

**STANDARD AGREEMENT**

STD. 213 (NEW 06/03)

AGREEMENT NUMBER <b>HSR12-03</b>
REGISTRATION NUMBER eP

- This Agreement is entered into between the State Agency and the Contractor named below  

STATE AGENCY'S NAME	California High-Speed Rail Authority
CONTRACTOR'S NAME	Department of Conservation
- The term of this Agreement is: June 30, 2013 thru September 30, 2018.  
 The effective date of this Agreement is the approval date by the Dept. of General Services, whichever is later
- The maximum amount of this Agreement is: **\$ 19,993,339.00**  
 Nineteen Million Nine Hundred Ninety Three Thousand Three Hundred Thirty Nine Dollars and Zero Cents
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	12	Pages
Exhibit B – Budget Detail and Payment Provisions	3	Pages
Attachment 1, Program Budget	3	Pages
Exhibit C* – GIA 610 General Terms and Conditions	1	Page
Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement)	6	Pages
Exhibit E – Supplemental Terms and Conditions for Contracts Using Federal Funds	25	Pages

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at [www.ols.DOC.ca.gov/Standard+Language](http://www.ols.DOC.ca.gov/Standard+Language)

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) Department of Conservation		 DEPT OF GENERAL SERVICES  <i>Kyattis</i>
BY (Authorized Signature) 	DATE SIGNED (Do not type) <i>6/24/13</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING Mark Nechodom, Director		
ADDRESS 801 K Street, 24 <sup>th</sup> Floor, Sacramento, CA 95814		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME California High-Speed Rail Authority		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <i>6-26-13</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING Jeff Morales, Chief Executive Officer		
ADDRESS 770 L Street, Suite 800, Sacramento, CA 95814		



**EXHIBIT A  
SCOPE OF WORK**

**Provision of Agricultural Land Mitigation Services to the California High-Speed Rail Authority**

**A. PURPOSE**

The purpose of this Interagency Agreement (IA) is to assist the California High-Speed Rail Authority (Authority), by providing services to meet the Authority's environmental commitments associated with agricultural land conversion via the establishment of permanent agricultural conservation easements (easements) on land of similar acreage, location, and quality to that impacted by the alignment and maintenance facilities located within the Central Valley. The services will be provided by the DOC's California Farmland Conservancy Program (CFCP). CFCP will work with local entities and willing sellers to secure these easements to meet the agricultural mitigation requirements established in the environmental review documents for the High-Speed Train system.

**B. BACKGROUND AND GOALS**

1. The California High-Speed Rail Act of 1996 (Chapter 796, Statutes of 1996 [SB 1420, Kopp]) authorized the planning and construction of an intercity high-speed train (HST) that links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. The project is expected to be constructed in nine sections, running from San Francisco to Los Angeles/Anaheim via the Central Valley, and later to Sacramento and San Diego. Trains will travel between Los Angeles and San Francisco in under 2 hours and 40 minutes, at speeds of up to 220 mph, and will interconnect with other transportation alternatives, providing an environmentally friendly option to traveling by plane or car.
2. Under the enabling legislation, the Authority was created to oversee the development and implementation of the project. As part of the planning process, the project must comply with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The Authority is both the project sponsor and the lead agency for purposes of state CEQA requirements. The Federal Railroad Administration (FRA) is the federal lead agency for NEPA compliance. A first-tier, or programmatic, Environmental Impact Report/ Environmental Impact Statement (EIR/EIS) analyzed general routes and station alternatives, and was approved by the Authority in November 2005 (Resolution 05-01) for most portions of the state except the Bay Area – Central Valley connection. The Authority and FRA prepared an additional first-tier, programmatic EIR/EIS to analyze the Bay Area to Central Valley connection for the high-speed train system, which the Authority and FRA approved in 2008. The Authority has undertaken additional work on the Bay Area to Central Valley Program EIR in response to court challenges, and completed a partially revised program EIR in spring of 2012.
3. As part of the CEQA process, a Mitigation Monitoring and Reporting Plan was adopted concurrently with the programmatic EIR/EIS to document that mitigation strategies identified in the EIR/EIS will be implemented to avoid, minimize, or reduce any potentially significant environmental impacts. Individual sections of the route are thereafter analyzed in more detail for their environmental impacts, and these project-level impacts tier from the programmatic EIR/EIS. As part of these second-tier environmental reviews, the Authority uses the mitigation strategies identified in the programmatic document as starting points to determine their applicability in each section and to develop additional mitigation measures for significant adverse impacts identified in the project specific analysis. For purposes of CEQA, the mitigation strategies in the EIR/EIS also serve as mitigation measures at a programmatic level.



4. One significant environmental impact recognized in the Program EIR/EISs is on California's valuable agricultural land resources:

*Conversion of prime, statewide important, and unique farmlands, and farmlands of local importance, to project uses.*

5. The categories of agricultural land described are documented by the state's Farmland Mapping and Monitoring Program (FMMP; Government Code Section 65570); based on soil and land use data, and updated on a biennial basis. This data source is cited in CEQA as the statewide standard for measuring important farmland impacts under Public Resources Code Section 21060.1.
6. To mitigate for the loss of these important farmlands, the Program EIR/EIS Mitigation Monitoring and Reporting Plans include steps to avoid and minimize the project footprint during design and construction, and to establish agricultural conservation easements via mitigation banks or other mechanisms for the remaining losses. Specifically, the plan states:

*Coordinate with and support the CFCP to secure conservation easements on farmland in geographic areas where the HST project creates impacts.*

7. In the program EIR/EIS, a specific ratio for mitigation is stated, which is one acre conserved for every acre of Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance (Important Farmland) impacted by the project footprint. Unless modified by the Authority, this mitigation requirement will be included in the project-level EIR/EIS environmental documents, as appropriate.
8. In August 2011, the Authority and FRA released second-tier, project-level EIR/EISs for the section of the high-speed train project between Merced and Fresno and the section between Fresno and Bakersfield. These two project-level EIR/EISs were consistent with the program EIR/EIS in identifying conversion of important farmlands as an impact under CEQA and NEPA.
9. In May 2012, the Authority certified the Merced to Fresno HST Project Final EIR/EIS, which included the following mitigation measure:

**Ag-MM#1: Preserve the Total Amount of Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, and Unique Farmland.**

- a) The Authority will enter into an agreement with the DOC's CFCP to implement the preservation of farmland. The Authority will fund the CFCP's work to identify suitable agricultural land for mitigation of impacts and to fund the purchase of conservation easements from willing sellers. The performance standards for this measure are to preserve Important Farmland in an amount commensurate with the quantity and quality of the converted farmlands, within the same agricultural regions as the impacts occur, at a replacement ratio of not less than 1:1. The CFCP will work with local, regional, or statewide entities whose purpose includes the acquisition and stewardship of agricultural conservation easements.
- b) The Authority and CFCP will develop selection criteria under this agreement to guide the pursuit and purchase of conservation easements. These will include, but are not limited to, provisions to ensure that the easements will conform to the requirements of the Public Resources Code Section 10252 and to prioritize the acquisition of willing seller easements on lands that are adjacent to other protected agricultural lands or that would support the establishment of greenbelts and urban separators.

- c) This mitigation measure would be effective given the nationwide and local success of farmland preservation programs using agricultural conservation easements and the experience of the DOC's CFCP. However, because the mitigation does not anticipate the creation of new farmland (conversion of natural lands to agriculture), the Authority and FRA are not claiming that the mitigation measure would reduce impacts to a less than significant level.

10. This measure, or a refined version of it, will be included in the Final EIR/EIS for the Fresno to Bakersfield section of the HST system. In addition, the Authority anticipates including a similar mitigation measure for farmland impacts as part of the San Jose to Merced EIR/EIS. As a result, this agreement is intended to implement the Authority's commitment to mitigate the impacts to important farmlands in the Merced to Fresno, Fresno to Bakersfield section, and San Jose to Merced sections of the statewide HST system.

### **C. The Division of Land Resource Protection (DLRP)**

1. The Department of Conservation's Division of Land Resource Protection (DLRP) is the state governmental entity with responsibility to fostering agricultural land resource conservation. DLRP's programs include the Williamson Act Program (WA), the Farmland Mapping and Monitoring Program (FMMP), the Resource Conservation District (RCD) Assistance Program, the Watershed Program, and the California Farmland Conservancy Program (CFCP). These programs work in an integrated fashion to document agricultural land resources, provide statewide Williamson Act Program support, administer permanent farmland conservation easements, and provide decision support to governments in the planning process as it pertains to agricultural land conversion impacts.
2. This agreement is primarily focused on implementing the agricultural mitigation measures described above via the purchase of permanent agricultural conservation easements, administered through the CFCP. The work will include supporting analysis of Williamson Act enrollment and land use change taking place as the HST project proceeds. Data on land use conversion, evolving land use restrictions, and the Authority's parallel effort to mitigate for habitat impacts, will assist in the site selection process for permanent easements as construction continues. Documentation of the continuity of agricultural uses along the HST alignment as right of way and construction proceeds will contribute to the Authority's ability to assure stakeholders that the Authority has met its stated environmental goals and is a partner in planning and promoting the implementation of smart growth development principles in California.

### **D. The California Farmland Conservancy Program (CFCP)**

1. The CFCP was created in 1996 (Public Resources Code Sections 10200 to 10277) to fund the purchase of agricultural conservation easements (referred to herein as easements or agricultural easements), which are voluntary, legally recorded deed restrictions that keep land permanently in agriculture and are held by an eligible organization (typically, a non-profit land trust). CFCP also funds planning, policy, and technical assistance grants to eligible organizations; supporting long-term conservation of the state's most important farmland. Eligible organizations<sup>1</sup> may include land trusts, local governments, or other 501(c)(3) nonprofits which have among their stated purposes the conservation of agricultural lands. For simplicity, the term easement grantee is used to describe eligible organizations in this document.
2. CFCP serves as the State of California's (State) expert in permanent agricultural conservation easements (ACEs), having protected more than 54,000 acres to date. It has increased the capacity of local grantees to

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<sup>1</sup> Public Resources Code Section 10212 "Applicant" means a city, county, nonprofit organization, resource conservation district, or a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes, as prescribed by statute, or as expressed in the entity's locally adopted policies, that applies for a grant authorized pursuant to this division

hold easements with 34 planning grants. CFCP has worked with federal and local partners to acquire easements, and has had three successful audits of bond expenditures by the California Department of Finance.

3. Under legislation passed in 2010 (SB 1142, Wiggins; Public Resources Code Section 10252.5), CFCP is now authorized to acquire easements on those portions of farm properties which provide ecological value, such as riparian zones adjacent to agricultural fields. This 'whole farm' approach recognizes the multiple values served by privately-owned farmlands and will streamline easement transactions. However, by law, ecological services easements cannot 'overlay' agricultural easements; each acreage counts separately toward a required mitigation acreage total. Further, such easements cannot restrict "the current or reasonably foreseeable agricultural use of the easement property" that is under cultivation at the time the easement is created. CFCP will cooperate with the Authority and pertinent resource agencies in the acquisition of agricultural easements for ecological value where there is not a conflict with its obligations under Public Resources Code 10252, et seq, or detrimental to the acquisition of specific agricultural easements.

#### **E. Goals of the Agricultural Land Mitigation Services Agreement**

1. The CFCP will pursue the establishment of agricultural easements in furtherance of the mitigation measure set out in the Board-approved individual EIR/EIS documents and Mitigation Monitoring and Reporting Plans for the HST project. The goal will be to protect agricultural land of equivalent quality and acreage in the general vicinity of the HST project's alignment, stations, and maintenance facilities. These easements will be placed on the land of willing sellers, with direct easement acquisition costs based on Fair Market Value Appraisal standards laid out in CFCP's Appraisal Guidelines (including the use of qualified, independent third-party appraisers) easement acquisition policies state control agencies and consistent with all federal and state laws, including 49 CFR Part 24 The Uniform Act..
2. Because parcel sizes, soil and water quality, crops, farm infrastructure, title issues, and other factors vary significantly, each easement transaction is complex and no two situations are alike. A significant lead time is required to identify suitable properties and negotiate easement terms. In addition, land use changes and constraints that take place during the time in which mitigation efforts are underway can affect the suitability of properties for final selection. While it is the goal to achieve equivalency in proximity, acreage, and agricultural characteristics; the Authority and the CFCP recognize that mitigation will be a close approximation and not a replication of all attributes of the land affected by the alignment and maintenance facilities of the HST system.
3. This agreement is to provide agricultural mitigation services for those HST sections located in the Central Valley, as may be needed. As the final alignment of each section is determined, the acreage of each Important Farmland type impacted will be known and will be the focus of mitigation efforts until the ratios identified in the EIR/EIS documents and Mitigation Monitoring and Reporting Plans are met.

**F. WORK TO BE PERFORMED**

**TASK 1 – GRANT MANAGEMENT SERVICES BY CFCP**

Described below are the services that will be performed by CFCP staff in order to assess the suitability of potential easement projects and the grant administration processes necessary to secure agricultural easements. While each easement project will proceed through the steps listed, the order of and timing for each step may vary as a function of the complexity of the specific transaction. CFCP staff shall provide the following tasks:

**SECTION-LEVEL COORDINATION**

1. Formalize staff contacts and methods of communication between the Authority and CFCP for tasks associated with this agreement, commensurate with the type of work being conducted.
2. In coordination with Authority staff, develop a matrix of legal requirements and desired outcomes for the agricultural mitigation process and rate their relative importance. This will be used to structure a system for evaluating easement applications, including consideration of the Authority's goals for smart growth, or other factors.
3. In consultation with Authority staff, develop model easement language, Request for Grant Application, standard grant agreement forms and supporting materials specific to the needs of the HST mitigation program's goals and requirements. This will include fact sheets or other outreach materials to announce the availability of funds for mitigation of HST agricultural impacts that will be available through the CFCP. Create a HST agricultural mitigation program section on the CFCP website to host information and forms.
4. Identify prospective easement grantees that have an interest in becoming local partners to hold the agricultural conservation easements along each section. Meet with and provide informational materials to prospective easement grantees, outlining the goals, requirements, and availability of funds to meet the Authority's 1:1 ratio agricultural lands mitigation program.
5. Solicit easement project applications based on the Authority's adopted mitigation plan, statutory eligibility, priorities, and selection criteria<sup>2</sup>, consistent with CFCP practices. To the degree possible, follow smart growth principles for location of agricultural conservation easements, such as within greenbelts and urban separators, or adjacent to other protected lands, in order to reduce the potential for urban sprawl as a result of building and operation of the HST. Consideration will be given to obtaining easements within each affected county sufficient to match the amount of Important Farmland being directly converted by the project in that county. The CFCP will confer with the Authority regarding the status of prospective easement grantees and the locations of prospective properties relative to the goals of the Mitigation Services Agreement .
6. Solicit applications for targeted planning grants to ensure that geographic areas not currently served by organizations with the capacity to hold agricultural land conservation easements will be covered. Targeted planning grants, modeled after CFCP's existing planning grant program, may be used for landowner outreach, appraisals, and out of pocket expenses which are subsequently deducted from the final cost of the easement transaction.

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<sup>2</sup> Projects are evaluated on the overall quality of a series of productivity, sustainability, and planning-related factors, as described in Public Resources Code Section 10252. CFCP will work cooperatively with the Authority to include additional selection criteria pertinent to successful implementation of the EIR/EIS mitigation, to the extent that such criteria do not conflict with Section 10252.

7. Maintain regular in-person, phone, and email communication between the Authority and CFCP staff regarding project oversight, budget, accounting, and public affairs, as the project proceeds.

## **TASK 2 – EASEMENT PROJECT ASSESSMENT AND COMPLETION**

1. Evaluate easement project applications; request additional information or clarification as needed to determine whether the project is an appropriate candidate for Authority mitigation. Project applications must include an independent third party appraisal conducted by an appraiser experienced in agricultural land valuation. Easement appraisals must comply with CFCP's published 'Guidelines for the Preparation of Agricultural Appraisals'<sup>3</sup>.
2. Assess the location of proposed easements relative to the selected HST route, Williamson Act enrollment patterns, existing or proposed habitat lands, active or proposed developments, or other site limitations using GIS technology. Perform field site visits on properties under consideration to verify property characteristics and identify potential problems with transactions.
3. Make recommendations to the Authority regarding suitability for funding and, with the concurrence of the Authority's Chief Executive Officer and the Director of the DOC on the merits of the project and capabilities of the prospective easement grantees, make tentative grant awards, pending successful execution of subsequent steps in the process and fiscal approvals. The approval process will proceed in the following manner:
  - a) CFCP staff presents completed application and staff evaluation, in the form of an application summary and maps, to the DOC Director.
  - b) DOC Director reviews application summary and maps and recommends tentative approval to the Authority's CEO.
  - c) Authority staff reviews project's application summary and maps, clarifies any questions with CFCP, and gives to the Authority's CEO for review and approval.
  - d) Authority CEO approves project to proceed to the grant agreement stage, notifies DOC Director and staff of approval.
  - e) If either DOC Director or Authority CEO do not approve project, project will be reviewed again for possible improvement and reconsideration. If improvement cannot be achieved to the satisfaction of DOC Director or Authority CEO, then project will not move forward to the grant agreement stage.
4. Execute individual grant agreements using the standard agreement forms discussed in Task 1. Grant agreements between DOC and easement grantee will reflect a complete workload and budget estimate for the easement acquisition, and its associated costs. Budget and workload estimates submitted in easement applications are subject to review by DOC and the Authority prior to execution of final grant agreements.
5. Negotiate terms of individual easements with the easement grantee, landowner, and their legal counsel.
6. Coordinate the review and evaluation of the independent easement appraisals to ensure that funds paid to landowners are no more than the fair market value of the interests conveyed. Recommend appraisal corrections or improvements to easement grantee and appraiser. Both DOC and Department of General

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<sup>3</sup> <http://www.conservation.ca.gov/dlrp/cfcp/Documents/CFCP%20Appraisal%20Guidelines.pdf>

Services expertise may be used to review and evaluate appraisals, as appropriate, to ensure the interests of the State.

7. Ensure that documentation of the applicable city or county's long-term commitment to agriculture and agricultural land conservation is provided, as described in Public Resources Code Sections 10244, 10251, and 10252.
8. Provide due diligence to ensure that title can be conveyed commensurate with the State's invested long term interest. This includes the review of preliminary title reports, title documents, subordination agreements, pro forma and final title policies; and any documentation of potential hazardous materials or other threats that could put agricultural practices at risk.
9. Produce escrow instructions in the interests of the Authority, CFCP, and the State. Review escrow instructions of the easement grantee; providing input for improvement or corrections as needed.
10. Review Baseline Documentation Reports, which are referenced in the easements. The Baseline Documentation Report is used to monitor easement compliance and documents the agricultural and other characteristics of the property, current use, and state of improvement. Easement grant applications shall include a section on long term monitoring, describing how the proposed project will be monitored following its completion, frequency of monitoring, who will be responsible for monitoring, how monitoring documents are archived, and the budget available for monitoring and any necessary enforcement.
11. CFCP, will review and process invoices from easement grantees for costs towards easement acquisition and associated transactional costs pursuant to Exhibit B. Follow-up with corrections when needed.
12. Track the progress of easement completion through regular communication with the easement grantee pursuant to Exhibit D. Work cooperatively with project participants to address issues as they arise.
13. If match funders are used to expand conservation beyond mitigation requirements, follow their guidelines and regulations to ensure each program's requirements are satisfied<sup>4</sup>.
14. While every effort will be made to screen potential projects early in the process to ensure completion, some easement projects may fall out of the process due to unforeseen circumstances, such as economic conditions or family circumstances. CFCP will communicate progress with the Authority on a regular basis as described in Task 1 - 2.
15. For targeted planning grants, of \$100,000 or less each; evaluate expertise of the applicants to ensure that they have the capacity to complete and steward agricultural conservation easements, evaluate their existing service areas and conservation priority plans, their work plan and proposed budget. Recommend any improvements needed to ensure expenditures will be directly linked to HST mitigation for the direct acquisition of agricultural conservation easement(s). Make recommendation to the Authority regarding suitability for funding with the process outlined in Task 2, item 3, and make grant awards. Execute planning grant agreements using the standard agreement forms discussed in Task 1. Monitor progress of outreach and status of prospective easement applications. Review easement pre-applications and, with the concurrence of the Director of the DOC and the Authority's Project Manager, approve the commission of appraisals as

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<sup>4</sup> CFCP will establish a separate account for Authority funding in order to track the use of Authority mitigation funds and ensure that they are used in accordance with this agreement.

outlined in the grant agreement. Review progress toward completion of full applications for agricultural conservation easements and report to Authority as part of DOC's regular progress reporting cycle.

### **TASK 3 – LEGAL REVIEW AND PUBLIC AFFAIRS**

1. The DOC's Legal Office and Public Affairs unit will support the acquisition of agricultural easement projects funded by the Authority. These functions will occur as needed, at appropriate points in Tasks 1 and 2 described above.
2. Provide in-house legal review of easement language, title documents (preliminary, pro formas, subordination agreements), escrow instructions, and related legal matters in coordination with the Authority, in the interest of the State and the Authority. Recommend changes as needed.
3. The DOC Public Affairs staff, in coordination with the Authority, will develop a factsheet or similar outreach material aimed at prospective participants, as discussed in Task 1, to describe the availability of funding for mitigation of HST agricultural impacts that will be available through CFCP. DOC Public Affairs staff will also develop press materials announcing completion of easements resulting from mitigation efforts, in coordination with the Authority and easement holders. Materials and/or events associated with agricultural land conservation will be tailored to appropriate media markets.

### **TASK 4 -- MONITORING AND MANAGEMENT SERVICES**

1. The following steps represent the DOC's long-term commitment to accountability specific to agricultural easement expenditures and the land conserved with those expenditures. Upon closure of easement projects comprising the Authority's mitigation requirements, CFCP and the easement holder will be the responsible parties for long-term management oversight of the easements. Task 4 shall survive the termination of the contract. Task 4 is included in the consideration for the existing contract price, and DOC shall perform all services in Task 4 at no additional cost to the Authority.
2. Maintain records of easements in hardcopy, digital format, and a geographic information system (GIS) formats to meet Authority, state, and federal reporting requirements as set forth in Exhibit D and E. Maintain land appraisals of completed projects in hardcopy and/or digital format for future reference and for compliance with potential Public Records Act<sup>5</sup> requests.
3. Tabulate easement information and enter data in the state Conservation Easement Registry<sup>6</sup> and other applicable accountability databases. Provide summary reports on funded easements on a regular basis as requested by control agencies and the Authority.
4. Provide GIS data on funded easements to the Authority as requested. To document the Authority's environmental commitments to agricultural land conservation, map the evolving patterns of Williamson Act enrollment, parcelization, additional conservation lands, and urban development in proximity to the HST alignment in GIS format; for use by the Authority in its communication with local communities and the public.

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<sup>5</sup> [http://resources.ca.gov/docs/Public\\_Records\\_Access\\_Guidelines\\_-final\\_web.pdf](http://resources.ca.gov/docs/Public_Records_Access_Guidelines_-final_web.pdf)

<sup>6</sup> The California Resources Agency maintains this publicly accessible web site to facilitate better conservation and resource planning among state agencies, local government, nonprofit organizations and the public, as required by Senate Bill 1360 (Kehoe, 2006) and Assembly Bill 188 (Aghazarian, 2007); <http://easements.resources.ca.gov/>.

5. As part of the application process, CFCP requires a monitoring plan describing how prospective easement grantees will monitor completed easements on an annual basis; including establishment of baseline information, who will be responsible for monitoring, how monitoring documents are archived, and the budget for long term monitoring and enforcement of the terms of the easement (described in Task 2, item 10 above). Upon completion of easement projects, easement holders are thereafter required to report annually to CFCP regarding the condition of each easement property as it compares to its baseline report. CFCP will review and provide follow-up with the easement holders regarding potential violations of easement terms; may independently monitor easements via aerial imagery review, and schedule field site visits if needed. Documentation for each project will be archived as with all projects in CFCP's existing portfolio.
6. CFCP will provide independent long-term monitoring of easements as described in Section 5, based on a periodic risk assessment of CFCP's entire easement portfolio, based on risk factors such as project age, fiscal stability of grantee, changes in land ownership, and land use conversion trends.
7. During the life of the agreement, CFCP will provide quarterly reports to the Authority discussing the status of easement projects and progress toward the mitigation measure's conservation ratios (as described in Section H – I, below). In addition, CFCP will provide an annual report describing the size and location of conservation easements acquired that year, total acreage acquired that year, and overall progress toward achieving 1:1 mitigation. The annual report will also summarize the completed easement monitoring information provided by easement holders (as described in Task 4 item #5 above), any potential easement violations, and the status of follow-up efforts. This information will be provided for the overall system, and by county.
8. The DOC will provide staff and legal oversight for potential or actual challenges to easements created under this agreement. As the original funder of the conservation easements, the Authority, along with DOC, will be notified of any proposals to terminate these easements through eminent domain or other legal proceedings. Termination of any these easements through condemnation is subject to the requirements of Section 10261 of the Public Resources Code, the eminent domain laws of the State.

## **G. WORK SCHEDULE Timing of Purchase Compliance**

### **1. Factors Affecting Work Schedule**

- a) Meeting environmental mitigation requirements by placing easements on the land of willing sellers near a large infrastructure project's impact area(s) is a process that does not lend itself to a precise timeline. Factors influencing the workload include:
- b) Phased construction of the HST system dictates that services for provision of agricultural mitigation take place over an extended timeline. Work toward agricultural easement acquisition for each section will ensue when the acreage of affected farmland type(s) are known and when funds are available to acquire easements. Agricultural conservation easements are obtained from willing sellers and therefore subject to the availability of such sellers. As a goal, the DOC shall satisfy the Authority's agricultural lands mitigation commitments within 10 years of this contract being executed, with one-half of the mitigation to be completed within five years.
- c) Section geography--regions with thousands of affected acres will require longer time periods to solicit, review, and identify suitable projects of sufficient acreage than would those with hundreds of acres.
- d) Number of transactions--the combination of the types of farmland affected by the HST alignment and easement project size will determine how many easement transactions it will require to meet mitigation ratios. The average *CFCP funded* easement in the San Joaquin Valley is 150 acres for

irrigated farmland and 400 acres for grazing land. However, individual easements in the San Joaquin Valley have ranged from 80 acres of Prime Farmland to 2,000 acres of Grazing Land.

- e) Additional project requirements that severely limit their location—for example, if all projects were required to be within two miles of the HST alignment---would also lead to a longer lead time until willing sellers come forward that meet the criteria. Cost per acre is also likely to increase concurrent with more restrictive placement criteria.
- f) Quality of proposals submitted for agricultural easements--an unknown percentage of projects may not be suitable for the Authority mitigation but may be eligible for other CFCP funds. Only the work done specifically for the Authority mitigation projects will be paid for under this agreement.
- g) Staffing—personnel factors such as vacancies or workload for CFCP projects not funded by the Authority may affect the pace at which individual projects are completed.
- h) Fund availability—appropriation of funds in a given fiscal year by the state legislature allows three years to encumber and an additional two years to expend. Appropriation, however, is not equivalent to cash availability if projects are funded by California General Obligation Bonds. Bond sale cancellations, or lag times for control agency project certifications and tax compliance certificates can result in the loss of appropriations, until reauthorized under a subsequent fiscal year.

2. For these reasons, a generalized timeline per section is estimated as follows:

High-Speed Train Quarterly Workload, Per Section																				
Task	FY 13-14				FY 14-15				FY 15-16				FY 16-17				FY 17-18			
	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4
Merced to Fresno HST Section – DOC Support Activities																				
Fresno to Bakersfield HST Section – DOC Support Activities																				
San Jose to Merced HST Section – DOC Support Activities																				
<b>Specific Activities</b>																				
1. Section level coordination; including development of legal requirements and priorities, development of RFGA, forms, and other materials, identifying potential applicants, and easement project solicitation.																				
2. Easement project assessment and completion; including site evaluation, baseline report, negotiation of grant and easement terms, appraisal review, due diligence of land title and local government requirements, communication with transaction participants, invoice payments, and regular reporting.																				

CFCP support activities continue until mitigation ratio is reached for each section.

<p>3. Legal review and public affairs; ensuring that easement and other legal documents comply with applicable laws and represent the best interest of the State, development and release of press releases/materials.</p>	
<p>4. Monitoring and management; the archiving of all associated documents in digital and paper formats, GIS mapping, entry into public databases, annual easement review and long term oversight.</p>	
<p>KEY: Solid lines indicate primary workload; dashed lines are for functions that are occasional in nature.</p>	

Monitoring by CFCP continues beyond mitigation services agreement.

- a) The budget document for this agreement provides more detail on the projected hours to secure individual easements and associated expenditures.
- b) The site selection and agricultural conservation easement services provided by CFCP will be considered complete when the conservation ratios prescribed and adopted in the Authority’s Final EIR/EIS mitigation measures and Mitigation Monitoring and Reporting Plans are met. Both the Director of DOC and the CEO of the Authority concurrence will be required to verify completion.

**H. DELIVERABLES**

1. Fact sheet or similar outreach material aimed at prospective participants. Request for Grant Applications, application forms, model easement template, and supporting material customized for HST mitigation services.
2. Permanent and timely agricultural conservation easements on land of similar acreage, location, and quality to that impacted by the alignment and maintenance facilities of the HST system. The services CFCP provides in securing these easements will meet the requirements described in the Final EIR/EIS’ mitigation measures and Mitigation Monitoring and Reporting Plans, in conjunction with local grantees and willing sellers. CFCP will conduct this effort in the best interests of the State and the Authority.
3. Progress Reports as described below, along with easement project summaries; and archival documents in paper and digital format, in compliance with bond accountability and transparency requirements.

**I. REPORTS**

**1. Progress Reports**

- a) CFCP will provide quarterly reports stating the progress made on the above tasks in the previous quarter, and any problems incurred for completing deliverables. Summaries of prospective easements will be provided as the screening process continues. Due to privacy considerations, preliminary documents associated with each project will be treated as confidential in accord with the requirements

of the California Public Records Act of 1968 (Government Code Sections 6254(h), 6254(k), and 6255); names of landowners and assessor’s parcel numbers under consideration cannot be publically disclosed until the successful completion of easement transactions, pursuant to the California Information Practices Act of 1977 (California Civil Code, Sections 1798 et seq.) and that may be subject to exemption under the California Public Records Act of 1968 (Government Code Section Sections 6254(h), 6254(k), and 6255)). The report will document the number of acres conserved as compared with the acreage of various agricultural types specified in the Mitigation Monitoring and Reporting Plans, along with and maps showing the locations of projects. Maps will include information on land use factors of interest to the Authority in meeting its environmental commitments to conserve agricultural land, such as Williamson Act enrollment, parcel data, and urbanization, in proximity to the HST alignment and easement areas.

- b) In cooperation with Authority staff, a final report on lands conserved for each section of the HST system will be produced in a format suitable for posting on the Internet.

**2. The project representatives during the term of this agreement will be:**

<b>CALIFORNIA HIGH-SPEED RAIL AUTHORITY</b>	<b>CALIFORNIA DEPARTMENT OF CONSERVATION</b>
Section/Unit: Environmental Services	Section/Unit: Division of Land Resource Protection, California Farmland Conservancy Program
Attention: Mark McLoughlin, Deputy Director of Environmental Planning	Attention: Molly A. Penberth, Manager California Farmland Conservancy Program
Address: 770 L Street, Suite 800 Sacramento, CA 95814	Address: 801 K Street, MS 18-01 Sacramento, CA 95814
Phone: (916) 403-6934	Phone: (916) 324-0863
Email: <a href="mailto:Mark.McLoughlin@hsr.ca.gov">Mark.McLoughlin@hsr.ca.gov</a>	E mail: <a href="mailto:mpenber@consrv.ca.gov">mpenber@consrv.ca.gov</a>
Fax: (916) 322-0827	Fax: (916) 327-3430

Contract Manager/Project Coordinator: Scott Rothenberg	Project Coordinator: Larelle Burkham-Greydanus
Section/Unit: Environmental Planning	California Department of Conservation Division of Land Resource Protection, California Farmland Conservancy Program
Address: 770 L Street, Suite 800 Sacramento, CA 95814	Address: 801 K Street, MS 18-01 Sacramento, CA 95814
Phone: (916) 403-6936	Phone: (916) 322-1831
Email: <a href="mailto:Scott.Rothenberg@hsr.ca.gov">Scott.Rothenberg@hsr.ca.gov</a>	E mail: <a href="mailto:lburkham@conservation.ca.gov">lburkham@conservation.ca.gov</a>
Fax: (916) 322-0827	Fax: (916) 327-3430

**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**A. INVOICING AND PAYMENT**

1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the Authority agrees to compensate the DOC for actual expenditures incurred in accordance with the rates specified in Attachment 1, to Exhibit B, which is attached hereto and made are part of this Agreement.
2. For the purchase of an agricultural conservation easement that has been approved by DOC and the Authority, as described in Exhibit A, Scope of Work, DOC will submit an invoice and supporting documentation to the Authority. The Authority will provide a State warrant, in the amount applicable to the purchase price of the easement, to DOC. The State warrant will be made payable to the applicable title company for deposit into escrow, as described in DOC's escrow instructions. The warrant may be cashed and the transaction closed only upon the satisfaction of the conditions included in the DOC escrow instructions. If escrow terminates for any reason without conveyance of the easement, then the title company shall immediately return the State's warrant or the entire proceeds of the warrant to DOC. DOC will then provide these proceeds the Authority.
3. Please provide three (3) copies of the Invoice for payment. Invoices shall include the Agreement Number, a narrative describing work performed and any training attended, identification of the hourly rate and number of hours worked by classification and detailed operating expenses plus the overhead costs by task, and shall be submitted no more than monthly in arrears to:

California High-Speed Rail Authority  
Attention: Financial Operations Section  
770 L Street, Suite 800  
Sacramento, CA 95814

(2 Copies)

**AND**

California High-Speed Rail Authority  
Attention: Scott Rothenberg, Contract Manager/Project Coordinator  
770 L Street, Suite 800  
Sacramento, CA 95814

(1 Copy)

4. **ADVANCE PAYMENT:** The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code Sections 11257 through 11263.
5. **EXPEDITED PAYMENT:** The Authority, under a separate agreement with the State Controller's Office, can expedite payment. DOC will be assessed a fee for each payment request. An explanation of fee schedules can be obtained at the Authority's Financial Operations Section address, listed above.

**B. BUDGET CONTINGENCY CLAUSE Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.**

1. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
3. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
4. The State has the option to void or amend this Agreement to reflect any reductions of funds.

**C. PAYMENT**

1. Costs for this Agreement shall be computed in accordance with State Administrative Manual Sections 8752 and 8752.1.
2. The total amount of this Agreement is \$19,993,339.00. The Authority shall submit all payments to the address in Section A.3.
3. The Authority shall remit the total amount due within forty-five (45) days of the date of the monthly or quarterly invoice.

**D. TRAVEL AND PER DIEM**

DOC shall be reimbursed for travel and per diem expenses using the same rates provided to state employees. Travel costs that exceed the annual budget must be pre-approved by the Authority's Contract Manager. DOC may obtain current rates at the following web site: <http://www.dpa.ca.gov/personnel-policies/travel/main.htm>

**E. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDS**

Partial funding for this agreement utilizes ARRA funding. For specific disbursements including ARRA funding, DOC will work with HSRA staff to provide the required information provided on Attachment at the following site:

<http://www.documents.DOC.ca.gov/pd/poliproc/ARRATand%20C081009final.pdf#search=arra&view=FitH&pagemode=none>

**F. COST PRINCIPLES**

1. DOC agrees to comply with Federal procedures in accordance with Title 2 Code of Federal Regulations (CFR) Part 225, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 225).

2. DOC also agrees to comply with Federal procedures in accordance with Title 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR 18).
3. Any costs for which payment has been made to DOC that are determined by subsequent audit to be unallowable under the 2 CFR 225 or 49 CFR 18 is subject to repayment by DOC to the Authority.



Direct Cost of Easement Purchase—Initial Construction Segment  
 From Borden in Madera County to 2 miles NW of State Route 99 in Reeddale, Kern County

Estimate based on 2500 acre mitigation; actual amount may vary. Mitigation for the remainder of the San Joaquin Valley sections may begin to occur during the five-year timeframe.

Project Workload Component	2013 Estimated Amount	Unit of Measure
Easement Purchase	\$6,600	ACRE (estimated mitigation acreage requirement of ~ 2500 acres)
Stewardship Fund	\$330	acre (6% of easement value)
Appraisals and DGS Appraisal Review	\$10,000	transaction
Title, Escrow & Closing Costs	\$6,500	transaction
Easement Holder Administration (1)	\$30,000	transaction

Note: Billing will be based on actual costs of HST mitigation.

Note: Average CFCP San Joaquin Valley cropland easement has been 150 acres. Due to lower San Joaquin Valley parcel configurations, used 160 acres for estimate.  
 Estimated 2500 acre mitigation requirement would result in 15.6 average size cropland easements; used 16 for budget estimate.

Actual number of transactions may be less, particularly if easements are completed on larger farms in the southern San Joaquin Valley.

	FY 13-14		FY 14-15		FY 15-16		FY 16-17		FY 17-18		Total
# of Projects	2	4	4	4	4	4	4	4	2	16	
# of Acres	320	640	640	640	640	640	640	640	260	2500	
Inflation over 2013 estimate, starting in FY 14-15	0	2%	2%	2%	2%	2%	2%	3%	3%	3%	
Easement Purchase	\$ 2,112,000	\$ 4,308,480	\$ 4,308,480	\$ 4,308,480	\$ 4,308,480	\$ 4,308,480	\$ 4,308,480	\$ 4,308,480	\$ 1,767,480	\$ 16,847,360	
Stewardship Costs	\$ 105,600	\$ 219,732	\$ 219,732	\$ 219,732	\$ 219,732	\$ 219,732	\$ 219,732	\$ 219,732	\$ 91,025	\$ 860,152	
Appraisals and DGS Appraisal Review	\$ 20,000	\$ 40,800	\$ 40,800	\$ 40,800	\$ 40,800	\$ 40,800	\$ 40,800	\$ 40,800	\$ 20,600	\$ 163,400	
Title, Escrow & Closing Costs	\$ 13,000	\$ 26,520	\$ 26,520	\$ 26,520	\$ 26,520	\$ 26,520	\$ 26,520	\$ 26,520	\$ 13,390	\$ 106,210	
Easement Holder Administration (1)	\$ 110,000	\$ 172,400	\$ 172,400	\$ 172,400	\$ 172,400	\$ 172,400	\$ 172,400	\$ 172,400	\$ 61,800	\$ 590,200	
	\$ 2,360,600	\$ 4,767,932	\$ 4,767,932	\$ 4,767,932	\$ 4,767,932	\$ 4,767,932	\$ 4,767,932	\$ 4,766,362	\$ 1,954,295	\$ 18,567,122	

(1) Easement Holder administration budget includes staff, legal and technical consultants, landowner outreach, and landowner negotiations. Additional funds in FY 13 and 14 are added to account for startup planning efforts to ensure easement holder capacity in locations not currently served by eligible organizations (as defined in Public Resources Code Section 10212).

California Farmland Conservancy Program  
**Mitigation of Agricultural Land Conversion Impacts**  
**Initial Construction Segment - California High Speed Rail**

Estimate based on 2,500 acres of mitigation of impacts on Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance. See other worksheet for easement purchase calculations and other spreadsheet for labor and administration costs. Actual amount will vary depending on easement project location, size, and other factors as described in Interagency Agreement Scope of Work.

<b>Annual Budget Breakdown</b>	<b>FY 13-14</b>	<b>FY 14-15</b>	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>Totals</b>	<b>%</b>
Easement project workload - DOC/CFCP (1)	\$ 287,083	\$ 284,783	\$ 284,783	\$ 284,783	\$ 284,783	\$ 1,426,216	7%
Easement project workload - Easement Holders (2)	\$ 110,000	\$ 172,400	\$ 122,400	\$ 123,600	\$ 61,800	\$ 590,200	3%
Easement project transaction costs (3)	\$ 138,600	\$ 287,052	\$ 287,052	\$ 292,042	\$ 125,015	\$ 1,129,762	6%
Easement purchase	\$ 2,112,000	\$ 4,308,480	\$ 4,308,480	\$ 4,350,720	\$ 1,767,480	\$ 16,847,160	84%
<b>Total Agreement Amounts</b>	<b>\$ 2,647,683</b>	<b>\$ 5,052,716</b>	<b>\$ 5,002,716</b>	<b>\$ 5,051,145</b>	<b>\$ 2,239,078</b>	<b>\$ 19,993,339</b>	<b>100%</b>

- (1) Hours billed will be based on actual staff implementation time.
- (2) Consists of staff, legal and technical consultants, landowner outreach, and landowner negotiations.
- (3) Consists of appraisals, escrow, closing costs, and stewardship endowment.

**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS**

PLEASE NOTE: GIA 610 The General Terms and Conditions, effective as of 6/9/2010, are included in this Agreement by reference and made a part of this Agreement as if attached hereto. This document can be viewed at: <http://www.dgs.ca.gov/ols/Home.aspx>.

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS**

**A. AGREEMENT MANAGEMENT**

1. DOC's Project Manager is responsible for the day-to-day project status, decisions and communications with the Authority's Contract Manager (CM). DOC may change its Project Manager by giving written notice to the Authority.
2. The Authority's CM is responsible for the day-to-day Agreement status, decisions and communications with DOC's Project Manager. The CM will review and approve all project deliverables, reports. The Authority may change its CM by giving written notice to DOC. The Authority's Contract Officer will sign the written notice.
3. Authority staff may work side-by-side with DOC's staff, to the extent and under conditions that may be directed by the Authority's CM. In this connection, the Authority staff will have access to all data, working papers, etc., that DOC may seek to utilize.

**B. STANDARD OF PERFORMANCE**

1. DOC shall be responsible for the performance of the Easement Holders whose projects are selected for agricultural mitigation work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. An Easement Holder, as defined by Public Resources Code Section 10212, may include a city, county, nonprofit organization, resource conservation district, or a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes.
2. If a deliverable that requires Authority approval does not receive such approval, the DOC will re-perform, or cause to be performed, at its own expense, any task as necessary for the deliverable to receive Authority approval.
3. The Authority and the DOC shall agree on a new schedule for the re-performance of any task in the event that re-performance of a task within the original time limitations is not feasible.

**C. EASMENT HOLDER**

1. The following provisions apply to Easement Holders and DOC's relationship with them. If Easement Holders are needed to perform any portion of this Agreement, the following criteria must be met and the DOC shall manage the performance of the Easement Holders.
2. Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any Easement Holder, and no agreement shall relieve the DOC of its responsibilities and obligations under this agreement. The DOC agrees to be as fully responsible to the State for the acts and omissions of its Easement Holder and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the DOC. The DOC's obligation to pay its Easement Holder is an independent obligation from the contracting Agency's obligation to make payments to the DOC. As a result, HSR shall have no obligation to pay or to enforce the payment of any monies to any Easement Holder.

3. The DOC shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the Easement Holder for work performed in accordance with the terms of this Agreement. The DOC shall be responsible for: 1) scheduling and assigning Easement Holder to specific tasks in the manner described in this Agreement; 2) coordinating the Easement Holder accessibility to Authority staff; and 3) submitting completed products to the CM.
4. DOC shall keep the Authority informed of its progress towards reaching a signed agreement with any Easement Holder. At least one week prior to the date DOC anticipates executing such agreement, DOC shall provide a draft to the Authority for its review and comment. At a minimum, such agreement shall clearly inform the Easement Holder that any portions of the RFP, agreement or any similar or related documents that reference work beyond the Project limits are unfunded and that DOC disclaims any representations that such work is or will be funded, and shall require the Easement Holder to waive any claims against the Authority related to such extra-Project work. The agreement also shall require the Easement Holder to waive any claims of any kind, present and future, against the Authority related to the Project, DOC hereby agrees to defend, indemnify and hold harmless the Authority from any claims, demands or suits of any kind from Easement Holder related to this Agreement or the Project (this indemnity is in addition to any other remedy and/or indemnity in this Agreement).
5. DOC shall not enter into any contract change orders that could result in schedule delay to tasks described in Exhibit A or additional cost beyond the budget described in Exhibit B, without the Authority's prior written approval.
6. All sub-awards shall contain the following language:
  - a) Recordkeeping: The Easement Holder shall retain backup source documentation for audit purposes. Accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and subcontract documents.
  - b) Audits: The Easement Holder agrees that the awarding department, the Authority, the Department of General Services, the Bureau of State Audits, the FRA, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Easement Holder agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Easement Holder agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Easement Holder agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code § 8546.7, Pub. Contract Code § 10115 et seq., CCR Title 2, Section 1896).
  - c) Non-Discrimination: During the performance of this Agreement, the Easement Holder and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Easement Holder and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Easement Holder and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2,

Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Easement Holder 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.

- d) A provision that further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the CM.
- e) The confidentiality provisions in the Reports paragraph of this Agreement.
- f) Language that incorporates the relevant federal provisions contained in Exhibit E, paragraph 1.
- g) DOC shall not execute any agreement or contract with its Easement Holder that makes any reference to the Authority or the FRA until this Agreement has been signed by the Parties.

#### **D. RECORDKEEPING AND INSPECTION OF RECORDS**

1. DOC shall retain backup source documentation for audit purposes, and make the documentation available to the Authority and the Federal government upon request. In accordance with FRA Grant Agreement FR-HSR-0009-10-01-00, Attachment 2, Section 6(a), (or the equivalent, modified only for language consistency), DOC's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and Easement Holder award documents. DOC agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after the date of final payment. DOC shall include appropriate contract provisions with each of its Easement Holders to secure adequate backup documentation to verify all Easement Holder services and expenses invoiced for payment under this Agreement.
2. In accordance with ARRA Sections 902, 1514 and 1515, DOC agrees that it shall permit the State of California, the United States Comptroller General or his representative, FRA/DOT or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of DOC or any of its Easement Holders regarding the activities funded with funds appropriated or otherwise made available by ARRA. DOC shall include this provision in all of its agreements with its Easement Holders from whom it acquires goods or services in its execution of ARRA-funded work.

#### **E. SAFETY**

1. The DOC and any Easement Holders or subcontractor's shall comply with OSHA regulations applicable to the DOC regarding necessary safety equipment or procedures. The DOC shall comply with safety instructions issued by the AUTHORITY's Safety Officer and other State representatives. The DOC's personnel and any Easement Holders or subcontractor's shall wear white hard hats and orange safety vests at all times while working on the construction project site.
2. Pursuant to the authority contained in Section 591 of the Vehicle Code, the AUTHORITY has determined that within such areas as are within the limits of the project and are open to public traffic, the DOC shall

comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The DOC shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

#### **F. PROPERTY, EQUIPMENT AND SUPPLIES**

1. Unless otherwise approved by FRA, the following conditions apply to property, equipment, and supplies financed under this Agreement:
  - a) **Use of Property.** The Easement Holder agrees that Project property, equipment, and supplies shall be used for the provision of the Project activity for the duration of its useful life, as determined by the Authority. Should the Easement Holder unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Easement Holder agrees that the Authority may require the Easement Holder to return the entire amount of FRA assistance through the Authority fund source, expended on that property, equipment, or supplies. The Easement Holder further agrees to notify the Authority immediately when any Project property or equipment is withdrawn from use in the Project activity or when such property or equipment is used in a manner substantially different from the representations made by the Easement Holder in its application or the text of this Agreement.
  - b) **General Federal Requirements.** An Easement Holder that is not a governmental entity agrees to comply with the property standards of 49 CFR 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued.
  - c) For a complete list of terms and conditions for the use of property, equipment and supplies, using federal financial assistance, refer to the FRA Grant/Cooperative Agreement (FR-HSR-0009-10-01-00) General Provisions, Attachment 2, Section 8., Property, Equipment and Supplies.

#### **G. TERMINATION**

1. The Authority has the right to cancel, terminate, or suspend this Agreement if DOC or any Easement Holder fails to comply with the reporting and operational requirements contained in this Agreement. DOC may cancel, terminate, or suspend this Agreement if the Authority fails to comply with the operational requirements of this Agreement.
2. **Without Cause:** The AUTHORITY may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the DOC. In such event, the DOC agrees to use all reasonable efforts to mitigate the DOC's expenses and obligations hereunder. Also, in such event, AUTHORITY shall pay the DOC for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the DOC have been avoided, but not in excess of the maximum payable under this Agreement

#### **H. ENFORCEABILITY**

DOC agrees that if it or one of its Easement Holders fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the Authority 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 Authority under all applicable State and Federal laws.

**I. WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, meaning in addition to every other remedy provided therein or by law. The failure of the Authority to enforce at any time any of the provisions of this Agreement, or to require at any time performance by DOC of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Authority to thereafter enforce each and every such provision.

**J. CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

**K. NOTICE**

1. This clause applies to situations where notice is required to be given by this Agreement, or the parties are asserting their legal rights and remedies. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work.
2. The parties to the contract must give legal notice using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit A of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this clause.
3. Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In this event, the effective date shall be postponed until the next business day.

**L. AMENDMENTS**

1. This Agreement may be amended to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to Public Contract Code section 10335, Government Code section 11010.5 and the State Contract Manual. Amendments may require prior written approval from FRA.
2. DOC acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. DOC agrees to comply with any amendments that the Authority makes to this Agreement to comply with Federal or State law, regulation, or policy.

**EXHIBIT E**

**REGULATIONS FOR CONTRACTS RECEIVING FEDERAL FUNDING  
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)**

**A. FEDERAL REQUIREMENTS**

1. The DOC (Contractor) for purposes of Exhibit E: understands that the Authority has received Federal funding from FRA for the Project and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. The contractor acknowledges that federal laws, regulations, policies and related administrative practices may change and that such changed requirements will apply to the Project. The contractor shall ensure compliance by its Subcontractors and include appropriate flow down provisions in each of its lower-tier Subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein.
2. 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.

**B. COMPLIANCE WITH FEDERAL REQUIREMENTS**

1. The contractor's failure to so comply shall constitute a material breach of this Contract.

**C. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

1. 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.

**D. ENVIRONMENTAL REQUIREMENTS**

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

**E. CLEAN AIR**

1. 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.
2. 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.

**F. CLEAN WATER**

1. 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.
2. 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.

**G. ENERGY CONSERVATION**

1. 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.).

**H. AGREEMENT NOT TO USE VIOLATING FACILITIES**

1. 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 or 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 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.
2. The contractor also agrees to include these requirements in each subcontract hereunder exceeding \$50,000.

**I. ENVIRONMENTAL PROTECTION**

1. 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.

**J. RECYCLED PRODUCTS**

1. 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 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.

**K. FLY AMERICA**

1. 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.

**L. RESTRICTIONS ON LOBBYING**

1. 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 Regarding Lobbying” in Section EE.

**M. FRAUD AND FALSE OR FRAUDULENT STATEMENTS, AND RELATED ACTS**

1. 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.
2. 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.
3. The Contractor agrees to include the above two 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.

**N. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

1. 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 the Authority, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
2. 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.

**O. DEBARMENT AND SUSPENSION**

1. 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.
2. 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.
3. 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.

**P. CIVIL RIGHTS**

1. The following requirements apply to the Contract:

**Q. NONDISCRIMINATION**

1. In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended; 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990; 42 U.S.C. § 12132; and 49 U.S.C. § 306, the Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of the Contract. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

**1. EQUAL EMPLOYMENT OPPORTUNITY**

2. The following equal employment opportunity requirements apply to the Contract:

**R. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX**

1. 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 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.

**S. AGE**

1. 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.

#### **T. DISABILITIES**

1. 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. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.
2. 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.
3. 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.

#### **U. ACCESS TO RECORDS**

1. 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.
2. 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.
3. The Contractor agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than seven 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).
4. The inclusion of these requirements is not required in Subcontracts.

## V. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

1. 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:
  - a. 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.
  - b. 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.

## W. SEISMIC SAFETY

1. 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 Contract 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.

## X. DISADVANTAGED BUSINESS ENTERPRISES

1. Notwithstanding anything to the contrary in the Contract Documents, this Section X shall apply only if and when the Project receives Federal funding.
2. 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 Title VI) in carrying out the Project.
3. 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 Title VI 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)).

**Y. 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/Page/P0391>

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. The 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.

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

1. 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

2. 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) but 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

3. 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.

4. 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, the Contractor's written waiver request justification shall contain:

- a. Description of the Project;
- b. Description of the steel, iron or manufactured good not meeting the Buy America requirement;
- c. Description of the percentage of U.S. content in the steel, iron, or manufactured goods, as applicable;
- d. Description of the efforts made to secure the Buy America compliant steel, iron, or manufactured goods;
- e. 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);
- f. 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;
- g. Citation to the specific 49 U.S.C. § 24405(a)(2) waiver category(ies) under which the waiver is sought;
- h. Justification supporting the application of the waiver category(ies) cited; and
- i. Contact information for the responsible party.

1) **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 "BUY AMERICA" clause 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.

**Z. CARGO PREFERENCE—USE OF UNITED STATES-FLAG VESSELS**

1. The Contractor agrees to the following:

- a. 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.
- b. To furnish within 20 Working Days following the date of loading for shipments originating within the United States, or within 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.
- c. 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.

#### **AA. 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 Contractor shall comply with the Contract Compliance provisions set forth in the Technical Assistance Guide for Federal Construction Contractors and for a Mega Project.

#### **BB. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

##### **1. MINIMUM WAGES**

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

- c. The 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. The Authority shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - d. 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
  - e. The classification is utilized in the area by the construction industry; and
  - f. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - g. 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.
2. **IF THE CONTRACTOR AND THE LABORERS AND MECHANICS TO BE EMPLOYED IN THE CLASSIFICATION (IF KNOWN), OR THEIR REPRESENTATIVES, AND THE 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 THE 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 30 DAYS OF RECEIPT AND SO ADVISE THE AUTHORITY OR WILL NOTIFY THE AUTHORITY WITHIN THE 30-DAY PERIOD THAT ADDITIONAL TIME IS NECESSARY.**
  3. **IN THE EVENT THE CONTRACTOR, THE LABORERS OR MECHANICS TO BE EMPLOYED IN THE CLASSIFICATION, OR THEIR REPRESENTATIVES, AND THE AUTHORITY DO NOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE (INCLUDING THE AMOUNT DESIGNATED FOR FRINGE BENEFITS, WHERE APPROPRIATE), THE AUTHORITY SHALL REFER THE QUESTIONS, INCLUDING THE VIEWS OF ALL INTERESTED PARTIES AND THE RECOMMENDATION OF THE AUTHORITY, TO THE ADMINISTRATOR FOR DETERMINATION. THE ADMINISTRATOR, OR AN AUTHORIZED REPRESENTATIVE, WILL ISSUE A DETERMINATION WITHIN 30 DAYS OF RECEIPT AND SO ADVISE THE AUTHORITY OR WILL NOTIFY THE AUTHORITY WITHIN THE 30-DAY PERIOD THAT ADDITIONAL TIME IS NECESSARY.**

4. **THE WAGE RATE (INCLUDING FRINGE BENEFITS WHERE APPROPRIATE) DETERMINED PURSUANT TO PARAGRAPHS (II)(B) OR (II)(C) OF THIS SECTION, SHALL BE PAID TO ALL WORKERS PERFORMING WORK IN THE CLASSIFICATION UNDER THIS CONTRACT FROM THE FIRST DAY ON WHICH WORK IS PERFORMED IN THE CLASSIFICATION.**
5. **WHENEVER THE MINIMUM WAGE RATE PRESCRIBED IN THE CONTRACT 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.**
6. **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.**
7. **THE 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 CONTRACT SHALL BE CLASSIFIED IN CONFORMANCE WITH THE WAGE DETERMINATION. THE AUTHORITY SHALL APPROVE AN ADDITIONAL CLASSIFICATION AND WAGE RATE AND FRINGE BENEFITS THEREFOR ONLY WHEN THE FOLLOWING CRITERIA HAVE BEEN MET:**
  - a. **The work to be performed by the classification requested is not performed by a classification in the wage determination; and**
  - b. **The classification is utilized in the area by the construction industry; and**
  - c. **The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.**

8. **IF THE CONTRACTOR AND THE LABORERS AND MECHANICS TO BE EMPLOYED IN THE CLASSIFICATION (IF KNOWN), OR THEIR REPRESENTATIVES, AND THE 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 THE 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 THE AUTHORITY OR WILL NOTIFY THE AUTHORITY WITHIN THE 30-DAY PERIOD THAT ADDITIONAL TIME IS NECESSARY.**
9. **IN THE EVENT THE CONTRACTOR, THE LABORERS OR MECHANICS TO BE EMPLOYED IN THE CLASSIFICATION, OR THEIR REPRESENTATIVES, AND THE AUTHORITY DO NOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE (INCLUDING THE AMOUNT DESIGNATED FOR FRINGE BENEFITS, WHERE APPROPRIATE), THE AUTHORITY SHALL REFER THE QUESTIONS, INCLUDING THE VIEWS OF ALL INTERESTED PARTIES AND THE RECOMMENDATION OF THE AUTHORITY, TO THE ADMINISTRATOR FOR DETERMINATION. THE ADMINISTRATOR, OR AN AUTHORIZED REPRESENTATIVE, WILL ISSUE A DETERMINATION WITH 30 DAYS OF RECEIPT AND SO ADVISE THE AUTHORITY OR WILL NOTIFY THE AUTHORITY WITHIN THE 30-DAY PERIOD THAT ADDITIONAL TIME IS NECESSARY.**
10. **THE WAGE RATE (INCLUDING FRINGE BENEFITS WHERE APPROPRIATE) DETERMINED PURSUANT TO PARAGRAPHS (V)(B) OR (V)(C) OF THIS SECTION, SHALL BE PAID TO ALL WORKERS PERFORMING WORK IN THE CLASSIFICATION UNDER THIS CONTRACT FROM THE FIRST DAY ON WHICH WORK IS PERFORMED IN THE CLASSIFICATION.**

#### **11. WITHHOLDING**

The 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 Contract. 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, the 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.

#### **12. PAYROLLS AND BASIC RECORDS**

- a. 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 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 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.

- b. 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.

- c. 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

- d. 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 (ii)(B) of this section.
- e. 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.
- f. The Contractor or Subcontractor shall make the records required under paragraph (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. 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.

## **CC. APPRENTICES AND TRAINEES**

### **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.

## **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.

## **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.

## **4. 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.

## **5. 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.

## **6. 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.

**7. 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.

**8. 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.

**9. Disputes Concerning Labor Standards**

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general” clause of this Contract (Section). 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.

**10. 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 Contract 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.

**DD. Contract Work Hours and Safety Standards**

**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 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 40 hours in such workweek.

**2. VIOLATION, LIABILITY FOR UNPAID WAGES, LIQUIDATED DAMAGES**

In the event of any violation of the clause set forth in Section 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 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 40 hours without payment of the overtime wages required by the clause set forth in Section 1.

**3. WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES**

The 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 2.

**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.

**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:

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: \_\_\_\_\_

6. N  
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.

**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.

**8. INSERTION IN SUBCONTRACTS**

The Contractor and each Subcontractor shall insert in any Subcontracts the clauses set forth in Sections 1 through 7 of this “Contract Work Hours and Safety Standards” clause (Section DD), 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 (including any lower-tier Subcontractor) with the clauses set forth in Sections 1 through 7.

**9. 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.

**10. 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.

**EE. Certification Regarding Lobbying**

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

1. 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:

If Joint Venture, each Joint Venture member shall provide the above information and sign the certification.

**FF. 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:

#### **GG. 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, Best Practices of 49 CFR Part 26, Executive Order 11246 and Title VI of the Civil Rights Act of 1964 and related statutes.

For 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.

#### **HH. SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS**

##### **II. 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 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.

##### **JJ. Enforceability**

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

##### **KK. Prohibition on Use of ARRA Funds**

The 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.

**LL. 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 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.

**MM. Inspection of Records**

In accordance with ARRA Sections 902, 1514, and 1515, the Contractor agrees that it shall permit the State, 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.

The 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.

**NN. Whistleblower Protection**

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

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

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

**OO. False Claims Act**

The 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.

**PP. 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/arrasinguidance.htm>

**QQ. Reporting Requirements**

Federal Audit Requirements:

- i. Non-Federal entities that expend (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Federal Office of Management and Budget (OMB), Circular No. A-133, Section 200, Audit Requirements.

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

The total amount of ARRA funds received by the 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:

1. The name of the project or activity
2. A description of the project or activity
3. An evaluation of the completion status of the project or activity
4. An estimate of the number of jobs that were either created or retained or both by the project or activity
5. For any contracts equal to or greater than \$25,000, the following information must be included:

6. The name of the entity receiving the contract
7. The amount of the contract
8. The transaction type
9. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number
10. The Program source
11. An award title descriptive of the purpose of each funding action
12. The location of the entity receiving the contract
13. The primary location of the contract, including the city, state, congressional district, and country
14. 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 the Contractor, should the entity be owned by another

The names and total compensation of the five most highly compensated officers of the company if it received either of the following:

1. Eighty percent (80 %) or more of its annual gross revenues in Federal awards, or
2. Twenty-five million (\$25,000,000.00) 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 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](http://www.federalreporting.gov). The additional requirements will be added to this contract(s).