature occasioned by the Contractor's performance. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Authority and shall be built with labor and materials furnished by the Contractor without expense to the Authority. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon Substantial Completion. With the written consent of the Authority, the buildings and utilities may be abandoned and need not be removed. The Contractor shall, under regulations prescribed by the Authority, use only established roadways or use temporary roadways constructed by the Contractor when and as authorized by the Authority. When materials are transported in the prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by Law. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

7.11 Office Space Requirements

The Contractor shall provide and pay for all office and other building space, facilities, and equipment necessary to construct the Project and meet the requirements of the Contract and of this Section 7.11, as follows:

- In making arrangements for its staff and for accommodating either the Authority staff or the Authority's representative or both, Contractor shall provide for:
  - Locating Contractor's staff and the Authority's representative staff in the same building or in close proximity to one another
  - Providing facilities for visiting Authority staff to be present in the local offices whenever they are required

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7.11.1 Joint Inventory and Inspection of Facilities

Prior to accepting or using any facility or item provided by the Contractor, the Authority's representative in conjunction with the Contractor, will conduct a condition survey and inventory of all such items, and the Authority and Contractor will note the condition of each item. The Authority and Contractor will provide written receipts for all facilities and items found to meet Contract requirements. The written receipt will note the condition of all items. The Authority will not be obliged to accept any facility or item that the Authority reasonably considers does not meet the requirements of the Contract.

7.11.2 Facilities and Space Requirements

For office space, including any office trailers, Contractor shall be responsible for providing all utilities connections and supply, including domestic water, electricity, telephone and gas [natural gas or liquefied petroleum gas (LPG)] and sewerage and for paying all costs for providing and supplying such Utilities until at least thirty (30) Days after Final Acceptance for the Work included in the Contract or after facilities are no longer needed by the Authority, whichever is earlier.

7.12 Duty to Inform

If, at any time during the performance of the Contract the Contractor becomes aware of an actual or potential problem, fault, or defect in the Project, or any non-conformance with any Contract Document, federal or Law the Contractor shall give immediate written notice thereof to the Authority.

7.13 Project Meetings and Progress Reporting

Contractor shall schedule regular meetings to review formal reporting, which shall include but not limited to meetings covering the general areas of overall Project progress, technical reviews and workshops, environmental compliance, handover. Additionally the Contractor shall:

- Prepare and submit all reports in accordance with the provisions in the Contract. Unless otherwise specified in the Contract, the contents of the reports shall be substantially as follows:
  - The Contactor is on schedule or in compliance with [report subject matter] except: [list exceptions, reasons why and resolution]
- Proactively identify report and meeting deficiencies to become more efficient in Project information sharing.
- Work with the Authority to identify more efficient ways of sharing information via workshops and meetings, working to reduce or merge formal meetings where possible.
- Coordinate with appropriate parties, prepare materials, record and distribute meeting minutes and action items, and record action completion at follow up meetings. All materials relevant materials shall be distributed via the Authority's web portal on conclusion of the

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meeting. This pertains only to meetings that are with elements external to the Contractor's own forces.

- Maintain Authority required data logs with accurate, verified, and timely information via the Authority's web portal. The Contractor shall proactively work with the Authority to avoid duplication of Project data in multiple logs.

- The meeting schedule shall be defined in the initial Project Partnering Workshop.

7.14 Default

7.14.1 Breach of Contract

The Authority may, by written notice to the Contractor, terminate the right to proceed with the Work (or the separable part of the Work); or the Authority may take over the Work and complete it by contract or otherwise, if:

- The Contractor fails or refuses to commence the Work within the time required by this Contract.
- Contractor fails or refuses to prosecute the Work or any separable part with the diligence that will ensure its completion within the time specified in this Contract, including any extension(s).
- Contractor fails or refuses to provide sufficient resources to complete the Work in an acceptable manner and without delay, or promptly pay its subcontractors, or perform any of its other obligations under this Contract.
- Contractor fails or refuses to complete the Work within the time specified in this Contract.

- Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under the "Assignment" clause (Section 15) of the General Provisions.

- Contractor or any guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors.

- Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against Contractor or any guarantor and not dismissed within 60 days.

- Contractor fails to provide and maintain the performance and payment bonds, any guaranty (see Attachments D, E and F of the Signature Document) and the insurance as required hereunder.

- Contractor breaches any other agreement, representation or warranty contained in the Contract Documents, or Contractor fails to perform any other obligation under the Contract Documents.

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- Any material representation or warranty made by Contractor or any guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents is false or materially misleading when made.
- Contractor violates any Law in performance of the Work.
- Any guarantor hereof revokes or attempts to revoke its obligations under its guaranty, or otherwise takes the position that such instrument is no longer in full force and effect.

The Contractor breaches any other agreement, representation or warranty contained in the Contract Documents, or the Contractor fails to perform any other obligation under the Contract Documents.

7.14.2 Cure Periods

There will be no cure period with respect to the following breaches to which the Contractor agrees are not curable:

- Any material representation or warranty made by Contractor or any guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents is false or materially misleading when made.
- Contractor violates any Law in performance of the Work.
- Any guarantor hereof revokes or attempts to revoke its obligations under its guaranty, or otherwise takes the position that such instrument is no longer in full force and effect.

The Authority shall provide the Contractor and its surety under the performance bond hereunder thirty (30) days' notice and opportunity to cure any other breach before declaring an event of default. If a breach is curable but by its nature cannot be cured within 30 days, as reasonably determined by the Authority, the Authority agrees not to declare an event of default provided that the Contractor commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period exceed sixty (60) days in total.

7.14.3 Remedies

Upon the occurrence of an event of default hereunder, the Authority may, by written notice to the Contractor, terminate the right to proceed with the Work (or the separable part of the Work) or the Authority may take over the Work and complete it by contract or otherwise.

The Contractor and its sureties shall be liable for any damage to the Authority resulting from events of default, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the Authority in completing the Work.

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If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for the convenience of the Authority.

7.14.4 No Limitation of Rights and Remedies

The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided by law or under this Contract. Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

7.15 Use and Possession Prior to Completion/Substantial Completion

The Authority shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any work, the Authority shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that the Authority intends to take possession of or use. However, failure of the Authority to list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. The Authority's possession or use shall not be deemed an acceptance of any Work under the Contract. While the Authority has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from the Authority's possession or use, notwithstanding the terms of the Contract terms relating to Risk of Loss clause of these General Provisions, Section 61.12. If prior possession or use by the Authority delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract Price or the time of completion, and the Contract shall be modified in writing accordingly.

7.16 Substantial Completion and Final Acceptance

7.16.1 Substantial Completion

The Contractor shall deliver an application for Substantial Completion to the Authority when all of the following have occurred:

- The Contractor has completed all Work (except for punch list items, final cleanup and other items included in the requirements for Final Acceptance);
- The Contractor has ensured that all Work has been performed in accordance with the requirements of the Contract Documents;
- The Contractor has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person; and
- Any special tools purchased by the Contractor as provided in the Contract Documents shall have been delivered to Authority and all replacement spare parts shall have been purchased and delivered to Authority free and clear of liens.

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Upon receipt of the Contractor's application for Substantial Completion, Authority shall conduct such inspections, surveys and/or testing as the Authority deems desirable. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, the Authority will promptly advise the Contractor as to any errors, omissions, deviations, defects or deficiencies in the Work necessary to be corrected as a condition to Substantial Completion and as to any errors, omissions, deviations, defects or deficiencies which may be corrected as punch list items. Upon correction of the errors, omissions, deviations, defects or deficiencies identified as a prerequisite to Substantial Completion, the Contractor shall provide written notification to the Authority and the Authority shall conduct another round of inspections, surveys and/or tests. This procedure shall be repeated until the Authority finds that all prerequisites to Substantial Completion have been met.

Substantial Completion of the Project shall be deemed to have occurred when:

- The Authority determines that all errors, omissions, deviations, defects and deficiencies identified as prerequisites to Substantial Completion have been corrected; and
- The Authority and Contractor have agreed upon a punch list for the Project.

The Authority will issue a Certificate of Substantial Completion to the Contractor at such time as the Authority determines that Substantial Completion has occurred.

7.16.2 Final Acceptance

On or before the Final Acceptance Deadline, the Contractor shall perform all Work, if any, which was waived for purposes of Substantial Completion and shall satisfy all of its other obligations under the Contract Documents, including ensuring that the Project has been completed and all components have been properly inspected and tested. Final Acceptance shall be deemed to have occurred when all of the following have occurred:

- All requirements for Substantial Completion have been fully satisfied;
- All punch list items shall have been completed to the reasonable satisfaction of the Authority;
- The Contractor shall have delivered to Authority a certification representing that there are no outstanding claims of the Contractor or claims, liens or stop notices of any Subcontractor or laborer with respect to the Work, other than any previously submitted unresolved claims of the Contractor and any claims, liens or stop notices of a Subcontractor or laborer being contested by the Contractor (in which event the certification shall include a list of all such matters with such detail as is requested by the Authority and, with respect to all Subcontractor and laborer claims, liens and stop notices, shall include a representation by the Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;

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- The Authority shall have received and accepted all design documents, record documents, as-built schedule, right-of-way record maps, surveys, test data, training, operations and maintenance documents and manuals and other deliverables required under the Contract Documents;
- All of the Contractor's obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived in writing by the Authority; and
- The Contractor shall have delivered to Authority a Notice of Completion for the Project in recordable form and meeting all statutory requirements.

The Authority will issue a Certificate of Final Acceptance to the Contractor at such time as the Authority determines that Final Acceptance has occurred.

Final Acceptance will not prevent the Authority from correcting any measurement, estimate or certificate made before or after completion of the Work, nor shall it prevent Authority from recovering from the Contractor, its surety(ies), or other provider of performance security or any combination of the foregoing, overpayment or other costs sustained for failure of the Contractor to fulfill the obligations under the Contract Documents. The occurrence of Final Acceptance shall not relieve the Contractor from any of its continuing obligations hereunder.

7.17 Force Majeure

To the extent Force Majeure has the effect of increasing the costs directly attributable to changes in the Work or increases the time of performance of the Work, the Contractor may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions. Force Majeure is defined as any of the following events, provided it is beyond the control and not due to an act or omission of any Contractor-Related Entity or Authority and could not have been avoided by due diligence or use of reasonable efforts by Contractor:

- Earthquake exceeding 3.5 on the Richter scale;
- Tidal wave;
- Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed in the Contract;
- Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; and
- Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Contractor-Related Entity.

Force Majeure excludes:

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- Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;
- Except as provided in bullet 3 above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;
- Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Contractor-Related Entity); and
- All other matters not caused by or beyond the control of Authority or a Contractor-Related Entity and not listed in the first six bullets above.

7.18 Alternative Technical Concepts (ATCs)

Contractor shall be solely responsible for obtaining third party approvals required to implement approved Alternative Technical Concepts.

Notwithstanding anything herein to the contrary, (i) if an approved ATC incorporated in the Contract Documents requires additional Governmental Approvals or other third party approvals, and the Contractor fails to obtain or comply with such additional approvals or (ii) if an ATC incorporated in the Contract Documents was approved with conditions and the Contractor fails to comply with such conditions, the Contractor shall comply with the requirements of the Contract Documents excluding the ATC without any right to an equitable adjustment. Notwithstanding anything herein to the contrary, if implementation of an ATC will require additional real property or Utility Work, the Contractor shall have full responsibility for paying for any such real property and any related costs including any necessary Governmental Approvals, or performing any such Utility Work, without the right to an equitable adjustment.

8 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State, without regarding to conflict of law principles. Venue for any arbitration action shall lie exclusively in Sacramento County, California.

9 Interest of Public Officials

No Authority board member, officer, employee, or agent shall have any direct or indirect interest in this Contract or its proceeds during, or within one year after, that person's tenure with the Authority. In addition, the Contractor or its employees shall not enter into any contract involving services or property with a person or business prohibited by Government Code sections 1090 et seq. and 87100 et seq. from transacting such business. Unless an explicit statement to the contrary accompanied the Contractor's Proposal, the Contractor affirms that no board member, officer, or employee of the Authority has any interest (whether contractual, non-

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contractual, financial, or otherwise) in this transaction or in the business of Contractor. If any such interest becomes known to the Contractor at any time, the Contractor shall submit a full and complete written disclosure of such information to the Authority, even if such interest would not be considered a conflict under Government Code sections 1090 et seq. and 87100 et seq.

Neither the Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official or employee of the Authority any gifts, entertainment, payments, loans or gratuities. The Authority may, by written notice to the Contractor, terminate the Contractor's right to proceed under the Contract if it is found that gratuities (in the form of gifts, entertainment, or otherwise) were offered or given by the Contractor, or any agent of the Contractor, to any board member, officer, agent and/or employee of the Authority.

Employment by the Contractor of personnel on the payroll of the Authority is not permitted in the performance of the Contract, even though such employment may be outside the Authority employee's regular working hours or on Saturdays, Sundays, holidays or vacation time; further, employment by Contractor of personnel who have been on the Authority's payroll within one year prior to the date of Contract award, where such employment is caused by and/or dependent upon Contractor securing the Contract or a related contract with the Authority, is also prohibited.

The Contractor shall include the language of this provision in Subcontracts for any first tier Subcontractor whose contract exceeds $100,000.

The rights and remedies of the Authority specified in this Section 9 are not exclusive and are in addition to any other rights and remedies allowed by Law.

10 Composition of Contractor

If the Contractor is a joint-venture, each joint venture member shall be jointly and severally liable hereunder.

11 Insurance

[To be provided by addendum.]

12 Bonding and Guaranty

The Contractor shall provide security as described in this clause. Performance bonds are required on all contracts over $100,000 (see Attachment E of the Signature Document) and payment bonds are required on contracts over $25,000 (see Attachment D of the Signature Document). The Contractor may be required to update the bonds on an annual basis, or more frequently if requested by the Authority. Notwithstanding any other provision of the Contract

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Documents, 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.

12.1 Performance and Payment Bonds

The Contractor shall provide to the Authority and maintain at all times during the term of the Contract payment and performance bonds as described below. The performance bond shall be in an amount equal to fifty percent (50%) of the sum of the Total Contract Price and the payment bond shall be in an amount equal to one hundred percent (100%) of the Total Contract Price. The surety company providing the bonds must be authorized to do business in the State of California. The surety company shall be approved for the amount of the bonds and, either hold a certificate of authority from the U.S. Department of Treasury or have obtained reinsurance from a Treasury listed insurer or an A.M. Best Co. "Best's Rating" of A- or better and Class X or better, or as otherwise approved by Authority in its sole discretion. Copies of the executed payment and performance bonds are attached to the Signature Document.

12.2 Additional Bond Security

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

- If any surety upon any bond furnished with this Contract becomes unacceptable to the Authority;
- If any surety fails to furnish reports on its financial condition as required by the Authority; or
- If the Contract Price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Authority.

12.3 Guaranty

The Contractor has provided the Authority with a guaranty (if required) in the form attached to the Signature Document. Such guaranty (if required) assures performance of the Contractor's obligations hereunder and shall be maintained in full force and effect throughout the duration of the Contract (including the warranty period).

A copy of the executed guaranty (if required) is attached to the Signature Document.

13 Records Management and Document Control

To ensure that all Authority program and Project participants and organizations have access to the latest and current versions of each necessary document, the Authority has established a formal document and data control system that manages all program and Project related records, including documents, drawings and other data. The Contractor shall implement a records management program that follows the principles of ISO 15489 and complies with any

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additional document control requirements and process defined by the Authority. The Contractor shall describe its procedures for document control within its quality plan. All submittals shall be English, including reference documents.

13.1 Policy and Implementation

Document control procedures are specified in The Records Management Plan in Book 3. The Authority will use a web-based content management system to manage all Project related submittals. The Contractor will be provided with a secure portal address which it shall use for all submittals. The Contractor shall provide the necessary user licenses required for access to the content management system. Access to documents will be governed by the information security policy established by the Authority.

The Authority shall respond to the Contractor's submittals and correspondence that require a response within 42 days unless otherwise specified elsewhere in the Contract Documents.

The Contractor shall ensure that all Project records are stored and accessible throughout their lifecycle in accordance with the Authority Retention Schedule in the Records Management Plan at Book 3.

13.2 Retention of Records

The Contractor shall ensure that the proper collection, storage, access, retrieval, and eventual destruction of all Project records through their lifecycle in accordance with the Record Management Plan in Book 3.

13.3 Audit and Inspection Rights

The Contractor and its Subcontractors at all tiers shall grant to the Authority, FRA and any other parties designated by the Authority, audit and inspection rights of any and all Project related documents, in any form, including without limitation financial records. The Contractor and its Subcontractors shall also allow the Authority and any designated representative access to any and all Project related documents and the right to copy documents, books and records as such Persons may request in connection with the issuance of Change Orders, the resolution of disputes and other matters without limitation as such Persons reasonably deem necessary for purposes of verifying compliance with the Contract and Laws.

Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates the Contractor has been over-credited under a previous progress report or payment, that over-credit will be credited against current progress reports or payments.

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For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, the Authority and its representatives have the right to examine all books, records, documents and other data of the Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

All claims filed against the Authority shall be subject to audit at any time following the filing of the claim. No notice is required before commencing any audit before 60 days after Final Acceptance. Thereafter, the Authority shall provide 20 days notice to the Contractor, any Subcontractors or their respective agents before commencing an audit. The Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to the Authority, for the audit during normal business hours. The Contractor, Subcontractors, and their agents shall cooperate with the auditors.

Full compliance by the Contractor with the provisions of this Section 13 is a contractual condition precedent to the Contractor's right to seek relief under the "Disputes" clause (Section 51) of the General Provisions. The Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section.

The Contractor shall insert in all Subcontracts a requirement that the Subcontractor shall permit audits and inspection in accordance with this Section, and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

Contractor and Subcontractors may request that such Persons execute a reasonable Non-Disclosure Agreement prior to conducting an audit of any documents, books or records reasonably determined by the Contractor or Subcontractors to be confidential or proprietary.

14 Authority Designated Holidays

The current Authority designated holidays are: New Year's Day (January 1); Martin Luther King, Jr., Day (third Monday in January); Presidents' Day (third Monday in February); Memorial Day (last Monday in May); Independence Day (July 4); Labor Day (first Monday in September); Thanksgiving Day (fourth Thursday in November); the day after Thanksgiving (fourth Friday in November); and Christmas Day (December 25).

15 Assignment

The Contractor shall not assign the whole or any part of this Contract, or any monies due or to become due hereunder, without the prior written consent of the Authority.

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The Authority may assign without the Contractor's consent all or any portion of the Contract, payment and performance bonds hereunder or guaranty hereunder (see attachments D, E and F of the Signature Document) to any Person that succeeds to the governmental powers and authority of the Authority.

16 Authority's Right to Carry Out the Work

The Authority, in its sole discretion and without waiving any other rights, may elect to correct work deficiencies and charge the Contractor for the cost of such corrections if the Contractor fails or refuses to do the following:

- Carry out all or any part of the Work in accordance with the Contract requirements or within the Contract schedule; or
- Correct a deficiency within seven (7) days of receipt of written notice thereof from the Authority.

Nothing in this clause shall relieve the Contractor of its obligation to perform the remainder of the Work in accordance with the Contract.

17 Changes

17.1 Authority-Directed Changes

The Authority may, at any time, without notice to the sureties or any guarantor, by written order designated or indicated to be a directive letter under this clause 17.1, make changes in the Work within the general scope of the Contract, including the following changes:

- In the Scope of the Work to be performed
- In the specifications including, but not limited to performance specifications, drawings and designs
- In the means, method, sequences, techniques or manner of performance of the Work
- In the facilities, equipment, materials, services, or site to be furnished by the Contractor or the Authority
- Directing acceleration in the performance of the Work

The Contractor shall proceed immediately with the Work as directed in the directive letter, pending the execution of a formal Change Order (or, if the directive order states that the Work is within the original scope of the Work, the Contractor shall proceed with the Work as directed but shall have the right pursuant to the "Disputes" clause (Section 51) of these General Provisions to request that Authority issue a Change Order with respect to the directive letter).

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Receipt of a directive letter from the Authority is a condition precedent to the Contractor's right to claim that an Authority-Directed Change has occurred, provided that no directive letter shall be required for alleged Authority-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by the Authority. The fact that a directive letter was issued by the Authority shall not be considered evidence that in fact an Authority-Directed Change occurred. The determination whether an Authority-Directed Change in fact occurred shall be based on an analysis of the original Contract Documents requirements and a determination whether the directive letter in fact constituted a material change in those requirements. that materially increases the cost of the Project and/or affects the critical path.

17.2 Contractor Right to Request Time Extension and Price Increase

Upon the Contactor's fulfillment of all applicable requirements of the Contract Documents and subject to the limitations contained therein, any circumstance that causes a change in the Contractor's obligations shall be treated as a Change Order under this clause; provided, that:

- The Contract Documents expressly contemplate that such event or condition entitles the Contractor to an equitable adjustment and
- The Contractor timely gives the Authority written notice which includes the following information:
  - Date
  - Circumstances allowing an equitable adjustment
  - Applicable provision of the Contract Documents expressly contemplating that an equitable adjustment is allowed for such event or condition
  - A statement providing that the Contractor regards the circumstance as allowing a Change Order

Each such notice shall be delivered as promptly as possible after the occurrence of such event or circumstance. If any such notice is delivered later than 14 days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of such circumstance, the Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in the Critical Path that accrued prior to the date of delivery of the written notice.

Except as provided in Section 17.1 or Section 17.2, no circumstance, order, statement, or conduct of the Authority shall be treated as a change, modification, amendment or entitle the Contractor to an equitable adjustment.

Furthermore, if any such notice concerns any condition or material described in Section 34 the Contractor shall be deemed to have waived the right to collect any and all costs incurred in

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connection therewith to the extent that the Authority is not afforded the opportunity to inspect such material or condition before it is disturbed. The Contractor's failure to provide such notice within 28 days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Contractor from any relief whatsoever. Such notice shall be deemed delivered only if it fully conforms to the requirements of this "Changes" clause and the Contract Documents.

17.3 Equitable Adjustment

Subject to complying with the requirements of this "Changes" clause, if any change under this "Changes" clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, the Authority shall make an equitable adjustment and modify the Contract Price, Utility/Third Party Provisional Sum and/or any Completion Deadline in writing.

17.4 Proposal for Adjustment

The Contractor must submit any Change Order Proposal under this clause within forty-two (42) days after either of the following:

- Receipt of a written directive letter under Section 17.1
- The furnishing of a written notice under Section 17.2

Each Change Order Proposal shall contain a sworn certification in form acceptable to the Authority by Contractor (and each Subcontractor, for any Subcontractor involved in the Work or event contemplated by the Change Order) that the Change Order is made is good faith and in accordance with the terms of the Contract, the amount of time and/or compensation requested accurately reflects the appropriate adjustments and includes all known and anticipated impacts that may be incurred as a result of the event giving rise to such proposed change and that the Contractor (and each Subcontractor, as applicable) has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

Each Change Order proposal involving Subcontractor Work shall include a sworn certification including that Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested.

The Change Order Proposal shall comply with the requirements of the "Equitable Adjustments" clause (Section 23) of the General Provisions. The Change Order Proposal shall include sufficient backup documentation and must outline any cost and time impact to the Contract performance as the result of the change specified in the Change Order. If no reasonable Change Order Proposal is submitted by the Contractor within the specified time, the Contractor shall be conclusively deemed to have accepted the cost and time adjustment stated in the written directive letter under Section 17.1 or shall be deemed to have withdrawn its request for a Change Order under Section 17.2.

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Each Change Order Proposal provided under this clause shall meet all requirements set forth in this clause, provided that if any such requirements cannot be met due to the nature of the occurrence, the Contractor shall provide an incomplete Change Order Proposal, which shall:

- Comply with all requirements capable of being met.
- Include a list of requirements, which are not fulfilled together with an explanation reasonably satisfactory to the Authority stating why such requirements cannot be met.
- Provide such information regarding projected impact on the Critical Path affecting a Completion Deadline as is requested by the Authority.
- In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Contractor shall furnish, when requested by the Authority, such further information and details as may be required to determine the facts or contentions involved. The Contractor agrees that it shall give the Authority access to any and all of the Contractor's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the Authority can investigate the basis for such proposed Change Order. The Contractor shall provide the Authority with a monthly update to all outstanding incomplete Change Order Proposals, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the Authority, time expenditures to date and time anticipated for completion of the Activities for which the time extension is claimed. Failure to provide the above monthly information as required shall prevent the Contractor from being compensated for that month for any Change Order Proposal amounts that otherwise may be owed or become owed.

The Contractor may request a Change Order only for those events and situations that the Contract Documents expressly contemplate that a Change Order is permitted.

No Change Order Proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

17.5 Importance of Timely Notice

The Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to the Authority. The Authority is relying on the Contractor to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether the Contractor believes a time extension and/or price increase is required hereunder. If an event or situation occurs that may affect the Contract Price and/or Utility/Third Party Provisional Sum or a Completion Deadline, the Authority will evaluate the situation and determine whether it wishes to make

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any changes to the definition of the Project so as to bring it within the Authority's funding and time restraints.

17.6 Waiver

THE CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH THE CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY CHANGE ORDER REQUEST, AND AGREES THAT THE CONTRACTOR SHALL NOT BE ENTITLED TO ANY COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

17.7 Disputes

The failure of the Authority and the Contractor to agree to any Change Order hereunder shall be a dispute to be resolved pursuant to the "Disputes" clause (Section 51) of the General Provisions. The Contractor's claim and any award by the resolver of the dispute shall be limited to the incremental costs incurred by the Contractor with respect to the disputed matter (crediting the Authority for any corresponding reduction in the Contractor's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

17.8 Release of Claims

All Change Orders executed under this Contract shall contain the following "Release of Claims" language:

> "Except as modified by this Change Order, all terms and conditions of the Contract, as previously modified, remain unchanged and in full force and effect. The parties agree that this Change Order is a final and equitable adjustment of the Contract time and Contract amount and constitutes a mutual accord and satisfaction of all claims, current or future, of whatever nature caused by or arising out of the facts and circumstances surrounding this Change Order including, but not limited to, direct, indirect, and consequential costs; additional time for performance; and the impact of the modifications specified in this Change Order, along or taken with other changes, on the unchanged work."

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18 Change Order Accounting

In the event an equitable adjustment under the General Provision clause entitled "Changes" as supplemented by the General Provision entitled "Equitable Adjustment" cannot be agreed to in a timely manner, the Authority may issue a directive letter under Section 17.1 and require Change Order accounting. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable direct costs (less allocable credits) of work, both changed and not changed, which are allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Authority or the matter is conclusively disposed of in accordance with the "Disputes" clause (Section 51) of the General Provisions.

19 Pricing of Adjustments

When costs are a factor in any determination of a Contract Price and/or Utility/Third Party Provisional Sum adjustment, pursuant to the "Changes" clause (Section 17) of the General Provisions or any other provision of this Contract, such costs shall be in accordance with the Federal Acquisition Regulation (FAR) Part 31, Contract Cost Principles and Procedures.

19.1 Requirements for Cost or Pricing Data (Modifications)

The requirements for cost and pricing data (modifications) to this Contract are provided below:

- For any Contract modification of more than $100,000, if the Contractor is not granted an exemption from the requirement to submit cost or pricing data, the Contractor shall submit cost or pricing data and supporting documents in a form prescribed by the Authority.
- Before awarding any subcontract expected to exceed $100,000 when entered into, or pricing any subcontract change order involving a pricing adjustment expected to exceed $100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price of the subcontract or modification thereto is as follows:
  - Based on adequate price competition
  - Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
  - Set by Law
- The Contractor shall require the subcontractor to certify in substantially the form prescribed in the "Certificate of Cost and Pricing Data" as set forth in FAR 15.406.2 and (Section 20) below, that, to the best of its knowledge and belief, the data submitted under the second bulleted item above are accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

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- The Contractor shall insert the substance of bullets two through four of this clause in each subcontract that exceeds $100,000 when entered into.

20 Certificate of Cost and Pricing Data

When the Contractor and the Authority negotiate a Contract change in excess of $100,000 a "Certificate of Current Cost or Pricing Data" as set forth in FAR 15.406.2 in form acceptable to the Authority must be submitted by the Contractor. Any documentation to support the price negotiated must be attached to the certificate when it is submitted to the Authority. If a certificate is required and the information is subsequently found to have been inaccurate, incomplete, or more than ninety (90) days old as of the date stated in the certificate, the Authority is entitled to an adjustment of the Contract Price and/or Utility/Third Party Provisional Sum, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

21 Price Reduction for Defective Cost or Pricing Data (Modifications)

This clause shall become operative only for any modification to this Contract involving either aggregate increases or decreases in costs or both, plus applicable profits, of more than $100,000, except that this clause does not apply to any modification for which the price is:

- Based on adequate price competition;
- Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- Set by Law.

If any price (including profit) or fee negotiated in connection with any modification covered by this clause was increased by any significant amount because:

- The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its respective Certificate of Current Cost or Pricing Data
- A subcontractor or prospective subcontractor furnished to the Contractor (in support of the subcontractor cost estimates) cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or
- Any of these parties furnished data of any description that were not accurate,

the price shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

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Any reduction in the Contract Price and/or Utility/Third Party Provisional Sum under the paragraph above, due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract or the actual cost to the Contractor (if there was no subcontract) was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

22 Differing Site Conditions

The Contractor shall promptly, and before the conditions are disturbed, give written notice to the Authority of any of the following:

- Subsurface or latent physical conditions encountered at the exact boring locations included in the Contract Documents that differ materially from those indicated for such locations in the Contract Documents; or
- Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

Notwithstanding the above, the following conditions shall be excluded:

- Conditions that the Contractor had, or should have had, actual or constructive knowledge as of the Proposal Due Date.
- Utility facilities, Hazardous Materials Hazardous Materials, non-contaminated water and any conditions which constitute or are caused by Force Majeure.
- Conditions that could have been discovered by reasonable Site investigation or review of other available information prior to the Proposal Due Date.
- Variations in soil moisture content or groundwater levels from that represented in reports, borings or tests included in the Contract.

To the extent such conditions materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, the Contractor or the Authority may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed unless the Contractor has given the required written notice; provided that the time prescribed for giving written notice may be extended by the Authority in the Authority's sole discretion.

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No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

23 Equitable Adjustments

The provisions of the "Changes" clause (Section 17) in these General Provisions are supplemented as follows:

- Change Order Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Authority.
- For Change Order Proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract. The itemized breakdown shall, at a minimum, include the items specified in Section 23.1 below.
- Change Order Proposals shall not include any cost for insurance provided by the Authority
- The Contractor shall submit with the Change Order Proposal its request for time extension (if any), and shall include sufficient information and dates, and include a Time Impact Analysis under the "Project Controls" clause (Section 58) of the General Provisions, to demonstrate whether and to what extent the change will delay the Contract in its entirety.

In considering a Change Order Proposal, the Authority shall check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment. After receipt of a Change Order Proposal, the Authority shall act thereon. If the necessity to proceed with a change does not allow time to properly check a Change Order Proposal, the change cannot be reasonably estimated, or in the event of a failure to reach an agreement on a Change Order Proposal, the Authority may order the Contractor to proceed based on a price to be determined at the earliest practicable date. If appropriate, the Contractor may be required to proceed in accordance with the General Provision entitled "Change Order Accounting" (Section 18). If a mutually acceptable agreement cannot be reached, the Authority may determine the price unilaterally, subject to the "Disputes" clause (Section 51) clause of the General Provisions.

23.1 Overhead and Profit

For forward priced negotiated Change Orders, profit and overhead will be paid at 10 percent of the direct allocable, allowable and reasonable costs plus, if the Work is subcontracted, 5 percent of the direct costs, regardless of the number of lower-tier subcontractors involved in any and all changed Work, for a total maximum markup of 15 percent. This amount shall fully compensate Contractor for administration, general superintendence, overhead, profit and all other expenses not otherwise directly recoverable with respect to a Change Order.

The foregoing overhead and profit will be paid to the Contractor only for Work it performs; in the case of Work that is subcontracted, the additional payment for Subcontract administration

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will be allowed to the Contractor as described above and all other overhead and profit will be allowed to the Subcontractor who actually performs the Work.

For time and materials and unit price Change Orders, no markup for overhead and profit will be allowed.

23.2 Limitation on Price Increases

Any increase in the Contract Price and/or Utility/Third Party Provisional Sum allowed hereunder shall exclude:

- Costs caused by breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity.
- Costs that could reasonably have been avoided by the Contractor, including by re-sequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).
- Costs for (a) any rejected Work that failed to meet the requirements of the Contract Documents and (b) any necessary remedial Work.

23.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it:

- Did not impact the Critical Path affecting a Completion Deadline.
- Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity.
- Could reasonably have been avoided by Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves an Authority caused delay, Authority shall have agreed, if requested to do so, to reimburse Contractor for its costs incurred, if any, in re-sequencing, reallocating, or redeploying its forces).
- Was concurrent with any other delay for which Contractor is not entitled to an extension.

The Contractor shall be required to demonstrate to the Authority's satisfaction that the change in the Work or other event or situation which is the subject of a Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable delay of the Work which has impacted the Critical Path activity affecting a Completion Deadline.

23.4 Limitation on Delay and Disruption Damages

Delay damages shall be compensable hereunder only in the case of delays to the extent that they entitle the Contractor to an extension of a Completion Deadline and result from the following (and no other delays):

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- A written order designated to be a directive letter under the "Authority-Directed Changes" clause (Section 17.1) of the General Provisions,
- A suspension for convenience under the "Suspension for Convenience" clause (Section 39.2) of the General Provisions.
- Failure of the Authority to provide access to the real property identified in the ROW Acquisition Plan on or before the deadline for such access set forth therein as described under the "Right Of Way" clause.
- Failure of the Authority to provide responses to proposed schedules, design submittals or other submittals and matters for which response by the Authority is required within the time periods indicated in the Contract Documents.

Delay damages are limited to additional field office and jobsite overhead costs incurred by the Contractor directly attributable to the delay of a Completion Deadline. Home office overhead is excluded from delay damages and not compensable under the Contract. Before the Contractor may obtain any increase in the Contract Price and/or Utility Provisional Sum to compensate for any delay damages, the Contractor shall have demonstrated to the Authority's satisfaction that:

- The Project schedule in fact sets forth a reasonable method for completion of the Work.
- The change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable delay of the Work and impact the Critical Path affecting a Completion Deadline.
- The Delay Damage was not due to any breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by the Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).
- The delay for which compensation is sought is not concurrent with any other delay for which the Contractor is not entitled to delay damages.
- The Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the Authority.

Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable under the Contract. Disruption damages include costs of (i) rearranging the Contractor's Work plan not associated with an extension of a Completion Deadline and (ii) loss of efficiency, momentum or productivity.

As provided in Section 58.4, the Contractor shall not be entitled to delay damages to the extent of available Total Float.

Notwithstanding the above, the Contractor shall be entitled to compensation for idle time of equipment as set forth in Section 49.

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24 Value Engineering

The Authority is committed to cost-effective implementation of the Project and encourages the Contractor to submit Value Engineering Change Proposals if, during the course of the Project, it determines that an alternative not previously considered in its response to the RFP offers added value to the Authority at a reduced total cost.

24.1 Description of the Value Engineering Change Proposal (VECP)

A VECP is a proposal to change the Contract requirements to reduce the cost of the Project without impairing essential functions or characteristics of the Project, as determined by the Authority in its sole discretion, provided that a VECP cannot be based solely on a change in quantities. The Authority retains the right to determine, in its sole discretion, if a VECP represents an opportunity to reduce costs without impairing essential functions. Any VECP submission must include a determination of essential functions and characteristics including analyses of the following:

- The relative service life of the proposed change and the existing requirement
- The warranty service requirements of the proposed change and the existing requirement (level of effort and frequency)
- Environmental and aesthetic impacts of the change
- Effects on system service
- Effects on other system components

Contents of the VECP Package – At a minimum, the following information must be submitted by the Contractor with each VECP:

- A narrative description of the proposed change. In the event the Authority requests a VECP, it shall provide the description of the proposed change.
- A comparison of the differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item.
- A complete cost analysis, including the cost estimate of any additional right-of-way or easements required for implementation of the VECP.
- A justification for changes in function or characteristics of each item, and effect of the change on the performance on the end items.
- A description of any previous use or testing of the proposed approach, and the conditions and results.
- An estimate of the costs of development and implementation of the proposed change.
- A statement of the time by which a Contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the Contract completion time or delivery schedule.

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The Authority at its sole discretion may request additional information to further the Authority's evaluation of the VECP.

24.2 Review by the Authority

The Authority shall process the VECP expeditiously, but will not be liable for any delay in acting upon any VECP submitted pursuant to this Section. The Contractor may withdraw all or part of any VECP at any time prior to approval by the Authority, but shall be liable for costs incurred by the Authority in review of the withdrawn VECP, or part thereof. Except in the case of a withdrawn VECP, the Authority and the Contractor shall each be responsible for its own costs in connection with preparation and review of a VECP.

24.3 Approval or Rejection of a VECP

The Authority shall determine whether a VECP qualifies for consideration and evaluation. Value Engineering Change Proposals that require excessive time or costs for review, evaluation, or investigations, or that are not consistent with the Authority's design policies and basic design criteria, may be rejected. The Contractor shall have no claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profits, or increased material or labor costs. The Authority may approve, in whole or in part, any VECP submitted. The decision regarding rejection or approval of any VECP will be at the sole discretion of the Authority and will be final and not subject to appeal.

24.4 Share in Savings

Any net savings estimated to accrue to the Contract due to an approved VECP will be split equally between the Authority and the Contractor, after taking into account any additional costs or savings anticipated to be incurred by the Authority resulting from the VECP, including costs relating to Relocations, ROW and implementation.

The Contractor is not entitled to share in either of the following:

- Any measurable net reductions in the Authority's costs resulting from the VECP, including costs of maintenance by the Authority and logistics, excluding net reductions in the Authority's costs relating to Right-of-Way, or
- A reductions in the cost of performance of future contracts resulting from a VECP.

25 Escrowed Proposal Documents

The Contractor has delivered to the Authority all documentary information used in preparation of the Contract Price (the "Escrowed Proposal Documents" or EPDs). The EPDs are held in a locked fireproof cabinet supplied by Contractor and located in the Authority's offices or in another location as designated by the Authority, with the key held only by the Contractor. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the Contract and currently with approval of each

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Change Order, if appropriate, as determined solely by the Authority, all documentary information used in preparation of the quotation or Change Order shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained subject to this Section until all of the following have occurred:

- Expiration of Contractor's Warranties or termination of the Work, as applicable;
- All disputes regarding the Contract have been settled; and
- Final payment on the Contract has been made by the Authority and accepted by the Contractor.

25.1 Availability for Review

The EPDs shall be available during business hours for joint review by the Contractor. The Authority, the DRB and any other dispute resolvers and their successors and assigns, in connection with approval of the Schedule of Values, negotiations of Change Orders, in the resolution of disputes, and as described in Section 25.6. Authority shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. The Authority shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that the Authority has executed and delivered to the Contractor a confidentiality agreement specifying that all proprietary information contained in such documents will be kept confidential, that copies of such documents will not be distributed to any third parties other than the Authority's attorneys and experts, the DRB, and other dispute resolvers hereunder, and that all copies of such documents (other than those delivered to dispute resolvers) will be either destroyed or returned to the depository (or to Contractor if the EPDs have been returned to it) upon final resolution of the negotiations or disputes. The foregoing shall in no way be deemed a limitation on the Authority's discovery rights with respect to such documents.

25.2 Proprietary Information

The EPDs are, and shall always remain, the property of Contractor, and shall be considered to be in the Contractor's possession, subject to the Authority's right to review the EPDs as provided in this Section. The Authority acknowledges that the Contractor may consider that the EPDs constitute trade secrets or proprietary information. This acknowledgment is based upon Authority's understanding that the information contained in the EPDs is not known outside the Contractor's business, is known only to a limited extent and by a limited number of employees of the Contractor, is safeguarded while in the Contractor's possession, and may be valuable to the Contractor's construction strategies, assumptions, and intended means, methods, and techniques of construction. The Authority further acknowledges that the Contractor expended money in developing the information included in the EPDs, and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Authority acknowledges that the EPDs and the information contained therein are being made accessible to Authority only because it is an express prerequisite to award of the Contract.

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25.3 Representation

The Contractor represents and warrants that the EPDs constitute all of the information used in the preparation of its Contract Price, and agrees that no other Proposal preparation information will be considered in resolving disputes or claims. Contractor agrees that the EPDs are not part of the Contract and that nothing in the EPDs shall change or modify the Contract.

25.4 Contents of EPDs

The EPDs provided with the Proposal shall, inter alia, clearly detail how each price included in the Proposal has been determined and shall be adequate to enable a complete understanding and interpretation of how Contractor arrived at the Contract Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined and shall be adequate to enable a complete understanding and interpretation of how the Contractor arrived at its quotation and/or Change Order price. In this regard, crews, equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into Contractor's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Contractor's usual format. Contractor's allocation of plant and equipment, indirect costs, contingencies, mark-up, and other items to each direct cost item shall be clearly identified. The EPDs shall include all assumptions, detailed quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and suppliers, memoranda, narratives, and all other information used by Contractor to arrive at the Contract Price or amendment or Change Order.

25.5 Form of EPDs

Contractor shall submit the EPDs in such format as is used by Contractor. It is not intended that the Contractor perform any significant extra work in the preparation of these documents. However, the Contractor represents and warrants that the EPDs provided with the Proposal were personally examined prior to delivery by an authorized officer of the Contractor and that they meet the requirements of the Section 25.4; and that the EPDs provided in connection with quotations and Change Orders will be personally examined prior to delivery by an authorized officer of the Contractor and that they will meet the requirements of Section 25.4.

25.6 Review by Authority

Authority may at any time conduct a review of the EPDs to determine whether they are complete. In the event the Authority determines that any data is missing, Contractor shall provide such data within three (3) Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPDs information, and added to the EPDs. Contractor shall have no right to add documents to the EPDs except upon the Authority's request.

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At the Authority's option, which may be exercised at any time, the EPDs associated with any Change Order or Contract amendment shall be reviewed, organized, and indexed in the following manner: Representatives of the Authority and the Contractor shall organize the EPDs, labeling each page so that it is obvious that the page is a part of the EPDs and so as to enable a person reviewing the page out of context to determine where it can be found within the EPDs, and shall compile an index listing each document included in the EPDs and briefly describing the document and its location in the EPDs. The Authority shall have a right to retain a copy of the index. If, following the initial organization, the Authority determines that the EPDs are incomplete; the Authority may require the Contractor to supply data to make the EPDs complete.

25.7 Subcontractor Pricing Documents

Contractor shall require each Subcontractor whose subcontract price equals or exceeds $5,000,000 to submit to Contractor a copy of all documentary information used in determining its subcontract price, immediately prior to executing the Subcontract or change orders or amendments thereto, to be held in the same manner as the EPDs, and which shall be accessible by the Contractor and its successors and assigns (including the Authority), the DRB, and other dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that its EPDs constitute all the documentary information used in establishing its subcontract price. Each Subcontract with a Subcontractor whose subcontract price is less than $5,000,000 shall require the Subcontractor to preserve all documentary information used in establishing its subcontract price and to provide such documentation to either the Contractor or Authority or both in connection with any claim made by such Subcontractor.

26 Safety and Security

It is the policy of the Authority to perform work on the California High-Speed Train Project (CHSTP) in a manner that ensures the safety and security of employees, contractors, emergency responders, and the public. The application of system safety and security is a fundamental hazard and vulnerability management process that incorporates the characteristics of planning, design, construction, testing, operational readiness, and subsequent operation of the high-speed rail system. Safety and security are priority considerations in the planning and execution of all work activities on the Project.

All trains, facilities, systems, and operational processes must be designed, constructed, and implemented in a manner that promotes the safety and security of persons and property. The design, construction, testing, and start-up of the CHSTP shall comply with applicable safety and security laws, regulations, requirements, and railroad industry practices. The Authority shall maintain or improve upon the public transit and railroad industry standards for safety and security. Through the Reliability, Availability, Maintainability, and Safety (RAMS) Program, a standard of safety will be established that is as safe as or safer than conventional U.S. railroad

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operations. The design, construction, testing, and start-up of the CHSTP will be accomplished in compliance with this standard.

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

26.1 Goals and Objectives

The Safety and Security Management Plan (SSMP) is established by the Authority to implement safety initiatives associated with the Project. The SSMP applies to all persons or entities involved in the design, construction, and warranty service of the post-construction California High-Speed Train Project, including but not limited to the Authority and Contractors (prime contractors and subcontractors).

SSMP goals are as follows:

- Prevent personal injuries and property damage or loss
- Provide safe and secure work environment for employees, contractors, passengers, emergency responders, and the public at large
- To convey the CHSTP Safety and Security Policy Statement to all contractors and subcontractors
- To ensure compliance with the stated objectives and requirements contained in the CHSTP Safety and Security Policy Statement; Contractor's Site-Specific Health and Safety Plan (SSHASP); Contractor's Site-Specific Security Plan (SSSP); Contract provisions; applicable Laws; and industry consensus standards
- To identify general requirements for the Contractors' workplace safety and security programs
- To identify a process for Authority approval of the safety and security submittals

26.2 Construction Safety and Security

Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. The effectiveness of the Contractor's safety and security efforts depends upon

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active participation, cooperation, and compliance by Contractor's and subcontractor's project managers, superintendents, supervisors, and other employees. The Contractor shall:

- Plan and execute all Work to prevent personal injury, breaches in security, property damage or loss
- Comply with Laws, industry consensus standards; and Authority and Contractor, policies, procedures, and requirements
- Implement and maintain a system of prompt identification and correction/abatement of unsafe and unhealthy practices and conditions
- Implement and maintain a system of prompt identification and correction/abatement of unsecure assets and conditions
- Prompt notification and investigation of all incidents of injury, damage, or near-miss incidents to determine causes and take necessary corrective action
- Prompt notification and investigation of all reports of security breaches
- Establish and conduct an educational program for all employees through safety and security meetings and training programs
- Proper utilization of required safety equipment/devices
- Employ competent personnel to develop processes to provide safe and secure working environments for the design and construction work force, management facilities, the affected public, and private businesses and their properties
- Establish and maintain a comprehensive security program encompassing personnel, facility, and site management in conjunction with emergency planning and response procedures
- Maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment.

26.2.1 Contractor Responsibilities

The Contractor is responsible for ensuring safety and security at all of its work sites, including the activities of subcontractors. Safety and security management and enforcement for each contract shall be administered by employees (direct hire) of the Contractor. This responsibility shall not be delegated nor contracted out to subcontractors, suppliers, consultant service/company, or any other persons/agency without written approval from the Authority. Accordingly, the Contractor shall:

- Develop a Site-Specific Health and Safety Plan (SSHASP).
- Develop a Site-Specific Security Plan (SSSP).
- Plan and execute all work in compliance with the stated objectives and requirements contained in the CHSTP Safety and Security Policy Statement (contained in the CHSTP

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Safety and Security Management Plan in Book 3); the Contractor's SSHASP and SSSP; Contract provisions; applicable federal, State, and local laws and regulations; and industry consensus standards.

- Ensure all subcontractors, suppliers, etc. are provided with a copy of the CHSTP Safety and Security Policy Statement, and the Contractor's SSHASP and SSSP, and are properly informed of their obligations with regards to compliance.
- Complete safety and security certification processes as identified below.
- Obtain permits required by the California Division of Occupational Safety. Permits shall be kept on file at the work site.
- Designate one or more persons as the safety and security representative(s) responsible to ensure the proper implementation of the SSHASP and SSSP. Identify the response plan for the representative(s) and reporting responsibilities. The representatives will have sufficient knowledge and experience to demonstrate competency for applicable subject matter. Qualifications may include: OSHA outreach Construction Training card; competent person training certifications for trenching and excavations; confined space entry and rescue; tunnel construction and ventilation; fall protection; certification as a Construction Health and Safety Technician, Certified Safety Professional, or Certified Industrial Hygienist. The qualifications of the Contractor's safety and security team shall be submitted to the Authority with the SSHASP.
- For any engineering or construction equipment (such as drills, cranes, concrete pump trucks, backhoes, and other mobile equipment) that could encroach into the operating right-of-way of other railroads or public spaces, the Contractor shall submit and obtain approval from the other railroads or third parties a plan describing the use of such equipment and the precautions to be taken to preclude any unintended encroachment of the right-of-way. Encroachment shall be as defined by the other railroads and third parties. The Contractor will comply with the safety requirements specified by the adjacent railroad or third parties for work in and adjacent to the respective rights-of-way.
- The Contractor shall submit to the Authority a monthly report of safety performance, including but not limited to incidents of injury or property damage incurred, injury rates, incident investigation results, corrective action plans, a summary of communication and training efforts, a narrative summary of safety activities, and other items as identified by the Contractor.
- The Contractor shall submit to the Authority a monthly report of security performance, including but not limited to incidents of trespass or security breach, incident investigation results, corrective action plans, a narrative summary of security activities, and other items as identified by the Contractor.

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26.2.2 Site-Specific Health and Safety Plan

The safety processes, equipment utilized, and personnel assignments to be provided by the Contractor at each work site may differ based upon a site-specific Job Hazard Analysis (JHA) performed by the Contractor. The Site-Specific Health and Safety Plan shall, but not be limited to:

- Contractor's Safety and security policy statement.
- Conform to applicable workplace safety regulations including but not limited to California Code of Regulations Title 8 Construction Safety Orders, Federal Railroad Administration regulations as found at 49 C.F.R. Parts 214, 219, 225, 228, and 236; California Public Utilities Commission General Orders; Federal and State OSHA regulations
- Identify the makeup, reporting structure, and inter-action processes of the Contractor's Safety team with the rest of the Project work force (including subcontractors and the Authority), and with third parties such as emergency responders, utilities, and adjacent railroad operators.
- Identify roles and responsibilities of all employees for the Contractor and subcontractors with respect to safety.
- Detail a process for managing hazards or incident of injury or damage through identification, reporting, and correction or abatement or mitigation, including descriptions for processes and applicability of Job Hazard Analyses for each job assignment within the scope of the contract for which a person may be exposed to incidents of injury or illness. JHAs previously performed by the Contractor will be acceptable for use in determining preventive measures if the scope and functionality of the jobs under review are justifiably the same. The previously-performed JHAs, however, must address the specific characteristics of each site and tasks performed within the Project scope. JHAs shall be submitted via the Authority's web portal and a copy kept on the Site.
- Detail procedures for work site safety audits and inspections, including assignment of responsibility, frequency, documentation method, and actions following various audit results.
- Detail an employee communication program that identifies individual responsibilities for all employees, schedules for specific communication techniques, and a process for recording and tracking communication program performance. The employee communication program shall include but not be limited to:
  - Job briefing procedures/requirements
  - Hazard communications (HazComm)
  - Employee safety committees
  - Project safety committees
  - Notification to employees and the Authority of incidents or hazards when identified

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- Detail site-specific workplace health and safety rules and procedures that conform to regulatory requirements of local, State, and federal occupational safety and health regulations, including but not limited to California Code of Regulations Title 8 Construction Safety Orders, Federal Railroad Administration regulations 49 C.F.R. Parts 200-299, California Manual on Uniform Traffic Control Devices, the Contractor's corporate safety plan, and the CHSTP Safety and Security Policy Statement. Rules and procedures shall address Site-specific work activities and conditions including but not limited to:
  - Safeguards for the protection of all workers, pedestrians, and the public from excavations, construction equipment, obstructions, and other dangers. Safeguards may include but are not limited to fencing, adequate railings, guard rails, temporary walks, barricades, warning signs, directional signs, overhead protection, planking, decking, danger lights, and other suitable safeguards.
  - Personal protective equipment for all work site hazards and conditions, including equipment issuance/availability procedures
  - Mobile equipment operation procedures and training program, including qualification process and requirements, and performance observation/evaluation requirements
  - Fall protection and scaffolding procedures, including minimum fall protection equipment requirements, a process for training workers, and performance observation/evaluation requirements
  - Motor vehicle operation program, including rules and procedures for specific equipment to be used at the work site (including industrial lift trucks), operator screening and qualification process and requirements, and performance observation/evaluation requirements
  - Roadway worker protection (on-track safety) for Authority right-of-way in compliance with FRA regulations contained in 49 C.F.R. Part 214
  - Hazardous materials handling and storage plan specific to each work site, including a plan for cataloguing Material Safety Data Sheets and submitting same to the Authority, and for communicating Material Safety Data Sheet information to employees
  - Lockout/tagout programs for all applicable energy sources, including but not limited to electrical, hydraulic, and kinetic
  - Fire prevention and suppression, including procedures for identification of hazards that could lead to fire, procedures for local fire suppression and notification to authorities, inspection processes, and a detailed training and exercise program
  - Safety and security program training requirements and documentation including training curriculum, frequencies of and method of delivery for training, training records, and lists of qualified/competent persons for specific tasks
  - Roadway worker protection for adjacent railroad right-of-ways – Employees working in these locations shall be trained by the Contractors to ensure they become fully familiar

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with railway operations, procedures, rules, and safety requirements; and a daily Jobsite Hazard Analysis (JHA) shall be conducted

- Detail a Hazardous Waste Operations and Emergency Response Plan (HAZWOPER Plan) for the control of hazardous substances in compliance with California Code of Regulations, Title 8, Section 5192. The HAZWOPER Plan will be kept on site, available to all employees, authorized visitors, and the Authority upon request.
- Detail a program for coordinating roadway worker protection activities and compliance with adjacent railroads. All Contractors working in the shared corridor will meet frequently with the responsible representatives of the operating railway and coordinate activities to minimize risks and hazards to Contractor personnel, and to avoid hazards or disruptions to the operation of the railway.
- Detail work site first-aid resources and a training program for employees.
- Detail an Emergency Response Plan for management of emergency situations associated with, but not limited to, the following: injury to an employee or member of the public; fire; flood; earthquake; property damage and damage to various utilities (such as, electrical, gas, sewage, water, telephone, or public roadways); public demonstrations; acts of sabotage including threats of sabotage; Hazardous Materials Hazardous Materials encountered; toxic spills; explosions; vehicular accidents; and confined space rescues. The Emergency Response Plan shall be updated when conditions or procedures change. The Emergency Response Plan will be kept on site, available to all employees, authorized visitors, and the Authority upon request. The Emergency Response Plan shall include the following items, at minimum:
  - Identification of the person responsible for handling an emergency
  - Establishment of teams for handling each type of emergency
  - Identification of the person responsible for making emergency call (preferably the ranking Supervisor present)
  - The requirement to conspicuously post a list of emergency phone numbers, along with information to be transmitted. Include with the emergency phone numbers, the number of the Authority representative to be contacted (request telephone number and name of Authority contact person or persons from the Authority Representative)
  - Site identification and signage for emergency responders
  - Trench and confined space rescue plan or tunnel evacuation plan, as applicable
  - The procedure for contacting the Authority Representative when an incident of emergency response occurs
  - Scene management for the emergency response including procedures for ensuring the safety of employees and emergency responders, safeguarding the scene from unwanted entry, and handling on-scene media
- Detail a program for ensuring public safety at work sites and avoiding damage to public property. The public shall be considered as any persons and property not employed or

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owned by the Contractor or its Subcontractors. The program shall address site-specific work activities and conditions including but not limited to:

- Identification of potential hazards to the public
- Erection and proper upkeep at all times of all necessary safeguards for the protection of the public, including pedestrian and vehicle traffic, and the assignment of trained and competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the Work site
- Posting of signs warning against the hazards created by construction or warranty service activities
- Elimination of unnecessary noise, obstructions, and other annoyances to nearby residents and businesses
- Procedures and competency training for employees assigned to public safety and public property protection
- Designated work zones – Work outside of the designated work zones shall be performed only when specifically stated in writing from the Authority Representative

- Detail a Temporary Traffic Control Plan for each phase of the work. Temporary Traffic Control Plans will be developed in compliance with the requirements of the current California MUTCD. The Contractor shall apply to the jurisdictional authority for approval of the plan and for a permit or permits to work in the public right-of-way. In cases where there is more than one jurisdictional authority, a separate Temporary Traffic Control Plan will be developed for each jurisdictional authority, as required. The Temporary Traffic Control Plan shall include:

  - Drawings showing proposed traffic control devices including temporary signage and temporary pavement markings and striping.
  - Different traffic diversion patterns and methods of control. Include for each phase detailed schedules for performance of work and include proposed traffic control devices.
  - Requirements for flagger training and qualifications, assignment, and supervision.
  - Notification plans for vehicular, bicycle, and pedestrian traffic detours including notifications of business owners, residents, and property owners in the vicinity of traffic and parking disruptions.
  - Any other requirements of the local government

  The Temporary Traffic Control Plan will be kept on site, available to all employees, authorized visitors.

- Other elements that conform to the Contractor's corporate health and safety plan.

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26.2.3 Site-Specific Security Plan Elements

Security at construction sites is to ensure all personnel working at the site, the Authority's assets and property, and the surrounding communities, are protected from trespassers, vandalism, theft, encroachment and illegal dumping. In compliance with these provisions, the Contractor shall develop a Site-Specific Security Plan (SSSP) which shall address all crime and security-related conditions. This includes protection of property, materials, tools, equipment, and personal property of workers at sites. The types of security to be provided by the Contractor at each site may differ based upon a site-specific security assessment performed by the Contractor.

The Site-Specific Security Plan shall include, but not be limited to:

- Safety and security policy statement
- Identification of the makeup, reporting structure, and inter-action processes of the Contractor's Project Management Team, including the Contractor's Security Management Team, with the rest of the Project work force (including subcontractors and the Authority) and with third parties such as local law enforcement agencies
- Identification of roles and responsibilities of all employees for the Contractor and subcontractors with respect to security
- Protection of the public and property, materials, equipment, and tools through the use of fencing, access control, locks, alarms, intrusion detection, lighting, and security guards as necessary, and any other security requirements that may be applicable
- Personnel security program including employee background requirements, a code of conduct and expectations for employee behavior, and procedures for internal and external notification when personnel security is violated
- Access control program to identify authorized persons for each work site, procedures for authorizing new employees or visitors, and procedures for monitoring access control performance
- Coordination program with local law enforcement for incident reporting, traffic control, and other security-related conditions or events
- Other elements that conform to the Contractor's corporate security plan
- Reporting of incidents to the Authority including the following reports:
  - Incident reports for graffiti, vandalism, theft, and trespass
  - Daily reports, which shall include the number of security personnel who worked the 24-hour shift, current weather conditions, time and location, including city and county, east or west side of alignment, streets and cross streets, or distances from nearest streets
  - Immediate reports to the Authority via telephone all significant damage or conditions observed, and any injuries, to either the security personnel or trespassers
  - Reports from local agencies who respond to incidents on the Authority's property

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- A process for recommending enhancements to the Authority's security elements.

26.2.4 Noncompliance

Contractor shall take all necessary corrective actions to avoid the issuance of a stop work order on identification of a safety or security noncompliance. If the Contractor fails or refuses to take corrective action promptly, the Authority may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances. The Contractor shall be responsible for its subcontractors' compliance with this clause.

26.2.5 Submittals

The Site-Specific Health and Safety Plan, Site-Specific Security Plan and qualifications of proposed safety and security representatives shall be submitted to the Authority for review sixty (60) days following Initial Notice to Proceed. The Authority will provide a Statement of No Objection (SONO) following review.

The Site-Specific Health and Safety Plan and Site-Specific Security Plan shall be updated when substantial changes are made to Project phases, conditions, locations, or processes. The updated plans shall be resubmitted to the Authority for review.

The Contractor shall submit to the Authority monthly reports of Safety Performance and Security Performance with the monthly schedule report at Section 58.4.

26.3 Safety and Security Certification Program

26.3.1 Purpose

The purpose of safety and security certification is to ensure:

- The Work is in conformance with the safety and security design criteria and specifications requirements, and to verify their readiness for operational use
- The Project is safe and secure for customers, employees, emergency responders, and the general public.

The objective is to achieve an acceptable level of risk through a systematic approach to safety hazard and security vulnerability management, design criteria adherence, and specification and construction compliance. The Contractor shall apply hazard management principles in conformance with the CHSTP Safety and Security Management Plan when designing and constructing elements contributing to overall system safety.

The Verification and Validation and Self-Certification process detailed in Book 3 and Section 57 of these General Provisions shall be applied to the Safety and Security Certification Program.

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26.3.2 Safety and Security Certification Plan Elements

The Contractor is responsible for safety and security certification activities associated with its Work. The Contractor shall develop a Safety and Security Certification Plan that describes in detail how the Contractor shall identify, mitigate, verify/validate, and certify safety and security requirements. The Safety and Security Certification Plan shall include but not be limited to the following:

- Organizational structure identifying personnel responsible for safety and security certification activities.
- Qualifications of safety and security personnel. Personnel must have adequate experience in either railroad system safety or security or both and be able to demonstrate proficiency in hazard management, systems safety and security hazard analysis, verification, validation, and self-certification, processes as supported by their resumes.
- A method for demonstrating that that the Work is designed and constructed in conformance with the system-level Preliminary Hazard Analysis Reports, Site-Specific Hazard Analysis Reports, and CHSTP Safety and Security Management Plan (Book 3).
- Regular updates to and expansion of the Certifiable Elements and Hazards Log. Hazards associated with each certifiable element that can reasonably be expected to occur in the CHST System shall be identified on the Certifiable Elements and Hazards Log.
- Hazard and vulnerability mitigations are identified as output from site-specific hazard analyses, and are input to the Verification and Validation Process for the creation of Certifiable Items Lists.
- Management of the verification and validation of safety and security requirements, in conformance with the Contractor's verification and validation plan.
- Completion of the Safety and Security Certification Package in compliance with the requirements of the CHSTP Safety and Security Management Plan and the CHSTP Verification and Validation Management Plan. A Safety and Security Certification Package shall be compiled by the Contractor when all Certifiable Items Lists for a particular element or infrastructure component are completed for applicable milestone payments. The Safety and Security Certification Package shall consist of a signed Certificate of Conformance for the Project element, all completed Certifiable Items Lists, a completed Certifiable Elements and Hazards Log, and all supporting documentation such as hazard analysis, drawings, and design element descriptions.
- Outreach to safety and security stakeholders including but not limited to emergency response agencies, adjacent railroad operators, adjacent highway agencies, and local communities.
- Participation in the Authority's monthly Safety and Security Project Committee, monthly Fire/Life Safety and Security Committee meetings, and other committee meetings as identified by the Contractor or the Authority. Committee meeting participation shall occur during the period prior to Final Acceptance and shall facilitate consistent, comprehensive,

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and recorded communication of information pertinent to the fire and life safety of the Project elements included in the Contract scope.

26.3.3 Submittal

The Safety and Security Certification Plan shall be submitted to the Authority for review sixty (60) days following Notice to Proceed.

27 Drug-Free Workplace Program

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code § 8350 et seq.), and shall provide a drug-free workplace by taking the following actions:

- Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited; and specifying actions to be taken against employees for violations
- Establish a Drug-Free Awareness Program to inform employees about the following:
  - the dangers of drug abuse in the workplace
  - the person's or organization's policy of maintaining a drug-free workplace
  - any available counseling, rehabilitation, and employee assistance programs
  - Penalties that may be imposed upon employees for drug abuse violations
- Every employee who works on the Project will receive a copy of the company's drug-free workplace policy statement, and must agree to abide by the terms of this statement as a condition of employment on the Project.
- Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both; and Contractor may be ineligible for award of any future State agreements if the State determines that any of the following has occurred:
  - The Contractor has made false certification
  - The Contractor has violated the certification by failing to carry out the requirements as noted above (Gov. Code § 8350 et seq.)

27.1 Pass-through Requirement

A Drug-Free Workplace Program clause identical to the language in this Section 27 (except for changes appropriate for designation of the parties), including this subparagraph, shall be included in every subcontract entered into in connection with this Contract.

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28 Indemnification and Infringement

28.1 Indemnification

The Contractor shall fully defend, indemnify and hold harmless the Authority, FRA and all of their Board members, officers, employees, and agents and their respective successors and assigns ("Indemnified Persons") from any and all claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to:

- The breach or alleged breach of or failure or alleged failure to perform the Contract or any subcontract thereunder by any Contractor-Related Entity;
- The failure or alleged failure by any Contractor-Related Entity to comply with any applicable Law;
- The breach or alleged breach of or failure or alleged failure to perform any contract or agreement to use private property for any purpose under the Contract;
- The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault, of any Contractor-Related Entity arising out of or related to any contract or agreement to use private property for any purpose under this Contract;
- The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault of any Contractor-Related Entity;
- Any service or design, or product called for in any service or design, provided by any Contractor-Related Entity 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 claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Contractor-Related Entity with respect to any payment for the Work made to or earned by such Contractor-Related Entity under the Contract Documents;
- Any and all stop notices and/or liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any stop notice or lien, provided that Authority is not in default in payments owing to Contractor with respect to such Work;
- Any release or threatened release of Hazardous Materials Hazardous Materials (a) brought onto the Site by any Contractor-Related Entity or (b) where the removal or handling involved negligence, willful misconduct or breach of Contract by any Contractor-Related Entity; or

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- The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors or failure of any Contractor-Related Entity to cooperate reasonably with other contractors.

28.2 Infringement

The Contractor agrees to fully defend, indemnify, and hold harmless the Indemnified Persons against any demand, claim, cause of action, suit, proceeding, or judgment that any service or design, or product called for in any service or design, provided by any Contractor-Related Entity (herein called "deliverables") 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.

The Contractor shall pay any and all costs of such defense and settlement (including, without limitation, interest, fines, penalties, costs of investigation, costs of appeals, and attorney 's fees), and will pay any and all costs and damages finally awarded against any of the Indemnified Persons. The Authority shall have the right to employ separate counsel and participate in its defense. No settlement pertaining to the Authority's right to use the deliverables as provided herein shall be made without the Authority's prior written consent.

In the event that any deliverables furnished hereunder, or called for in any design or services provided under this Contract, is in any suit, proceeding, or judgment held to constitute an infringement on any third party's right, and its use is enjoined, Contractor shall use its best efforts immediately, and at its own expense to accomplish the following:

- Procure the fully paid-up, irrevocable and perpetual right for the Authority to continue using the deliverable
- Modify the deliverable
- Provide for the replacement of the deliverable with an alternative product that is functionally equivalent to the deliverable.

If the Contractor is unable to provide the Authority with one of the forms of relief described above, the Contractor shall reimburse to the Authority the total paid by the Authority for the deliverable that is held to constitute an infringement.

28.3 Design Defects

The Contractor shall fully defend, indemnify and hold harmless the Indemnified Persons from any and all claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the design documents furnished by the Contractor, regardless of

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whether such errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects were also included in the Preliminary Design or Reference Documents. The Contractor agrees that, because the Preliminary Design and Reference Documents are preliminary and conceptual in nature and are subject to review and modification by the Contractor, such documents shall not be deemed "design furnished" by the Authority or any of the other Indemnified Persons, as the term "design furnished" is used in Civil Code Section 2782. The Contractor hereby waives the benefit (if any) of Civil Code Section 2782 and agrees that this clause constitutes an agreement governed by Civil Code section 2782.5.

Except as permitted by Civil Code sections 2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Person so as to impose liability on the Contractor for the active negligence of an Indemnified Person, or to relieve an Indemnified Person of liability for such active negligence.

28.4 Restrictions

The following restrictions shall apply to the indemnities set forth in this "Indemnification and Infringement" clause:

- With respect to any loss, damage or cost of the type covered by the insurance required to be provided hereunder, the Contractor's indemnity obligation shall not extend to any loss, damage or expense arising from the sole negligence or willful misconduct of such Indemnified Person or its agents, servants or independent contractors who are directly responsible to such Indemnified Person.
- With respect to any loss, damage or cost which is not of the type covered by the insurance required to be provided hereunder, the Contractor's indemnity obligation shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the gross negligence or willful misconduct of such Indemnified Person or its agents, servants or independent contractors who are directly responsible to such Indemnified Person.
- Except as permitted by Civil Code sections 2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Contractor for the active negligence of an Indemnified Person, or to relieve an Indemnified Person of liability for such active negligence.
- Such indemnities shall not be construed to effect any extension of statutes of limitations otherwise applicable to causes of action for breach of Contract held by the Authority against the Contractor.
- In claims by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this "Indemnification and Infringement" clause shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the

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Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

29 Royalties and Patents

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights, and shall save the Indemnified Persons harmless from loss on account thereof, except when a particular design, process, or product of a particular manufacturer is specified by the Authority; provided, that, if the Contractor has reason to believe that the design, process, or product specified infringes a patent, the Contractor shall be responsible for such loss unless it promptly gives such information to the Authority.

30 Invoicing and Payment

The Cash Flow Curve set forth in the Signature Document constitutes a preliminary cap on cumulative milestone payments and will be confirmed in writing by the Authority. Payment of any amounts included in an invoice which exceed the maximum aggregate amount payable under the Authority approved Cash Flow Curve will be deferred (without interest) until funds are available under the Cash Flow Curve. The Contractor may propose changes to the Cash Flow Curve on an annual basis which is subject to Authority approval.

Payment will be made after delivery and acceptance of all items associated with the milestone(s) in the approved resource loaded schedule. Milestone payments do not represent "progress" payments or "monthly" payments for level of effort expended. Rather, a "milestone" payment shall only be made at the completion of a definable and measurable point considered integral and necessary to the completion of the performance objective.

A payment milestone may be the culmination of a series of deliverables, or a single deliverable in its own right. A payment milestone is an event selected by the Contractor to signify that certain tasks have been completed.

A payment milestone shall include the means of verifying the achievement and the date it was achieved. Such verification shall be sufficient detail to allow the Authority to readily determine that the milestone is in fact complete.

The Contractor shall demonstrate that milestones are verified as 100% complete. As such, each milestone may include deliverables such as, but not limited to:

- All applicable environmental certifications and reports
- Applicable Verification and Validation certifications and tracking documentation
- Applicable ICE or ISE certifications
- Self-certifications

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- Applicable drawings, documents and records
- Photographic evidence of completion
- Certifications of Third Party requirement completion
- Operations and maintenance deliverables
- Appropriate Reliability Availability, Maintainability and Safety statements
- Quality data packs inclusive of but not limited to test results and close out results of non-conformances
- The disposition of any outstanding SONO comments
- Any other Contractually required documents, reports or records

Invoices may be submitted to the Authority no more frequently than once per month. The process for invoicing shall be defined in advance of any work being performed. Invoices shall be legible and shall contain, as a minimum, the following information:

- The Contract number documentation that the price of the invoiced milestone(s) is within the ceiling of the Cash Flow Curve and is in accordance with the terms of the Contract.
- Evidence acceptable to the Authority that payments have been made to each Subcontractor.
- Any other information necessary to demonstrate entitlement to payment under the terms of the Contract which includes meeting all Federal, State and ARRA invoicing and reporting requirements.

Failure to provide the above information may result in the rejection and return of the invoice for resubmission with complete data. Payment will be made within 30 days after the Authority's receipt of an acceptable invoice.

30.1 Certifications

Concurrently with the submission of each request for a payment under this Contract, the Contractor shall certify that all due and payable bills with respect to the Work either have been paid or will be paid with the proceeds of the current request for payment. A false certification to the Authority under the provisions of this clause may be a criminal offense in violation of the California Penal Code.

30.2 Prompt Payment and Payment to Subcontractors

The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its subcontract no later than seven (7) days from receipt of each payment the Contractor receives from the Authority, regardless of subcontractor tier.

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30.3 Retainage

Retainage will be withheld under the Contract at the rate of 5 percent of all invoices paid up to a cap of $10,000,000.00.

Contractor acknowledges and agrees that, pursuant to Public Contract Code section 7200, the percentage of retainage amounts withheld by Contractor from its Subcontractors, if any, may not exceed the percentage withheld by Authority from Contractor as specified herein.

Upon satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Contractor shall submit an application to Authority for the release of the portion of the Retention attributed to the Subcontractor's work, stating that the Subcontractor has completed all Work required to be performed under its Subcontract, stating the amount withheld by Contractor under the Subcontract and providing all backup information and Stop Notice and Lien releases as may be required by Authority.

Within seven days following receipt of payment from Authority for the completed Subcontractor Work, Contractor shall return all moneys withheld as retainage from the Subcontractor, even if Work to be performed by Contractor or other Subcontractors is not completed and has not been accepted. Contractor shall, by appropriate agreement with each Subcontractor, require each first tier Subcontractor to make payments to sub-subcontractors and Suppliers in a similar manner.

Authority's release of such retainage shall not relieve Contractor of its contractual obligations relating to the Work.

30.4 Interest

The Authority shall not be liable for interest on any late or delayed payment caused by any claim or dispute, any failure to provide supporting documentation or other information required with the invoice or as a precondition to payment under the Contract, or due to any payment the Authority has a right to withhold under the Contract.

30.5 Federal, State, and Local Taxes

The Contract Price includes all applicable federal, State, and local taxes and duties. The Authority is exempt from California State and local sales and use taxes, and any such taxes included on any invoice or voucher received by the Authority shall be deducted from the amount of the invoice or voucher for purposes of payment.

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31 Final Payment

The Authority shall pay the final amounts due the Contractor under this Contract after completion and acceptance of all work, and presentation to the Authority of a properly executed voucher, an executed release of all claims against the Authority. Authority and all other documentation required by the Authority.

As a condition to Final Acceptance, the Contractor shall have prepared and the Authority shall have approved a final invoice as follows:

- The Contractor shall prepare and submit to the Authority a proposed final invoice showing the proposed total amount due the Contractor, including the payment for Final Acceptance. The Contractor shall not be entitled to the Final Acceptance payment prior to delivery of its final invoice. In addition to meeting all other requirements for invoices hereunder, the final invoice shall list all outstanding claims, stating the amount at issue associated with each such claim. The final invoice shall be accompanied by complete and legally effective releases or waivers of liens and stop notices satisfactory to the Authority, from all persons legally eligible to file stop notices in connection with the Work, consent of surety(ies) to final payment, and such other documentation as the Authority may reasonably require. Prior applications and payments shall be subject to correction in the proposed final invoice. Claims filed concurrently with the final invoice must be otherwise timely and meet all requirements hereunder.

- The Authority will review the Contractor's proposed final invoice, and changes or corrections will be forwarded to the Contractor for correction. If no changes or corrections are required, the Authority will approve the final invoice. The "Final Invoice Payment Date" shall mean the due date for payment of the final Approved Invoice under the third bullet below or the fourth bullet below, as applicable.

- Notwithstanding anything to the contrary in the "Invoicing and Payment" clause (Section 30) of the General Provisions, if the final approved invoice shows no outstanding or pending claims, liens or stop notices, and provided that no claim, lien or stop notice is thereafter filed, the Authority, in exchange for an executed release meeting the requirements of the fifth bullet below and otherwise satisfactory in form and content to the Authority, will pay the entire sum found due on the approved final invoice no later than 30 days after issuance of the Certificate of Final Acceptance.

- Notwithstanding anything to the contrary in the "Invoicing and Payment" clause (Section 30) of the General Provisions, if the final approved invoice lists any outstanding claims, liens or stop notices, or if any claim, lien or stop notice is thereafter filed, final payment will be made no later than 60 days after issuance of the Certificate of Final Acceptance. The Authority, in exchange for an executed release meeting the requirements of the fifth bullet below and otherwise satisfactory in form and content to the Authority, will pay the entire sum found due on the approved final invoice. The Authority may withhold from payment an amount not to exceed 150% of any Subcontractor claims, liens or stop

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notices plus 150% of any amount in dispute between the Authority and the Contractor, pending resolution of such matters.

- The executed release from the Contractor shall be from any and all claims arising from the Work as represented in the Contract Documents, and shall release and waive any claims against the Authority and its Board, officers, agents and employees, excluding only those matters identified in any claim listed as outstanding in the final invoice. The release shall be accompanied by an affidavit from the Contractor certifying that:
  - It has resolved any claims made by Subcontractors and others against the Contractor or the Project;
  - It has no reason to believe that any Person has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the Authority as of the date of the certificate; and
  - All guarantees and warranties are in full force and effect.
  - The release and the affidavit shall survive final payment.

32 Liquidated Damages

32.1 Basis for Liquidated Damages

As the result of late completion of the Project, Authority will suffer financial damages which cannot be quantified as of the date of execution hereof. Therefore, the Contractor and Authority have agreed to a stipulated amount to be paid by the Contractor in the event the Contractor fails to achieve Final Acceptance by the Final Acceptance Deadline. The Parties intend for the Liquidated Damages set forth herein to constitute liquidated damages under California law. The Contractor acknowledges and agrees that the Liquidated Damages are intended to compensate Authority solely for the Contractor's failure to meet the Final Acceptance Deadline, and shall not excuse the Contractor from liability from any other breach of the Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that Authority has agreed to accept Liquidated Damages as compensation for its damages associated with a delay in meeting the Final Acceptance Deadline shall not preclude Authority from exercising its other rights and remedies available at law or in equity other than the right to collect compensation for other damages associated with such delay.

32.2 Reasonableness of Liquidated Damages

The Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by the Authority of damages which it will incur in the event of late completion, including additional administrative costs. The Contractor and the Authority agree that the amount of such damages is impossible to ascertain as of the date of execution hereof and the

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parties have agreed to such Liquidated Damages in order to fix the Contractor's costs and to avoid later disputes over which items are properly chargeable to the Contractor. It is understood and agreed by the Contractor that any Liquidated Damages payable in accordance with this Section are in the nature of liquidated damages and not a penalty and that such sums are not manifestly unreasonable under the circumstances existing as of the date of execution and delivery of the Contract.

The Contractor acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

32.3 Waiver

Permitting or requiring Contractor to continue and finish the Work or any part thereof after the Final Acceptance Deadline shall not act as a waiver of Authority's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to Authority.

33 Consequential Damages

Contractor and Authority will not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of the Contract, tort (including negligence) or any other theory of liability, and each party releases the other party from any such liability. The foregoing limitation on liability for consequential damages will not apply to or limit any right of recovery respecting the following:

- Losses (including defense costs) to the extent covered by (a) the proceeds of insurance required to be carried under the Contract or (b) the proceeds of insurance actually carried by or insuring Contractor under policies solely with respect to the Project and the Work;
- Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;
- Contractor's or Authority's indemnities under the Contract;
- Contractor's obligation to pay liquidated damages in accordance with the Contract;
- Specific amounts owing under the express provisions of the Contract; and
- Losses arising out of releases of Hazardous Materials Hazardous Materials by Contractor or Authority.

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34 Process to be Followed for Discovery of Certain Site Conditions

34.1 Notification to the Authority

If the Contractor becomes aware of: (i) any Differing Site Conditions; (ii) any on-Site material that the Contractor believes may contain Hazardous Materials Hazardous Materials that is required to be removed or treated; or (iii) any Items of Archeological, Geological or Biological Significance within the Right-of-Way, as a condition precedent to the Contractor's right to a Change Order, the Contractor shall immediately notify the Authority thereof by telephone or in person, to be followed by written notification as soon as practicable, but in no event later than 24 hours after becoming aware. The Contractor shall have the burden of proving such oral notice was given and when it was given. The Contractor's written notification shall advise the Authority of any obligation to notify any Governmental Person or other Person required under applicable Law, Governmental Approval or the Contract Documents. The Contractor shall immediately stop Work in, and secure, the area. Operations that may impact the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the Authority. In such event, the Authority will view the location promptly upon receipt of notification, and will advise the Contractor at that time whether to resume Work or whether further investigation is required. Upon the Contractor's fulfillment of all applicable requirements of the "Changes" clause and the Contract Documents and subject to the limitations contained therein, the Authority shall be responsible for, and agrees to issue Change Orders to compensate the Contractor for, any additional costs for and to extend the affected Completion Deadlines as a result of any delay in the Critical Path resulting from the Authority's viewing of the location that exceeds three Working Days.

34.2 Further Investigation

The Contractor shall promptly conduct such further investigations, as the Authority reasonably deems appropriate. As soon as possible but no later than five Working Days after its initial notice to the Authority, the Contractor shall advise the Authority of any action recommended to be taken regarding the situation in a written remediation plan. If Hazardous Materials Hazardous Materials are involved, the remediation plan shall describe the type of remediation Work, if any, that the Contractor proposes to undertake with respect thereto. If any Items of Archeological, Geological or Biological Significance are discovered, the remediation plan shall advise the Authority what course of action the Contractor intends to take with respect thereto and whether the location must be fenced off or whether Work can resume. The Authority then will either Approve, or require modification of, the Contractor's proposed remediation plan.

34.3 Recommence Work

The Authority shall have the right to require the Contractor to recommence Work in the area at any time, even though an investigation may still be ongoing, provided such Work is not in violation of any Laws or Governmental Approvals. The Contractor shall promptly recommence Work in the area upon receipt of such notification from the Authority. On recommencing Work, the Contractor shall follow all applicable procedures contained in the Contract Documents and

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Laws with respect to such Work, consistent with the Authority's determination or preliminary determination regarding the nature of the material, resources, species or condition.

35 Notice of Labor Disputes

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

36 Order of Precedence

In the event of any inconsistency between the provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence in the following order:

1. Signature Document
2. Special Provisions (Book 2, Part A)
3. General Provisions (Book 2, Part B)
4. Scope of Work (Book 2, Part C)
5. Final Environmental Documents and Mitigation Monitoring Plan
6. Third Party Agreements and Permits
7. Approved Design Variances
8. Design Criteria Manual (Book3, Part C)
9. Directive Drawings (Book 3, Part E)
10. HST CADD Manual (Book 2, Part C)
11. HST Plans Preparation Manual (Book 2, Part C)
12. All other documents in Book 3
13. Proposal (provided that if the Authority determines, in its sole discretion that the Proposal contains a provision that is more restrictive/beneficial to the Authority than is specified elsewhere in the Contract Documents, that Proposal provision shall take precedence)

Alternative Technical Concepts (see Section 7.18), amendments and Change Orders will have the priority just above the document that is being amended.

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

37 Publicity Releases

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Work hereunder, which the Contractor or any of its subcontractors desires to make for purposes of publication in whole or in part, shall be subject to approval by the Authority prior to release.

38 Severability

If any provision of this Contract, or the application thereof to any Person or circumstances, is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other Persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable Law. The Parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

39 Suspension of Work

The Authority may order the Contractor in writing to suspend all or any part of the Work for such period of time as determined appropriate by the Authority.

39.1 Suspension for Cause

No adjustment will be made for suspensions:

- required to correct conditions unsafe for Project personnel or the general public;
- required to comply with any Governmental Approval, law or otherwise carry out the requirements of the Contract; or
- to the extent that performance would have been suspended or delayed by any other cause, including the fault or negligence of Contractor for which an equitable adjustment is provided for or excluded under any other provision of the Contract.

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39.2 Suspension for Convenience.

The Contractor may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions for additional costs (including overhead and delay damages but excluding profit) and a time extension for suspensions beyond a 240-hour cumulative period.

No claim under this clause shall be allowed for any costs incurred unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred, but for a delay within the provisions of this clause.

40 Termination for Convenience

The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set in the notice of termination, the Contractor shall stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Authority. The Contractor must still complete the Work not terminated by the notice of termination, and may incur obligations as are necessary to do so.

The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority, the following:

- The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated
- The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Authority

The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.

Contractor and all Subcontractors will not be entitled to anticipatory or unearned profit or consequential or other damages as a result of a termination or partial termination for convenience.

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40.1 Payments on Termination

The Authority shall pay the Contractor the following amounts for termination under this "Termination for Convenience" clause:

- For Work performed before the effective date of termination, the total (without duplication of any items) of the cost of this Work; the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included above; plus 10 percent for overhead and profit. However, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Authority shall allow no profit under this clause and shall reduce the settlement to reflect the indicated rate of loss.
- The reasonable costs of settlement of the Work terminated, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; the termination and settlement of subcontracts (excluding the amounts of such settlements); and storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- The total sum to be paid the Contractor shall not exceed the Contract Price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of construction, supplies, and construction materials under this Section 40.1, and the Contract Price of Work not terminated.

40.2 Reduction in Amount of Claim

The amount otherwise due the Contractor under this clause shall be reduced by: (i) all unliquidated payments for Work or materials not yet performed on or supplied to the Project at the time of the payment; (ii) the amount of any claim which the Authority may have against any Contractor-Related Entity in connection with the Contract; (iii) the agreed price for, or the proceeds of the sale of, any property, materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Authority; (iv) amounts that the Authority reasonably deems advisable to retain to cover any existing or threatened claims, liens and stop notices relating to the Project, including claims by Utility Owners; (v) the cost of repairing any nonconforming Work; and (vi) any amounts due or payable by the Contractor to the Authority.

40.3 Subcontracts

The Contractor shall insert in all subcontracts a requirement that the Subcontractor shall stop Work on the date and to the extent specified in a notice of termination from the Authority in accordance with this clause, and shall require Subcontractors to insert the same provision in each subcontract at all tiers.

Upon termination under of Work under any subcontract, the Contractor will not be entitled to reimbursement for that portion of the termination settlement with any such Subcontractor

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which constitutes anticipatory or unearned profit on Work not performed, or which constitutes consequential damages on account of the termination or partial termination.

40.4 No Unearned Profit or Consequential Damages

Under no circumstances shall the Contractor be entitled to anticipatory or unearned profit or consequential or other damages as a result of a termination or partial termination under this clause. The payment to the Contractor determined in accordance with this clause constitutes the Contractor's sole and exclusive remedy for a termination under this clause.

40.5 No Waiver

Anything contained in the Contract to the contrary notwithstanding, a termination under this clause shall not waive any right or claim to damages, which the Authority may have, and the Authority may pursue any cause of action, which it may have at law or in equity or under the Contract.

40.6 Allowability of Costs

All costs claimed by the Contractor under this clause shall, at a minimum, be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

41 Interest on Contractor Indebtedness

Notwithstanding any other clause of this Contract, all amounts that become payable by the Contractor to the Authority under this Contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563, 92 Stat. 2383), which is applicable to the period in which the amount becomes due, as provided in this clause, and then at the rate applicable for each 6-month period as fixed by the Secretary until the amount is paid. In no event shall the interest charged or payable hereunder exceed that allowable under applicable Law. Amounts shall be due at the earliest of the following dates:

- The date fixed under this Contract
- The date of the first written demand for payment consistent with this Contract, including any demand resulting from a default termination
- The date the Authority transmits to the Contractor a proposed Contract Order to confirm completed negotiations establishing the amount of debt (unless a later date is set forth therein) if this Contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by Contract modification

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42 Environmental Requirements

In addition to the Federal environmental requirements set forth in Section 46.3, the Contractor shall comply with the requirements contained in the Final Environmental Documents including all supplemental documents thereto.

42.1 General Requirements

The Contractor shall include in the monthly schedule updates required at Section 58.4 all applicable environmental requirements. In the narrative report the Contractor shall report on status and schedule for environmental activities that are to occur prior to, during and following Project construction. To support this effort, the Contractor shall provide environmental compliance monitors during Project construction. This will include, but is not limited to, Wildlife and Fish Biologists, Noise/Vibration Specialists, Water Quality monitors, Archaeologists, and Cultural Resources Monitors.

42.2 Pre-Construction Activities

The Contractor shall comply with all permit terms and conditions, and implementation of mitigation measures outlined in the permits or as adopted by the Authority in the Mitigation Monitoring and Reporting Plan, Book 3.

The Contractor shall produce an Environmental Management Plan that includes all compliance requirements as detailed in the environmental documents. A draft plan shall be submitted to the Authority within ninety (90) days of NTP and a final plan within one hundred-eighty (180) days of NTP or prior to any construction activities commencing. The plan will include a detailed list identifying each environmental approval and commitment, with reference to the approved EIR/S, and the federal, state, or local agency providing the permit or the approval. The plan shall detail environmental roles and responsibilities of all entities involved in the Project.

The Contractor shall track detailed progress against environmental commitments, including but not limited to:

- Effective dates of approvals and commitments
- Triggers of approvals
- Responsible parties
- Milestone dates and deadlines
- Final clearance dates

The plan and all associated documents and daily reporting data for permits and approvals shall be provided to the Authority electronically via the Authority web portal.

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As additional environmental permits are obtained by the Contractor, the plan shall be updated to incorporate new commitments agreed to by the permitting agency and Authority.

Any amendments to or new permits required as a result of Contractor-initiated changes to the Project will be at the Contractor's expense. Any resulting schedule delay shall also be the responsibility of the Contractor. Other Contractor responsibilities shall include:

- Community Outreach, as addressed in the Public Involvement section of this document.
- Monthly permitting review meeting where the formal status report is reviewed. Further informal permitting review meetings may be required.
- Submit to the Authority environmental compliance reports with designs that are ready for construction demonstrating that the design remains consistent with the Project described in the final EIR/S and the environmental analysis provided therein.
- Providing, as needed, subsequent environmental analyses to assess changes in Project design.

42.3 Construction Activities

During construction, the Contractor will be required to implement and demonstrate effectiveness of all applicable environmental compliance requirements. The Contractor's Environmental Management Plan shall include procedures to identify and rectify environmental non-conformances.

The Contractor will initiate and obtain variances and amendments to existing permits and environmental commitments, resulting from their Project design and conditions changes. The Contractor will coordinate with the appropriate agencies to obtain needed approvals for these activities. The Contractor will be responsible for the costs and any schedule delay for these activities.

Submit to the Authority environmental compliance reports with the as built drawings demonstrating that the construction is consistent with the project described in the final EIR/S and the environmental analysis provided therein. The Contractor shall conduct an annual review to demonstrate how the project and project construction practices are consistent with EIR/S.

42.4 Post-Construction Activities

The Contractor shall be required to complete all necessary environmental compliance activities associated with the Contract. For all environmental compliance activities that need to continue after final acceptance, the Contractor shall prepare a long term environmental compliance plan and provide the plan to the Authority prior to Contract close out.

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43 Hazardous Materials

The Contractor shall remove all Hazardous Material in accordance with the Contract Scope of Work. Prior to performing the hazardous material removal work, the Contractor shall submit a Hazardous Materials Remediation Plan per the requirements of the regulatory agency having jurisdiction over the site as well as requirements delineated elsewhere in this Contract.

As between the Contractor and the Authority, the Authority will be considered the generator and arranger for Hazardous Materials other than Hazardous Materials brought onto the Site by any Contractor-Related Entity or Hazardous Materials where the removal or handling involved negligence, willful misconduct or breach of Contract by any Contractor-Related Entity.

Whenever the Authority has such arranger liability, the Contractor's remediation plans will be subject to the prior written approval of the Authority and the Authority will have exclusive decision-making authority regarding selection of the destination facility to which such Hazardous Materials will be transported. The Authority will comply with the applicable standards for generators and arrangers with regard to such Hazardous Materials, including the responsibility to sign manifests for the transport of hazardous wastes. The Authority will indemnify, save, protect and defend the Contractor from third party claims, causes of action and losses arising out of or related to generator or arranger liability for such Hazardous Materials.

As between the Contractor and the Authority, the Contractor will be considered the generator and arranger for Hazardous Materials brought onto the Site by any Contractor-Related Entity or Hazardous Materials where the removal or handling involved negligence, willful misconduct or breach of Contract by any Contractor-Related Entity.

If the Contractor encounters any Hazardous Materials that have the effect of increasing the cost or time of performance of the Work, then the Contractor may request an equitable adjustment for its direct remediation costs, excluding overhead, delay damages and profit, and a time extension, in accordance with the "Changes" clause (Section 17) of the General Provisions. To the extent the Hazardous Materials are within a category for which unit prices are provided in the Signature Document, compensation will be based on the unit prices.

Compensation under this clause will not be made unless the Contractor demonstrates to the Authority's satisfaction that: (i) any remediation work could not have been avoided by reasonable design modifications or construction techniques; and (ii) the Contractor's remediation plan represents the approach that is most beneficial to the Project and the public. The Contractor shall provide the Authority with such information, analyses and certificates as may be requested by the Authority in order to enable a determination regarding eligibility for payment.

The Contractor shall not be entitled to an equitable adjustment under this clause for:

- Investigation or characterization of Hazardous Materials or preparation of a remediation plan.

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- Hazardous materials brought onto the Site by any Contractor-Related Entity or Hazardous Materials where the removal or handling involved negligence, willful misconduct or breach of Contract by any Contractor-Related Entity.
- Hazardous materials that could have been avoided by reasonable design modifications or construction techniques.
- Hazardous materials on additional properties requested by Contractor.
- Hazardous materials (including lead and asbestos) encountered during the demolition of buildings, fixtures or other improvements on the Site.

44 Sustainability

In addition to California regulatory requirements and Project specifications, the Contractor shall address Project sustainability while carrying out the Work under the Contract.

44.1 Project Sustainability Goals

The Project Sustainability Goals are as follows:

- Exemplary energy use minimization and energy efficiency
- Minimize water use
- Reduce GHG emissions and dependency on fossil fuels
- Employ sustainable, healthy materials and reduce the extraction of scarce resources
- Reduce waste to landfill

44.2 Requirements

- The Contractor shall reduce emissions and energy use beyond regulatory and other Project requirements by:
  - Use of cleaner engines, including non-road engines meeting or exceeding Tier III, and on-road engines meeting 2004 On-Highway Heavy Duty Engine Emissions Standards or cleaner, whether the equipment is owned or rented
  - Use of cleaner fuels including ultra-low sulfur diesel
  - Use of cleaner diesel control technology, including EPA or California Air Resources Board (CARB) verified diesel particulate filters (DPFs) or diesel oxidation catalysts (DOCs)
  - Efficient use of fuel
  - Reduction of energy use
  - Efficient energy practices

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  - Efficient construction practices
  - Materials delivery streamlining
  - Other Contractor identified initiatives
- The Contractor shall practice water conservation and efficiency in water use by:
  - Use of efficient fixtures in facilities and temporary offices, such as Energy Star or Water Sense certified products
  - using non-potable water for appropriate uses such as allaying dust (including, for example, retaining and treating concrete wash water on site)
  - Strategies for addressing equipment and temporary system maintenance to avoid leaks
  - Strategies for reducing runoff and increasing ground water re-charge
  - Strategies for monitoring compliance with the Contractor Sustainability Plan, identifying opportunities to enhance performance, and addressing non-compliance conditions
- The Contractor shall manage and minimize construction waste by diversion of construction and demolition debris from landfill, which shall not be less than that required by local regulations. The minimum percentages for diversion of construction and demolition waste are:
  - 75 percent of construction waste from landfill.
  - 100 percent of steel and concrete demolition waste from landfill.

  Excavated soil shall be excluded from the waste calculation. Contaminated materials shall be excluded from the waste calculation.
- The Contractor shall apply pollution controls beyond regulatory requirements.
- The Contractor shall procure environmentally preferable products; refer to

  http://www.dgs.ca.gov/buyinggreen/Home/BuyersMain.aspx
- The Contractor shall promote sustainability activities and successes as part of its Public Involvement requirement.
- Where practicable the Contractor shall use post-consumer, post-industrial recycled products and materials or waste materials, such as fly-ash, ground granulated blast-furnace slag (GGBS), crushed glass, recycled aggregate, and tire derived aggregate (TDA).
- Where feasible the Contractor shall use Renewable Energy:
  - The Contractor shall evaluate the use of all reasonably feasible renewable energy sources. Sources of renewable energy include solar, wind, and biomass and biogas. Examples of renewable energy technologies include photovoltaic panels, wind turbines, digesters, gasifiers, and microturbines.
  - The Contractor shall conduct a cost analysis that compares the energy costs from renewable sources versus traditional electricity sources provided by local utilities, over

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the expected Project schedule. Similarly, an evaluation of the avoided emissions as a result of using renewable energy sources versus traditional energy sources provided by local utilities shall be performed.

– The Contractor shall also evaluate the cost of purchasing green power from organizations that offer green power within the appropriate utility provider.

44.3 Plans

44.3.1 Sustainability Management Plan

The Contractor is required to submit a final Sustainability Management Plan ninety (90) days after NTP. The plan shall demonstrate how the Contractor shall meet or exceed regulatory and Contract requirements during design and construction activities. The plan shall establish a sustainability baseline from which improvements shall be measured. The Plan shall identify how the Contractor shall track and report site fuel, emissions, energy, water consumption, waste, materials and other appropriate sub categories. The ability to reasonably measure consumption will be a factor in determining the viability of a subcategory.

44.3.2 Construction Waste Management Plan (CWMP)

Included in the Sustainability Management Plan, the CWMP shall demonstrate how the Contractor shall carry out regulatory and Contract requirements to divert the specified percentage of construction and demolition debris from landfill. The plan will include either written or graphic information or both to indicate how waste will be diverted from landfills, and calculations of estimated quantities to establish the sustainability baseline. The CWMP shall include details of:

- The collection and separation of each type of waste deemed reusable or recyclable. Designation of specific area(s) on the construction site for segregated or comingled collection of recyclable materials.
- Tracking of recycling efforts throughout the construction process.
- Materials to be recycled, which may include cardboard, metal, brick, mineral fiber panel, concrete, plastic, clean wood, glass, gypsum wallboard, carpet, and insulation.
- Materials to be re-used in the Work, such as demolished concrete to be crushed and used as aggregate base. Indicate items to be salvaged and re-used in the Work, and items to be salvaged and turned over to jurisdictional authorities or utilities in accordance with Contract requirements.
- Items to be removed for salvage and sale or re-use through donation to identified charitable or other organizations.
- Materials that are not recyclable or otherwise recoverable, and which will be disposed of in landfill (or other means acceptable to the State of California and other jurisdictional authorities). Explain why these materials are not recyclable or otherwise recoverable.

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Include a list of permitted landfill or other permitted disposal facilities that will be accepting waste materials.

44.3.3 Innovative Project Sustainability Methods

Within the plans above the Contractor shall consider improvements to the sustainability of the Project with innovations such as:

- Recycling and reuse of construction and demolition debris on-site – Construction and demolition debris which may be candidates for recycling and reuse on-site include non-hazardous, non-contaminated solid waste resulting from construction, repair, renovation, or demolition operations and may include concrete, cement, masonry materials, scrap metal, rock, wood (not treated), glass, plastics, landscape materials, piping/plumbing materials, drywall, asphalt pavement, and other construction materials
- Modular construction, and offsite fabrication to minimize onsite waste
- Using low impact development approaches like permeable pavement and cool and green roofs for temporary facilities
- Reusable formwork
- Packaging take-back arrangements with suppliers
- Selection of compostable or re-usable temporary erosion control devices
- Minimizing site travel
- FSC-certified timber for on-site carpentry or formwork
- Recycling and composting facilities in site offices
- Recycled paper for site office use
- Purchase products formulated with safer chemicals to reduce chemical exposures to workers and the public
- Use of electronic reference standards
- Paperless documentation, records management, and submittal process during design and construction to the extent permitted by the Authority and other governmental agencies including federal and state

The Contractor Sustainability Plan shall document all measures the Contractor shall take that are beyond regulatory requirements and Contract requirements for use of recycled materials, construction site emissions, energy efficiency, water efficiency, pollution controls, and construction waste management, and any other sustainability practices that the Contractor considers exemplary.

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44.4 Reporting

The Contractor shall provide monthly reporting via the Authority's web portal on its sustainability and construction waste management activities including:

- Off-site recycling services and identification of the hauler of each designated material or item, who have agreed to accept and divert that item from landfill, in the proposed quantities. Schedule each item and list off-site recycling service and hauler company name, telephone number, address, and person contacted.
- Delivery receipts for the materials and waste materials sent to the permitted recycling facilities, processing facilities, or landfill
- Delivery receipts for the materials and salvaged items donated, sold, or delivered to jurisdictional authority or Utility Owner
- Documentation for the materials and salvaged items re-used as part of the Work
- Calculations of quantities in accordance with the appropriate adopted Conversion Rate
- The Contractor shall track emissions reduced (i.e., tons of diesel particulate matter reduced) associated with using cleaner diesel equipment and fuels.
- Data including:
  - Fuel use
  - Water use
  - Power use
  - Materials
  - Waste
  - Diesel emissions
- The use of post-consumer, post-industrial recycled products and materials including data on:
  - Type of material/product
  - Quantity
  - Location/structure
  - Dollar value
- The Contractor shall complete a Contract close-out report, documenting final levels of:
  - Fuel savings
  - Emissions savings
  - Energy savings
  - Water savings

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- Recycling/waste diversion
- Materials goals

45 Labor Code Requirements

45.1 Worker's Compensation

Contractor hereby certified that it is aware of the provisions of Section 3700 of the California Labor Code (Labor Code) which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and the Contractor will comply with such provisions before commencing performance of the Work under the Contract Documents and at all times during the term hereof, whether by provision of its own insurance or self-insurance.

45.2 Prevailing Wages

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

45.3 Hours of Work

Eight hours labor constitutes a legal day's work.

45.3.1 Specific Labor Code Provisions

Contractor's attention is directed to the following requirements of the Labor Code. A copy of each such Code section shall be included in each subcontract hereunder:

45.3.1.1 Labor Code Section 1771

Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract,

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and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

45.3.1.2 Labor Code Section 1775

The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the Contract by the contractor or, except as provided in subdivision (b) of Section 1775, by any subcontractor under the contractor.

The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

- Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor
- Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations
- The penalty may not be less than forty dollars ($40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor
- The penalty may not be less than eighty dollars ($80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous 3 years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned
- The penalty may not be less than one hundred and twenty dollars ($120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1

If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

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The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) of Section 1775 unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

- The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815
- The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor
- Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project
- Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813

The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

45.3.1.3 Labor Code Section 1776

Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- The information contained in the payroll record is true and correct.

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- The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

The payroll records enumerated under subdivision (a) of Section 1776 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

- A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- A certified copy of all payroll records enumerated in subdivision (a) of Section 1776 shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- A certified copy of all payroll records enumerated in subdivision (a) of Section 1776 shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2) of Section 1776, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified in subdivision (a) of Section 1776.

A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) of Section 1776 with the entity that requested the records within 10 days after receipt of a written request.

Except as provided in the paragraph below, any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. § 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court

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may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision of Section 1776 may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records. Any copies of records or certified payrolls made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a) of Section 1776, including the street address, city, and county, and shall, within five (5) Working Days, provide a notice of a change of location and address.

The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a) of Section 1776. In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 [commencing with Section 1798] of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

Regulations implementing Labor Code Section 1776 are located in Sections 16000, 16400, 16401, 16402, 16403, and 16500 of Title 8, California Code of Regulations.

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45.3.1.4 Labor Code Section 1777.5

Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered, and shall be employed only at the work of the craft or trade to which he or she is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

- The apprenticeship standards and apprentice agreements under which he or she is training
- The rules and regulations of the California Apprenticeship Council

When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section, and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o) Section 1777.5.

Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified

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statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards; but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite, and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1 to 5 ratio required by subdivision (g) of Section 1777.5.

Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1:5 hourly ratio, as set forth in this section for that craft or trade.

An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:

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- Unemployment for the previous 3-month period in the area exceeds an average of 15 percent
- The number of apprentices in training in the area exceeds a ratio of 1 to 5
- There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis
- Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman

When an exemption is granted pursuant to subdivision (k) of Section 1777.5 to an organization that represents contractors in a specific trade from the 1 to 5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

A contractor to whom a contract is awarded, who, in performing any of the Work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

- If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made
- If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program
- All training contributions not distributed under subparagraphs (A) and (B) of Section 1777.5 shall be used to defray the future expenses of the Division of Apprenticeship Standards

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All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

All decisions of an apprenticeship program under this section are subject to Section 3081.

45.3.1.5 Labor Code Section 1813

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

45.3.1.6 Labor Code Section 1815

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

45.3.1.6.1 Labor Nondiscrimination

Contractor's attention is directed to Section 1735 of the Labor Code, which reads as follows:

> "A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

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Contractor's attention is directed to the following "Nondiscrimination Clause" that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

45.3.1.6.2 Nondiscrimination Clause

During the performance of this contract, the Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. 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.

The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

46 Federal Requirements

The Contractor understands that the Authority has received Federal funding from FRA for the Project and acknowledges that as a result the Authority has determined that federal laws, regulations, policies, and related administrative procedures shall apply to the Contract as set forth herein. Notwithstanding the foregoing, the Contractor shall comply with all applicable federal laws, regulations, policies, and related administrative practices. The most recent of such federal laws, regulations, policies, and related administrative practices at the time of Proposal submission will govern the Project, unless the Authority issues a written determination otherwise. 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 required herein.

Notwithstanding anything to the contrary contained in the Contract Documents, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract Documents. 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.

46.1 Compliance with Federal Requirements

Contractor's failure to so comply shall constitute a material breach of this Contract.

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46.2 Access Requirements for Individuals with Disabilities

The Contractor agrees to comply with, and assure that any Subcontractor under this Contract 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. §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable federal regulations, including any amendments thereto.

46.3 Environmental Requirements

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

46.3.1 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. §§ 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 Federal Railroad Administration (FRA) and the appropriate Environmental Protection Agency Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding $50,000 financed in whole or in part with federal assistance provided by the FRA.

46.3.2 Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding $50,000 financed in whole or in part with federal assistance provided by FRA.

46.3.3 Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6421 et seq.).

46.3.4 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 Environmental Protection Agency ("EPA"). The Contractor shall promptly notify the Authority if the Contractor any Subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Contract is under consideration to be listed on the EPA's List of Violating

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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.

The Contractor also agrees to include these requirements in each Subcontract hereunder exceeding $50,000.

46.3.5 Environmental Protection

The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.

46.4 Recycled Products

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to 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.

46.5 Fly America

The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. 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 air 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.

46.6 Restrictions on Lobbying

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601)who has made lobbying contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the recipient. See Form entitled "Certification of Restrictions on Lobbying" in Section 46.19.

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46.6.1 Fraud and False or Fraudulent Statements, and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. 13), as amended, 31 U.S.C. § 3801 et seq., and USDOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to this Project. Upon execution of the underlying Contract, 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 the underlying Contract or the FRA assisted project for which this Contract Work is being performed. 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 FRA, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two (2) paragraphs in each Subcontract financed in whole or in part with federal assistance provided by FRA. It is further agreed that the paragraphs shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

46.6.2 No Obligation by the Federal Government

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 Contract and shall not be subject to any obligations or liabilities to Authority, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above paragraph in each Subcontract financed in whole or in part with federal assistance provided by FRA. It is further agreed that the paragraph shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

46.6.3 Debarment and Suspension

This Contract is a covered transaction for purposes of 2 C.F.R. 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. § 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.

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

The Contractor shall include a term or condition in the contract 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.

46.7 Civil Rights

The following requirements apply to the Contract:

46.7.1 Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. § 2000d, the Contractor agrees that it will not discriminate against any individual because of race, color, national origin, or sex in any activities leading up to or in performance of the Contract.

46.7.2 Equal Employment Opportunity

The following equal employment opportunity requirements apply to the Agreement:

46.7.2.1 Race, Color, Religion, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 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. § 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, but not be limited to, 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.

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46.7.2.2 Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 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.

46.7.2.3 Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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. 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. §§ 290 dd-3 and 290 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.

46.8 Access to Records

The Contractor agrees to provide the Authority, the Secretary of the U.S. Department of Transportation, the FRA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than seven (7) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. § 18.39(i)(11).

The inclusion of these requirements is not required in Subcontracts.

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46.9 Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the federal government under any contract:

- 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. § 552(a). Among other things, the Contractor agrees to obtain the express consent of the federal government before the Contractor or its employees operate a system of records on behalf of the federal government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- The Contractor also agrees to include these requirements in each Subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by the FRA.

46.10 Seismic Safety

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R Part 41, and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

46.11 Disadvantaged Business Enterprises

Notwithstanding anything to the contrary in the Contract Documents, this Section 46.11 shall apply only if and when the Project receives Federal funding.

The Authority encourages the Contractor to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for certain USDOT agencies in 49 C.F.R. Part 26) in carrying out the Project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of this FRA DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate. Each Subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 C.F.R. § 26.13(b)).

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46.12 Buy America

The Contractor shall comply with 49 U.S.C. 24405(a), which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the US Secretary of Transportation. For more information on FRA's Buy America requirements and processes please see FRA's Answers to Frequently Asked Questions (FAQ) available at, http://www.fra.dot.gov/Pages/11.shtml. .

Appropriate Buy America certifications in the following form shall be provided with the executed Contract and with each Change Order Proposal that includes steel, iron, and manufactured products. Authority shall not approve a contract or such Change Order Proposal unless the completed Buy America certification is provided. If a Certificate of Non-Compliance is provided, the Contract or Change Order Proposal will be accepted only if the Authority determines that an exception to the Buy America requirements might apply and has requested and received a Waiver from the US Secretary of Transportation.

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46.12.1 Certification requirement for procurement of steel, iron, or manufactured goods

- Certificate of Compliance with 49 U.S.C. § 24405(a)

  The Contractor hereby certifies that it will meet the requirements of 49 U.S.C. § 24405(a)

  Date: _____

  Signature: _____

  Company Name: _____

  Title _____

- Certificate of Non-Compliance with 49 U.S.C. § 24405(a)

  The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 24405(a) buy it may meet the requirements for a waiver pursuant to 49 U.S.C. 25505(a)(2) and has provided the Authority with a written Buy America waiver justification.

  Date: _____

  Signature: _____

  Company Name: _____

  Title _____

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46.12.2 Failure to Demonstrate Compliance

If the Contractor at any time fails to demonstrate that it is in compliance with its certification, the Contractor must take the necessary steps in order to achieve compliance, at no cost to the Authority. The Contractor's failure to comply with this provision shall be a material breach of the Contract.

46.12.3 Waiver Request Justification

Where the Contractor is unable to certify that it will meet the Buy America requirements and believes it may qualify, pursuant to 49 U.S.C. § 24405(a)(2) for a waiver from the Buy America requirements set forth therein, the Contractor must submit to the Authority, along with the required certificate, a written justification detailing the reasons it believes it meets the particular waiver exception(s). If such written justification is necessary, it shall be submitted with the Proposal as required by the Instructions for Proposers of this RFP. At minimum, a Proposer's written waiver request justification shall contain:

- Description of the Project;
- Description of the steel, iron or manufactured good not meeting the Buy America requirement;
- Description of the percentage of U.S. content in the steel, iron, or manufactured goods, as applicable;
- Description of the efforts made to secure the Buy America compliant steel, iron, or manufactured goods;
- Description of the bidding process used in the procurement (e.g., whether open or closed, how many bids were received, were any compliant products offered in competing bids);
- If a waiver is based on price, cost differential(s) that would be incurred in order to secure compliant Buy American steel, iron, or manufactured goods;
- Citation to the specific 49 U.S.C. § 24405(a)(2) waiver category(ies) under which the waiver is sought;
- Justification supporting the application of the waiver category(ies) cited; and
- Contact information for the responsible party.

46.12.4 Investigation

If the evidence indicates noncompliance with Buy America requirements, the Authority will or FRA may on its own initiate an investigation. The Contractor shall have the burden of proof to establish compliance with its certification. If the Contractor fails to so demonstrate compliance, then the Contractor shall substitute sufficient domestic materials without revision of the Contract terms. Failure to comply with the provisions of this Section shall constitute a material breach of the Contract and may lead to the initiation of debarment proceedings pursuant to 49 C.F.R. Part 29.

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46.13 Cargo Preference–Use of United States-Flag Vessels

The Contractor agrees to the following:

- To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- To furnish within twenty (20) Working Days following the date of loading for shipments originating within the United States, or within thirty (30) Working Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the first bullet of this clause above. This bill-of-lading shall be furnished to the Authority (through the Contractor in the case of a Subcontractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the Project.
- To include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

46.14 General Federal Labor Requirements

This Project is also subject to U.S. Department of Labor, Contract Compliance Provisions as set forth in 41 C.F.R. Part 60 and Exec. Order No. 11246, unless otherwise noted. The selected Contractor shall comply with the Contract Compliance provisions set forth in the Technical Assistance Guide for Federal Construction Contractors and for a Mega Project.

46.15 Davis-Bacon and Copeland Anti-Kickback Acts

46.15.1 Minimum Wages

The Contractor must pay prevailing wages on the Project, as required by 49 U.S.C. § 24405(c)(2) and section 1606 of the American Recovery and Reinvestment Act of 2009 ("ARRA"). All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the U.S. Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor provided in Attachment G of the Signature Document, regardless of any contractual relationship which may be alleged to exist between the Contractor or Subcontractor and such laborers and mechanics. Notwithstanding the foregoing, for Project components that use rights-of-way owned by a railroad, the Contractor shall comply with the provisions of 49 U.S.C. § 24405(c)(2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. §

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24312. For these purposes, wages in collective bargaining agreement negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the Site in a prominent and accessible place where it can be easily seen by the workers.

Authority shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Authority shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the Work to be performed by the classification requested is not performed by a classification in the wage determination; and
- The classification is utilized in the area by the construction industry; and
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the Work is performed.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Authority to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.

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In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Authority shall refer the questions, including the views of all interested parties and the recommendation of Authority, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

Authority shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. Authority shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- The classification is utilized in the area by the construction industry; and
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Authority to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.

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In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Authority shall refer the questions, including the views of all interested parties and the recommendation of Authority, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

46.15.2 Withholding

Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

46.15.3 Payrolls and Basic Records

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of six (6) years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or

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mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the Authority for transmission to the Federal Railroad Administration (FRA). The Contractor is also responsible for the submission of copies of payrolls by all Subcontractors.

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of 29 C.F.R. Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402.

Each payroll submitted shall be accompanied by a Statement of Compliance signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract, and shall certify the following:

- That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of 29 C.F.R. Part 5, and that such information is correct and complete
- That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3
- That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Railroad Administration (FRA), the Department of Labor (DOL), and the Authority, and shall permit such representatives to interview employees during working hours on the job.

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If the Contractor or Subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

46.15.4 Apprentices and Trainees

46.15.4.1 Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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46.15.4.2 Trainees

Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

46.15.4.3 Equal Employment Opportunity

The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

46.15.5 Compliance with Copeland Act requirements

The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

46.15.6 Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System

The Contractor and Subcontractors shall comply with the requirements of Executive Order No. 12989, as amended, which are incorporated by reference in this Contract, to use an electronic employment verification system as designated by the Secretary of Homeland Security. This system has been designated to be the United States Citizenship and Immigration Service (USCIS) E-Verify System. The Contractor and its Subcontractors are further required to comply with the Federal Acquisition Regulations, as amended, which require compliance with the E-Verify System and its requirements.

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46.15.7 Subcontracts

The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as the Federal Railroad Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower-tier Subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower-tier Subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

46.15.8 Contract Termination: Debarment

A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

46.15.9 Compliance with Davis-Bacon and Related Acts

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are hereby incorporated by reference in this Contract.

46.15.10 Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general "Disputes" clause of this Contract (Section 51). Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Authority, the U.S. Department of Labor, or their employees or their representatives.

46.15.11 Certification of Eligibility

By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor, is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

46.16 Contract Work Hours and Safety Standards

46.16.1 Overtime Requirements

Neither the Contractor nor any Subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

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46.16.2 Violation, Liability for Unpaid Wages, Liquidated Damages

In the event of any violation of the clause set forth in Section 46.16.1, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Section 46.16.1, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in Section 46.16.1.

46.16.3 Withholding for Unpaid Wages and Liquidated Damages

Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Section 46.16.2.

46.16.4 Final Labor Summary

The Contractor and each Subcontractor shall furnish to the recipient, upon the completion of the Work, a summary of all employment, indicating for the completed Project, the total hours worked and the total amount earned.

46.16.5 Final Certification

Upon completion of the Work, the Contractor shall submit to the Authority with the voucher for final payment for any work performed, a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

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THE UNDERSIGNED CONTRACTOR ON CONTRACT:

_____ hereby certifies that all laborers, mechanics, apprentices, and trainees employed by him or by a Subcontractor performing Work on the Project have been paid wages at rates not less than those required by the Contract Documents, and that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract Documents or training program provisions applicable to the wage rate paid.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

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46.16.6 Notice to the Recipient of Labor Disputes

Whenever the Contractor has acknowledged that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Authority.

46.16.7 Safety

Pursuant to Section 107 of the Contract Work Hours and Safety Standards Act and Department of Labor Regulations at 29 CFR Part 1926, no laborer or mechanic working on this Contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health and safety as determined under applicable health standards promulgated by the Secretary of Labor.

46.16.8 Insertion in Subcontracts

The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in sub-sections 1-7 of this Contract Work Hours and Safety Standards (Section 46.16) clause, and also a clause requiring the Subcontractors to include these clauses in any lower-tier Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower-tier Subcontractor with sub-sections 1-7 as set forth in this Section 46.16.

46.17 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 Contract, 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.

46.18 Reprints of Publications

Whenever an employee of a Contractor-Related Entity writes an article regarding the Project or otherwise resulting from work under this Contract 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.

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46.19 Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that the following are true:

- No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 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 agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is 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. § 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 such failure.

Executed this ____ day of _____ , 20 ___.

Company Name: _____

By: _____
(Signature of Company Official)

_____
(Title of Company Official)

Note:
1) If Joint Venture, each Joint Venture member shall provide the above information and sign the certification.

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46.20 Equal Employment Opportunity Certification

[To be executed by the Contractor, all joint venture members of the Contractor, and all Subcontractors]

The undersigned certifies on behalf of _____ that:

_____

(Name of entity making certification)

[check one of the following boxes]

☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114, or 11246, and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not the Contractor, relationship to the Contractor: _____

47 Small and Disadvantaged Business Enterprise Program

The Contractor shall comply with the Authority's Small and Disadvantaged Business Enterprise Program which establishes an overall 30 percent goal for small business utilization in the Authority's contracting and procurement program. The Contractor shall also comply with 41 C.F.R. Part 60,

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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.

More detailed information regarding the Authority's Small and Disadvantaged Business Enterprise Program requirements, including SB utilization reporting, Substitution/Termination processes, Prompt Payment Provisions, Recognized SB Roster of Certifying Agencies and other performance related factors, refer to the Authority's Small and Disadvantaged Business Enterprise Program, located in Book 3, Part A.

48 Supplemental Terms and Conditions for Contracts Using ARRA Funds

48.1 ARRA-Funded Project

Funding for this contract has been provided through the American 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 contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

48.2 Enforceability

Contractor agrees that if 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 following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

48.3 Prohibition on Use of ARRA Funds

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

48.4 Wage Rate Requirements

The Contractor assures that it and its sub-recipients shall fully comply with ARRA, Provision 1606, and 49 U.S.C. § 24405(c)(2), and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by, or assisted in whole or in part by, and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of 40 U.S.C. Chapter 31 (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section

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3145 of Title 40, United States Code. For Project components that use or would use rights-of-way owned by a railroad, the Grantee shall comply with the provisions of 49 U.S.C. § 24405(c)(2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. § 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Grantee will comply with the provisions of 40 U.S.C. § 3141 et seq.

48.5 Inspection of Records

In accordance with ARRA Sections 902, 1514, and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to perform the following:

- Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- Interview any officer or employee of the Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA-funded work.

48.6 Whistleblower Protection

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 any of the following:

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

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.

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48.7 False Claims Act

Contractor agrees that it shall promptly notify the State 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.

48.8 Recovery Act Funding Announcement

The Contractor shall post a sign at all fixed project locations at the most publicly accessible location announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs or plaques will be consistent with guidance at this web site:

http://www.fhwa.dot.gov/economicrecovery/arrasignguidance.htm

48.9 Reporting Requirements

Pursuant to Section 1512(c) of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a quarterly basis:

- The total amount of ARRA funds received by Contractor during the Reporting Period
- The amount of ARRA funds that were expended or obligated during the Reporting Period
- A detailed list of all projects or activities for which ARRA funds were expended or obligated, including the following:
  - The name of the project or activity
  - A description of the project or activity
  - An evaluation of the completion status of the project or activity
  - An estimate of the number of jobs that were either created or retained or both by the project or activity
- For any contracts equal to or greater than $25,000, the following information must be included:
  - The name of the entity receiving the contract
  - The amount of the contract
  - The transaction type
  - The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number
  - The Program source

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- An award title descriptive of the purpose of each funding action
- The location of the entity receiving the contract
- The primary location of the contract, including the city, state, congressional district, and country
- The DUNS number, or name and zip code for the entity headquarters
- A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another
- The names and total compensation of the five (5) most highly compensated officers of the company if it received all of the following:
  - 80 percent or more of its annual gross revenues in Federal awards
  - $25 million or more in annual gross revenue from Federal awards
  - If the public does not have access to information about the compensation of senior executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or Section 6104 of Internal Revenue Code of 1986

- For any contracts of less than $25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of the Contractor that the information contained in the report is accurate

- **Any other information reasonably requested by the State of California or required by State or federal law or regulation.**

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

49 Third Party Entities

49.1 Utilities and Public Facilities

This Section 49.1describes how responsibility and liability for certain risks relating to the Utility Work and the Public Facility Work ("Third Party Facility Work") are allocated between the Parties and contains certain additional terms relating to the scope of the Third Party Facility Work. Sections 49.1.1.3, 49.1.5 and 49.1.14.3 pertain only to Utilities and Utility Owners; the remainder of this Section 49.1 pertains to all Third Party Facilities and Third Parties Additional provisions regarding the scope of the Utility Work are set forth in Book 3.

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49.1.1 Scope of Third Party Facility Work

49.1.1.1 Contractor's Responsibility for Third Party Facility Work

49.1.1.1.1 General Scope; Work Excluded

Contractor is responsible for performing (and the scope of the Third Party Facility Work includes) all Relocation work necessary to accommodate the Project, excluding any efforts and costs which any of the Contract Documents specifically identify(ies) as the responsibility of the Third Parties or of Authority or otherwise specifically excludes from the Third Party Facility Work. (By way of clarification, efforts and costs assigned to Authority in a Utility/Public Facility Agreement, which are otherwise Contractor's responsibility pursuant to this Section 49.1, shall remain Contractor's responsibility unless a provision of the Contract Documents expressly states that such efforts and costs are excluded from the Third Party Facility Work.)

49.1.1.1.2 Work Included

Except as otherwise provided in Section 49.1.1.1 of this clause, the Third Party Facility Work includes the following:

- Design activities related to the Third Party Facility Work, including planning, local agency encroachment permitting, preliminary design, engineering, surveys, exploration of existing conditions (e.g., utility horizontal, vertical, material type and condition identification), coordination with all interested parties, final design, construction document preparation, scheduling, cost estimates, quality assurance and control;

- Construction activities related to the Third Party Facility Work, including field surveys and staking, coordination with all affected and interested parties, construction of Relocations, protection of existing facilities, health and safety measures (including traffic control), preparation of as-built drawings, inspections, field engineering, certifications, quality assurance and control;

- In some instances, individual Third Parties will design and/or construct all or portions of the Relocation work pertaining to their Facilities. In these specific circumstances, Contractor shall coordinate, monitor, review, inspect and certify this work;

- Reimbursement of individual Third Parties for the Relocation work they perform, where Authority has Cost Liability;

- Any incidental work related to and/or necessary for the successful and complete construction of Relocations;

- Compliance with all local agency and/or private utility permitting necessary to complete the Third Party Facility Work including but not limited to, payment of all fees, furnishing all warranties and insurances, adherence to design, construction and safety standards, furnishing all mitigation measures and complying with all other required provisions;

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- All coordination with Third Parties necessary to accomplish the Relocations;
- Preparation of documentation relating to Utility Easements, joint use agreements, consent to common use agreements and other property rights and interests associated with Relocations in accordance with Book 4 of the Contract; and
- All cost monitoring related to Relocation work, regardless of whether performed in part or whole by an individual Third Party.

49.1.1.2 Necessary Relocations

Relocations of Third Party Facilities may be necessitated by:

- A physical conflict between the Facility and the Project (including their respective construction, operation, maintenance or use), and/or
- An incompatibility between the Project as designed and the Facility based on the applicable Utility Standards, Governmental Approvals and/or Laws (even though there is no physical conflict).

The limits of Third Party Facility Work shall extend as far as is necessary to accommodate or permit construction of the Project in accordance with the requirements of the Contract Documents, whether inside or outside the Right of Way. Contractor shall ensure that all Third Party Facility Relocations are compatible with and interface properly with the Project.

49.1.1.3 New Utility Work

Certain Utilities being Relocated are also being modified to provide service to the Project; i.e., they are New Utilities. This Section 49.1 and all other provisions of the Contract Documents pertaining to Relocations apply to such Utilities; such Utilities are also subject to any provisions of the Contract Documents pertaining to New Utilities. Any New Utilities that do not also involve Relocation work are not subject to the provisions of the Contract Documents pertaining to Relocations. All Work relating to New Utilities is included in the Contract Price (and not included within the Utility/Third Party Provisional Sum).

49.1.2 Utility/Public Facility Agreements

Contractor shall comply with the terms and conditions of all Utility/Public Facility Agreements and shall timely perform Contractor's obligations thereunder, as well as any of Authority's obligations thereunder that are Contractor's responsibility pursuant to these General Provisions or any other Contract Documents. Contractor shall have no authority to enter into any Utility/Public Facility Agreements on Authority's behalf.

49.1.2.1 Master Agreements

Authority and the Third Parties known to be impacted by the Project have entered into Master Agreements that govern the Relocation of their respective Facilities. All such Master Agreements are Contract Documents, and are provided in Book 3. If additional Relocations (other than Protection in Place) are required for Third Parties with which Authority has not

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entered into a Master Agreement, Authority will prepare, negotiate and enter into Master Agreements with such Third Parties. Contractor will not be a party to such Master Agreements, but shall provide such assistance as Authority shall reasonably require, including attendance at negotiation meetings, providing such design, reports, documentation and information as may be required for negotiations, and preparation of exhibits. Any executed Master Agreement or amendment thereto provided to Contractor after the Proposal Due Date will be added to Book 3 and will thereupon become a Contract Document.

49.1.2.2 Task Orders

49.1.2.2.1 Draft Task Orders

Authority and the affected Third Parties have prepared draft Task Orders for certain of the Relocations. The draft Task Orders are included in Book 3. The draft Task Orders are not Contract Documents, and Contractor may not rely on the content of the draft Task Orders, except as otherwise provided in this Section 49.1.

49.1.2.2.2 Final Task Orders

Contractor shall prepare, negotiate and obtain execution of a final Task Order for each Relocation (other than Protection in Place), using the specific draft Task Orders included in the RFP where provided, and the generic draft Task Orders attached to the Master Agreements for all other Task Orders. All Task Orders are subject to Authority's approval, and shall be three-party agreements among Authority, Contractor and the Third Party. Task Orders may address a single Relocation, or a group of Relocations where appropriate. Executed Task Orders shall not be considered Contract Documents. A Task Order may include provisions which deviate from the requirements of the applicable Master Agreement (only if such deviation is expressly identified in the Task Order as an amendment to the Master Agreement), but shall in no event be deemed to modify the terms of any other Contract Documents or any other agreement to which Authority is a party. Except as provided in the preceding sentence with respect to Master Agreements, if a conflict occurs between the terms of any Task Order and the terms of the Contract Documents, the Contract Documents shall prevail as between Authority and Contractor.

49.1.3 Compensation for Third Party Facility Work

49.1.3.1 Utility/Third Party Provisional Sum

49.1.3.1.1 Amount of Utility/Third Party Provisional Sum

Any Work and/or costs payable from the Utility/Third Party Provisional Sum pursuant to this clause shall be deemed "Provisional Sum Facility Work". The Utility/Third Party Provisional Sum will be available to pay the allowable costs of Provisional Sum Facility Work determined as described in Sections 49.1.3.1.2 and 49.1.3.1.3 of this clause. If at any time the total allowable costs incurred by Contractor exceed the Utility/Third Party Provisional Sum, Contractor will be entitled to a Change Order increasing the Utility/Third Party Provisional Sum by an amount equal to 50 percent of the excess allowable costs. If, following achievement of Final Acceptance and resolution of all claims and disputes relating to the Relocation work (including all claims

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and stop notices of Subcontractors, laborers, and Third Parties relating to the Relocation work and any other work chargeable against the Utility/Third Party Provisional Sum), a positive balance remains in the Utility/Third Party Provisional Sum, the balance will be deducted from the Utility/Third Party Provisional Sum and shall be credited to Authority.

49.1.3.1.2 Provisional Sum Relocations

The Relocations described in 49.1.1.2 shall be payable from the Utility/Third Party Provisional Sum. Such Relocations are referred to herein as "Provisional Sum Relocations."

49.1.3.1.3 Work on Provisional Sum Relocations Performed by Third Parties

With respect to work performed by Third Parties for Provisional Sum Relocations, payment from the Utility/Third Party Provisional Sum shall be limited to the eligible costs actually incurred by Contractor after issuance of the NTP for the following:

- Reimbursement of Third Parties for their reasonable and necessary costs actually incurred for design and construction of Provisional Sum Relocations, to the extent reimbursable in accordance with the applicable Utility/Public Facility Agreement(s); and

- Payment of review, approval, permit, or inspection fees required by Third Parties (excluding all connection fees).

Eligible costs shall exclude any markup for Contractor. Costs will be considered reasonable and necessary if the Task Order or Time and Materials Daily Record (Form T&M), as applicable, is signed by Contractor and approved by Authority prior to payment by Contractor to a given Third Party. Such Authority approval or disapproval will be given within five Working Days after Authority has received adequate documentation.

49.1.3.1.4 Contractor's Provisional Sum Facility Work

Except as otherwise provided in Section 49.1.3.1.3 of this clause, payment from the Utility/Third Party Provisional Sum shall be limited to the eligible costs actually incurred by Contractor, after issuance of the NTP, for design and construction of Provisional Sum Relocations. Prior to commencement of any Relocation work to be paid for out of the Utility/Third Party Provisional Sum, Contractor must obtain an executed Provisional Sum Authorization from Authority regarding the scope and maximum cost of such work. To the extent Contractor authorizes performance of any such Relocation work without first receiving a Provisional Sum Authorization executed by Authority, Contractor shall be deemed to have caused such work to be performed voluntarily and shall not be entitled to any compensation in connection therewith. In addition, Contractor may be required to remove or otherwise undo any such work, at its sole cost. Eligible costs shall exclude any markup for Contractor. Incidental Utility Work shall not be payable out of the Utility/Third Party Provisional Sum.

49.1.3.1.5 Limitations

Contractor's entitlement to charge any costs against the Utility/Third Party Provisional Sum is subject to the following limitations:

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- Notwithstanding the above or any other provision of the Contract, the Utility/Third Party Provisional Sum is not available to pay for any costs that are disallowed from calculation of a Change Order under this Section 49.1 or under any other provision of the Contract.

- Costs may not be charged against the Utility/Third Party Provisional Sum for any costs of Relocation for which the Third Party has Cost Liability.

- Costs may not be charged against the Utility/Third Party Provisional Sum unless required solely due to work that is eligible for payment from the Utility/Third Party Provisional Sum (e.g., traffic control required solely for eligible Relocations performed by Contractor in a particular area may be charged as a cost of construction; traffic control for Relocations in a location where traffic control is also necessary for Relocations not eligible for payment from the Utility/Third Party Provisional Sum or for other Project construction is not eligible).

49.1.3.2 Contract Price

The Contract Price includes compensation for the following (such items are not included within the Utility/Third Party Provisional Sum):

- Design and construction of all Relocations assigned to Contractor pursuant to Section 49.1.6 of this clause and not eligible for payment from the Utility/Third Party Provisional Sum;

- All payments Contractor is required to make to Third Parties other than amounts payable from the Utility/Third Party Provisional Sum;

- New Utility Work;

- Incidental Utility Work;

- Maintaining reasonable functionality of existing Third Party Facilities during performance of the Work;

- Restoration of facilities following Temporary Relocation of a Utility (whether to the original location or a nearby location as approved by the Utility Owner);

- All Contractor's indirect costs associated with Third Party Facility Work (regardless of whether the associated direct cost is payable from the Utility/Third Party Provisional Sum); and

- Any other costs of performing Third Party Facility Work that are not allowable under Section 49.1.3.1 of this clause, including Contractor's management of Provisional Sum Facility Work.

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49.1.3.3 Records

Contractor shall maintain separate and distinct records to track the cost of designing and constructing all Third Party Facility Work and shall provide Authority with access to such records.

49.1.4 Change Orders

Contractor shall be entitled to receive a Change Order increasing the Contract Price and/or Utility/Third Party Provisional Sum and extending applicable Completion Deadlines for additional costs and delays associated with Relocations, only as permitted by this Section 49.1 or for circumstances for which such a Change Order is independently permitted under the "Changes" clause (Section 17) of the General Provisions. A deductive Change Order for reductions in the Work associated with Relocations shall be issued in the circumstances providing for a decrease in the Contract Price and/or Utility/Third Party Provisional Sum described in this Section 49.1 or in circumstances for which a deductive Change Order is independently permitted under the "changes" clause (Section 17) of the General Provisions. All Change Orders pursuant to this Section 49.1 shall be subject to the limitations, restrictions and procedures set forth in the "Changes" clause (Section 17) of the General Provisions or in the "Equitable Adjustments" clause (Section 17.3) of the General Provisions.

49.1.5 Accuracy of Utility Information

Contractor acknowledges that prior to the Proposal Due Date, Contractor had ample opportunity to analyze the Utility Information, to contact and make inquiries of Utility Owners, and to perform such additional investigations as it deems appropriate to verify and supplement such information, and that such investigations constituted the basis for establishing its Proposal price, also taking into consideration the Utility/Third Party Provisional Sum amount set forth in the Signature Document.

49.1.5.1 Inaccuracy Increasing the Work

If any existing underground Utility located within the planned limits of the Right of Way is not indicated at all in the Utility Information (i.e., is "unidentified"), or is not indicated with "reasonable accuracy" therein (i.e., is "misidentified"), then upon Contractor's fulfillment of all applicable requirements of the "Changes" clause (Section 17) and the "Equitable Adjustments" clause (Section 17.3) of the General Provisions, and subject to the limitations contained in this clause 49.1.5, and in the applicable provisions of said Sections 17 and 17.3:

- For the first one hundred-eighty (180) days after the date on which the NTP applicable to the affected Utility Work is issued, Authority shall bear 100 percent of the risk of any increase in Contractor's direct costs for the Utility Work that is directly attributable to such lacking or inaccurate information (i.e., Contractor shall be entitled to a Change Order increasing the Contract Price and/or the Utility/Third Party Provisional Sum, as applicable, in an amount equal to the incremental increase in the direct costs of performing the Utility Work arising from the fact that the Utility was unidentified or misidentified), to the extent that such lacking or inaccurate information is clearly and specifically identified in writing to the Authority within such 180 day period, and

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- After said first one hundred-eighty (180) days, the Parties shall share equally the risk of any increase in Contractor's direct costs for the Utility Work that is directly attributable to such lacking or inaccurate information (i.e., Contractor shall be entitled to a Change Order increasing the Contract Price and/or the Utility/Third Party Provisional Sum, as applicable, by an amount equal to 50 percent of the incremental increase in the direct costs of performing the Utility Work arising from the fact that the Utility was unidentified or misidentified, and Contractor shall be entitled to charge against the Utility/Third Party Provisional Sum only such 50 percent amounts). Any increase in the Contract Price shall be limited to costs of the types described in the first two bulleted subparagraphs of Section 49.1.3.2, of this clause and shall exclude delay and disruption damages other than compensation for idle time of equipment. Any increase in the Utility/Third Party Provisional Sum shall be limited to costs allowed under Section 49.1.3.1 of this clause.

Notwithstanding the foregoing, Contractor shall be fully liable for, and no Change Order shall be issued with respect to, unidentified or misidentified underground Utilities to the extent that:

- The existence of the Utility, or the accurate information concerning the Utility required pursuant to Section 49.1.5.3 of this clause was known to Contractor as of the Proposal Due Date,

- A surface inspection of the area prior to the Proposal Due Date would have shown the existence or the reasonable likelihood of the existence of the Utility with reasonable accuracy, by reason of above-ground facilities such as buildings, meters, junction boxes or identifying markers, or

- The exercise of reasonable care would have indicated the Utility with reasonable accuracy.

49.1.5.2 Inaccuracy Decreasing the Work

If any underground Utility identified in the Utility Information is not identified therein with reasonable accuracy, and if as a result of corrected information:

- It is not necessary to Relocate such Utility or

- There is a reduction in the cost of the Work necessary to Relocate such Utility. Then Authority shall be entitled to a Change Order reducing the Contract Price and/or Utility/Third Party Provisional Sum, as applicable, to reflect the full value of any reduction in the Work that is directly attributable to such correction.

Such Change Order shall be based on the Parties' reasonable estimate of the reduction in the cost of performance of such Work (including mark-ups).

49.1.5.3 "Reasonable Accuracy" Defined

An underground Utility identified in the Utility Information shall be deemed indicated with "reasonable accuracy" unless any information about such Utility provided in the Utility Information meets any one or more of the following conditions:

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- The indicated horizontal centerline location is more than two feet distant from the actual location; or

- The Utility has an actual nominal diameter (excluding casings and any other appurtenances) greater than **12** inches, and its indicated nominal diameter is either greater than or less than the actual diameter by **25** percent; or

- The Utility Information shows the Utility as abandoned (i.e., nonexistent except "on paper", or existent but no longer active) when in fact the Utility exists and is active, or the Utility Information shows the Utility as active when in fact the Utility is abandoned.

Except as provided in the bulleted subparagraphs above, any inaccuracies in the Utility Information (e.g., as to type of material or vertical location) shall have no impact on "reasonable accuracy". Any information concerning the location, nature or other characteristic of a Utility contained in any portion of the RFP other than the Utility Information shall not be relied upon by Contractor and shall have no impact on "reasonable accuracy." If there is any inconsistency between any two or more components of the Utility Information, the most accurate of the indications will be used for purposes of this clause.

49.1.5.4 Acknowledgments and Waivers

Except as expressly provided otherwise in Section 49.1.5.1 of this clause, the Parties specifically intend by this clause 49.1.5 to delegate to Contractor the obligation to perform all responsibilities with respect to identification of Utilities. Contractor acknowledges and agrees that:

- Any information concerning existing Utilities found outside the Utility Information shall not be deemed "indicated in the plans and specifications" as that term is used in Government Code section 4215;

- Section 49.1.5 of this clause satisfies Authority's obligations pursuant to California Government Code section 4215; and

- To the extent that California Government Code section 4215 might be construed to the contrary, Contractor hereby waives the benefit of such statute.

49.1.6 Initial Allocation of Work Responsibility

Contractor is responsible for performing design and construction of all Relocations, except as otherwise specified in the Master Agreements, executed Task Orders and/or Draft Task Orders included in the RFP. For purposes of this Section 49.1, references to responsibility for performing or Relocation design and construction include all tasks customarily associated therewith; provided, however, that Contractor shall be responsible for all coordination with Third Parties that is necessary in order to accomplish all Relocations in compliance with the requirements of the Contract Documents.

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49.1.7 Change in Allocation of Work Responsibility

For each Relocation, the allocation of responsibility for performing design and/or construction can be changed from the initial allocation determined pursuant to clause 49.1.6, by any of the following occurring after execution of the Contract:

- Execution of an amendment to the relevant Master Agreement;
- Execution of a new Master Agreement;
- Execution of a new Task Order;
- Execution of an amendment to the relevant Task Order; or
- Execution of a Task Order reciting that it amends the relevant Master Agreement.

If any of the foregoing occur, then the scope of the Third Party Facility Work for such Relocation shall be determined by the applicable Utility/Public Facility Agreement(s), and such reallocation of work responsibility shall be addressed in a Change Order; provided, however, that there shall be no change in either the Contract Price or the amount of the Utility/Third Party Provisional Sum on account of such change.

Any changes shifting responsibility for Relocation work from a Third Party to Contractor or from Contractor to a Third Party shall not be grounds for extension of any Completion Deadline, except as otherwise provided in Section 49.1.13 of this clause.

49.1.8 Payments to and Collection from Third Parties

49.1.8.1 Reimbursement by Contractor

Contractor shall reimburse each Third Party directly for the cost of Relocation work incurred by the Third Party (subject to the provisions of the applicable Utility/Public Facility Agreement(s) to the extent Authority has Cost Liability for such Relocation work, and excluding costs incurred by Third Parties to acquire Utility Easements.

49.1.8.2 Contractor's Failure to Pay

If Contractor fails to make any payment to a Third Party required by this clause 49.1 within ten (10) days of receipt of Authority's notice requesting such payment and Contractor is not entitled to reimbursement of such payment from the Utility/Third Party Provisional Sum, then Authority may make such payment and deduct the payment amount from any moneys due or to become due to Contractor and/or obtain reimbursement from Contractor for such cost. If Contractor fails to make any such payment to a Third Party within said time period and Contractor is entitled to reimbursement of such payment from the Utility/Third Party Provisional Sum, then Authority may make such payment and deduct the payment amount from the Utility/Third Party Provisional Sum. If insufficient funds remain available in the Utility/Third Party Provisional Sum to pay the amount owing, Authority may deduct the payment amount from any moneys due or to become due to Contractor and/or obtain reimbursement from Contractor for such cost.

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49.1.8.3 Collection by Contractor

Contractor shall collect the appropriate reimbursement directly from the Third Party for Contractor's Third Party Facility Work (subject to the provisions of the applicable Utility/Public Facility Agreement(s) to the extent the Third Party has Cost Liability for such Work.

49.1.8.4 Third Party's Failure to Pay

If for any reason Contractor is unable to collect amounts due from a Third Party pursuant to Section 49.1.8.3 of this clause, Contractor shall notify Authority and shall resolve such dispute directly with the Third Party, subject to the requirements of Section 49.1.12 of this clause. Contractor shall not be entitled to any additional compensation from Authority on account of any unpaid amounts owed by Third Parties.

49.1.8.5 Cost Liability

For each Third Party Facility impacted by the Project, the initial determination of whether Cost Liability lies with the Third Party or Authority shall be specified in the applicable Master Agreement, executed Task Order and/or Draft Task Order included in the RFP. If the Cost Liability for a particular Third Party Facility is not indicated in the foregoing locations, Authority shall be deemed to have Cost Liability.

49.1.9 Change in Cost Liability Determination

Authority may, at any time, notify Contractor of a change in the determination of Cost Liability for a particular Relocation. Such change in the Work directed by Authority shall be treated as an Authority-Directed Change resulting in either an increase or decrease in the Contract Price or the Utility/Third Party Provisional Sum, as applicable. Contractor shall not be entitled to any time extension on account of a change in Cost Liability determination

49.1.10 Betterments

49.1.10.1 Betterments Included in the Original Scope of the Work

Betterments included in the original scope of the Work as described in the Contract Documents (whether or not identified as betterments therein) shall not be grounds for extension of any Completion Deadline. With respect to those Relocations that are payable from the Utility/Third Party Provisional Sum, any Betterments included in the original scope of the Work shall be chargeable against the Utility/Third Party Provisional Sum in the same manner as other costs of the Relocation. With respect to those Relocations that are not payable from the Utility/Third Party Provisional Sum, any such Betterments are included in the Contract Price and shall not be grounds for any increase in the Contract Price.

49.1.10.2 Addition of Betterments to the Work

If a Third Party requests that Contractor design and/or construct a Betterment not included in the original scope of the Work, then, subject to Section 49.1.10.4 of this clause, Contractor may negotiate an agreement with the Third Party providing for Contractor to perform such work so long as the design and construction of the Betterment do not interfere with Contractor's efforts to design and construct the Project and do not increase Authority's costs or delay any

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Completion Deadlines. Any such Betterment shall be treated as an addition to the scope of the Work; provided, however, that:

- Such addition shall not be treated as an Authority-Directed Change,
- Contractor shall not be entitled to any increase in the Contract Price or time extension as a result thereof, and
- The costs of such Betterment shall not be chargeable against the Utility/Third Party Provisional Sum.

Instead, Contractor shall arrange to collect payment for such work directly from the Third Party, subject to the provisions of the applicable Utility/Public Facility Agreement(s).

49.1.10.3 Third Party Projects

If a Third Party requests that Contractor design and/or construct a Third Party Project, then, subject to Section 49.1.10.4 of this clause, Contractor may negotiate an agreement with the Third Party providing for Contractor to perform such work so long as the design and construction of the Third Party Project do not interfere with Contractor's efforts to design and construct the Project and do not increase the Authority's costs or delay any Completion Deadlines. Any Third Party Project that Contractor agrees to perform shall not be added to or treated as part of the scope of the Work.

49.1.10.4 Limitations Authority's Approval

Contractor shall not proceed with any Betterment or Third Party Project that is incompatible with the Project or cannot be performed within the constraints of applicable Laws, the Governmental Approvals and the Contract Documents, including the Completion Deadlines, in each case as determined by Authority in its sole discretion. Contractor shall not be entitled to any additional compensation or time extension hereunder as the result of any Betterment or Third Party Project, whether performed by Contractor (either outside of this Contract or as part of the Work), or by the Third Party or its contractors. Contractor shall provide Authority with such information, analyses and certificates as Authority may request in order to determine compliance with this Section 49.1.

49.1.10.5 Decrease in Scope

If any Authority-approved changes to the Third Party Facility Work are made which eliminate or reduce the cost of any Betterments that were included in the original scope of the Work, thereby reducing the cost of the Work, then Authority shall be entitled to a Change Order reducing the Contract Price or Utility/Third Party Provisional Sum, as applicable, to reflect the value of any reduction in the allowable costs of the Work that is directly attributable to the reduction or elimination of such Betterment. Such Change Order shall be based on the Parties' reasonable estimate of the reduction in allowable costs of performing such Work.

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49.1.11 Change in Relocation Requirements

Inasmuch as Contractor is both furnishing the design of and constructing the Project, Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering such opportunities, Contractor shall at all times consider the impact of Project design changes on Relocations with the overall goal of minimizing the necessity for Relocations to the extent practicable. Accordingly, except to the extent resulting from Authority-Directed Changes in Project design affecting Relocations, the following rules shall apply with respect to any resulting delays to a Critical Path, and with respect to any cost increases or decreases associated with Project design changes which either:

- Reduce or eliminate the costs of any Relocation, or
- Result in new Relocations or an increase in costs of existing Relocations:
  - Contractor shall not be entitled to any time extension on account of delays to a Critical Path caused by such Project design changes.
  - Contractor shall not be entitled to any increase in the Contract Price or the Utility/Third Party Provisional Sum for any such additional costs which it incurs, including both additional Relocation costs and the costs of any additional Work on other aspects of the Project undertaken, nor shall Contractor be entitled to charge any such additional costs against the Utility/Third Party Provisional Sum.
  - Neither the Contract Price nor the Utility/Third Party Provisional Sum shall be increased, nor shall any charge be made against the Utility/Third Party Provisional Sum as the result of:
    - Any increase in amounts owed to Third Parties that is directly attributable to such Project design change, or
    - Any amounts owed to Third Parties for work which is unusable or which must be redone as a result of such Project design change.
  - Contractor shall reimburse Authority for any costs incurred by Authority for additional or expanded Utility Easements required as the result of any such Project design change.
  - Contractor shall be responsible for all reimbursement owed to affected Third Parties for "wasted work", either by reimbursing the Third Parties directly, or by reimbursing Authority for the costs of reimbursing such Third Parties.
  - Contractor shall not be obligated to provide a credit to Authority on account of reductions in the cost of the Work due to any such avoided or reduced Relocations, unless Authority is entitled to such credit pursuant to any other provision of this Section 49.

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49.1.12 Failure of Third Parties to Cooperate

49.1.12.1 Notice to Authority

Contractor shall make diligent efforts to obtain the cooperation of each Third Party as necessary for the Project. Contractor shall notify Authority immediately if:

- Contractor believes that it will be unable to successfully negotiate a Task Order,
- Contractor believes that any Third Party would not undertake or permit a Relocation in a manner consistent with the timely completion of the Project,
- Contractor becomes aware that a Third Party is not cooperating in providing needed work or approvals, or
- any other dispute arises between Contractor and any Third Party with respect to the Project, including any dispute as to whether or not a particular Third Party request or requirement is a Betterment.

49.1.12.2 Authority Actions

After giving notice, Contractor shall continue to diligently pursue the Third Party's cooperation or to otherwise resolve the dispute, as applicable, and may request Authority's assistance for such purpose. Contractor shall include in such request evidence satisfactory to Authority showing that Contractor has made diligent efforts to obtain the Third Party's cooperation or to otherwise resolve the dispute, but that such efforts have not succeeded. Authority may elect whether or not to provide the requested assistance; provided, however, that if the dispute involves determination as to a Betterment, Authority shall reasonably cooperate with Contractor in any action or proceeding brought by Contractor to establish that such request or requirement is a Betterment, at no cost to Authority other than the time of its internal staff. Without limiting the generality of the foregoing, Authority shall not be obligated to take legal action against an uncooperative Third Party (and/or to undertake such other alternate proceeding to enforce the Third Party's obligations as may be authorized by the applicable Utility/Public Facility Agreement(s)), unless Authority elects to do so in its sole discretion. Authority may, at its sole discretion, participate in the resolution of any dispute between Contractor and a Third Party, whether or not requested to do so by Contractor.

49.1.12.3 Contractor Actions

As requested by Authority, Contractor shall cooperate with Authority in any efforts to obtain Third Party cooperation and/or to resolve disputes with them, including in connection with any lawsuit or alternate proceedings undertaken by Authority for such purpose. Such cooperation shall include Contractor's staff and consultants acting as witnesses in such lawsuits and proceedings and providing testimony, information, reports, graphs, photos, plans, renderings and similar materials to Authority's counsel at Contractor's expense. Authority shall remit to Contractor any amounts collected on Contractor's behalf as a result of any such action or proceeding, after first deducting therefrom all costs (including attorneys', accountants' and

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expert witness fees and costs plus an administrative charge equal to 10 percent of the costs) incurred by Authority in pursuing such action or proceeding. Any assistance provided by Authority shall not relieve Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations under the Contract Documents and timely completion of all necessary Relocations.

49.1.12.4 Performance of Work by Contractor

In certain cases where a Third Party is not cooperating with Contractor or Authority, Authority may, in its sole discretion and where permitted pursuant to applicable Laws, issue a directive letter directing Contractor to proceed with a Relocation without an agreement or other written consent by the Third Party. In other cases, if a Third Party fails to complete work for which it is responsible on or before the deadline established in the applicable Utility/Public Facility Agreement(s), or if Authority reasonably determines that the Third Party will be unable to timely complete such work, then Authority may, in its sole discretion and if permitted by applicable Laws and/or the applicable Utility/Public Facility Agreement(s), terminate the Third Party's performance of such work and either direct Contractor to perform such work or cause it to be performed by another contractor.

49.1.13 Delays

49.1.13.1 Notice

Contractor shall give notice to Authority of any circumstance that may lead to a claim under this clause 49.1.13 within 72 hours after Contractor's becoming aware that such circumstance has occurred or is likely to occur. Any Change Order under this clause is subject to the applicable limitations and restrictions set forth in the "Changes" clause (Section 17) and the "Equitable Adjustments" clause (Section 17.3) of the General Provisions.

49.1.13.2 Inaccuracies in Utility Information

Contractor shall be entitled to an extension of any affected Completion Deadline to the extent that any delay in a Critical Path is directly attributable to a circumstance for which Contractor is entitled to a Change Order for increased costs with respect to a Utility Relocation pursuant to the "Inaccuracy Increasing the Work" clause (Section 49.1.5.1) of the General Provisions.

49.1.13.3 Advance Relocations

With respect to any Relocation to be completed prior to the date on which the NTP applicable to the affected Third Party Facility Work is issued, Contractor shall be entitled to an extension of any affected Completion Deadline to the extent that any delay in a Critical Path is directly attributable to a delay by a Third Party in completing such Relocation prior to the applicable NTP.

49.1.13.4 Third Party Caused Delay

For any Relocation as to which a Task Order has not yet been executed, Contractor shall be entitled to one day of extension of any affected Completion Deadline for every two days of delay in a Critical Path that is directly attributable to a delay by a Third Party in completing any task necessary for a Relocation beyond the later to occur of:

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- the deadline for performance of such work stated in the applicable executed Utility/Public Facility Agreement(s) (taking into consideration any force majeure provisions therein), and
- the approved Baseline Schedule for the Project, provided that the following conditions are satisfied:
  - Contractor has made all reasonable efforts to obtain the timely cooperation of the Third Party,
  - If applicable, Contractor has provided a reasonable Relocation plan to the Third Party that has been approved by Authority,
  - The party(ies) responsible hereunder for obtaining permits necessary to perform the Relocation (Contractor, Authority and/or the Third Party) has/have obtained, is/are in a position to timely obtain all such permits, and
  - The delay for which compensation is sought is not concurrent with any other delay, whether or not such other delay is on a Critical Path, other than any other delay caused by the Authority.

No time extension shall be granted pursuant to this clause with respect to any Relocations as to which a Task Order has been fully executed.

49.1.14 Additional Restrictions on Change Orders

In addition to all of the other requirements and limitations contained in this Section 49.1 and in the "Changes" clause (Section 17) and the "Equitable Adjustments" clause (Section 17.3) of the General Provisions, the entitlement of either Contractor or Authority to any Change Order under this Section 49.1 shall be subject to the following restrictions and limitations:

49.1.14.1 Coordination Costs

In no event will Contractor be awarded any increase in the Contract Price or the Utility/Third Party Provisional Sum for any increased costs of coordinating with Third Parties or for assisting Authority in its coordination with Third Parties.

49.1.14.2 Avoidance of Relocations

Contractor shall at all times consider the impact of design changes on Relocations with the overall goal of minimizing the necessity for Relocations to the extent practicable. Whenever Contractor claims entitlement to an increase in compensation or a time extension for a Relocation, Contractor shall bear the burden of:

- Proving that the Relocation could not reasonably have been avoided, and
- Proving and justifying the amount of any costs and/or delays claimed by Contractor, including demonstrating that the timing and nature of the investigations undertaken by Contractor were appropriate and that the increased costs and/or time could not have been avoided by more timely and appropriate investigation.

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49.1.14.3 No Adjustment for Incidental Utility Work

Contractor shall not be entitled to an adjustment for increased costs of the Work resulting from, or for any extension of time for delays associated with, the performance of Incidental Utility Work by Contractor or any Third Party.

49.1.14.4 Voluntary Action

If Contractor elects to make payments to Third Parties or to undertake any other efforts which are not required by the terms of the Contract Documents, Contractor shall not be entitled to reimbursement from the Utility/Third Party Provisional Sum or an adjustment in the Contract Price in connection therewith. Contractor shall promptly notify Authority of the terms of any such arrangements.

49.1.14.5 Assumption of Third Party Facility Risks by Contractor

Contractor agrees that:

- The Contract Price and Utility/Third Party Provisional Sum cover all of the Third Party Facility Work described in the Contract Documents, and
- It is feasible to obtain and/or perform all necessary Relocations within the time deadlines of the Contract Documents.

Without limiting the generality of the foregoing, Contractor acknowledges and agrees that:

- Prior to the date of execution hereof, Contractor analyzed the risks involved and in calculating the Contract Price included adjustments deemed appropriate by Contractor to account for the potential risks of additional costs and delays relating to Relocations.
- Contractor shall not be entitled to any Change Order with respect to any Relocations, including any act or failure to act of any Third Party which may result in a delay to Contractor's planned schedule or in Contractor's incurring costs not included in its budget for the Project, except as specified in this Section 50.1.
- Contractor shall not be entitled to a Change Order for any costs or delays which it may incur attributable to any errors, omissions, inconsistencies or other defects in Relocation designs furnished by Third Parties which are the basis for any construction Work performed by Contractor.

49.1.15 Bonds and Insurance

All Third Party Facility Work shall be covered by the payment and performance bonds (see Attachments D and E of the Signature Document) required under the Contract. All premiums for including such Third Party Facility Work in the Payment and Performance Bonds shall be included in the Contract Price. Any liability insurance required by a Third Party for Third Party Facility Work shall be provided by naming such Third Party as an additional insured on the insurance provided by Contractor pursuant to the “Insurance” clause (Section 11) of the General Provisions.

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49.1.16 Utility and Public Facility Definitions

As used throughout this Contract, the following terms shall have the meanings set forth below:

- Betterment shall have, with respect to a given Third Party Facility, the meaning (if any) set forth in the applicable Master Agreement.

  In all other cases, the term "Betterment" shall mean any upgrading of a Relocated Third Party Facility that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Third Party, including an increase in the capacity, capability, level of service, efficiency, duration or function of the Relocated Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

  - Any upgrading necessary for safe and effective construction of the Project;
  - Replacement devices or materials that meet equivalent standards although they are not identical;
  - Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
  - Any upgrading required by applicable Laws (excluding any Laws that fall within the definition of Third Party Standards for such Third Party);
  - Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or
  - Any upgrading required by the applicable Third Party Standards in effect as of the date of execution of the applicable Master Agreement .

- **Conduit –** Any conduit, casing, sleeve, hanger, attachment, or blockout for installation or protection of Utilities attached to or installed through structures, or installed under rail or roadway crossings, and any associated pull-ropes for Utility cables.
- **Cost Liability –** The obligation to bear the cost of all or part of a Relocation (as between the Authority and the Utility Owner), whether arising out of common or statutory law or contract, as established in accordance with Section 49.1.8.5.
- **Draft Task Order –** an unexecuted Task Order included in Book 3, without consideration of any modifications or amendments made after the Proposal Due Date.
- **Facility –** a Third Party Facility.
- **Incidental Utility Work –** All Work associated with the following (whether performed by Contractor or by Utility Owners):
  - Service Line Relocations,
  - Utility Appurtenance Adjustments,

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- Purchases and installations of Conduits,
- Protections in Place,
- Street and parkway modification and restoration made necessary by Utility Relocations, including resurfacing and restriping of streets (including sidewalks), landscape restoration, and relocation of street lights and traffic signals,
- Potholing, electronic detection and/or surveying to determine Utility locations,
- Design, construction and as-built surveys,
- Obtaining permits required for Utility Relocation work, and
- Abandonment of Utilities, including removal and disposal of abandoned Utilities.

- **Master Agreement –** Any of the following documents (including unless otherwise specified, any modifications and amendments thereto executed after the Proposal Due Date):
  - The agreements between the Authority and Third Parties included in Book 3 and identified as Master Agreements, and
  - Any other agreement between the Authority and a Third Party that addresses Relocations for the Project in a general manner.

  A document is a "Master Agreement" if it meets the definition set forth herein, without regard to the name by which the document designates itself.

- **New Utility** -- Any new Utility constructed or installed as a result of the Project for the purpose of providing service to the Project, either directly or indirectly. The terms also includes Utilities being Relocated that are also being modified to provide service to the Project, either directly or indirectly.
- **Protection in Place or Protect in Place –** Any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would not be considered Protection in Place and would instead be a Temporary Relocation. The term Protection in Place includes both temporary measures and permanent installations meeting the foregoing definition.
- **Provisional Sum Authorization –** The written authorization from the Authority regarding the scope and maximum cost of Third Party Facility Work to be paid for out of the Utility/Third Party Provisional Sum as set forth in the "Contractor's Provisional Sum Facility Work" clause (Section 49.1.3.1.4) of the General Provisions.
- **Provisional Sum Facility Work –** The Third Party Facility Work payable from the Utility/Third Party Provisional Sum as described in the "Utility/Third Party Provisional Sum" clause (Section 49.1.3.1) of the General Provisions.

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- **Public Facility –** A facility, owned or operated by a Governmental Person, that is not a Utility and must be relocated in order to accommodate the Project.
- Public Facility Owner – The owner or operator of a Public Facility.
- Public Facility Work – The Work associated with Relocation of Public Facilities, including (a) the Work with respect to Public Facilities described in this Section 49.1, and (b) any Betterments added to the scope of the Public Facility Work.
- **Relocate** – Action to undertake a Relocation.
- **Relocation –** Each alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all Third Party Facilities that is necessary in order to accommodate or permit construction of the Project.
- **Relocation work –**The Utility Work and Public Facility Work as well as the work by Third Parties and/or their contractors associated with Relocation of Utilities, including design, construction, installation, manufacture, supply, testing, inspection, and any other work required by the Utility/Public Facility Agreements.
- **Service Line (also referred to as a lateral or service lateral) –** (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or Conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Person's lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.
- **Task Order –**A work order or agreement, as the same may be amended from time to time, among the Authority, the Contractor and a Third Party, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment. A document is a "Task Order" if it meets the definition set forth herein, without regard to the name by which the document designates itself, and without regard to whether it is issued pursuant to the provisions of an applicable Master Agreement.
- **Temporary Relocation –** (a) Any interim relocation of a Utility (i.e. the installation, removal and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and (b) any removal and reinstallation of a Utility in the same location with or without an interim relocation.
- **Third Party –** Any Utility Owner or Public Facility Owner.
- **Third Party Facility –** Any Utility or Public Facility.
- **Third Party Facility Work –** Public Facility Work and/or Utility Work, as the context may require.

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- **Third Party Project –** The design and construction by or at the direction of a Third Party of a new Third Party Facility other than as part of a Relocation or to provide service to the Project. Third Party Projects shall be entirely the financial obligation of the Third Party.
- **Third Party Standards –** For a Relocation covered by a Master Agreement, the standard specifications, standards of practice, and construction methods which the Master Agreement applies to Relocations made in order to accommodate the Project.

  For any Relocations not covered by a Master Agreement, the standard specification, standards of practice, and construction methods that a Third Party customarily applies to Facilities constructed by the Third Party (or for the Third Party by its contractors) at its own expense and that are comparable to the Facilities being Relocated for the Project. Such Third Party Standards may or may not all be incorporated into documents issued by the Third Party, and shall include those processes, procedures, policies and practices that are industry-standard in Central California for each particular type of Third Party Facility and those (if any) that are specified for the particular Third Party in the Contract Documents. For any Third Party that is also a Governmental Person, its Third Party Standards shall include all such requirements that are imposed by Laws issued by such Third Party.
- **Utility or utility -**- Privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the Project, the term "Utility" or "utility" specifically excludes (a) storm water facilities that provide drainage solely for the Right of Way, and (b) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities. If the context so requires, the term "Utility" or "utility" shall also mean "Utility Owner".
- **Utility/Public Facility Agreement –**A Master Agreement and Task Orders thereunder, if any, as the context may require, and as the same may be modified or amended from time to time.
- **Utility Appurtenance Adjustment –**The adjustment of Utility appurtenances (e.g. manholes, valve boxes, and vaults) for line and grade upon completion of Work in the vicinity.
- **Utility Easement –**A permanent replacement easement and/or other interest in real property located outside of the Right-of-Way limits that is necessary for a Relocation.

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- **Utility Information –** As defined in Book 3.
- **Utility Owner or utility owner –**The owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, municipalities and other Governmental Persons).
- **Utility/Third Party Provisional Sum –** The fund in the amount specified in the Signature Document to be used to pay for certain Work in accordance with Section 49.1.3.1.
- **Utility Work –** The Work associated with Relocation of Utilities, including (a) the Work with respect to Utilities described in this Section 49.1, (b) any Betterments added to the scope of the Utility Work, and (c) any Work to be performed by Contractor pursuant to [insert cross-reference] with regard to acquisition of Utility Easements.

49.2 Railroad Agreements

[To be provided]

50 Partnering

The Parties agree to use the principles of partnering, collaboration and cooperation to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions. Such measures should extend to all levels of the Work, including lower-tiered Subcontractors.

50.1 Post-Award Partnering Workshop

In order to achieve effective and efficient completion of this Project, the Parties agree to conduct a one to two day Partnering Workshop within 60 days of the issuance of the Notice to Proceed. Certain Project stakeholders have also agreed to participate in the Partnering Workshop. The Partnering Workshop shall be conducted at a facility local to Sacramento, CA, shall be facilitated by an independent facilitator mutually selected by the Contractor and the Authority, and will include the following topics:

- Developing and implementing an Issues Resolution Ladder (IRS) establishing a hierarchy of those individuals responsible for addressing issues as they arise during the course of the Project.
- Developing and implementing a Partnering Implementation Plan (PIP) to sustain the partnering relationship after the workshop by establishing regularly scheduled partnering meetings and any procedures necessary for the identification and resolution of issues during the performance of the Work to be addressed by the Partnering Participants.
- Conducting facilitated Executive Partnering Sessions among the senior managers of each party to discuss issues related to potential conflicts and to engage in collaborative problem solving.

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- Conducting training for all parties in teambuilding, collaborative problem solving and conflict resolution skills.
- Conducting evaluations of the Project Partnering efforts.
- Including language from this Section 50 in contracts for Subcontractors involved in the performance of the Work.

50.2 Periodic Partnering Meetings

The purpose of the periodic partnering meetings scheduled in the aforementioned PIP is to evaluate the ongoing efficacy of the partnering relationship and to review its processes as necessary to improve or correct any procedures/practices and to efficiently identify and resolve Project issues.

50.3 Partnering Cost Allocation

The cost of the Partnering Workshop and subsequent partnering meetings shall be borne initially by the Contractor and then the actual cost, without markup, will be passed along to the Authority as a normal cost of the Project as a part of the Provisional Sum.

50.4 Project Completion

At the completion of the Project, Partnering Participants shall formally evaluate the Project and goal achievement or failure and what was accomplished by the partnering process by way of, but not limited to; Project quality, cost savings and schedule adherence. Additionally, the evaluations should provide lessons learned and suggestions to improve the partnering process.

50.5 Partnering Confidentiality

Neither the language of this Partnering clause nor any statements made or materials prepared during partnering meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any DRB hearing, arbitration or other judicial or dispute resolution proceeding. Notwithstanding the foregoing, the Parties acknowledge and agree that such information may be considered public information under the Public Records Act.

51 Disputes

Except with respect to the Ineligible Matters described below, all disputes between the Parties must be resolved in accordance with this Section 51 and Section 52, below.

51.1 Authority Decision

Before Contractor may submit any matter to dispute resolution hereunder, it must first obtain a final Authority decision in accordance with the following procedures.

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If Contractor objects to any decision, action, order or position of the Authority (including any rejection or modification of a proposed Change Order by the Authority), as a condition precedent to referral of any dispute to said designated representative, the Contractor shall first seek to resolve the dispute through the partnering process, including escalation of the dispute through all levels of the Issue Resolution Ladder. If the dispute is not resolved through partnering, the Contractor shall file a written request for an Authority decision with the Authority's designated representative, within 14 days after completion of the partnering effort. The request shall state clearly, and in detail, the basis for the objection, the nature of the costs involved, the Contractor's plan for mitigating such costs and its best estimate of the time and/or cost effects of the matters which give rise to the potential dispute.

The Authority's designated representative will consider any timely filed written objection and provide a written response on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the dispute. The response will be furnished, in writing, to the Contractor within two (2) weeks after receipt of the Contractor's written objection, provided that, if no written decision is issued, the Contracting Officer shall be deemed to have denied the Contractor's written objection and a response to that effect shall be deemed received by Contractor at the end of such two-week period.

The decision of the designated representative shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the Contractor furnishes a written appeal to the Authority's Chief Executive Officer or designee. In connection with any appeal of the Authority's decision, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. If the Chief Executive Officer fails to issue a new decision within two weeks after the date on which the appeal is submitted, the Authority's previous decision shall be final and conclusive at the end of the two-week period. If the Chief Executive Officer issues a new decision within the two-week period, such decision shall be the Authority's decision and shall be final and conclusive unless the dispute is referred to the DRB.

If the dispute is not resolved by the Chief Executive Officer's decision, either Party may refer the dispute to the DRB (if it is then in existence) or to arbitration (if the DRB is not then in existence), provided however, that the Contractor must refer the dispute to the DRB or arbitration within 42 days from the date of the Contractor's receipt (or deemed receipt) of the Authority's final decision. Pending the final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Authority's decision. If it is determined, on appeal, that the Authority's interpretation of the Contract, direction to the Contractor, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under the Contract, the Contractor's sole remedy shall be the same as if such action were a "change" pursuant to Section 17 of these General Provisions.

In the event Contractor fails to file a written objection or to appeal a decision by the Authority's designated representative within the time periods specified herein, or if the Contractor fails to refer the dispute to the DRB or arbitration within the specified time period, the Contractor shall

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be deemed to have waived any and all rights it may have to object to or to seek DRB review or arbitration of such decision, action or order. This waiver shall occur whether or not there is any showing of prejudice to the Authority resulting from the delay in filing the objection.

As a condition to Final Acceptance, the Contractor shall identify all outstanding matters relating to this Contract which have been elevated to the dispute resolution process. By provision of the list of outstanding matters, or by its failure to provide such a list, the Contractor shall be deemed to have waived any and all rights it may have to make any claim against the Authority with respect to this Contract except with respect to the listed matters, provided that such waiver shall not extend to any matters arising after Final Acceptance with respect to obligations of the Parties under the Contract after Final Acceptance.

51.2 Continuance of Work During Dispute

At all times during the course of the dispute resolution process, the Contractor shall continue with the Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, orders; and shall be governed by all applicable provisions of the Contract. The Contractor shall keep records of the Work in sufficient detail to enable payment in accordance with applicable provisions in this Contract irrespective of the ultimate outcome of any dispute.

51.3 Disputes Resolution Board

A standing Disputes Resolution Board (DRB) will be established to assist in the resolution of disputes, including claims and other controversies, arising out of the Work of this Contract, excluding any Work to be performed after Final Acceptance. This Section 51 describes the purpose, procedure, function, and key features of the DRB. A 3-party agreement, in the form provided in the Signature Document, shall be executed by the Authority, the Contractor, and members of the DRB for the purpose of formalizing the creation of the DRB.

The DRB will assist in and facilitate the timely and equitable resolution of disputes between the Authority and the Contractor in an effort to avoid construction delay and litigation. It is not intended for the Authority or the Contractor to default on their normal responsibility to amicably and fairly settle their differences by indiscriminately referring them to the DRB. The Authority and Contractor are encouraged to resolve potential disputes without resorting to the DRB procedures.

A dispute may be referred to the DRB by the Authority or the Contractor.

The DRB shall fairly and impartially consider disputes referred to it, and shall provide written decisions to the Authority and the Contractor to assist in the resolution of these disputes. Although the decisions of the DRB should carry great weight for both the Authority and the Contractor, except as specified in Section 51.4, they are not binding on the Parties unless the amount in controversy exceeds $1,000,000.00.

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51.4 Matters Ineligible for DRB Procedures

The following matters (collectively, "Ineligible Matters") are ineligible for resolution through the DRB procedures specified in this Section 51:

- Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;
- Any matters relating to the scope or applicability of indemnities provided under the Contract Documents;
- Any claim for injunctive relief;
- Any claim against an insurance company, including any Subcontractor dispute that is covered by insurance;
- Any claim arising solely in tort;
- Any claim involving a third party which is a necessary or appropriate party to such dispute, including any related claims between the Parties arising therefrom, unless the third party agrees to the jurisdiction of the DRB;
- Any dispute regarding failure to comply with equal employment opportunity requirements or requirements of the Contract relating to Small Business Enterprises, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises, and Microbusinesses; and
- Any claim for, or dispute based on, remedies expressly created by statute; and
- Any dispute that is actionable only against a Surety.

51.5 Membership

The DRB will consist of one (1) member selected by the Authority, who shall be a Professional Engineer and approved by the Contractor, one (1) member selected by the Contractor who shall be a Professional Engineer and approved by the Authority, and a third member selected by the first two (2) members who shall be an attorney and approved by both the Authority and the Contractor. The third member will act as a Chairperson for all DRB activities.

All DRB Members shall be experienced with the type of construction involved in this Contract, and interpretation of the Contract documents. The goal in selecting the third member is to complement the experience of the first two (2) Members and to provide leadership for the DRB's activities. It is imperative the DRB Members show no partiality to either the Contractor or the Authority, or have any conflict of interest.

51.5.1 Criteria and Limitations for Membership on the DRB

The following provide the criteria and limitation for membership on the Dispute Resolution Board:

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- No member shall be an Affiliate of or otherwise have a financial interest in the Contractor, any Subcontractor, the Project, the California High Speed Train Project or in the outcome of any dispute decided hereunder, except for payment for services on the DRB.
- Except for fee-based consulting services on other projects, no member shall have ever been previously employed by the Authority, Contractor or any Affiliate (including any work for such entity through an arrangement with his or her direct employer), except for fee-based consulting services on other projects which are disclosed to the Parties, and no member shall have otherwise had financial ties to any Party during the two years preceding his or her engagement for the DRB.
- No member shall have had a professional or personal relationship, with the Contractor, any Subcontractor, the Authority, or an employee of any of the foregoing of a nature which could affect his/her ability to impartially resolve disputes.
- No member shall have had substantial prior involvement in the Project or the California High Speed Train Project of a nature which could affect his/her ability to impartially resolve disputes.
- No member shall have a conflict of interest under the Authority's Organizational Conflict of Interest Policy.

Refer to the form of DRB Agreement attached to the Signature Document for additional limitations applicable to DRB members.

Before their appointments are final, the first two (2) prospective members shall submit complete disclosure statements for the approval of both the Authority and Contractor. Each statement shall include:

- A resume of experience,
- A declaration describing all past, present, and anticipated or planned future relations to this Contract and the Project, and with all entities involved in the design and construction of the Project, as well as any other possible or potential conflicts of interest.
- Disclosure of all relationships with any Parties to this Contract or persons otherwise involved in the Project.
- A statement that the member meets all criteria applicable to DRB Members as specified in the form of DRB Agreement contained herein.

The third DRB Member shall supply a similar statement to the first two (2) DRB Members and to the Authority and Contractor before his or her appointment is final.

The duty to disclose conflicts of interest shall be continuing:

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- Members of the DRB shall promptly notify the Authority and the Contractor not only of any possible or potential conflict of interest that exists at the time they are appointed to the DRB, but also any possible or potential conflict of interest that they become aware of while they are serving on the DRB.

During each DRB Member's tenure on the DRB, neither Party shall employ such DRB Member nor contact such DRB Member regarding employment, other than as a DRB Member; nor shall either Party contact any individual DRB Member in an ex parte manner to seek advice or consultation during job site meetings described below or at any other time. If either Party makes such inappropriate contact with a DRB Member, the DRB Member shall be expected to report such contact to the other Party, and the other Party may in its sole discretion terminate the DRB process. If the DRB process is terminated because of inappropriate contact, the contacting Party shall reimburse the non-contacting Party for all costs incurred to date in the DRB process. The DRB process shall then commence anew from the beginning with the selection of all new members.

The Authority and the Contractor shall each select and negotiate an interim agreement with their respective member within six (6) weeks after award of this Contract. Immediately after approval, the Authority and Contractor shall notify their members to begin selection of the third member. The first two (2) members shall ensure that the third member meets all of the criteria listed above. The third member shall be selected within four (4) weeks after the first two (2) members are notified to proceed with his or her selection. In the event of an impasse in selection of the third member, that member shall be selected by mutual agreement of the Authority and the Contractor. In so doing, they may, but are not required to, consider the nominees offered by the first two (2) members.

Within a reasonable time after selection of the third member, the Authority, the Contractor, and all three (3) members of the DRB shall execute a 3-party agreement in the form provided in the Signature Document.

51.6 Operation

The DRB shall formulate its own rules of operation consistent with the terms and conditions specified herein. It is not desirable to adopt hard and fast rules for the functioning of the DRB. The entire procedure shall be kept flexible to adapt to changing situations. The DRB shall initiate, with the Authority's and the Contractor's concurrence, new rules or modifications to old ones whenever this is deemed appropriate. In order to keep abreast of construction developments and progress, the DRB Members will be promptly informed of construction activities by means of regular written progress reports and other relevant data prepared by the Contractor and approved by the Authority. The DRB shall visit the Project and meet with representatives of the Authority and the Contractor at intervals as requested by the Authority and the Contractor, and at times of critical construction events. The frequency of these visits shall be as agreed among the Authority, the Contractor, and the DRB, depending on the progress of the Work. During Project visits by the DRB, meetings shall be held at the job site. Each meeting shall consist of an informal round table discussion followed by field inspection of

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the Work. The round table discussion shall be attended by selected personnel from the Authority and the Contractor. The agenda shall generally include the following:

- Meeting convened by the Chairperson of the DRB.
- Opening remarks by the Authority's representative.
- A description by the Contractor's representative of:
  - The Work accomplished since the last meeting
  - The current status of the work schedule
  - The schedule for future work
  - Potential disputes, claims, and other controversies; and proposed solutions for these problems.
- A description by the Authority's representative of:
  - The Work accomplished since the last meeting
  - The current status of the work schedule
  - The schedule for future work
  - Potential disputes, claims, and other controversies; and proposed solutions for these problems.
- Set tentative date for next Project visit and meeting. The Contractor shall prepare minutes of the meetings and circulate them for any comments, revisions, and approval of all concerned. The field inspection shall cover all active segments of the Work. The DRB shall be accompanied by representatives of both the Authority and the Contractor at all times.

51.6.1 Procedure and Schedule for Dispute Resolution

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. If agreed by the Authority, Contractor and DRB members in writing, steps may be omitted and the time periods stated below may be shortened in order to hasten resolution. The Contractor may submit a dispute to the DRB only after obtaining a final Authority decision as specified in this Section 54. The Authority may refer a dispute to the DRB at any time.

A Statement of Dispute shall be submitted to the DRB separately by the Authority and the Contractor stating clearly and in full detail the specific issues of the dispute and its position. Simultaneous with submittal to the DRB, a copy of the Statement of Dispute shall be provided to the other Party.

When a dispute is referred to the DRB, it shall first be decided when to conduct the hearing. If the matter is not urgent, it may be heard at the next scheduled DRB Project visit and meeting. For an urgent matter, the DRB shall meet at its earliest convenience.

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Once a dispute is referred to the DRB, discovery shall be permitted to the full extent provided by Code of Civil Procedure sections 1283.05(a) through (d); provided that the Parties may agree to shorten the discovery period for individual disputes.

51.6.2 Conduct of Hearing

The DRB may request that written documentation and arguments in addition to the Statements of Dispute be submitted by either Party or both Parties to each DRB member before the hearing begins.

Normally the hearing will be conducted at the job site. However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory. Private sessions of the DRB may be held at any convenient location.

The third member of the DRB will act as chair of the hearing. Each member shall keep his or her own notes, and a formal transcript will normally not be prepared. Audio or video recordings will normally not be permitted.

The Authority and the Contractor shall have representatives at all hearings. The Contractor shall first discuss the dispute, followed by the Authority. Each Party will then be allowed successive rebuttals until all aspects are fully covered. The DRB Members may ask questions, request clarification, or ask for additional data. Additional hearings may be necessary in ordered by the DRB in its sole discretion if determined necessary to consider and fully understand all the evidence presented by both parties. Both the Authority and the Contractor shall be provided full and adequate opportunity to present all of their evidence, documentation, and testimony regarding all issues before the DRB.

During the hearings, no DRB Member shall express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the DRB shall meet to formulate its decision. All DRB deliberations shall be conducted in private, with all individual views kept strictly confidential. The DRB's decision, together with a detailed explanation of its reasoning, shall be submitted as a written report to both Parties. The decision shall be based on the pertinent Contract provisions, applicable laws and regulations, and the facts and circumstances set forth in the record of the dispute.

The DRB shall make every effort to reach a unanimous decision. If this proves to be impossible, the dissenting member shall prepare a written minority report.

51.6.3 Additional Requirements for Subcontractor Demands

For purposes of this Section 51, a "Subcontractor Demand" shall include any claim by a Subcontractor (including also any pass-through claims by a lower tier Subcontractor) against Contractor that is actionable by Contractor against the Authority and arises from work, services or materials provided or to be provided under the Contract Documents. If Contractor

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determines to pursue a claim against the Authority that includes a Subcontractor Demand, the following additional conditions shall apply:

- Contractor shall identify clearly in all submissions pursuant to this Section 51, that portion of the claim that involves a Subcontractor.
- Contractor shall include, as part of its submissions pursuant to Section 51, a certification in a form acceptable to the Authority by the Subcontractor's officer, partner or authorized representative with authority to bind the Subcontractor and with direct knowledge of the facts underlying the Subcontractor's claim. Contractor also shall submit a Contractor's certification that (i) Contractor has investigated the basis of the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and time requested, and has reviewed and verified the adequacy of all back-up documentation; (ii) the Subcontractor's claim has been prepared and submitted in accordance with the terms of the Contract Documents and the applicable Subcontract(s) and contains all information required by the Contract Documents and applicable Subcontract; and (iii) Contractor has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any claim under this Section 51 involving Subcontractor Work shall be considered incomplete if it is not accompanied by such analysis and certification
- At any DRB hearing on a dispute that includes one or more Subcontractor Demands, Contractor shall require that each Subcontractor that is involved in the dispute have present an authorized representative with actual knowledge of the facts underlying the Subcontractor's claim to assist in presenting the Subcontractor's claim and to answer questions raised by the DRB members or the Authority's representatives.
- Failure of Contractor to assert a Subcontractor's claim on behalf of any Subcontractor or Supplier at the time of filing a written objection with the Contracting Officer as provided in Section 51.6.1, shall constitute a release of the Authority by Contractor on account of such Subcontractor's claim.
- Contractor shall require in all Subcontracts that all Subcontractors and suppliers of any tier: (i) agree to submit Subcontractor's claims to Contractor in a proper form and in sufficient time to allow processing by Contractor in accordance with this Section 51; (ii) agree to be bound by the terms of this Section 51 to the extent applicable to Subcontractor's claims; (iii) agree that, to the extent a Subcontractor's claim is involved, completion of all steps required under this Section 51 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law; (iv) agree that any Subcontractor's claim brought against a bonding company, that also is actionable against the Authority through Contractor, shall be stayed until completion of all steps required under this Section 51; and (v) agree that the existence of a dispute resolution process for involving Subcontractor's Demands shall not be deemed to create any claim, right or cause of action by any Subcontractor or Supplier against the Authority.
- Notwithstanding the foregoing, this Section 51 shall not apply to, and the DRB shall not have the authority to consider:

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- any Subcontractor claim between the Subcontractor(s) and Contractor that is not actionable by Contractor against the Authority;
- any Subcontractor claim based on remedies expressly created by statute; (iii) any Subcontractor claim that is covered by insurance; or
- any Subcontractor claim that is actionable only against a bonding company.

51.6.4 DRB Decision

The DRB's decision for resolution of the dispute will be reasoned and given in writing, to both the Authority and the Contractor, within two (2) weeks of completion of the hearings. This time may be extended by mutual agreement of all parties.

If requested by either Party, the DRB shall meet with the Authority and Contractor to provide additional clarification of its decision.

Within two (2) weeks of receiving the DRB's decision, or such other time as agreed by the DRB and the Parties, both the Authority and the Contractor shall respond to the other and to the DRB in writing, signifying either acceptance or rejection of the DRB's decision. The failure of either Party to respond within the specified period shall be deemed an acceptance of the DRB's decision. If, with the aid of the DRB's decision, the Authority and the Contractor are able to resolve their dispute, the Authority will promptly process any required Contract changes.

Should the dispute remain unresolved, the DRB will consider the responses of the Parties and either uphold its prior decision or amend the decision as the DRB may determine appropriate. The decision of the DRB shall be final and binding on the Parties for all disputes where the amount in controversy is less than or equal to $1,000,000. If the amount in controversy exceeds $1,000,000, the decision of the DRB shall be final and binding unless either Party provides Notice of Intent to Appeal the DRB Decision to Arbitration to the other Party within forty-two (42) days of the issuance of the DRB Decision. If neither Party gives Notice of Intent to Appeal the DRB Decision to Arbitration within the period of forty-two (42) days, the DRB Decision shall be final and binding on the Parties. If the Party that provided Notice of Intent to Appeal fails to submit the dispute to arbitration as provided in Section 52 within 180 days after the date the DRB Decision becomes final, then the DRB Decision shall be final and binding on the parties.

51.6.5 Compensation

The Contractor shall prepare and mail the regular written progress reports and other relevant data it provides to the DRB Members and the Authority. The Contractor will provide conference facilities for DRB meetings and hearings.

If the DRB desires special services, such as legal consultation, accounting data, research, and the like, the Parties must agree prior to expenses being incurred for such services. The Authority and the Contractor shall share the cost equally.

The Contractor shall pay the invoices of the DRB members, after both Parties agree to the amounts, and for special services for the DRB. The Contractor shall then invoice the Authority

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for 50 percent of the invoices of the DRB and the cost of the special services. Submittal of invoices for 50 percent of the cost of services provided and for such other special services as are mutually agreed upon shall not be subject to retainage as provided in the paragraph entitled "Invoicing and Payment" (Section 30) of these General Provisions, and shall not include mark-up of any kind. Refer to the List of Bid Items (Book 3) providing for the reimbursement of the Contractor's share of the DRB expenses.

51.7 Provisional Remedies

No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy which may be necessary, and which is not otherwise available under this Section 51, to protect its rights, including temporary and preliminary injunctive relief, attachment, claim and delivery, receivership and any extraordinary writ.

52 Arbitration

If the Parties cannot resolve claims informally or through the DRB process, then either Party shall have the right to bring such unresolved claims to mandatory binding arbitration in accordance with this Section 52, provided that the matters identified in Section 51.2 as "Ineligible Matters" shall also be ineligible for resolution through arbitration. Unless the Parties otherwise agree in writing, as a condition precedent to the right to bring a claim to arbitration, either Party electing to bring a matter to arbitration shall first have attempted to resolve the matter informally in accordance with Section 50 and before the DRB if applicable. Any such arbitration proceeding shall be *de novo.*

The Party requesting arbitration shall file notice of the demand for arbitration in writing with the other Party within 180 days of the date the DRB Decision is rendered or within 42 days from the date of the Contractor's receipt (or deemed receipt) of the Authority's final decision for disputes not required to be submitted to the DRB.

Within 30 days after delivery of the request for arbitration, the Parties shall seek to jointly appoint a panel of three arbitrators who have at least ten years experience in complex construction disputes involving public works transportation projects. For any insurance disputes which are subject to arbitration, at least one of the arbitrators shall be experienced with regard to insurance coverage underwriting. Each Party shall appoint one arbitrator of its choosing, and jointly appoint a mutually agreeable third arbitrator, all of whom shall meet the foregoing qualifications. If any Party fails to select one arbitrator of its choosing who meets the foregoing qualifications, or if the Parties are unable to agree upon the selection of the third arbitrator, within such 30-day period, then either party may petition the Superior Court of Sacramento County to select such arbitrator(s) meeting the foregoing qualifications.

Unless the Parties agree otherwise, arbitrations shall be conducted in accordance with the procedures for arbitrations under Public Contract Code sections 10240 et seq. (the "State

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Arbitration Act"), and implementing regulations set forth in California Code of Regulations, Title 1, Chapter 4, sections 1300 et seq.

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 Contract Documents and applicable law, and shall be set forth in writing.

The arbitrators shall not have the power to award punitive damages, rescind this Contract, reform the Contract Documents, or void any limitations on liability contained in this Contract.

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.

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.

During the resolution, DRB process, arbitration, or subsequent litigation of any and all claims, disputes, and other matters in question arising out of or relating to this Agreement, the breach thereof, or provision of construction work, the Contractor shall be required to continue to progress the work to completion and comply with all other terms and provisions of this Agreement in a diligent, timely and faithful manner, unless otherwise excused in writing by the Authority.

It is expressly agreed by the Parties that the DRB Decision rendered prior to the Notice of Intent to Appeal the DRB Decision to Arbitration shall be admissible in any subsequent Arbitration proceeding by either Party.

53 Public Involvement

53.1 General

Communications, community involvement, and minimizing impacts to businesses, residents, and traffic are critical components to the successful development of the California High-Speed Train Project (HST). The Authority has developed a State-wide set of goals and objectives related to construction related activities, including community relations (with specific outreach to impacted businesses), construction and traffic mitigation, public information, and responsiveness to public concerns.

Based on these goals and objectives the Contractor shall develop a Contract-specific Public Involvement Program (PIP) for all construction-related activities to facilitate management of community issues and mitigation of construction impacts on the community and neighborhoods adjacent to the construction work sites. It will include, at a minimum, an

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ongoing public information program which identifies public meetings, construction advisories, newsletters, and other community outreach plans to effectively communicate the activities of construction. The PIP will also include a Business and Residential Impact Mitigation Plan (see Section 53.3). The Contractor shall manage the community advisory plan for construction-related activities and work closely with the Authority regarding community issues. The Contractor shall also work with other city departments and the State Department of Transportation to provide construction advisories and current construction-related traffic information to the public.

Developing and implementing an effective PIP will require a team effort involving the HST team comprised of the Authority, stakeholders' representatives of each construction segment, and the Contractor. Working together as a communications team, the Authority, the stakeholders, and the Contractor must be prepared to work together to accomplish the following:

- Maintain, improve, and build positive Public Involvement of the HST Project
- Provide regular reports on Construction Package progress
- Provide meaningful mechanisms for community outreach and responding to Project area concerns
- Mitigate construction impacts for the Construction Package area residents, business owners, and commuters

Above all, this communications team must place a high priority on being responsive to the concerns of the public, neighborhoods, and business owners throughout the life of the Contract.

53.1.1 Roles and Responsibilities

53.1.1.1 Authority's Role

The Authority shall maintain overall responsibility for Public Involvement (PI) and information for the entire HST. The Contractor shall be responsible for implementing the PIP for this specific Contract. The Authority's responsibilities will include the following:

- Providing leadership in establishing the State-wide communications policy and strategic direction through the Authority regional communication directors.
- Providing the Contractor with communications goals and objectives
- Ensuring that the Contractors' communications programs and products are consistent system-wide and in line with the Authority's overall public information and involvement efforts
- Conducting Authority-sponsored public relations activities targeted to the general public
- Monitoring the Contractor's performance for compliance with the Contractor's PIP
- Identifying stakeholder representatives in the Construction Package project area

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53.1.1.2 Contractor's Role

The Contractor shall be the focal point for the PI effort to prepare affected neighborhoods for construction and to minimize the actual impact of construction. The Contractor shall have primary responsibility for performing the Project-specific PI activities. The Contractor shall be responsible for day-to-day PI and mitigating the impact of construction for businesses and residents in the Project area, as defined in the Contract Documents, including the Contractor's Proposal.

53.1.2 Contractor's Responsibilities

53.1.2.1 Contractor's Public Involvement Plan

Within sixty (60) days of any Notice to Proceed (NTP), the Contractor shall complete and submit to the Authority for Review and Comment, its PI Program based on the summary submitted with its Proposal and the other Contract Documents. The Business and Residential Impact Mitigation Plan defined in Section 53.3 must be included as a subset of the PIP. The PIP must reflect the Authority's communications goals and objectives and must target PI activities to those most affected by the construction of the Project. The Contractor's PIP must include, at a minimum, the items described in these General Provisions. The cost of all PI work shall be included as an individual line item in the Schedule of Prices.

The official Project logo must be used on all final communications products. The Contractor may identify itself and use its logo, as approved by the Authority. The Authority must approve all deliverables before final production.

The Contractor shall update the PI Program at least semi-annually, soliciting input from the businesses and residents along the corridor, and the stakeholders' representatives. A copy of each update shall be submitted to the Authority for Review and Comment.

The Contractor must provide monthly reports of activities undertaken to implement the PI Program. The monthly report must be submitted in a format agreed upon by the Authority on or before the 10th day of the month for activities undertaken during the previous month via the Authority web portal. The report should also forecast known activities for the month ahead, to the extent feasible.

The Contractor shall be responsible for assessing the effectiveness of the PI Program. Working in conjunction with the Authority's Communications team, the Contractor shall provide information to the Authority that will be used to determine if any course corrections are needed in the delivery of information and interaction activities with Project area residents, businesses, and commuters.

During the time this Contract is in force, the Contractor shall also be responsible for coordinating all PI issues that arise within and adjacent to the geographical limits of this Contract directly with the Authority.

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53.1.2.2 Staff Requirements

The Contractor shall provide, at a minimum, a full-time Public Involvement Manager responsible for managing its PI Program and other staff as needed to accomplish specified tasks.

The Contractor's Public Involvement Manager shall have "real-time" access to all Project details that may be relevant to the public, public agencies, emergency service providers, businesses, etc. The Public Involvement Manager must provide information as requested by the Authority in a timely manner.

The Contractor's PI team shall be the primary interface between the public and the Contractor's organization.

53.1.2.3 Public Interaction

The Contractor shall maintain day-to-day contact with the affected Project area residents, businesses, and commuters.

It is essential that the Contractor provide information to all parties impacted by the Project. If a resident, business, commuter, or other member of the public has a question or comment related to construction or preparation for construction, the first and preferred point-of-contact should be the Contractor's Public Involvement Manager. The Contractor shall take necessary steps to foster these contacts, including continuous interaction with the affected residents, businesses, and commuters.

53.1.2.4 Public Notifications

The Contractor shall notify specifically affected businesses and residents along the Project, as well as the public and community in general, of construction progress and upcoming events. The Contractor shall provide information to mitigate impacts that have immediate and long term results.

The Contractor shall provide the specific notifications specified in the "Table of Notifications" clause.

53.2 Table of Notifications

53.2.1 Notice Requirements

- Thirty-Day Heavy Construction Notification - Written notification of Heavy Construction shall be given thirty (30) days prior to construction. Access maps shall be provided per the Maintenance of Traffic Plan.
- Three-Day Light Construction Notification - Written notification of Light Construction shall be given three (3) days prior to construction. Access maps shall be provided per the Maintenance of Traffic Plan.
- Critical Utility Shut-off/Diversion - Written notice of at least 72 hours in advance of, but not more than 96-hours before, either shut-off or diversions or both.

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- Seventy-two Hour Business/Commercial Utility Shutdown - Written notification of utility shutdown for businesses and commercial property.
- Forty-eight Hour Residential Utility Shutdown - Written notification of utility shutdown for residential property.
- Weekly Heavy Construction Updates - A construction update will be provided to each business or resident fronting a Heavy Construction Zone.
- Road and Driveway Closures - Written notice and personal contact at least 72 hours in advance of, but no sooner than seven (7) days prior to closure.
- Construction Schedule - One (1) month prior to start of construction.

  Utility shut-off/diversion arrangements and notifications requirements shall be confirmed by the master agreements that the Authority is currently negotiating with affected utilities.

  The Contractor is required to provide a weekly written report to the Authority, in a format agreed upon by the Authority, identifying the nature of public contacts and Contractor responses for the preceding week. The Contractor is also required to be available at the request of the Authority to discuss the report.

53.2.2 Database

All contacts made by the Contractor shall be logged into a database that is capable of tracking all contacts made with the public. The Contractor must ensure the information is imported into the Authority's database on a monthly basis via the Authority's web portal.

The Contractor's entries, at a minimum, shall list all of the following:

- Contact name, business name, address, phone number, and home phone for business owners
- When the contact was made
- Who accepted/responded to the contact
- How the contact was made (in person, phone, e-mail)
- A brief description of the nature of the contact
- A brief description of handouts

A referencing system shall be developed to track the distribution of handouts and mass mailings in order to minimize the amount of hard copy information filed.

A standardized form shall be developed to log contact information. This form will become the hard copy of all contacts. Handouts shall be attached to this form. The contact information shall include the information provided for the database as well as a description of what was discussed. The database shall document all contact with the public and be capable of recreating what transpired during the Project.

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All contact information shall be entered into the database within three (3) days of contact by the recipient.

53.2.2.1 Complaint/Comment Forms

The Contractor shall provide complaint/comment forms to businesses and residents along the Project as a method for the public to express Project concerns. These forms shall provide all information needed for entry into the database. The forms shall indicate the business address or email address where the forms can be sent.

53.2.2.2 Responses to Complaint/Comment Forms

Complaints received shall be responded to within five (5) days of receipt for non-emergency issues and within 24 hours for emergency issues.

Emergency calls relating to hazardous conditions, diminished security or loss of access or utility services shall be evaluated on a case-by-case basis. Verification calls shall be provided on all calls to inform the callers that their calls have been addressed.

53.2.2.3 Emergency, Unforeseen Utility Disruptions, Hazardous Conditions, Traffic Signal Emergencies, Security, and Loss of Access Notifications

The Contractor shall initiate immediate response to emergencies by trained personnel from an incident response team within thirty (30) minutes of receiving notification from either the Authority, a utility owner, an Authority official, affected business(es), resident(s) or any combination thereof.

All emergencies and unforeseen disruptions shall be explained to the public immediately by a personal contact from the Contractor's Public Information Specialist or designated member of the Contractor's public information staff. The Authority must be made aware of the issue and explanation immediately. The person making the contact shall provide to the affected party(ies) information such as the following:

- Cause of disruption (i.e., whether it is construction-related or not)
- Actions being taken to alleviate the problem
- Anticipated duration of the disruption

53.2.2.4 Construction Schedule/Maintenance of Traffic and Access

The Contractor shall notify businesses and residents along the Project and shall publicize commencement of construction in accordance with the "Table of Notifications" clause. The notices must provide, at a minimum, information addressing public safety, business impact mitigation, and proposed alternative routes and detours. This notification shall indicate the projected dates for the construction by individual notices to stakeholders, community groups, businesses, and residents along the corridor as well as along alternative routes. The Contractor shall provide all relevant information concerning the construction schedule to the Authority who will then publicize such information to appropriate media outlets and statewide or local officials.

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53.3 Business and Residential Impact Mitigation

The Contractor shall complete, update, and submit its Business and Residential Impact Mitigation Plan based on the summary submitted with its Proposal. This Plan shall include, but is not limited to, the PI activities described in the sub-sections below.

53.3.1 Door Hangers

The Contractor may use door hangers to inform particular property owners/residents about day-to-day construction progress and disruption.

53.3.2 Access Maps

The Contractor shall develop access plans with businesses and residents on each block and shall provide maps showing existing and planned patron, delivery, and residential access during any construction period. The map(s) shall identify times of business operation and deliveries. The Contractor may show the utilization of either alleys or adjacent driveways or both alleys and adjacent driveways upon receiving written permission from the Authority or owner having jurisdiction over such driveways and alleys. Individual business and residential access shall be recorded in the database. The access maps shall be made available at least seven (7) days prior to construction where a business or residence is impacted.

53.3.3 Changes to Access

The Contractor shall inform businesses and residents in writing of any changes to access that may impact them, at least two (2) weeks prior to start of construction. Changes in access, along with an access map, shall be submitted to the Authority for Review and Comment at least three (3) weeks prior to start of construction.

53.3.4 Garbage and Recycling Removal

Contractor shall provide adequate access for all garbage and recycling removal. The Contractor shall negotiate with public and private garbage and recycling removal services, and provide them access at agreed times.

53.3.5 Construction Kiosks

On blocks that are undergoing construction, the Contractor shall maintain signage at each intersection on both sides of the street that lists all businesses that face on the block or use the block for access. This signage must be maintained throughout the duration of construction in any area affected.

53.4 Community Updates/Neighborhood Boards

Besides the daily contacts made, the Contractor shall conduct community updates to give the public the opportunity to discuss the Project. All neighborhood meetings must be advertised in neighborhood and community newsletters at least 10 Working Days prior. At a minimum, community updates must be hosted once per month starting one (1) month prior to construction. The Contractor shall be responsible for selecting an appropriate, easily accessed venue, and for convening the updates at a convenient time for maximum attendance. The

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information displayed or discussed shall include schedule, staging, maintenance of traffic and access, and any other Project information. The stakeholders will be provided the opportunity to participate in all community updates, which are to be advertised no less than ten (10) Working Days before the event.

Additionally, the Contractor shall accompany Authority representatives to all Neighborhood Board meetings to serve as a resource when Authority representatives present Project updates.

The fees or costs associated with the meetings or community updates are the responsibility of the Contractor. The venues and any additional services needed for the event must be selected in a fiscally responsible manner.

53.5 Construction Tours

The Authority shall manage and handle all requests for construction tours in consultation with the Contractor, including scheduling tours and requiring tour participants to observe Contractor's reasonable safety program guidelines, such as the wearing of protective equipment and waiver of liabilities. The Contractor shall participate in tours as requested to provide construction information.

53.6 Project Identification Boards

The Contractor shall install signs throughout the Project to be placed in prominent auto traffic zones where construction is occurring, at the Contractor's main office, and at all field offices. The signs will identify the Project and will comply with Federal Railroad Administration (FRA) requirements. The signs will also identify the Contractor's name, public contact information, and the participating agencies. A sample of the Project Identification Board shall be submitted to the Authority, and shall be subject to the Authority's review and comment. Signs and lettering shall be sized appropriately for the speed limit in the area using the Manual on Uniform Traffic Control Devices size guidelines, and be consistent with applicable city sign ordinance(s).

53.7 Incident Notification

The Contractor shall establish and manage an emergency response telephone tree. All appropriate stakeholder personnel shall be included on this telephone tree for immediate response in the event of an emergency. The telephone tree shall be divided into areas of expertise so the proper people are called for specific emergency situations. The Contractor's first point of contact will be a representative of the Authority.

53.8 Media Relations

An ongoing media relations campaign will be implemented and managed by the Authority. The Contractor shall not meet with the media without the Authority's authorization, and shall direct all questions from the media to the Authority. The Contractor shall give timely information to the Authority regarding construction activities for use in media events.

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The Contractor shall develop press releases for the Authority as needed to keep the public informed of the Project. All press releases must be approved by the Authority prior to release and will be distributed by the Authority to media.

Radio and television traffic reporters will receive appropriate and timely updates on construction activity and traffic management information from the Authority in conjunction with the Contractor. Public service announcements will be developed as part of the Contractor's traffic management information.

Neither the Contractor nor any subcontractor nor their employees shall conduct or participate in media interviews or events, radio or television broadcasts relating to the Project, without consent of the Authority, except in emergencies. In emergency situations, the Contractor shall immediately notify the Authority of any situation that may involve the media.

53.9 Public Notices

The Contractor shall prepare public notices for radio, and broadcast and cable television, and for the www.cahighspeedrail.ca.gov web site to notify the public of inconveniences caused by the Project works, including but not limited to traffic and utility disruptions. Public notices for scheduled disruptions shall be submitted to the Authority fifteen (15) days in advance of the event. Inconveniences caused by unpredictable events (e.g., damage to utility lines, extended street closures) will be communicated to the public as expediently as possible.

The Contractor shall provide a monthly Project update for public dissemination that will be posted on the Project website; published in print outlets; and broadcast on radio, television, and cable television. Costs associated with production and publication/airing of these updates will be borne by the Contractor

53.10 Special Events

The Contractor shall assist the Authority as needed with the planning and implementation of special events that recognize significant Project milestone achievements such as groundbreaking.

53.11 Website

The Contractor shall recommend and provide adequate Project updates (weekly, monthly, or quarterly) for the existing www.cahighspeedrail.ca.gov web site. Web site information to be submitted by the Contractor includes but is not limited to information to prepare Project area residents and business owners for construction and to mitigate the impact of construction, public notifications, neighborhood meetings, the dates and location of scheduled construction, and detours and alternative routes. The Authority has final approval on content. The Contractor shall submit information to the Authority within two (2) Working Days prior to scheduled updates in electronic formats that facilitate website posting. The Authority shall maintain web site links to other appropriate sites that convey facts and benefits of the rail Project to the

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California general public, the business community, and elected and appointed government officials.

54 Quality Program

54.1 Introduction

The Quality Control and Quality Assurance requirements presented in this document applies to all program participants and is based upon ANSI/ISO/ASQ Q9001:2008 and the USDOT Federal Transit Administration Quality Assurance and Quality Control Guidelines (FTA-IT-90-5001-02.1).

54.2 Quality Program

The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all surveys, designs, drawings, specifications, geotechnical investigations, construction, manufacturing, installation, and other services furnished under this Contract, including the warranty service element. The Quality Program and Quality Management Plan shall follow the principles of ISO 9001.

The Contractor's Quality Management System shall include comprehensive Quality Control and Quality Assurance procedures. Quality Assurance (QA) shall be independent of Quality Control (QC) and the QA functional lead shall report outside of the Project reporting chain to the Contractor's Officer in Charge. The Quality program shall be implemented from NTP and maintained to Final Acceptance. The QC manager shall be responsible for the quality of the Work.

54.2.1 Testing Facilities

Contractor testing facilities shall be properly certified according to industry standards.

54.3 Inspections, Tests and Audits

- The Contractor shall notify the Authority of the schedule of technical audits for design and construction activities
- A copy of the audit and the corresponding corrective/preventative action plans shall be submitted to the Authority. The Contractor shall submit close out reports that demonstrate how and when corrective action was completed for each non-conformance.
- The Contractor shall submit an Inspection Test Plan and weekly updates during construction to the Authority. The plan shall specify location, time, date, and test or inspection type. The Contractor shall notify the Authority at least one (1) day prior to any change to an inspection or test taking place, differing from the Inspection Test Plan. The Authority does not have to confirm attendance at any inspection or test, and if not present the inspection or test shall continue as planned. The presence of the Authority at any inspection or test does not confirm acceptance of the results.

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- The Authority may conduct independent testing or statistical sampling of the Work. None of the Authority-performed tests and assessments shall relieve the Contractor of the obligations specified in the Contract.
- The Authority may audit the Contractor at any time.

54.4 Deficient and Non-Conforming Work

The Authority shall not pay for incomplete or deficient work or for work placed on top of identified non-conforming work, and shall not place work in a manner that will conflict with the Contractor's ability to repair or replace the identified non-conforming work.

- The Contractor shall notify the Authority when deficient work is identified.
- Deficient work shall remain open until the root cause of the deficient work is identified and a corrective action plan implemented to address the problem.
- The Contractor shall not place work on top of identified non-conforming work and shall not place work in a manner that will conflict with the Contractor's ability to repair or replace the identified non-conforming work. In the event the Contractor chooses to place work on identified non-conforming work, the Authority shall not pay for the Work performed until the non-conforming work is brought into conformance with the Contract Documents.
- The Authority may choose to conduct testing on a piece of work that has been completed by the Contractor. Should the test results prove a non-conformance then the Contractor shall rectify the defect at its own cost and without a time extension.
- The Contractor's decision to "remove from site", "rework" "repair" or "use as is" shall be recorded on the Non-Conformance Form regardless of who originated the non-conformance.
- Authority may, in its sole discretion, accept nonconforming Work without requiring it to be fully corrected, in which case the Contract Price will be decreased accordingly.

54.5 Reporting

The Contractor shall submit a monthly quality report as part of the overall Project progress reporting.

Contractor shall provide quality related data via the Authority's web interface, detailing non-conformances, including environmental non-conformances, notice of defects and corrective actions completed on a daily basis.

55 Interface Coordination and Design Integration:

The CHSTP is being delivered in segments and in stages in which multiple concurrent contracts may be underway. The scope of this Contract is a defined portion of the design and

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construction of the full CHST System which will be delivered over several years. As the Contractor executes its scope of work under the terms of this Contract, concurrent design and construction activities will be taking place at various interface points along the system.

The Authority will manage multiple contracts to deliver the complete High-Speed Rail system.

The Contractor shall:

- Employ an interface and integration management approach to the scope of this Contract by identifying and coordinating the interfaces as well as performing design integration with adjacent contracts, third parties, and other entities in cooperation with the Authority. Demonstrate that the Work is being designed and executed such that facilities and subsystems identified in the design criteria, drawings and by other means are being accommodated without functional or spatial constraints.
- Ensure delivery of the complete contract that integrates into the adjacent geographical territories and functions to support future systems and facilities components of the complete high-speed rail system
- Resolve conflicts by partnering with all parties associated with the interface conflict to reach an agreeable solution so as not to place constraints on this or future contracts.

55.1 Interface Management Plan

The Contractor shall develop an Interface Management Plan (IMP) which establishes and maintains a systematic, documented, comprehensive, verifiable management process applied throughout the duration of the Contract to coordinate the interfaces. The IMP shall include the following:

- In accordance with the Verification and Validation processes, detailed processes for systematic identification, management, tracking and documentation of the physical, technical, functional, and other interfaces by means of the Requirements Management (RM) Tool
- Documentation of interfaces with systems components as applicable to the Contract (e.g., track, traction power, overhead contact system, train control, communications, electrical, mechanical, safety, security)
- Identification of interfaces between the Contract and adjacent geographical contracts
- Identification of third-party interfaces (utilities, agencies, regulators, sub-projects, railroads, others)
- Identification of major coordination milestones (e.g., engineering, construction, testing, and commissioning) and the handling of interface requirements during these phases
- Procedures for the identified interfaces to be included in the Interface Registry held in the RM Tool

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- Defined processes to confirm and demonstrate interface compatibility through test or other verification methods throughout the Contract

- Defined processes to assure that reliability, availability, maintainability, and safety requirements (RAMS) are propagated through all interface components, elements and systems to meet the criteria set out in the RAMS requirements.

- A schedule of expected meetings and workshops that shall include organizations external to the Contractor

- Provision for the establishment of an Interface Coordination Team (ICT) as the management group for the interface and design integration task

- An organization chart showing members of the ICT

- The Contractor shall submit to the Authority a draft IMP sixty (60) days after NTP and the final IMP ninety (90) days after NTP. The IMP will be updated as required to reflect the current interface management and design integration process as the Project progresses.

55.2 Interface Coordination Team

As stipulated in the IMP, the Contractor shall employ an interface and integration management approach to the scope of this Contract by establishing an Interface Coordination Team (ICT) as follows:

- The ICT shall have identified members from the Contractor's and relevant sub-contractors' staff(s) with specific assigned Project responsibility and accountability for interface coordination and control within the overall design and construction activities
- The ICT lead shall have a minimum ten (10) years previous experience as supported by resume in managing multi-disciplinary coordination and interface in the rail transportation industry with a focus on systems and technologies, utilities, roadways, infrastructure and right-of-way
- The ICT shall be staffed by professionals with a minimum of five (5) years experience as supported by resume in interface coordination between high-speed, conventional and freight railroad disciplines including: systems and technologies, utilities, roadways, regulatory agencies, infrastructure and right-of-way

55.3 Interface Coordination Workshops, Meetings and Reports

The ICT shall conduct no less than monthly interface coordination workshops with the Authority, adjacent contractors, third parties, and other entities, or at other times as required.

- The interface coordination workshops will be used to discuss the specifics of the interfaces, resolution of conflicts, and to monitor and track the incorporation of the interfaces contained in the RM Tool.

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- The ICT shall demonstrate that the Work is being designed and executed such that facilities and subsystems identified in the design criteria and drawings are being accommodated without functional or spatial constraints.
- The workshops shall also be used to identify new interfaces which may affect the design or construction, and to reach a common agreement on the management approach to addressing the interface and any possible constraint on this or future contract(s). New interfaces shall be incorporated into the Interface Registry of the RM Tool.

The Contractor shall coordinate and prepare all materials required for the interface discussions and activities.

- The Contractor shall provide the Authority, third party or other entity attending workshops or meetings with an agenda and any additional pre-reading materials.
- Agendas shall be circulated for comment no less than forty-eight (48) hours prior to each event.
- The Contractor shall produce and present a matrix or tracking sheet for the workshops which provides updates, activities and responsible parties of interface and integration activities
- The Contractor shall produce output reports from the RM Tool to demonstrate progress on interface and integration activities
- The Contractor shall record and distribute minutes and actions of the meetings or workshops to the participants within five (5) Working Days after the event.

Notwithstanding the recordings of the minutes of any Interface Coordination Workshop or meeting, no resolution or communication at any Interface Coordination Workshop or meeting (nor minutes recording any resolution or communication) or anything else which occurs during an Interface Coordination Workshop or meeting or as part of the process for such meeting will have the following effect:

- Limit or otherwise affect the following:
- The Contractor's obligations under the Contract or otherwise according to Law
- The Authority's rights under the Contract or otherwise according to Law
  - Be construed as, or amount to, a direction under the Contract, unless and until a separate direction is given to the Contractor in writing by the Authority.

The conclusion of the workshops shall be an understanding between the Contractor and Authority as to the handling of the interface in the design and the documentation of the process to be implemented in the IMP.

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56 Reliability, Availability, Maintainability and Safety (RAMS) Requirements

It is the policy of the Authority to perform work on the California High-Speed Train Project (CHSTP) in a manner that ensures safe, reliable, available and maintainable CHST service.

The RAMS management process incorporates the characteristics of planning, design, construction, testing, operational readiness, and subsequent operation of the high-speed rail system. RAMS are priority considerations in the planning and execution of all work activities on the Project.

All trains, facilities, systems, and operational processes must be designed, constructed, and implemented in a manner that satisfies RAMS requirements so the overall system RAMS targets can be achieved.

The Reliability, Availability and Maintainability (RAM) requirements are defined below.

The Safety requirements are defined in the Safety and Security section of this Contract.

56.1 CHSTP RAM Program Goals and Objectives

The RAM Program Plan (RAMPP) is established by the Authority to implement RAM initiatives associated with the Project. The RAMPP applies to all persons or entities involved in the design, construction, and warranty service of the post-construction California High-Speed Train Project, including but not limited to the Authority and Contractors (prime contractors and subcontractors).

RAMPP objectives are to:

- Provide the CHSTP with a medium for demonstrating a commitment to RAM
- Define the overall RAM targets for the CHSTP
- Provide a framework for implementation of the RAM Program and the achievement of the CHSTP RAMS policy goals and objectives.

56.2 Contractor's RAM Program and Responsibilities

The Contractor is responsible for ensuring the Work satisfy all the RAM requirements and achieve the RAM targets , including those delivered by its subcontractors.

The Contractor shall develop the Contractor's RAM Program Plan in conformance with the CHSTP RAMPP (Book 3). The Contractor's RAMPP shall describe how they will fulfill their responsibilities with the respect to RAM. To meet the CHSTP RAM Program objectives, the Contractor's RAMPP shall include but not be limited to the following:

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- The organization and the tasks of RAM management that will be implemented to build and demonstrate the RAM characteristics of the designated systems and elements of the Contract
- The RAM management structure and key personnel responsible for ensuring RAM, establishing milestones and schedules, and defining the methodologies used concerning RAM.
- The evidence that RAM aspects are treated in the design and construction process and that the necessary measures are proposed and documented to maintain the system's RAM level for the elements contained within the Contract throughout the CHSTP lifecycle.
- Plan and schedule for developing and submitting the supporting documentation.
- Management of the verification and validation of RAM requirements, in conformance with the Contractor's verification and validation plan.

The Contractor shall develop and submit the additional documents as required by the RAMPP and any other documents which are necessary to demonstrate compliance with the RAM requirements per the request of the Authority's representative.

57 Verification, Validation and Self Certification

57.1 Overview

The Contractor shall develop and implement a Verification, Validation and Self-Certification (V&V) process to confirm to the Authority's Representative that by examination and provision of objective evidence the technical contract requirements and the particular requirements for specific intended use have been fulfilled.

With every submittal to the Authority's Representative, the Contractor shall provide a V&V submittal self-certifying compliance with the Contract requirements and fitness for purpose. Every submittal shall be fully checked by an Independent Checking Engineer (ICE) and Independent Site Engineer (ISE) before submitted to the Authority's Representative.

Refer to the Verification and Validation procedures located in Book 3, Part B for detailed V&V requirements.

57.2 Verification, Validation and Self-Certification Management Plan (VVP)

The Contractor shall develop and implement a Contractor Verification and Validation Plan for the Project that addresses the following sub-processes, including the following:

- Verification and Validation
- Requirements Management

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- Design Management
- Interface Management
- Inspection and Test Program Management
- Change Management

Refer to the Verification and Validation procedures located in Book 3, Part B for detailed VVP requirements.

57.3 Technical Contract Requirements

The Contractor shall parse the Contract and capture, document, derive, apportion, trace, manage, verify, and validate Technical Contract Requirements using a requirements management (RM) tool.

Refer to Book 3, Part B for details on Technical Contract Requirement management.

57.4 Requirements Verification Traceability Matrix (RVTM)

The Contractor shall use an RVTM to demonstrate compliance with Technical Contract Requirements. An RVTM template will be provided with the Contract.

Refer to the Verification, Validation and Self-Certification procedures located in Book 3, Part B for detailed RVTM requirements.

57.5 Certifiable Items Lists (CIL)

The Contractor shall use CILs to demonstrate and certify compliance with critical items. A CIL template will be provided with the Contract. Critical items are a subset of the Technical Contract Requirements, including the following:

- Environmental requirements and mitigations as found in the environmental documents including Final EIR/EIS, Record of Decision (ROD), permits, and approvals
- Safety requirements including hazard mitigations
- Security requirements threat mitigations
- Interoperability items with other CHSTP contracts

Refer to the Verification, Validation and Self Certification procedures located in Book 3, Part B for detailed CIL requirements.

57.6 Contractor V&V Report

The Contractor shall use V&V reports to provide an executive summary of compliance with Technical Contract Requirements. Provide additional explanation as needed on how Technical

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Contract Requirements are met, inspected, tested, and accepted by the Contractor's design and construction in addition to information provided by the RVTM or CILs.

Refer to the Verification, Validation and Self-Certification procedures located in Book 3, Part B for detailed V&V report requirements.

57.7 Requirements Management (RM) Tool

The Contractor shall manage the Technical Contract Requirements using an RM tool. The Contractor shall manage the design, inspection, testing, and acceptance documents in the RM tool to allow the automatic creation of the following:

- Requirements Verification Traceability Matrices
- Certifiable Items Lists

Refer to Verification, Validation and Self-Certification procedures in Book 3, Part B for detailed RM tool requirements.

57.8 Independent Checking Engineer and Independent Site Engineer (ICE and ISE)

With every submittal to the Authority, the Contractor shall provide a V&V submittal self-certifying compliance with the Contract requirements and fitness for purpose.

The Contractor shall retain the services of a qualified independent engineering consulting firm(s) to serve as its ICE and ISE performing independent verification, validation and self-certification (IV&V) for the duration of the Contract. Every submittal shall be fully checked by the ICE during design and the ISE during construction before submittal to the Authority. The Contractor may choose to divide the checking and site engineering services between two professional engineering firms.

The independent verification and validation shall not relieve the Contractor from carrying out all the checks and reviews that a professional and prudent Contractor would normally carry out on the type of work of this Contract.

Refer to Book 3, Part B for the ICE and ISE requirements.

57.9 ICE and ISE Assessment Report and Certification

The ICE and ISE shall assess and evaluate the Contract submittal in order to be able to certify that the design meets the Contract Requirements. The ICE and ISE shall submit the assessment report and certification to the Authority with a copy to the Contractor.

Refer to Book 3, Part B for the ICE and ISE assessment report and certification requirements.

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58 Project Controls

Any Contractor submittal that receives a Statement of no Objection, with comments, the Contractor shall address or incorporate those comments within 14 days of receipt and re-submit.

58.1 Interim Schedule

The Contractor shall submit, within ten (10) Working Days after Contract award, an interim partial schedule detailing activities to be performed within the first ninety (90) days after notice to proceed. The interim schedule and schedule narrative shall describe the activities to be accomplished and their interdependencies subject to all requirements. This interim schedule shall be submitted in accordance with the specification requirements set forth below.

58.2 Baseline Schedule

The Contractor shall submit, within sixty (60) calendar days after Contract award, a Baseline Schedule showing the order in which the Contractor proposes to prosecute the Work; the dates on which the Contractor shall start various Work stages, operations, and principal items of Work, including procurement of materials and plant; planned dates for completing the same; and interfaces with outside entities such as utilities and Governmental Persons. The schedule shall include major submittals to the Authority. The Baseline Schedule activities shall be resource loaded with workforce labor by craft, equipment by type, and deliverables by type and quantity. The Baseline Schedule activities shall also be cost loaded with the value of the activity's completed scope of work, with the sum of the activity values equaling the Contract's total value. The baseline schedule shall include the payment milestones. Additionally, the Baseline Schedule shall clearly outline the intended flow of Work, including design, procurement, and construction, as well as the updated submittal schedule, samples, intended maintenance of traffic, pollution control measures, utility interfaces, right-of-way, and such other information as required by the Contract.

No objection by the Authority to the Baseline Schedule does not mean that it is reasonable in all respects, or that following the Baseline Schedule will result in timely completion of the Contract.

The Baseline Schedule electronic submittal shall consist of the following:

- XER file.
- Logic Diagram showing Activity ID, Activity Description, Activity Duration, each Activity's Total Float, Activity Calendar, and the Critical Path denoted.
- Listing of all activities sorted by ascending Activity ID and showing for each activity the Activity ID, Activity Description, Activity Duration, Total Float, Activity Calendar, Activity Budget (dollars), Activity Resources, and Activity Deliverables.

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- Listing of the Critical Path sorted by Early Start, Early Finish, and Activity ID, and showing for each activity the Activity ID, Activity Description, Activity Duration, Total Float, Activity Budget (dollars), Activity Resources, and Activity Deliverables.
- Listing of all activities sorted by ascending Total Float, Early Start, Early Finish, and Activity ID, and showing for each activity the Activity ID, Activity Description, Activity Duration, Total Float, Activity Calendar, Activity Budget (dollars), Activity Resources, and Activity Deliverables.
- Construction Activity Durations shall not exceed twenty (20) Working Days. However, other type activities such as reviews, procurement, and concrete curing can have longer durations.
- A lineal schedule corresponding with the electronic baseline schedule.
- Narrative Report describing the Contractor's approach to performing the Work and stating any assumptions made by the Contractor in preparing the schedule. The narrative Report shall also include the following:
  - Critical Path concerns
  - Potential delays

Note that all dates shown on reports will show the day, month, year.

The Contractor's schedules shall adhere to the template provided by the Authority. Changes to this layout may be submitted to the Authority for consideration. The Contractor may add additional layers to further group its activities at a lower level, however, under no conditions, shall such additional layers affect the WBS layout provided.

The Activity Codes included in the template shall dictate the values to be used for each activity. Each activity will have a number of Activity Codes assigned to it. The Contractor may use additional Activity Codes for its own purposes, but these shall not replace the standard Activity Codes provided in the template.

Out-of-Sequence progress shall be corrected prior to the submission of each schedule update. The Contractor shall include in the schedule update narrative why out-of-sequence progress occurred, how the Out-of-Sequence logic was corrected, and which activities and logic ties were impacted.

Each activity shall have a predecessor to its start excepting the schedule's start activity. Each activity shall have a successor from its finish excepting the schedule's finish activity.

The first three (3) columns of the Activity ID field shall contain the Contract's three (3) column code established by the Authority. No activity can be deleted from the schedule. If the scope of work for an activity is deleted, then that activity shall be given an Actual Start Date and the Same Date for its Finish Date, its duration set to zero, and a comment made in the Activity's Note section detailing why and when the scope was eliminated. All costs, resources, and

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deliverables assigned to the activity shall be set to zero. An Activity ID cannot be changed or reused.

An objection shall be given if the Contractor's schedule is deficient in the following, but not limited to, areas:

- Failure of the Contractor to submit a XER file
- Failure of the Contractor to "schedule" its schedule as of the Data Date
- Failure to attach a copy of the complete Scheduling/Leveling Report (SCHEDLOG.TXT file generated by Primavera)
- Any activities without predecessors or activities without successors appearing in the Scheduling/Leveling Report with the exception of the first and last activities in the schedule
- Any activity constraints appearing in the Scheduling/Leveling Report that have not been approved in writing by the Authority, or that are not specifically allowed by this specification
- Any activities with an Actual Date later than the Data Date appearing in the Scheduling/Leveling Report
- Duplicate Activity Descriptions
- Any Milestone Activity with invalid relationships appearing in the Scheduling/Leveling Report
- The existence of fractional day durations or fractional day floats
- Failure to have a clearly defined the Critical Path from the Data Date to the last activity in the schedule
- Failure to include a comprehensive schedule Narrative

58.3 Three Week Look-ahead Schedule

Each week the Contractor shall supply the Authority with a 3 week, resource loaded look-ahead work schedule indicating the planned work to be completed.

58.4 Monthly Schedule Updates

The initial update is to the Baseline Schedule and subsequent updates are to the preceding month's updated schedule. The Data Date for the schedule update is the close of business on the 28th of the month. The Monthly Schedule Update submittal shall consist of the same reports and files as those required for the Baseline Schedule submittal with the addition of the following listed information:

- Narrative Report describing the Contractor's approach to performing the Work and stating any assumptions made by the Contractor in preparing the schedule update. The narrative Report shall also include the following:

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- Planned and actual progress in the reporting period
- Critical Path progress and concerns
- Potential and actual delays
- Submittal status (focus on critical submittals and concerns)
- Details of any out-of-sequence progress, how the Out-of-Sequence logic was corrected, and which activities and logic ties were impacted
- Earned Value and associated performance metrics as follows:
  - Data:
    - Budgeted Cost at Completion (BAC)
    - Budgeted Cost of Work Performed (BCWP)
    - Actual Cost of Work Performed (ACWP)
    - Budgeted Cost of Work Scheduled (BCWS)
  - Variances:
    - Cost Variance (CV)
    - Schedule Variance (SV)
    - Variance at Completion (VAC)
  - Indices:
    - Cost Performance Index (CPI)
    - Schedule Performance Index (SPI)
  - Forecasts:
    - Estimate at Completion – EAC
    - Estimate to Completion – ETC
  - Current period values and cumulative values for data, variances, indices, and forecasts shall be provided in numerical format showing values and in graphical format showing trends.
  - Any schedule variance on the critical path or any path with negative total float shall be identified and its impact on subsequent milestones and the Project cost and schedule quantified.
  - Causal analysis shall be conducted on all variances. Each month a summary of variance causes for that reporting period and variance causes to date shall be provided. The summary shall include a breakdown of causes that identifies:
    - The size of the variance by cause (some variance may have multiple causes)
    - Why the variance occurred

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  - Corrective actions to be taken to mitigate the variance
  - The success or expected success of any corrective actions

The overall date and time of the report production shall be recorded on the submittal.

The Monthly Schedule Update shall include the following data for each activity:

- Actual Start Date (for started activities)
- Actual Finish Date (for completed activities)
- Physical Percent Complete
- Current Early Start Date (for not started activities)
- Current Early Finish Date (for uncompleted activities)
- Remaining duration (for all started activities)
- Current Total Float
- Current Critical Path activities denoted

Conditions may develop which require revision to logic or duration of the Baseline Schedule. If, during the progress of the Work, events develop which necessitate changes to the original plan, the Contractor shall make such changes so as to depict the current mode of operation, and shall submit a revised logic diagram to the Authority. Unless the Authority objects, the Contractor shall incorporate logic revisions in the current schedule (latest monthly update), and will address those revisions in the narrative report by means of both a description and a listing of those network elements affected by such change. This listing will include the following, when applicable:

- Activities/Milestones added showing all pertinent data
- Activities/Milestones deleted showing Activity ID
- Relationships added showing both predecessor and successor relationship types and lags
- Relationships deleted showing both predecessor and successor relationship types and lags
- Activity Duration changes showing both original and changed durations
- Activity Description changes showing both original and changed descriptions
- All other revisions to the network logic

Per the Partnering clause the Contractor shall meet with the Authority's representative to formally review the submitted monthly schedule update. This may include visits to the various Contractor sites to check on reported progress.

When a Change Order, a Delay or a Time Extension is proposed by either the Authority or the Contractor, the Contractor shall submit a Time Impact Analysis (TIA) illustrating the influence of each Change Order or delay on any specified intermediate milestone date(s) or Contract

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completion date. Each TIA shall include a sketch (fragnet) demonstrating how the Contractor proposes to incorporate the change or delay in the current schedule. The fragnet will include all logic changes and additions required as a result of said change order or delay or both. This fragnet will show all logic revisions for the Work in question and its relationship to other activities in the network. Additionally, the analysis shall demonstrate the time impact based on the date the change was given to the Contractor, the status of the Work at that time, and the activity duration of each affected activity. The activity durations used in this analysis shall be those included in the schedule update closest to the time of delay or as adjusted by mutual agreement.

Each Time Impact Analysis shall be submitted within twenty (20) days after either a delay occurs or a notice of change or change order is given to the Contractor.

Evaluation of each Time Impact Analysis will be made by the Authority and a decision rendered unless subsequent meetings and negotiations are necessary.

The time difference between the Early Finish and the Late Finish is defined as the activity's Total Float. Total Float belongs to the Contractor for purposes of determining whether or not the Contractor is entitled to an extension of any Completion Deadline, provided that in no event shall the Contractor be entitled to the benefit of any Total Float for purposes of determining delay damages pursuant to Section 23.4.

The Authority shall use Primavera's P6 standard scheduling software to prepare a Master Program Schedule (MPS). This MPS will be a composite of all Baseline Schedules or Current Schedules, as applicable, prepared by each Contractor for the Program. To enable the processing of all data, all schedules shall be generated using Primavera's P6 software in a format consistent for all contracts. This format comprises a uniform Work Breakdown Structure (WBS) and a set of Activity Codes that identify common types of Work for all program contracts, and a uniform set of Project Calendars reflecting the specific holiday restrictions and time format as set forth elsewhere in the Contract Documents. The Contractor shall use the standard template provided by the Authority to develop and maintain its schedules.

In preparing its schedule the Contractor shall use only Project Calendars. No Global Calendars are to be included in any XER submitted to the Authority.

The Contractor shall include a calendar which includes all State of California observed holidays. This calendar is to be used for all activities where the Authority is the responsible party.

Fractional durations and floats shall be resolved by the Contractor before submittal of the schedule. Schedules will not be accepted for review if they contain fractional durations or fractional floats.

Relationships between activities shall conform to the following requirements:

- The default setting in the Schedule Options shall be that the calendar for scheduling relationship lags is the predecessor activity calendar

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- The schedule shall be run (calculated) using Retained Logic
- Only Finish-to-Start, Finish-to-Finish, and Start-to-Start relationships are allowed
- No negative lags are allowed on any relationship
- No lags are allowed on Finish-to-Start relationships
- Lags on Start-to-Start relationships shall be calculated based on the Early Star.
- Critical Activities are defined as those activities on the Longest Path
- Total Float is defined as the lesser of the difference between an activity's Early Start and its Late Start, and the difference between an activity's Early Finish and its Late Finish

58.5 Change Control and Configuration Management

Pursuant to the requirements of the Authority's Change Control and Configuration Management Plan set forth in Book 3, the Contractor shall submit proposed changes or deviations to the Baseline Design Document to the Authority.

The Contractor shall develop policy and procedures for Configuration and Change Control. These procedures shall describe the process for managing and controlling changes and deviations to the Baseline configuration, Contract requirements, scope, schedule, and/or Contract value. This process shall provide for the development of the change with appropriate documentation, formal review of the change against the baseline configuration and other Contract requirements, review by the appropriate Contractor Team disciplines and the Contractor's Change Review Team as appropriate. Formal change documentation shall be prepared to reflect the final disposition of all changes. Any changes that may deviate from the Baseline Design document or other Contract requirements shall be submitted to the Authority. Final disposition will be subject to direction given by the Authority.

58.6 Risk Management

The Contractor shall be responsible for risk management of the Work and the production of a risk management plan that shall include but not be limited to the following sections:

- Risk Identification and Assessment – Examining the elements of Project definition and management processes to ''surface'' the associated risks and their root causes and assess the potential impacts and likelihood of occurrence
- Risk Mitigation – Process that identifies, evaluates, selects, and implements options to set risk at acceptable levels, given Project constraints and objectives
- Risk Mitigation Coordination – Proactive coordination with the Authority Representative of Project risk mitigation measures that impact the delivery of the Program goals
- Implementation and Review

The Contractor shall submit a monthly risk management report detailing, by exception, activities against risk items identified in the plan.

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The Contractor shall develop and implement a risk management system, consistent with the Project Management Institute's (PMI's) Practice Standard for Project Risk Management. The process will be codified in the Contractor's risk management plan that describes how cost and schedule contingency will be managed to provide sufficient protection for the Program against identified and unidentified risks. In particular, the Contractor shall be responsible for the following:

The Contractor shall support the Authority in risk assessment and mitigation workshops that will occur during the design and construction of the Project. This support may include development of position papers or design support for identified risk items of significance. Workshops will be scheduled quarterly upon the commencement of Work, but may require special meetings depending on the risk significance and responsible party. The meetings will cover risk management relevant issues of concern, and other issues requiring Authority participation. Contractor shall maintain a risk action items log that reflects assigned responsibilities and due dates for actions raised in this and any interim meetings. Special meetings may be necessary to maintain schedule delivery on all aspects of Contractor's Work. Typically, these special meetings include, but are not limited to, design workshops, design reviews, utility coordination, public involvement, environmental clearances, construction easements, and traffic management and control.

Overall, the Contractor's risk management process shall meet the following standards:

- Deliverables are presented within a substantively complete and appropriate engineering or Project management context
- Deliverables are appropriately quantified, fully integrated, traceable and consistent, and compatible with findings or stated facts
- Where risk management deliverables are qualitative in nature they are properly structured and clearly identified with respect to authorship
- Material analytic results of risk analysis are capable of independent analysis or reproduction using disclosed methods and assumptions generating similar analytic results within an acceptable degree of imprecision or error
- The Authority and FRA are able to assess, jointly or independently, whether it is appropriate to question the adequacy, accuracy, or completeness of data, information, modeling, or analysis

59 Right-of-Way

59.1 General

The Authority will acquire all right-of-way property necessary for the Construction Package with the exception of temporary easements not identified in the ROW Acquisition Plan. The right-of-way Acquisition Plan, found in Book 3 of the Contract, indicates the existing right-of-

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way lines and those parcels being acquired for the Construction Package. The Right-of-way Acquisition Plan appraisal maps also indicate any Fee Right-of-way, Easement Right-of-way, Access Control, or Temporary Construction Easements being acquired from each parcel by the Authority for the Construction Package. The Contractor shall not enter into negotiations for purchase of any property or property rights identified within the Right-of-way Acquisition Plan.

Right of possession of the Site and the improvements made thereon by the Contractor shall remain at all times with the Authority. The Contractor's right to entry and use of the Site arise solely from permission granted by the Authority under the Contract.

The Contractor shall be provided access to each parcel or group of parcels identified in the Right-of-Way Acquisition Plan as such parcel(s) is cleared. The Acquisition Plan will identify the key dates relating to access.

The Authority will provide the Contractor with regular updates regarding the status of the acquisition process for parcels for which access has not been provided. The Authority will provide written notification to the Contractor of the availability of each required parcel and notify the Contractor of any access restrictions that may be applicable.

The Authority will provide access to the real property identified in the ROW Acquisition Plan by the deadlines provided therein. If the Authority fails to provide access in accordance with the deadlines in the ROW Acquisition Plan or at any time determines that it will be unable to provide access to a parcel(s) in accordance with the deadlines in the ROW Acquisition Plan, the Authority may notify the Contractor of the revised projected date(s) for delivery of access. Upon such notice, or in the absence of such notice, upon the failure to provide access on the deadline specified on the ROW Acquisition Plan, the Contractor shall: (i) take immediate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and re-sequencing the Work so as to minimize or avoid any delay to the Project; and (ii) provide the Authority written notice within five Working Days after receipt of such notice or upon the Authority's failure to meet the schedule in the ROW Acquisition Plan whether the Authority's failure to provide access will result in a delay to a Completion Deadline. Failure to provide such notice shall bar the Contractor from asserting a delay under this clause.

Subject to the requirements of this clause, to the extent the Authority fails to provide access to the real property identified in the ROW Acquisition Plan on or before the deadline for such access set forth therein, and such failure has the effect of increasing the cost or time of performance of the Work, then the Contractor may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

59.1.1 The Authority's Role

The Authority will provide land rights and real property acquisition services in accordance with the Authority's right-of-way policy. Performance of right-of-way functions that include

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but are not limited to coordinating all phases of the acquisition; documenting the process and all work activities in a parcel diary; maintaining all records and documents; preparing status reports throughout the acquisition process; ordering Preliminary Title Reports as needed; coordinating all acquisition title requirements; developing, presenting, and negotiating all phases of the acquisition process using Authority standard documents; coordinating all phases of escrow; and preparing all documentation required to accomplish these tasks. Implement the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended) (Uniform Act) and its implementing regulations, 49 C.F.R. Part 24, as appropriate.

59.2 Administrative Requirements

59.2.1 Standards

In the event of a conflict relating to Right-of-Way activities, the order of precedence shall be as set forth below, unless otherwise specified:

- The Authority's Right-of-Way Policy
- The Authority's Surveying and Mapping Manual
- The Authority's CADD Data Standards

The Contractor shall comply with all procedural requirements of the Authority's Right-of-Way Policy that are required of the Authority.

The Contractor shall work proactively with the Authority's representative to resolve right-of-way acquisition changes and to adjust its construction schedule to accommodate these changes.

59.2.2 Meeting and Reporting Requirements

The Contractor shall conduct the progress and coordination meetings with the Authority, the Authority's representatives, affected governmental persons, and other required groups, held monthly or as agreed upon by the Authority and the Contractor.

The Contractor shall prepare all necessary exhibits, displays, agendas (sent to all participants 1 week prior to scheduled meetings), and meeting minutes (sent to the Authority within five (5) Working Days of the meeting).

The Contractor shall submit a monthly report via the Authority's web portal detailing Contractor right-of-way activities including temporary construction easements.

The Contractor shall prepare all electronic drawings in accordance with the Authority CADD Standards.

59.3 Resources Provided by the Authority

The following resources shall be used by the Contractor and will be available in the Authority's Right-of-Way Policy, the Design Criteria, or from the Authority:

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- General - Copies of pertinent Construction Package correspondence and Construction Package data as determined by the Authority
- Right-of-Way Acquisition Plan - The Right-of-way Acquisition Plan consists of various electronic graphical file elements from multiple Authority sources. Existing electronic survey and right-of-way files contain land features that may include the following:
  - New Fee Right-of-way, Easement Right-of-way, Access Control, and Temporary Construction Easements acquired for the Construction Package
  - Property lines

59.4 Acquisition Activities

The Authority is responsible for payments to all property owners for purchase of identified acquisitions and for relocation payments. All additional costs for the Contractor's pre-acquisition and acquisition activities shall be included in the Contract Price.

59.4.1 Temporary Construction Easements

The Contractor shall be responsible for the identification, acquisition including cost of any temporary construction easements that it requires for construction activities in accordance with the Work. The Contractor shall be able to work independently to secure such easements with property owners in parallel with the formal acquisition process.

59.4.2 Eminent Domain—Condemnation

The Contractor shall provide the following items related to eminent domain—condemnation:

- All items necessary as required by the viewing Engineer's checklist for eminent domain actions
- Materials and exhibits for hearings or trials as required
- Engineering testimony, for parcels in condemnation as required

59.4.3 Identification of Additional Right-of-Way

If the Contractor determines additional right-of-way is necessary, the Contractor shall prepare and submit a request to the Authority for consideration. This request shall identify the additional right-of-way sought, along with a justification for its need, and shall include drawings depicting proposed geometric designs, construction limits, and cross-sections. The Authority shall review the request and if it is determined that additional right-of-way is needed to construct the Project the Authority will acquire the right-of-way. Schedule implications shall be included in the Contractor's schedule updates.

If additional ROW is necessary as a result of an Authority-Directed Change, the additional Right-of-Way costs will be addressed in the Change Order for the Authority-Directed Change.

Contractor may request additional Right-of-Way as part of a Value Engineering Change Proposal (VECP), in which case the additional Right-of-Way costs will be addressed as part of

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the VECP. In this case, Contractor will be required to provide surveys, appraisals and other documentation to allow Authority to proceed with the acquisition.

Authority will require up to twenty-four (24) months to acquire any additional Right-of-Way not identified in the Right-of-Way Acquisition Information. To the extent the Authority fails to provide access to any such real property within such 24-month period, and such failure has the effect of increasing the cost or time of performance of the Work, then the Contractor may request an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

59.4.4 Demolition and Clearance

The Contractor is responsible for the management of demolition and clearance of all Construction Package right-of-way at the time the Authority acquires the Right-of-Way and gives written notice to the Contractor after Contract award. The Contractor shall remove all buildings, including foundation removal for all buildings and structures on the Construction Package Right-of-Way.

All demolition and clearance activities will be performed in accordance with the Authority's Right-of-Way Policy including clearance of any Hazardous Materials or substances.

59.5 Acquisition Activities Related to Utility Relocations

Acquisition responsibility for right-of-way for utility relocation will be identified in the applicable Master Agreements. Whether the Authority or utility is responsible, the Authority shall include the acquisition activities in the right-of-way Acquisition Plan for completeness.

60 Representations, Warranties and Covenants

The Contractor represents, warrants and covenants for the benefit of the Authority as follows:

60.1 Feasibility of Performance

The Contractor has evaluated the feasibility of performing the Work within the time specified herein and for the Contract Price, and has reasonable grounds for believing and does believe that such performance by the applicable Completion Deadlines and for the Contract Price is feasible and practicable.

60.2 Review of Site Information

The Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed the boring logs provided by the Authority, inspected and examined the Site and surrounding locations, and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project, to the extent the Contractor deemed necessary for submittal of its Proposal. The Contractor acknowledges that it is responsible for obtaining any additional

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information that has not been provided. As a result of such review, inspection, examination and other activities, the Contractor is familiar with and accepts the physical requirements of the Work and the risk allocations associated with such Work set forth in the Contract Documents. The Contractor acknowledges and agrees that changes in conditions at the Site may occur after the Proposal Due Date, and that the Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under the Contract. Before commencing any Work on a particular aspect of the Project, the Contractor shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work, which may have an impact on such Work. The Contractor shall be responsible for ensuring that the design documents accurately depict all governing and adjoining dimensions and conditions.

60.3 Governmental Approvals

The Contractor has no reason to believe that any Governmental Approval required to be obtained by the Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. If any Governmental Approvals required to be obtained by the Contractor must formally be issued in the name of the Authority, the Contractor shall undertake all efforts to obtain such Governmental Approvals, including execution and delivery of appropriate applications and other documentation in a form approved by the Authority. The Authority shall reasonably cooperate with the Contractor in obtaining any such Government Approvals. The Contractor shall assist the Authority in obtaining any Governmental Approvals that the Authority may be obligated to obtain, including providing information requested by the Authority and participating in meetings regarding such Governmental Approvals.

60.4 Organization

The Contractor and each of its members, if any, is duly organized and validly existing under the laws of the state in which it was formed, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Contractor and each of its members, if any, is duly qualified to do business and is in good standing in the State and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

60.5 Authorization

The execution, delivery, and performance of the Contract have been duly authorized by all necessary actions of the Contractor, and, if applicable, of each member of the Contractor, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person or any guarantor hereof is a party or by which its properties and assets may be bound or affected.

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60.6 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor, enforceable in accordance with its terms. Each guaranty hereof (if any) constitutes the legal, valid and binding obligation of the guarantor hereof, enforceable in accordance with its terms.

61 Miscellaneous

61.1 Standard for Approvals

In all cases where approvals, acceptances or consents are required to be provided by the Authority or the Contractor hereunder, such approvals, acceptances or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

61.2 Effect of Oversight, Reviews, Tests, Acceptances and Approvals

The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, assessments, reviews, tests, inspections, acceptances, approvals, or by any failure of any Person to take such action. The oversight, spot checks, assessments, reviews, tests, inspections, acceptances and approvals do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. The Authority may reject or require the Contractor to remedy any nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous oversight, spot checks, assessments, reviews, tests, inspections, acceptances or approvals were conducted by any Person. The Authority's approval of design documents for construction as described in the Contract Documents shall constitute approval of the design by the Authority for purposes of Government Code section 830.6, but shall not be deemed to relieve the Contractor of liability for the design.

61.3 No Estoppel

The Authority shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that the work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, the Authority shall not be precluded or estopped from

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recovering from the Contractor and its Surety(ies) such damages as the Authority may sustain by reason of the Contractor's failure to comply or to have complied with the terms of the Contract Documents.

61.4 Computation of Periods

In computing any period of time established under the Contract Documents, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a non-Working Day, in which event the period shall run to the end of the next Working Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, shall be required to be performed as specified, even though the date in question may fall on a non-Working Day.

61.5 Interpretation

In the Contract Documents, where appropriate: the singular includes the plural and vice versa.; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation; words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular clause, provision or section; words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; words of any gender used herein include each other gender where appropriate; headings and organization within sections are for convenience only; unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive; and unless otherwise specified, references to clauses, paragraphs, sections, appendices, attachments and exhibits are to the document which contains such references.

The Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the Contract Documents and to bring to the Authority's attention any conflicts or ambiguities contained therein. The Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person that prepared them, and shall be considered as drafted by both Parties. The Authority's final answers to the questions posed during the RFP process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

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61.6 Amendments

The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

61.7 Waiver

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

No act, delay, or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the Parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

61.8 Successors and Assigns

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

61.9 Survival

The dispute resolution provisions contained in the "Disputes" clause (Section 51) of the General Provisions and all other provisions which by their inherent character should survive termination of the Contract shall survive the termination of the Contract.

61.10 Third-Party Beneficiary

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and

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state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the Parties to the Contract Documents with respect to such third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Authority and a Subcontractor or any other Person except the Contractor.

61.11 Public Records Act

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the Authority's possession, including materials submitted by the Contractor, are subject to the provisions of the Public Records Act. The Contractor shall be solely responsible for all determinations made by it under the Public Records Act, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential" as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning the Public Records Act and its application to the Contractor.

If any of the materials submitted by the Contractor to the Authority are clearly and prominently labeled "Trade Secret" or "Confidential" by the Contractor, the Authority will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the Authority be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, by court order or occurs through inadvertence, mistake or negligence on the part of the Authority, except for any disclosure of trade secrets or proprietary information in violation of the confidentiality agreement described the "Availability for Review" clause (Section 25.1) of the General Provisions.

In the event of litigation concerning the disclosure of any material submitted by the Contractor to the Authority, the Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

61.12 Risk of Loss

The Contractor shall maintain, rebuild, repair, restore or replace all Work (including design documents, construction documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project and regardless of whether Authority has title thereto), that is injured or damaged. The Contractor shall also have full responsibility for rebuilding, repairing and restoring all other property at the Site whether owned by the Contractor, the Authority or any other Person. Where necessary to protect the Work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the Project and erect those temporary structures that are necessary to protect the Work or materials from damage. The suspension of the Work, regardless of cause, shall not relieve the Contractor of the responsibility for the Work and materials as herein specified.

ADDENDUM 1

61.13 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter.

ADDENDUM 1