



Agreement No.: HSR [●]

Track and Systems Contract Term Sheet

INDUSTRY DRAFT – May 9, 2019

This document provides background information and summarizes certain terms in the California High-Speed Rail Authority's draft contract to be included in the Request for Proposals (RFP) for the Track and Systems procurement. This document is not a full restatement of the contract requirements. There are numerous details, exceptions and qualifications associated with the provisions of the contract that can only be ascertained by reviewing the contract.

This document is subject to revision. Dates and information listed in brackets are for discussion purposes only.

| 1. Contract Overview | | |
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| Authority | California High-Speed Rail Authority | GP § 1 |
| Contractor | The entity identified as “Contractor” in the Signature Document and determined through the procurement. | Signature Document |
| Contract / Order of Precedence | <p>The Contract will include the following documents, in the following descending order of precedence:</p> <p><u>Part A</u></p> <ol style="list-style-type: none"> 1. Signature Document, except proposal commitments 2. General Provisions (without Schedules) 3. Schedules to General Provisions <p><u>Part B</u></p> <ol style="list-style-type: none"> 1. Functional and Technical Requirements 2. Base Design Criteria 3. Design Criteria Manual <p><u>Part C</u></p> <ol style="list-style-type: none"> 1. [Environmental Requirements] 2. [Sustainability Requirements] 3. Safety and Security Management Plan 4. Systems Engineering Management Plan <p><u>Part D</u></p> <ol style="list-style-type: none"> 1. Proposal commitments (provided that if Authority determines that the proposal contains a provision that is more restrictive or beneficial to Authority than is specified elsewhere in the Contract, that proposal provision will take precedence). | GP §§ 1, 2.1 |
| Federal Requirements | The Contract assumes federal requirements, including Buy America, related to the Passenger Rail Investment and Improvement Act (PRIIA), Railroad Rehabilitation & Improvement Financing (RRIF) Program and Transportation Infrastructure Finance and Innovation Act (TIFIA). | GP § 48 |
| Small and Disadvantaged Business Enterprise Program | Contractor will comply with Authority’s Small and Disadvantaged Business Enterprise Program and will establish a SB Performance Plan to address how Contractor will meet the overall SB goal throughout the duration of the Contract. | GP §§ 31.1, 48.24 |
| Community Benefits Agreement | Contractor and its subcontractors will comply with the Community Benefits Agreement with the State Building and Construction Trades Council of California and the Signatory Craft Councils and Local Unions. Contractor shall also comply with the Overhead Electrification System | GP § 31.2, GP Schedule 12 |

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| | Agreement with I.B.E.W. Local 47 and I.B.E.W. Local 1245. | |
| Labor and Employment | Contractor, as part of its proposal, will be required to describe its approach to developing a skilled labor force for the Construction Periods and Service Period of the Contract. | [Instructions to Proposers] |
| Environmental Compliance | The Project will comply with all state and federal environmental requirements, including noise mitigation requirements, through the Contract and/or other contracts. | GP § 44, GP Schedule 13 |
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| Maintenance of Way Facility Property | Authority will provide certain property by specified deadlines to allow Contractor to construct the Maintenance of Way Facilities. | Signature Document, Attachment A § 9 |
| Operations Control Center | Authority will provide Contractor with a building to use as an Operations Control Center by a specified deadline. Contractor will be responsible for making any changes to the building and supplying all fixtures and equipment necessary to use the building as an Operations Control Center. | Signature Document, Attachment A § 9 |
| Traction Power SubStations | Authority will provide Contractor with access to electrical power (115 or 230 kV) at the Traction Power Substations during the Construction Period of each Segment. Authority will provide Contractor with certain land on which to construct the required Traction Power Substations by specified deadlines. | Signature Document, Attachment A § 9, GP Schedule 2 |
| Governmental Approvals | Authority will obtain all Governmental Approvals listed in Schedule 13 of the Contract by specified deadlines. Contractor will obtain all other applicable Governmental Approvals. | Signature Document, Attachment A § 9, GP Schedule 13 |
| Access to Site | <p>Authority will provide Contractor with primary access to the site in increments of approximately five-mile sections in accordance with a schedule. Prior to Contractor receiving primary access to a section, the applicable civil contractor will have primary access and Contractor will have shared access to the section.</p> <p>As a condition to receiving primary access to a section:</p> <p>(a) Contractor is required to concur with the following: (i) the access is of sufficient width for the guideway and (ii) the work meets the requirements of the applicable civil contract, including use of correct material and, for embankments and at grade sections, compaction to appropriate standards.</p> <p>(b) Authority will make available the documentation related to the status of completion of the section from the applicable civil contractor, including, for embankments</p> | Signature Document, Attachment A § 9 |

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| | <p>and at grade sections, provision of monitoring reports regarding settlement.</p> <p><u>Party having primary access to a section:</u></p> <ul style="list-style-type: none"> - Responsible for safety, security, maintenance and risk of loss on the section; - Responsible for scheduling all work on the section; and - Obligation to proactively accommodate requests for shared access to the section. <p><u>Party having shared access to a section:</u></p> <ul style="list-style-type: none"> - Responsible for proactively requesting shared access to the section from the party having primary access; - Must follow access rules set by the party having primary access; - Must work where the party having primary access grants shared access (e.g., locations, time periods); and - Cannot unreasonably interfere with the party having primary access. | |
| Rolling Stock | Authority will provide Rolling Stock (including a driver) for use by Contractor in testing the Work by specified deadlines. | Signature Document, Attachment A § 9 |
| Radio Frequency | Authority will provide Contractor with specified radio frequency to use in connection with the operation of the Project. | Signature Document, Attachment A § 9 |
| 3. Payment | | |
| Contract Amount | <p>The Contract Amount is based on:</p> <ol style="list-style-type: none"> 1. Milestone Payments during the Construction Period of each Segment (Milestone Contract Amount); and 2. Monthly Service Payments during the Service Period. | GP § 11 |
| Milestone Payments | <p>Authority will pay Milestone Payments for each Segment upon 100% completion of each defined milestone. Payment for each milestone is conditioned on completion of all prior milestones.</p> <p>The Milestone Payment Amounts are based on a Schedule of Values bid by Contractor.</p> <p>The Milestone Payment Amounts for NTPs other than NTP 1 are subject to escalation.</p> | GP §§ 11.2, 11.4, 11.5 GP Schedule 3 GP Schedule 9 |
| Schedule of Values | As part of its proposal, Contractor will bid unit costs to add or deduct lineage based on type: at-grade/embankments; | GP § 11.4 GP Schedule 9 |

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| | structure/viaducts; trenches; and tunnels. | |
| Service Payment | <p>For performance of Contractor's obligations during the Service Period, Contractor is entitled to a monthly Service Payment. The Service Payment will be based on Segments in Revenue Service. The Service Payment will be calculated in part on fixed costs and in part on usage by the Rolling Stock. The Service Payment will be calculated based on prices bid by Contractor and is subject to annual escalation.</p> | <p>GP §§ 11.3, 11.4, 11.5</p> <p>Signature Document, Attachment B</p> |
| Service Payment Reductions – Performance Standards | <p>Service Payments will be reduced for Contractor's failure to meet specified Performance Standards. Contractor will be assessed reductions in Service Payments for exceeding the allowable number of Missed Stops, Late Stops and Mission Quality Failures over [●]-day measurement periods.</p> <p>A Missed Stop is a stop that, due to a failure, either (i) does not start or (ii) if it does start, is not completed by a Trainset under its own power.</p> <p>A Late Stop is a stop that, due to a failure, arrives at a station or specified interface point later than is allowed under the Contract (300, 150 or 120 seconds late).</p> <p>A Mission Quality Failure is where vertical or horizontal acceleration exceeds preset limits.</p> <p>If the number of Missed Stops, Late Stops and Mission Quality Failures exceed specified thresholds (Missed Stops, Late Stops and Mission Quality Failures counted separately), Authority may elect to discontinue the assessment of reductions in the Service Payment and pursue actual damages.</p> <p>Service Payment reductions will not be assessed to the extent Contractor can establish that Authority, the Rolling Stock Provider, the Operator, a third party or a Force Majeure Event is wholly responsible for the Late Stop, Missed Stop or Mission Quality Failure and such failure does not result from Contractor's failure to interface with an Interfacing Party.</p> <p>Contractor may be entitled to relief from [50]% of any Service Payment reduction assessed due to Missed Stops or Late Stops with respect to the [●]-day measurement period upon achieving defined improvement.</p> <p>The Service Payment reduction amounts are subject to escalation on an annual basis.</p> <p>The cumulative Service Payment reductions in a month will not exceed the Service Payment amount for the month.</p> | <p>GP § 13</p> <p>GP Schedule 6</p> |

| 4. Description of Work | | |
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| General Description of Work | <p>During each Construction Period (until Revenue Service), Contractor will design, build, test and certify all infrastructure, systems, sub-systems and utilities required to enable the continuous safe operation of Rolling Stock and build necessary Maintenance of Way Facilities.</p> <p>Upon receiving primary access to a Section, Contractor will be responsible for the safety, security, maintenance and risk of loss of the Section.</p> <p>During the Service Period, Contractor will be responsible for maintenance and will perform certain specified interface and integration duties with respect to Authority's other contractors, including the Rolling Stock Contractor.</p> | |
| Maintenance of Way Facilities | <p>Contractor is required to construct and/or contract for sufficient Maintenance of Way Facilities to perform its maintenance obligations. Contractor's proposal, Maintenance Plan and Baseline Program will identify all such facilities and/or contracts, including the timing for constructing each facility.</p> <p>The Maintenance of Way Facilities may be located on the Maintenance of Way Facility Property.</p> <p>Any maintenance contracts will be assignable to Authority.</p> | Signature Document, Attachment A § 9 GP Schedule 11 |
| Design Responsibility and Liability | <p>Contractor will be solely responsible for designing the Project, and for performing all design activities related to the work and for ensuring that the design of the Project is fully integrated with the work of all Interfacing Parties, as set forth in more detail below. Contractor will be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by Contractor.</p> <p>Contractor will not be relieved of its obligation to design and perform the work by oversight, spot checks, assessments, reviews, tests, inspections, acceptances, statements of no objection, statements of objection, approvals, or by any failure of any person or entity to take such action.</p> | GP §§ 3.1, 3.14, 3.17, 4 |
| Testing and Commissioning | <p>All testing and commissioning of the Work will be the responsibility of Contractor and will be performed pursuant to a Testing and Commissioning Program, which Contractor will develop and implement in accordance with the Contract.</p> | GP § 22 GP Schedule 2 |
| Service Period | <p>The Service Period commences upon achieving Revenue Service of the initial Segment(s) and ends 30 years after commencing Revenue Service of the last Segment.</p> <p>During the Service Period, Contractor is required to:</p> | GP § 15 GP Schedule 6 |

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| | <ol style="list-style-type: none"> 1. Manage and maintain the Project so that it is fit for safe and efficient operation in regular service and otherwise meets the Contract requirements; 2. Manage and maintain the Maintenance of Way Facilities, as necessary to meet the Contract requirements; 3. Investigate all failures / incidents relating to the Project, assess what occurred, describe any recommended repair or replacement work necessary, and plan an optimal manner to accomplish such work and report its findings to Authority; 4. Meet the minimum standards of performance for Contractor set forth in the Contract; and 5. Commence any emergency corrective work immediately and commence any non-emergency corrective work within 24 hours after becoming aware of the need for the corrective work, and complete the corrective work in accordance with the timeframe and other requirements set forth in the Maintenance Plan. | |
| Project Management Plan | <p>Contractor will establish and implement a comprehensive Project Management Plan in accordance with Federal Transit Administration guidelines and in accordance with the quality management system requirements of ISO 9001.</p> <p>Contractor will review, update or correct the Project Management Plan, and all programs, plans, manuals and training materials developed pursuant to the Project Management Plan at any tier, on a quarterly basis, or more often if updates are required as a result of an audit or if otherwise required by Authority.</p> | GP § 22 GP Schedule 3 |
| Applicable Laws | Contractor will comply with all applicable laws that bear on the performance of the Work. | GP § 3.4 |
| Applicable Standards | Contractor will comply with the current version of all standards referenced in the Contract. | GP §§ 3.5, 3.6 |
| Warranty | Contractor will provide a five-year warranty for Segments 1, 2 and 3 commencing on achieving Revenue Service for each such Segment covering all Work, including defects, parts and labor, but excluding any latent defects for the Civil Contracts provided work. | |
| Handback | At the conclusion of the Service Period or termination of the Contract, Contractor will turn over the applicable Segment or Segments to Authority, in a state of good repair and with at least 10 years of useful life. Contractor will turn over the Maintenance of Way Facilities to Authority when Contractor turns over the last Segment. | |

| 5. Integration and Interface | | |
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| Notices to Proceed / Preliminary Notice | Notices to Proceed (NTP) <ol style="list-style-type: none"> 1. Authority may issue NTP 1 to authorize work on Segment 1 (Madera to Poplar Avenue). 2. Authority may issue NTP 2 to authorize work on Segment 2 (extension to Bakersfield). 3. Authority may issue NTP 3 to authorize work on Segment 3 (extension to Merced). 4. Authority may issue additional NTPs to authorize work on additional Segments defined by Authority. <p>Contractor will not proceed with any work with respect to a Segment prior to the issuance of an NTP for the Segment.</p> Preliminary Notice <p>Before Authority issues a NTP other than NTP 1, it will issue to Contractor a preliminary notice indicating its intent to issue the NTP. Upon receipt of the preliminary notice, Contractor will submit for Authority's approval Contractor's determination of the applicable escalated payment amounts.</p> | GP § 5 [Signature Document § 2] |
| Prerequisites for Commencement of Work under the Notice to Proceed | <p>Contractor may not commence any work under an NTP with respect to a Segment until the following conditions are satisfied with respect to the Segment and Contractor has provided notice to Authority that the conditions are satisfied:</p> <ol style="list-style-type: none"> 1. All Governmental Approvals necessary for the work have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of the work have been performed; 2. All required documents related to insurance policies required to be delivered to Authority under the Contract have been submitted to Authority and remain in full force and effect; 3. Contractor has provided to Authority an irrevocable | GP § 5.7 |

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| | <p>letter of credit or performance bond to secure Contractor's obligations under the Contract (see Section 8 below); and</p> <p>4. Contractor has provided to Authority an executed Guaranty (see Section 8 below).</p> | |
| Segment Acceptance | <p>Segment Acceptance includes Provisional Acceptance of Plain Line (Segment 1 only), Provisional Acceptance of Segment Integrated Static Tests, Conditional Acceptance of Segment Integrated Dynamic Tests and Final Acceptance of each Segment. Contractor is required to achieve Segment Acceptance as follows:</p> <ol style="list-style-type: none"> 1. Provisional Acceptance of Plain Line of Segment 1 by June 30, 2022; 2. Provisional Acceptance of Segment Integrated Static Tests of Segment 1 (ready for Rolling Stock testing) by [December 31, 2025]; 3. Final Acceptance of Segment 1 by [December 31, 2028]; 4. Final Acceptance of Segment 2 within 36 months after NTP 2 for Segment 2; 5. Final Acceptance of Segment 3 within 36 months after NTP 3 for Segment 3; and 6. Final Acceptance of any additional Segments as agreed to by the parties. | <p>GP § 10 Signature Document, Attachment A § 4</p> |
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| Change Orders | <p>An Authority-signed Change Order or directive letter is required for any time extension or price increase. Authority may at any time issue a unilateral directive letter and Contractor will proceed immediately with the work as directed in the directive letter, pending the execution of a formal Change Order (or, if the directive letter states that the work is within the original scope of the work, Contractor will proceed with the work as directed but will have the right pursuant to the disputes provision to request that Authority issue a Change Order with respect to the directive letter).</p> <p>Contractor may request a Change Order for a time extension or price increase only "but for" those circumstances that the Contract expressly contemplates that a Change Order is permitted.</p> <p>Except as provided below, Change Orders are limited to the following circumstances (and no others):</p> <ol style="list-style-type: none"> 1. Authority-directed changes; 2. Authority Delay (unavoidable delays arising from Authority's failure to comply with certain obligations); | <p>GP § 16</p> |

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| | <p>3. Certain changes in applicable laws (described under a separate entry below);</p> <p>4. Force Majeure Events, which are limited to the following, provided the event is out of Contractor's control and is wholly responsible for Contractor's failure to perform: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the work; (b) embargoes instituted by a governmental Person; (c) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the work; (d) nuclear explosion, radioactive or chemical contamination of the site, unless the source of the explosion, contamination, radiation or contaminated material is brought to or near the site by Contractor; (e) fire, explosion, earthquake, floods and landslides caused by natural events, or tidal wave; (f) terrorism; or (g) any governor-declared emergency within the limits of the site;</p> <p>5. Differing Site Conditions;</p> <p>6. Suspensions of work for convenience by Authority;</p> <p>7. Issuance of a temporary restraining order or other form of injunction that prohibits prosecution of a material portion of the work; and</p> <p>8. Authority issues an NTP other than NTP 1 and there is no Segment in the Construction Period prior to Final Acceptance (see below).</p> <p>Change Orders that extend the deadline for Provisional Acceptance of Plain Line of Segment 1 are limited to Authority-directed changes, Authority Delays and suspensions for convenience (and no other events).</p> <p>Change Orders can never extend the incentive deadline to achieve Provisional Acceptance of Plain Line of Segment 1.</p> <p>Authority is entitled to a Change Order for Force Majeure Events pursuant to the same conditions applicable to Contractor above, upon written notice to Contractor.</p> | |
| Relief for Changes in Applicable Laws | <p>Contractor will be entitled to a time extension and price increase or Authority will be entitled to a time decrease or price decrease, as applicable, based on:</p> <p>A change to applicable laws, except for changes addressed under clause 2 below, after the date that is 30 days prior to the proposal due date, provided one of the following conditions is met:</p> <p>(a) the change requires physical rework to a Segment that has already achieved Final Acceptance; or</p> <p>(b) the change is both (i) a Discriminatory Change (a</p> | GP § 16.17 |

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| | <p>change that is principally directed at and the effect of which is principally borne by Contractor or operators of high-speed rail in California, except where the change (x) is in response to any failure to perform or culpable act / omission of Contractor, (y) is a directive by the U.S. Department of Homeland Security or comparable state agency, unless it is directed solely at or solely affects the work and requires specific changes to the design or manufacturing procedures in order to comply or (z) is expressly contemplated under the Contract) and (ii) affects the physical work.</p> | |
| Limitation on Contract Amount Increases | <p>Any increase in the Contract Amount will exclude:</p> <ol style="list-style-type: none"> 1. Costs caused by breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity (Contractor, entities forming Contractor (e.g., joint venture members), subcontractors, their employees, agents and officers and all other Persons for whom Contractor may be legally or contractually responsible). 2. Costs that could reasonably have been avoided by Contractor, including by resequencing, reallocating, or redeploying its forces to other portions of the work or to other activities unrelated to the work (including any additional costs reasonably incurred in connection with such reallocation or redeployment). 3. Costs for (i) any rejected work that failed to meet the requirements of the Contract and (ii) any necessary remedial work. 4. Costs caused, in whole or in part, by any concurrent event(s) for which Contractor is not entitled to an increase in the Contract Amount. 5. Costs resulting from Contractor's failure to interface with an Interfacing Party. | GP § 16.6.2 |
| Limitation on Time Extensions | <p>Any extension of a completion deadline will exclude any delay to the extent that it:</p> <ol style="list-style-type: none"> 1. Did not impact the critical path affecting the Segment Acceptance deadline. 2. Was due to the breach of contract, fault or negligence, or act or failure to act of any Contractor-Related Entity. 3. Could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the work (provided that if the request for extension involves an Authority Delay, Authority shall have agreed, if requested to do so, to reimburse Contractor for its costs incurred, if any, in | GP § 16.6.3 |

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| | <p>resequencing, reallocating, or redeploying its forces).</p> <ol style="list-style-type: none"> Was concurrent with any other delay for which Contractor is not entitled to a time extension. Did not affect a Construction Period. Resulted from Contractor's failure to interface with an Interfacing Party. <p>Contractor will be required to demonstrate to Authority's satisfaction that the change in the work or other event or situation which is the subject of a Change Order seeking a time extension has caused or will result in an identifiable and measurable delay of the work which has impacted the critical path.</p> | |
| Delay Damages and Disruption Damages | <p>Contractor is entitled to reimbursement of delay damages only to the extent any of the following events entitle Contractor to a time extension: (a) a written order from Authority designated to be a directive letter; (b) Authority's suspension of the work for convenience; or (c) Authority Delay.</p> <p>Delay damages are limited to additional field office and jobsite overhead costs, including onsite storage costs, incurred by Contractor directly attributable to the delay resulting in a time extension. Home office overhead is excluded from delay damages and not compensable under the Contract. Before Contractor may obtain any price increase to compensate for any delay damages, Contractor must demonstrate to Authority's satisfaction that:</p> <ol style="list-style-type: none"> The Baseline Program (project schedule) in fact sets forth a reasonable method for completion of the work. The change in the work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable delay of the work and impact the critical path. The delay damage was not due to any breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the work or other activities unrelated to the work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment). The delay for which compensation is sought is not concurrent with any other delay for which Contractor is not entitled to delay damages. Contractor has suffered or will suffer actual costs due to such delay, each of which costs must be documented | GP § 16.6.4 |

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| | <p>in a manner satisfactory to Authority.</p> <p>Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable under the Contract. Disruption damages include costs of (i) rearranging Contractor's work plan not associated with a time extension and (ii) loss of efficiency, momentum or productivity.</p> | |
| Construction Mobilization | <p>If Authority issues an NTP other than NTP 1 and there is no other Segment in the Construction Period prior to Final Acceptance, Contractor shall be entitled to an additional mobilization payment.</p> | |
| Performance Security | <p>Construction Security</p> <p>Contractor will provide and maintain until five years after Revenue Service of each Segment, an irrevocable letter of credit or a performance bond. From the date the letter of credit or performance bond is issued until Provisional Acceptance of the Segment, the amount of the letter of credit or performance bond will be [25]% of the Milestone Contract Amount of the Segment. From the date of Provisional Acceptance until Final Acceptance of the Segment, the amount of the letter of credit or performance bond will be [50]% of the Milestone Contract Amount of the Segment. From the date of Final Acceptance of a Segment until 5 years after Revenue Service of the Segment, the amount of the letter of credit or performance bond will be [20]% of the Milestone Contract Amount.</p> <p>Maintenance Security</p> <p>During the Service Period, Contractor will provide and maintain a performance bond or irrevocable letter of credit. The amount of the bond or letter of credit will be calculated according to a formula that increases or decreases the bond or letter of credit amount to reflect the anticipated maintenance activities.</p> <p>General Requirements</p> <p>Contractor may provide multiple letter(s) of credit or bond(s) including for shorter durations on condition of providing the required amounts of security during the specified time periods and providing replacement letter(s) of credit or bond(s) prior to expiration.</p> | <p>GP § 7</p> <p>Signature Document, Attachments E, F, and H</p> |
| Payment Bond | <p>A Payment Bond will be required in the amount of 100% of each Milestone Contract Amount.</p> | <p>[Signature Document, Attachment G]</p> |
| Guaranty | <p>The ultimate parent company of Contractor (or if Contractor consists of a consortium, partnership or joint venture, the</p> | <p>GP § 7.6</p> <p>Signature</p> |

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| | <p>ultimate parent company of each member, partner or joint venturer) will be required to provide a guaranty for the Project. The guaranty will assure performance of all obligations of Contractor under the Contract. Guarantor must agree to be sued in California.</p> <p>The guaranties must be maintained in full force and effect from NTP 1 to five years after Revenue Service of the last Segment.</p> | Document, Attachment I |
| Indemnities | <p>Contractor will defend, indemnify and hold harmless the State, the Authority, the Federal Railroad Administration, and their respective officers, directors, employees, agents, servants, representatives, consultants, successors, assigns and subsidiaries from and against any third party claims, losses, liabilities (including without limitation environmental liabilities), penalties, fines, demands, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs and expenses incidental thereto (including costs of defense and attorney's fees) arising out of or relating to or resulting from:</p> <ol style="list-style-type: none"> 1. Any errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the design documents furnished by Contractor, regardless of whether such errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects were also included in documents provided by Authority, if any; 2. The breach or alleged breach of or failure or alleged failure to perform the Contract or any subcontract thereunder by any Contractor-Related Entity; 3. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable law; 4. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault, of any Contractor-Related Entity; 5. The (a) injury, or death of any person, including any of Contractor's employees, agents or subcontractors, or (b) damage to or loss (including loss of use) of any private party, including property of the Parties hereto, arising out of or in any degree directly or indirectly caused by or resulting from supplies, material, Deliverables, products or equipment supplied by, or from activities of, or work performed by any Contractor-Related Entity; 6. Any service or design, or product called for in any service or design, provided by any Contractor-Related Entity that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility | GP § 29 |

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| | <p>model, industrial design, mask work, trade secret or other proprietary right of a third party;</p> <p>7. Any and all claims by any governmental Person claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Contractor-Related Entity with respect to any payment for the work made to or earned by such Contractor-Related Entity under the Contract;</p> <p>8. Any and all stop notices and/or liens filed in connection with the work, including all expenses and attorney's fees incurred in discharging any stop notice or lien, provided that Authority is not in default in payment owing to Contractor with respect to such work;</p> <p>9. Any release or threatened release of hazardous materials brought onto the site by any Contractor-Related Entity or where the removal or handling of hazardous materials involved negligence, willful misconduct, or breach of Contract by any Contractor-Related Entity; or</p> <p>10. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by any Contractor-Related Entity interfering with or hindering the progress or completion of work being performed by other contractors or failure of any Contractor-Related Entity to cooperate reasonably with other Contractors.</p> | |
| Insurance | <p><i>[Under development.]</i></p> <p>Contractor is required to provide the following insurance during the Construction Periods of the Contract:</p> <ol style="list-style-type: none"> 1. Automobile Liability Insurance. The minimum combined single limit for primary coverage is [\$1,000,000] per occurrence. 2. Workers' Compensation and Employer's Liability Insurance at statutory limits, including not less than [\$1,000,000] for each accident. 3. Commercial General Liability Insurance. Annual limit of not less than [\$2,000,000] per occurrence, [\$4,000,000] aggregate and [\$4,000,000] products and completed operations aggregate. 4. Excess/Umbrella Liability Insurance of not less than [\$200,000,000] per occurrence and in the aggregate in excess of the above underlying coverages. 5. Professional Liability Insurance with limits of not less than [\$50,000,000] per claim and in the aggregate. 6. Railroad protective liability coverage, with a limit of not less than [\$25,000,000] per occurrence and | GP § 37 |

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| | [\$25,000,000] in the aggregate. Contractor is required to provide the following insurance during the Service Period of the Contract: <i>[Under development]</i> | |
| Risk of Loss | Contractor is responsible for risk of loss for all Deliverables until delivery to and acceptance by Authority. Contractor is responsible for the risk of loss of each Segment at all times. | GP § 43.1 |
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| Breaches and Cure Periods | Contractor will be in breach under the Contract upon occurrence of any one or more of the following: <ol style="list-style-type: none"> 1. Contractor fails to deliver a Segment within the time specified in the Contract. 2. Contractor fails to make progress, so as to endanger timely performance under the Contract. 3. Contractor fails or refuses to complete the work within the time specified in the Contract. 4. Contractor fails, without cause, to make prompt payments to subcontractors or to make prompt payment for equipment, materials, and/or labor. 5. Contractor noncompliance with applicable laws or the proper instruction of Authority. 6. Contractor fails to make any payments due to Authority under the Contract. 7. Contractor fails to provide and maintain the payment bond as required under the Contract. 8. Contractor fails to submit the required performance bond, irrevocable letter(s) of credit and guaranties required under the Contract and keep such performance bond, letter(s) of credit and guaranties in full force and effect as required under the Contract. 9. Contractor fails to submit and maintain the insurance required under the Contract. 10. Contractor transfers any interest in the Contract without the approval of Authority. 11. Contractor fails to comply with the terms of a directive letter. 12. Contractor fails to comply with a suspension of work notice by Authority. 13. Contractor or any Guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debt, or makes an assignment for the benefit of creditors. | GP § 17 |

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| | <ol style="list-style-type: none"> 14. Contractor or any Guarantor dissolves or liquidates. 15. Contractor or any Guarantor commences a voluntary case seeking liquidation, reorganization or other relief related to Contractor or Guarantor or their debts under any U.S. or foreign bankruptcy, insolvency or other similar law. 16. An involuntary case is commenced against Contractor or Guarantor seeking liquidation, reorganization, dissolution, winding up or other relief related to Contractor or Guarantor or their debts under any U.S. or foreign bankruptcy, insolvency or other similar law and have not been dismissed or stayed within 60 days. 17. Contractor or Guarantor seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets. 18. Any material representation or warranty made by Contractor or any Guarantor in the Contract or in any certificate, schedule, instrument or other document delivered pursuant to the Contract is false or materially misleading when made. 19. Any Guarantor revokes or attempts to revoke its obligations under its Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect. 20. Failure to commence emergency corrective work immediately and non-emergency corrective work within 24 hours after becoming aware of the need for the corrective work, and to complete the corrective work in accordance with the Maintenance Plan. 21. Contractor fails to comply with any other provision of the Contract. <p>Authority will provide Contractor 30-day written notice and opportunity to cure breaches (1) through (10) and (21) above related to Construction Period work before declaring an event of default. If a breach is curable, but by its nature cannot be cured within the 30-day period, as determined by Authority, Authority will not declare an event of default provided that Contractor commences cure within such 30-day period and thereafter diligently prosecutes such cure to completion. Unless approved in writing by Authority in its sole discretion, in no event will such cure period exceed 90 days in total. Authority will provide Contractor five-day written notice and opportunity to cure the breach listed in (11) above before declaring an event of default. There will be no cure period with respect to breaches (12) through (20) above. In addition, notwithstanding the above, there will be no cure period to the extent the breach relates to</p> | |
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| | Service Period work. | |
| Authority Remedies | <p>Authority's remedies include, but are not limited to:</p> <ol style="list-style-type: none"> 1. Authority may reject any non-conforming work or require Contractor to remedy non-conforming work at Contractor's cost and without a time extension. 2. Authority may remedy any default and charge the cost to Contractor. 3. If Authority determines that any Project Asset is unfit for safe and efficient operation, Authority can require Contractor to propose a plan, subject to Authority's approval, to remedy the problem (e.g., through remanufacturing, replacement of systems or provision of a new Project Asset), and implement that plan at no additional cost to Authority. 4. If, over 30 consecutive days or 100 cumulative days of operations, a particular Project Asset does not meet the Contractor's RAMS Commitment in its proposal, Authority reserves the right to require Contractor to provide a new Project Asset to replace the element that could not meet the RAMS Commitment, at no additional cost to Authority. 5. If cumulative defects or failures of any kind in substantially identical components or systems within the Project serving substantially similar functions exceed 10%, Contractor will develop and implement a Modification Program, subject to Authority's approval, that addresses the issue in all affected components or systems in all Project Assets, all at no additional cost to Authority. 6. If Contractor fails to maintain the required insurance, Authority may procure or renew such insurance and pay any and all premiums in connection therewith, with Contractor being responsible to pay Authority for such expenses or Authority offsetting those expenses from funds otherwise due Contractor. 7. If there is a material default, Authority may terminate the Contract in whole or in part. <p>The rights and remedies of Authority provided for under the Contract are in addition to any other rights and remedies provided by law.</p> | GP §§ 9.7, 18, 37.2.10 |
| Termination for Convenience | <p>Authority may, in its sole discretion and upon 15-day written notice to Contractor, terminate the Contract, in whole or in part, for the convenience of Authority.</p> <p>Upon Contractor's compliance with certain requirements, Authority will pay Contractor termination expenses in the</p> | GP § 19 |

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| | <p>event of a termination for convenience, which will be, if appropriate and reasonable, an amount equal to the total of (without duplication):</p> <ol style="list-style-type: none"> 1. All amounts due, and not previously paid to Contractor, for work authorized and completed in accordance with the Contract prior to the date of termination, provided that: <ul style="list-style-type: none"> ○ For any Segment for which Authority has issued an NTP but Contractor has not achieved Final Acceptance, Contractor will be entitled to Contractor's actual costs incurred towards reaching the Milestones for that Work, plus a [15]% markup, minus any milestone payments previously paid for that Work, provided that such amount must not exceed the sum of all milestone payments for that Work; ○ For any Service Payment due for the month of termination, Authority will pay for the month at issue reduced pro rata to reflect the portion of the month terminated; plus 2. Contractor's cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract (settlement costs include accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data); plus 3. Contractor's expenses incurred for demobilization; plus 4. 10% of item 2 and item 3 for overhead and profit; plus 5. Contractor's reasonable expenses incurred in fulfilling its obligations under the Contract in respect of termination; less 6. The amount of any claim which Authority may have against any Contractor-Related Entity in connection with the Contract; less 7. Amounts that Authority reasonably deems advisable to retain to cover any existing or threatened claims, liens and stop notices relating to the Project, including claims by third parties, less 8. The costs of repairing any non-conforming work; less 9. Any Performance-Based Payment Reductions assessed by Authority but not yet deducted from a payment to Contractor; less 10. Any amounts due or payable by Contractor to Authority, including any liquidated damages; less 11. Any costs saved by Contractor as a result of the | |
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| | <p>termination.</p> <p>The termination expenses must not exceed the total Contract Amount as reduced by (i) the amount of payments otherwise made by Authority to Contractor prior to the date of termination and (ii) in the case of a partial termination, the portion of the Contract Amount attributable to the work not terminated.</p> <p>Authority may terminate the Contract prior to issuance of any NTP without incurring any cost or liability to Contractor, including termination expenses.</p> | |
| Liquidated Damages – Delay in Acceptances | <p>Liquidated damages will be assessed for failure to achieve Provisional Acceptance of Plain Line of Segment 1 by the applicable deadline, in the amount of:</p> <ol style="list-style-type: none"> 1. \$[●]/day, for up to [90] days of delay; 2. \$[●]/day, for between [91] and [180] days of delay; and 3. \$[●]/day, for beyond [180] days of delay. <p>Liquidated damages will be assessed for failure to achieve Provisional Acceptance of Segment Integrated Static Tests of Segment 1 by the applicable deadline, in the amount of:</p> <ol style="list-style-type: none"> 1. \$[●]/day, for up to [90] days of delay; 2. \$[●]/day, for between [91] and [180] days of delay; and 3. \$[●]/day, for beyond [180] days of delay. <p>Liquidated damages will be assessed for failure to achieve Final Acceptance of any Segment by the applicable deadline in the amount of:</p> <ol style="list-style-type: none"> 1. \$[●]/day, for up to [90] days of delay; 2. \$[●]/day, for between [91] and [180] days of delay; and 3. \$[●]/day, for beyond [180] days of delay. <p>Aggregate liquidated damages for failure to achieve Segment Acceptance are capped at 10% of the escalated Milestone Contract Amount for the Segment. The liquidated damages are not exclusive, except that Authority will not have the right to recover any damages it incurs due to Contractor's delay that are in excess of the amount of the liquidated damages.</p> <p>The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p> | GP § 12.1 |
| Incentives | <p>Contractor will be entitled to an incentive payment in the amount of \$[●] if Contractor achieves Provisional Acceptance of Plain Line of Segment 1 by June 30, 2022. The incentive deadline is not subject to extension for any reason whatsoever.</p> | |
| Liquidated Damages – Replacement of | <p>Liquidated damages will be assessed for Contractor's removal of the [project manager, the lead design engineer</p> | GP §§ 12.2, 21 |

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| Key Personnel | <p>or the testing and commissioning engineer] without Authority's approval of the replacement, in the following amount:</p> <p><i>[Under development]</i></p> <p>The liquidated damage amounts set forth above are subject to escalation on an annual basis.</p> | |
| Suspension | <p>Authority may order Contractor to suspend all or any part of the work for the period of time that Authority deems appropriate.</p> <ol style="list-style-type: none"> 1. Suspension for cause. No price/time adjustment will be made for suspensions: <ul style="list-style-type: none"> - required to correct conditions unsafe for Project personnel or the general public; - required to comply with any Governmental Approval or applicable law; - required to carry out an order of Authority duly given; or - required to comply in all respects with the Contract. 2. Suspension for convenience. Contractor will be entitled to a price/time adjustment for suspensions for convenience. In the event of a suspension for convenience for more than 180 consecutive days, Contractor will have the right to consider the Contract to have been terminated for convenience by Authority. | GP § 25 |
| Settlement of Disputes | <p>The parties will use informal dispute resolution procedures, including partnering, to attempt to resolve disputes without resorting to formal legal processes.</p> <p>Either party may refer the dispute to binding arbitration if the dispute is not resolved through the informal dispute resolution procedure.</p> <p>For a dispute that is appealed to binding arbitration, the parties will seek to appoint a panel of three arbitrators. If the parties cannot agree on a panel, then each party will appoint one arbitrator, who will then select a third arbitrator who will serve as the chairperson of the arbitral tribunal. The decision of the arbitrators will be binding on the parties and any judgment on the award may be entered in the Superior Court for Sacramento County.</p> <p>In the event that substantially similar disputes have arisen between the Authority and another Authority contractor, the Authority may consolidate pending arbitrations or join other such contractors in an arbitration with Contractor under certain circumstances.</p> | GP § 32 |

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| Intellectual Property Rights Granted to Authority | <p>Intellectual Property Definitions</p> <p>Intellectual Property means all rights, title and interest in (i) patents, (ii) inventions (whether patentable or not); (iii) trademarks, service marks trade names, trade dress, logos and fictitious business names; (iv) design rights; (v) utility models; (vi) copyright (including software); (vii) database rights; (viii) know-how (including trade secrets and confidential business information which is contained on any media); and in each case for such rights, whether registered or unregistered, and including (A) any pending applications or rights to apply for registrations of any of these rights, and (B) any similar or analogous rights to any of these rights, whether arising or granted under the laws of the United States of America or of any other country, territory or jurisdiction.</p> <p>Background Inventions means all Intellectual Property owned by any Contractor-Related Entity (i) prior to Authority's issuance of the RFP and (ii) after issuance of the RFP and not for the purposes of the Contract or Project.</p> <p>Third Party IP means all Intellectual Property owned by any Person other than a Contractor-Related Entity or Authority.</p> <p>Subject Inventions means all Intellectual Property and/or work created, authored and/or invented by any Contractor-Related Entity following Authority's issuance of the RFP and for the purposes of the Contract or the Project.</p> <p>Authority Rights to use IP</p> <p>At no additional cost to Authority, Contractor grants, pays for and delivers to Authority an irrevocable, perpetual, fully paid-up right and non-exclusive license to use, exploit, manufacture, have manufactured, distribute, import, reproduce, perform, prepare derivative works, adapt and display the Background Inventions, Subject Inventions and Third Party IP solely in connection with the "Allowable Uses," which are limited to:</p> <ul style="list-style-type: none"> (a) the use, maintenance or repair of each Segment that has reached Final Acceptance, including the Maintenance of Way Facilities; (b) the use, maintenance, repair, construction or manufacture of any Segment in the Construction Period, including Maintenance of Way Facilities; and (c) equipment acquisitions by Authority related to clauses (a) and (b) above. <p>Delivery of IP into Escrow</p> <p>Contractor will identify all Background Inventions, Subject Inventions and Third Party IP in connection with the Allowable Uses and deliver the same into escrow, under an</p> | <p>GP §§ 1, 28</p> |
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| | <p>Escrow Agreement. Contractor is responsible to pay for and maintain the escrow for the duration of the Contract. Execution of the Escrow Agreement and delivery of the Background Inventions, Subject Inventions and Third Party IP into escrow is a condition to Final Acceptance.</p> <p>Subcontractor IP Obligations</p> <p>Contractor will cause all subcontractors to:</p> <ol style="list-style-type: none"> 1. Identify and disclose Background Inventions, Third Party IP and Subject Inventions owned by the subcontractor in connection with the Allowable Uses; 2. Secure and deliver written licenses to grant an irrevocable perpetual, fully paid-up right and all license to use, exploit, manufacture, distribute, copy, adapt and display the Background Inventions, Third Party IP and Subject Inventions owned by the subcontractor in connection with the Allowable Uses; and 3. Submit and deliver the escrow materials. <p>Release of IP from Escrow</p> <p>The Background Inventions, Subject Inventions and Third Party IP (including escrowed IP from subcontractors) are subject to release from escrow due to Contractor's material default of the Contract.</p> | |
| Assignment and Delegation | <p>Contractor must not delegate its responsibility under the Contract and must not assign the Contract, any part of the Contract or any monies due or to become due under the Contract without the prior written consent of Authority. Authority will not unreasonably prohibit Contractor from assigning its right to payment, provided that Contractor remains responsible for all its obligations hereunder.</p> <p>Authority may assign with prior notice to Contractor, but without the need for Contractor's consent, all or any portion of the Contract (including Authority's rights under required insurance policies, letter(s) of credit, guaranties and Change Orders) to any entity, including (i) any entity that is or will be the Trainset operator and its successors and assigns or (ii) any entity succeeding to all or substantially all of Authority's powers and authority of Authority respecting the high-speed rail system or its operations.</p> | GP § 33 |
| Consequential Damages | <p>Contractor and Authority will not be liable for punitive damages or special, indirect (e.g., loss of profit or loss of revenues) or incidental damages (arising out of contract, tort (including negligence) or any other theory of liability. However, this limitation on liability will not apply to the following:</p> <ul style="list-style-type: none"> • Losses (including defense costs) arising out of the | GP § 43.3 |

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| | <p>work and covered by the proceeds of insurance carried by or insuring Contractor;</p> <ul style="list-style-type: none"> • Losses (including defense costs) of amounts which would have been reimbursed but for Contractor's failure to carry insurance required under the Contract; • Losses (including defense costs) arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence; • Contractor or Authority's indemnities under the Contract; • Performance-Based Payment Reductions assessed by Authority; • Contractor obligations to pay liquidated damages in accordance with the Contract; • Amounts owing under express provisions of the Contract; and • Losses arising out of releases of hazardous materials by Contractor or Authority. | |
| Limitation of Contractor's Liability | <p>Contractor's liability to Authority will be limited to an amount equal to 100% of the Contract Amount. However, excluded from this cap will be:</p> <ul style="list-style-type: none"> • Losses (including defense costs) arising out of the work and covered by the proceeds of insurance carried by or insuring Contractor; • Losses (including defense costs) of amounts which would have been reimbursed but for Contractor's failure to carry insurance required under the Contract; • Losses (including defense costs) covered by Contractor's indemnification obligations to the Authority; • Performance-Based Payment Reductions assessed by Authority; • Any liquidated damages; • Any type of cost arising from fraud, gross negligence, intentional misconduct or criminal acts of any Contractor-Related Entity; • All costs reasonably incurred by Authority (minus the unpaid portion of the Contract Amount) in completing the work or having the work completed by another Person; and • All costs reasonably incurred by Authority or any party acting on Authority's behalf in correcting the | GP § 43.4 |

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| | <p>work or having the work corrected by another Person.</p> <p>The limitation of Contractor's liability above will not affect Contractor's obligation to provide insurance.</p> | |
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