

EXHIBIT A: SCOPE OF WORK

1 BACKGROUND AND PURPOSE

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

AUTHORITY	CONTRACTOR
Contract Manager: David Kwalwasser	Contract Manager:
Address: 1401 Fulton Street, Suite 200 Fresno, CA 93721	Address:
Phone: 559-445-6781	Phone:
Email: David.Kwalwasser@hsr.ca.gov	Email:

The Contract Managers may be changed without amendment (as specified in Exhibit D, Section 1).

2 SCOPE OF WORK

To facilitate design and construction of the System, the Authority requires ROW Engineering and Survey Support Services for the Initial Operating Segment as amended by any future adopted Business Plan.

The following is a general description of the Project:

1. The Project is located within the counties of San Benito, Santa Clara, and Merced and is approximately 24 miles in length. The approximate mileage is subject to change due to alignment selection.
2. The western limit is approximately one-half mile south of the intersection of SR 152 and Lovers Lane and the eastern limit is approximately two miles west of Interstate 5 and one-half mile

north of the intersection of McCabe Road and Tres Cerritos Boulevard. The Project is bounded by these limits along the alignment. Please be advised that the boundaries of the Project may be modified due to environmental work.

As the Authority's program evolves, other geographic locations may be added later at the Authority's direction by Task Order.

2.1 Task Orders/Work Plans

This description of services outlines the services, which the ROW Engineering and Survey Support Services Consultant must be prepared to provide if identified in a Task Order issued by the Authority.

The selected Consultant shall provide a team of qualified personnel to provide ROW Engineering and Survey Support Services. This team shall be responsible for performing or overseeing all of the duties necessary for the preparation of documents and performing surveying services in support of the Authority's ROW acquisition program.

Consultant shall appoint a Project Manager, who is a Licensed Professional Land Surveyor (PLS) or Licensed Professional Engineer (PE) authorized to practice Land Surveying by the State of California. The Consultant's Project Manager will be responsible for all work to be performed by the Consultant(s) and/or Subconsultants for the Authority.

Any and all work submitted by Consultant shall be reviewed by the Project Manager or Quality Manager, and be complete and final in strict accordance with the California Board of Professional Engineers and Land Surveyors Rule 476, Subsection (e), and signed and sealed in accordance with section 8761 of the Professional Land Surveyors Act and in accordance with the Authority's Quality Policy.

All data, maps, and documents produced by Consultant shall be subject to approval and acceptance by Authority. In the event of non-acceptance due to errors or omissions, Consultant shall have seven calendar days to make corrections and return maps and documents to the Authority. Final acceptance will occur only after the work product has been determined to conform to the contract scope of work, quality standards, and Task Order requirements.

Task 1 – Administration and Project Management

Consultant shall manage a team capable of undertaking work assignments identified in the scope of work for the specific Task Order(s). All Task Order(s) performed by the team shall be directed by Consultant and coordinated with Authority and Rail Delivery Partner (RDP) staff.

Consultant's Project Manager is required to coordinate as needed with the DB to mitigate against any changes in construction schedule or ROW acquisition schedule. Each party shall proactively work together to reduce overall schedule risk when changes occur.

a. Meetings, Weekly and Monthly Progress Reports – Subject to the specific and individual Task Order(s), Consultant shall prepare weekly progress reports that include project schedules, progress to date identified by task, description of the progress, including identification of problems, proposed solutions and revised completion dates if necessary and earned value reporting. The weekly progress reports shall also indicate, in percentage form for each task, the amount of work completed, the budget expended to date, and anticipated cost overruns. Each weekly progress report is due to Authority within five (5) Business Days after the end of the reporting period. Monthly progress reports should summarize the weekly reports and are submitted with the monthly invoice.

Consultant's Project Manager shall manage the schedule for the Task Order(s) with monthly schedule updates submitted with the monthly progress reports.

Consultant's Project Manager shall meet monthly with Authority or as requested by Authority for progress update, resolution discussion, direction, and planning purposes.

b. Information and Project Tracking Systems – Subject to specific and individual Task Order(s), Consultant shall update Authority's database with progress data on a schedule and format to be determined by Authority. Consultant shall upload PDF files to Authority's document control system for the formal submittal of deliverables as outlined in the task below.

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

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

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

k setting.

The Safety Plan and the Consultant's personnel shall also meet the following standards and practices required of all ROW Consultants:

1. ROW Consultants, Subconsultants, and Contractors shall implement Safety & Security Programs, applicable to their scope of work / services, which meet or exceed all counterpart CA High Speed Rail Authority (Authority) Safety & Security policies, procedures, and specifications.
2. ROW Consultant, Subconsultant, and Contractor Safety & Security Programs shall meet or exceed all requirements set forth in 8 California Code of Regulations (CCR) applicable to the scope of work / services being provided at / on Authority properties by ROW Consultants, Subconsultants, and Contractors.
3. ROW Consultants shall be provided with the Authority's 'Field Safety & Security Plan' at the time of contracting. ROW Consultants shall utilize this resource for training of their staff, and the staff of all Subconsultants and/or Contractors retained for provision of services at Authority

properties. Staff training shall be conducted prior to personnel being authorized by the ROW Consultant to access Authority properties.

4. Prior to accessing any Authority-owned property, notification shall be made by the ROW Consultant to the Authority's ROW Coordinator, AND the designated Design and Construction Manager with oversight responsibility for the subject property, at least three (3) business days prior to the proposed site access. Notification shall be made in writing (via email), or verbally as necessary.
 5. ROW Consultants, Subconsultants and Contractors shall not access any Authority property wherein active construction work activities are occurring, unless authorization to do so has been provided by the Authority's ROW Coordinator and/or Design and Construction Manager.
 6. ROW Consultants, Subconsultants, and Contractors shall utilize all protective equipment which may be necessary to safeguard personnel from hazards and/or risks which are present on the property being accessed. Determination of required personal protective equipment shall be made through hazard assessment of the property PRIOR to, and upon initial site access.
 7. ROW Consultants, Subconsultants, and Contractors shall establish and implement an Emergency Response Plan (ERP) specific to their scope of work at Authority properties. At a minimum, the ERP must include procedures for management of those emergency events having potential to arise at Authority properties, contact details for ERP Coordinator(s) and emergency response services providers, and a protocol for coordination with Authority representatives both during and following emergency events.
 8. At all times, ROW Consultants, Subconsultants, and Contractors shall conduct their scope of work / services at Authority properties in a manner which minimizes the level of risk exposure to their personnel, the Authority, and the public to the extent possible.
- e. Provide a Final Contract and Task Order Report(s) – Subject to specific and individual Task Order(s), the final report for this Agreement shall summarize the Work that took place. The format and content shall be specified by Authority. A draft final report must be delivered to Authority from Consultant at least 90 days before the termination date of the contract. Once the Agreement has been reached on the draft final report, Consultant shall submit the final report accompanied by the final invoice for all remaining Task Orders prior to the Agreement expiration date.
- f. Participate in a Final Meeting – Consultant shall meet with Authority to discuss the overall contract and its closeout. The final meeting must be completed during the term of the contract. Authority will determine the appropriate meeting participants. Consultant shall prepare written documentation of the meeting agreements, and a schedule for completing closeout activities.

g. Deliverables

1. Quality Management Plan;
2. Safety Plan;
3. Monthly Schedule; and,
4. Monthly Progress Report.

Task 2 – Field Surveying and Research

- a. Land Net;

- b. Research (Preliminary Title Reports (PTR), Assessor Maps, Record Maps, Unrecorded Maps, Public Records);
- c. Establish all property and easement boundaries within and overlapping the project area;
- d. Perform site reconnaissance and monument recovery;
- e. Establish and re-establish all monumentation required by State law and local regulations;
- f. Flagging;
- g. Staking;
- h. Other services as requested by Authority; and,
- i. Deliverables
 - 1. PTRs (PDF files uploaded to Authority's document control system); and,
 - 2. Research (in electronic format).

Task 3 – ROW Engineering and Mapping

- a. Boundary, Monumentation, and Survey Control Maps showing all parcels and easement boundaries and their relationship to the land net;
- b. Appraisal Maps – per Authority standards;
- c. Resolution of Necessity (RON) Exhibits and Legal Descriptions – per Authority standards;
- d. Legal Descriptions and Plats – per Authority standards;
- e. Record of Survey – per Land Surveyors Act, Subdivision Map Act and County standards;
- f. ROW Record Maps – per Authority standards;
- g. Exhibits for State and Local Agency Agreements – per Authority, State and local agency standards;
- h. Other Services as requested by Authority; and,
- i. Deliverables:
 - 1. Appraisal maps, RON exhibits, RON legal descriptions, agreement exhibits and legal descriptions (PDF files uploaded to Authority's document control system);
 - 2. Record of Survey, Boundary Maps, etc. (in electronic format (PDF, DGN & GIS) or as specified in the Task Order);
 - i. File a Record of Survey to comply with Land Surveyors Act and County standards;
 - ii. Mapping shall be done to current State/County standards for a Record of Survey as described in the Subdivision Map Act and relative County standards/specifications; and,
 - iii. The preparation, filing and associated fees will be the responsibility of Consultant.

Task 4 – Railroad Support Services

- a. Railroad Exhibits and Legal Descriptions – per Authority, UPRR and BNSF standards, for agreements for construction, use, maintenance, or entry;
- b. Consultant will comply with Railroad’s safety and liability requirements for entry, if applicable;
- c. Deliverables, exhibits and legal descriptions are uploaded to the Authority’s document control system in PDF format; and,
- d. Other services as requested by Authority.

2.1 TASK ORDERS

Authority Contract Manager has the sole authority and responsibility to make amendments and revisions to the scope of work, schedule, cost, or deliverables in a Task Order.

2.1.1 Draft Task Order

Authority will prepare a draft Task Order, and request a cost estimate from the Consultant. The draft Task Order shall identify (with specificity) the following:

- a. Scope of Services, by Task as outlined in this Scope of Work;
- b. Location or limits of work, if applicable;
- c. Deliverables;
- d. Performance criteria or performance tests for the services (which demonstrate that the deliverables and schedule to submit deliverables satisfy the purpose or goal of the Task Order);
- e. Period of performance, the Task Order term, dates of service or project schedule, and/or due dates;
- f. Any milestone deliverables (including, but not limited to, any deliverables that shall be delivered and accepted prior to subsequent work being performed); and,
- g. Sufficient data to tie the Task Order to the Agreement (including Agreement number, name of Authority Contract Manager, and name of Consultant).

Consultant shall review the draft Task Order. Any questions regarding deliverables, expected results, schedule, etc. should be directed to Authority Contract Manager for clarification.

2.1.2 Work Plan and Cost Estimate

Consultant shall submit a work plan and a cost estimate including, at a minimum, the names of the individuals proposed to work on the task, the individuals’ classifications, the duties the individual shall perform for such task, a written estimate of the number of hours per staff person under each duty or activity, any anticipated reimbursable expenses, and an estimate of SB/DBE/DVBE utilization for the task. The total dollar amount shall be based on the rates in the Cost Proposal/Rate Sheet and shall exceed the total amount in the Agreement. Other information may be required at the request of Authority Contract Manager.

The cost estimate shall be in the format prescribed in the draft Task Order. Authority shall provide Consultant electronic templates of Task Order formats and required boilerplate language. All personnel to be used in the Task Order shall be among those identified in the Cost Proposal/Rate Sheet.

Consultant agrees that each cost estimate shall be the product of a good faith effort exercise of professional judgment.

2.1.3 Executed Task Orders

Provided agreement is reached on the negotiable items, both Authority and Consultant shall finalize and sign the Task Order. If Authority and Consultant are unable to reach an agreement, Authority may terminate the Agreement. No payment shall be due or made for any work performed under an unsigned Task Order, and Authority shall not pay for any work described in an unsigned Task Order.

2.1.4 Performance

Authority Contract Manager shall monitor and verify Consultant's performance and deliverables. Authority Contract Manager shall have the ultimate responsibility and authority to verify Consultant's performance, cost, schedule and deliverable(s).

Any services to be provided by Consultants shall only be performed pursuant to a Task Order that provides a detailed description of the services performed, the time frame for the work to be performed, the not to exceed amount to be charged, and the estimated expenses.

It is acknowledged by Consultant that it shall perform all incidental work required to complete the services described in the Task Order, including work for which no specific proposal item was included, Project Management, Quality Control, Safety, and work that is required to furnish final, complete work consistent with the intent of the Agreement. All such incidental work shall not be considered extra work for which additional compensation or an increase in the not to exceed compensation can be claimed.

2.1.5 Non-Exclusivity

The services described herein are not exclusive and Authority reserves the right to enter into other agreements covering the same or similar services or to perform the same or similar services itself or through its agents. A Task Order could include work for all or part of any of the tasks listed in this Exhibit A. A Task Order may require integration of work performed by others into a final work product to be prepared by Consultant.

2.1.6 Timeliness

Authority requires its professional consultants to provide service of the highest quality within a constrained schedule in order to meet program commitments. It is acknowledged by Consultant that time is of the essence in the performance of each task of this Agreement. The services and any defined deliverables shall be completed and delivered to Authority or its agent in a prompt and timely manner so as to permit the effective review and employment of the deliverable by Authority during and throughout the performance of the Agreement.

2.1.7 Subcontractors

Consultant will be required to submit a fee proposal and hourly billing rates for the prime Consultant team and for all Subcontractors/Subconsultants. Consultant and all Subcontractors/Subconsultants shall maintain an acceptable cost accounting system and a time recording system which is Task Order specific. Consultant may be required to maintain time records on a sub-task basis.

2.1.8 Quality of Work.

Authority will not pay for work which is substandard, does not conform to program requirements or the instructions of Authority or its agents, or which is delivered in an untimely manner such that it cannot be used for its intended purposes. In the event work is deemed substandard by Authority in its sole discretion, then at Authority's discretion Consultant shall either (1) correct the work at no charge to Authority, or (2) adjust its charges to Authority to remove the charges which resulted in the performance of the substandard work.

For each Task Order the Consultant will propose performance targets and measures suitable for measuring performance toward the Authority's Performance Objectives, which will be provided to the Consultant when the Task Orders are established.

All work that is required by California law to be performed by individuals with licenses shall be performed by individuals with the appropriate California licenses.

3 NOTICE TO PROCEED

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

4 TERM

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

5 AMENDMENT

5.1 This Agreement may be modified by amendment with mutual consent of the parties as to scope, time, amount, and other provisions to the extent allowable by law. The amendment shall be made in accordance with Exhibit C: GTC 610, Section 2, Amendment.

5.2 No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and all necessary approvals have been obtained. No oral understanding or agreement not incorporated in Agreement is binding on any of the parties.

5.3 The Consultant shall only commence work covered by an amendment after the amendment is executed and NTP has been provided by the Authority's Contract Manager.

5.4 There shall be no change in the Consultant's Contract Manager or key members of the project team, as listed in Exhibit B, Attachment 1, without prior written approval by the Authority's Contract Manager. If the Consultant obtains approval from the Authority's Contract Manager to add or substitute personnel, the Consultant must provide the Personnel Request Form (to be obtained from the Contract Manager) or written request on the Consultant's letterhead, a copy of the resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

5.5 This provision is in addition to the amendment requirements contained in the Exhibit C: GTC-610. If this provision conflicts with the Exhibit C: GTC-610, the terms of the Exhibit C: GTC-610 control over the terms of this clause.

5.6 The Contractor shall execute a new California Civil Rights Laws Certification to accompany any amendment to this Agreement.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

1 BUDGET CONTINGENCY CLAUSE

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

2 INVOICING AND PAYMENT

- 2.1 For services satisfactorily rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices by the Authority Contract Manager, the Authority agrees to reimburse the Consultant for actual hours worked on an actual cost basis (direct hourly wage plus overhead and fee), according to the Budget Detail.
The Consultant agrees to compensate all Subcontractors with the same payment structure.
The direct actual labor rates in Exhibit B, Attachment 1 are rate caps. Actual overhead rates will be adjusted on an annual basis.
 - 2.1.1 No payment shall be made in advance of services rendered.
 - 2.1.2 The total amount payable by the Authority for this Agreement shall not exceed the amount on the STD. 213. It is understood and agreed that this total is the maximum amount payable to the Consultant and the actual amount of work requested by the Authority may be less.
 - 2.1.3 Provide one paper original and two copies of the invoice for payment. Invoices shall be submitted no more than monthly in arrears and no later than 30 calendar days after completion of each billing period or upon completion of a task to:

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

accountspayable@hsr.ca.gov

(1 original and 2 copies)

AND

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

2.2 Applicable Fees and Escalation

- 2.2.1 The following is the fee structure for the Consultant and Subconsultants: Fixed fee of _____ percent for Consultant and Subconsultants for the life of the Agreement.
- 2.2.2 An escalation rate is set each Fiscal Year (starting July 1), with the March (updated around April 30 annually) rate published on the latest Employment Cost Index (ECI) data published by the Bureau of Labor Statistics, Table 9. WAGES AND SALARIES: Employment Cost Index for wages and salaries, for private industry workers, by occupational group and industry, the category of Professional, Scientific, and Technical Services. A copy of the latest ECI can be found at www.bls.gov/news.release/eci.t09.htm.
- 2.2.3 The escalation rate is capped at _____ percent, even if the ECI rate is higher for the Fiscal Year.

3 INVOICE FORMAT

- 3.1 The Authority will accept computer generated or electronically transmitted invoices. The date of "invoice receipt" shall be the date the Authority receives the paper copy at the address listed in Section 2.1.3 of this Exhibit.
- 3.2 An invoice shall consist of, but not be limited to, the following:
 - 3.2.1 Agreement number, date prepared, and billing period.
 - 3.2.2 The Consultant's actual loaded hourly labor rates by individual, inclusive of fees (hourly rate, fringe, indirect/overhead, general and administrative, fee, etc.). Each invoice shall include actual hours incurred, cumulative hours incurred to date, and budgeted hours.
 - 3.2.3 Consultant Other direct costs, including special equipment if requested by the Authority, miscellaneous, and materials. Cost for special equipment shall not exceed standard costs of similar equipment.
 - 3.2.4 An indication if the Consultant is certified as a California Certified Small Business, Disabled Veteran Business Enterprise, or Disadvantaged Business Enterprise. Subcontractor and vendor invoices shall also indicate whether a Subcontractor or vendor is a California Certified Small Business, Disabled Veteran Business Enterprise, or Disadvantaged Business Enterprise.
 - 3.2.5 Backup documentation for audit purposes, and the Consultant shall retain back-up documentation for audit purposes available to the Authority upon request. The Consultant shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify all Subcontractor services and expenses invoiced for payment under this Agreement.
 - 3.2.6 Receipts for travel, including departure and return times.
 - 3.2.7 By work plan category or task (as specified in Exhibit B, Attachment 1 and by reference to Task Orders, when applicable): cumulative amounts, budgeted per Agreement, billed to date, current billing, and balance of funds.

3.2.8 A documentation to support the progress of the work performed during the billing period.

3.2.9 A narrative that documents the progress of the work during the billing period.

3.2.10 Any other deliverables due during the billing period.

3.2.11 Subcontractors' and vendors' invoices.

4 TRAVEL AND PER DIEM RATES

4.1 The Consultant shall be reimbursed for approved travel and per diem expenses using the same rates provided to non-represented state employees. The Consultant must pay for travel in excess of these rates. The Consultant may obtain current rates at the following website:

www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx.

4.2 All travel not specified in a work plan and/or Task Order requires written authorization from the Authority's Contract Manager prior to travel departure. Travel expenses are computed from the Consultant's approved office location. Travel to the Consultant's approved office from other locations is not reimbursed under this Agreement unless specifically authorized. In the event that Consultant does not have a project office located within the geographic scope of the services, Consultant will use the Authority office address closest to its destination as the point of beginning in calculating travel expenses.

4.3 The Consultant must retain documentation of travel expense in its financial records. The documentation must be listed by trip and include dates and times for departure and return.

4.4 No international travel is authorized under this Agreement.

5 COST PRINCIPLES

5.1 The Consultant agrees to comply with procedures in accordance with 48 C.F.R., Federal Acquisition Regulations System, Chapter 1, Part 31, *et seq.*, to determine the allowability of individual items of cost.

5.2 The Consultant agrees to comply with 49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5.3 Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 C.F.R. Part 31, as amended, or 49 C.F.R. Part 19, are subject to repayment by the Consultant to the Authority.

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

6 PROMPT PAYMENT ACT

6.1 Payment will be made in accordance with, and within the time specified in, Government Code Chapter section 927, *et seq.*

7 EXCISE TAX

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

8 INVOICE DISPUTES

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

EXHIBIT C: GENERAL TERMS AND CONDITIONS

GTC 610

Under the California High-Speed Rail Authority's standardized agreement process, a hardcopy of Exhibit C, GTC 610, is not included in the standard Agreement package. As indicated on the STD. 213, a copy of Exhibit C can be found at the internet site:

www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx

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

Contracts and Procurement Branch
(916) 324-1541
770 L Street, Suite 620 MS3
Sacramento, California 95814

For contracts with the University of California or the California State Universities, the UTC 116 will be applied in place of the GTC 610. The UTC 116 can be found at:

www.dgs.ca.gov/ols/Resources/ModelContractLanguageUniversities.aspx.

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EXHIBIT D: SPECIAL TERMS AND CONDITIONS

1 CONTRACT MANAGEMENT

- 1.1 The Consultant's Contract Manager is responsible for the day-to-day project status, decisions and communications with the Authority's Contract Manager. The Consultant may change its Contract Manager by giving written notice to the Authority, but the Authority reserves the right to approve any substitution of the Contract Manager. This approval shall not be unreasonably withheld.
- 1.2 The Authority may change its Contract Manager at any time by giving written notice to the Consultant without an amendment.

2 SUBAGREEMENTS

For purposes of this section, subcontractor and subconsultant are used interchangeably, and the provisions of this section apply to subagreements with both subcontractors and subconsultants.

- 2.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Authority and any Subcontractors, and no subcontract shall relieve the Consultant of his or her responsibilities and obligations under this Agreement. The Consultant agrees to be as fully responsible to the Authority for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by the Consultant. The Consultant's obligation to pay its Subcontractor is an independent obligation from the Authority's obligation to make payment to the Consultant. As a result, the Authority shall have no obligation to pay or enforce the payment of any moneys to any subcontract.
- 2.2 The Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be contracted without written authorization by the Authority's Contract Manager, except that which is expressly identified in Exhibit B, Attachment 1.
- 2.3 Unless specifically noted otherwise, any subagreement in excess of \$25,000 entered into as a result of this Agreement shall contain all the applicable provisions stipulated in this Agreement.
- 2.4 The Consultant shall pay its Subcontractors within seven working days from receipt of each payment made to the Consultant by the State.
- 2.5 Any substitution of Subcontractors must be approved in writing by the Authority's Contract Manager in advance of assigning work to a substitute Subcontractor.

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

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

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

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

3 CONFIDENTIALITY OF DATA

- 3.1 All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Consultant in order to carry out this Agreement, shall be protected by the Consultant from unauthorized use and disclosure.
- 3.2 Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Consultant further disclose such information or disseminate the same on any other occasion.
- 3.3 The Consultant shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Consultant's own personnel, including Subcontractors, affiliates, and vendors, involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative Committee.
- 3.4 The Consultant shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- 3.5 Any subagreement entered into as a result of this Agreement shall contain all of the provisions of the Confidentiality of Data clause.

4 CONFIDENTIALITY CLAUSE

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

5 CONFLICT OF INTEREST

- 5.1 The Consultant and its employees, and all of its Subcontractors and employees, shall comply with the Authority’s Conflict of Interest Code and Organizational Conflict of Interest Policy.
- 5.2 The Consultant may be required to submit an Economic Interest Statement (Fair Political Practices Commission’s Form 700) from each employee or Subcontractor whom the Authority’s Legal Department, in consultation with the Authority Contract Manager or its designee, determines is a designated employee under the Political Reform Act subject to the requirements and restrictions of the Act. Such determination will be based on the nature of the work to be performed by the employee or Subcontractor. Each employee and Subcontractor determined to be a designated employee under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Authority’s staff who performs the same nature and scope of work as the Consultant.

6 SETTLEMENT OF DISPUTES

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

7 TERMINATION

- 7.1 Termination for Cause: In accordance with Section 7 of Exhibit C: GTC 610, the Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Consultant.
- 7.2 Termination for Convenience: The Authority reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to the Consultant if terminated for convenience of the Authority.
- 7.3 Termination Issues for Subcontractors, Suppliers, and Service Providers: The Consultant shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Consultant being liable for the termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to by the Authority in writing.
- 7.4 Contractor Claims Against this Agreement Under Early Termination: The Consultant agrees to release the Authority from any and all further claims for services performed arising out of this Agreement, or its early termination, upon acceptance by the Consultant of payment for costs actually incurred for work performed prior to receipt of the notice of termination and actual costs incurred as a result of termination, including the costs of preparing project files for return to the Authority as required by Section 13 of this Exhibit D.
- 7.5 Non-Waiver No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. No remedy available in this Agreement is intended to be exclusive of any other remedy, and every remedy shall be cumulative and shall be in addition to every other remedy provided therein or available at law or in equity. The failure of the Authority to enforce any provision of this Agreement or require performance by the Consultant of any provision shall in no way be construed to be a waiver of those provisions, affect the validity of this Agreement in whole or in part, or the right of the Authority to subsequently enforce any such provision.

8 HEADINGS AND RULES OF CONSTRUCTION

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

9 STOP WORK

- 9.1 The Authority's Contract Manager may, at any time, by written notice to the Consultant, require the Consultant to stop all or any part of the work in this Agreement.
- 9.2 Upon receipt of such stop work order, the Consultant shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- 9.3 The Consultant shall resume the stopped work only upon receipt of written instruction from the Authority Contract Manager canceling the stop work order.

- 9.4 An equitable adjustment shall be made by the Authority based upon a written request by the Consultant for an equitable adjustment. Such adjustment request must be made by the Consultant within 30 days from the date of receipt of the stop work notice.

10 NONDISCRIMINATION COMPLIANCE

- 10.1 During the performance of this Agreement, the Consultant and its Subcontractors shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Consultant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 10.2 The Consultant shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12900, *et seq.*) the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, section 11000, *et seq.*), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.
- 10.3 The Consultant shall permit access by representatives of the Department of Fair Employment and Housing to the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.
- 10.4 The Consultant 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.
- 10.5 The Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11 UNRUH CIVIL RIGHTS ACT AND THE FAIR EMPLOYMENT AND HOUSING ACT

- 11.1 Pursuant to Public Contract Code section 2010, the Consultant has a completed California Civil Rights Laws Certification on file with the Authority, certifying compliance with the following:
- 11.1.1 California Civil Rights Laws: For contracts over \$100,000 executed or renewed after January 1, 2017, the Consultant certifies compliance with the Unruh Civil Rights Act (section 51 of the Civil Code) and the Fair Employment and Housing Act (section 12960 of the Government Code); and
- 11.1.2 Employer Discrimination Policies: For contracts over \$100,000 executed or renewed after January 1, 2017, if a Consultant has an internal policy against a sovereign nation or peoples recognized by the United States government, the Consultant certifies that such policies are not used in violation of the Unruh Civil Rights Act (section 51 of the Civil Code) or the Fair Employment and Housing Act (section 12960 of the Government Code).

12 EVALUATION OF THE CONSULTANT

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

13 OWNERSHIP OF DATA

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

EXHIBIT E: ADDITIONAL PROVISIONS

1 ORDER OF PRECEDENCE

- 1.1 The Work to be performed under this Agreement shall be in accordance with the scope of work as detailed in Exhibit A, and the Consultant's Statement of Qualifications (SOQ) dated XX/XX/XX, which is attached hereto as Attachment 1. All documents listed in this Section below are specifically incorporated by reference into this Agreement. In the event of any inconsistencies or ambiguities in this Agreement the following documents shall be used to interpret the Agreement in the order of precedence stated:
1. Terms of this Agreement and any amendments.
 2. Approved Task Orders.
 3. Contractor's SOQ dated XX/XX/XX
 4. Request for Qualification for ROW Engineering and Survey Support Services for Pacheco Pass dated XX/XX/XX RFP/Q No.HSR16-XX.

2 INDEMNIFICATION

- 2.1 The following Indemnification requirements are in addition to Section 5 of Exhibit C.
- 2.2 Consultant agrees to indemnify, defend, and hold harmless the Authority, Federal Railroad Administration, State of California, their officers, agents and employees from any and all claims, demands, costs, or liability to the extent caused by the negligence or wrongful acts, errors or omissions of the Consultant. The Consultant will reimburse the Authority for any expenditure, including reasonable attorney fees incurred by the Authority in defending against claims ultimately determined to be due to negligent or wrongful acts, errors or omissions of the Consultant. The Consultant's indemnification herein with regard to third parties shall arise only to the extent caused by the negligence or wrongful acts, errors or omissions of the Consultant with regard to such third parties. Parsons Brinkerhoff, Inc. is an intended third party beneficiary of this indemnity clause.
- 2.3 The Consultant shall not be responsible for or obligated to indemnify the Authority from claims, demands, costs, or liability to the extent caused by the Authority's active negligence or sole negligence.

3 FORCE MAJEURE

- 3.1 Except for defaults of Subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to Acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, or public regulating utility or governmental statutes or regulations superimposed after the fact. The Consultant shall not be liable for damages of such delay or failure, if a delay or failure to perform by the Consultant arises out of a default of its Subcontractor, and if such default arises out of the following:
1. Causes beyond the control of both the Consultant and Subcontractor; and,
 2. Without the fault or negligence of either of them.

- 3.2 However, with respect to supplies or services to be furnished by the Subcontractor that were obtainable from other sources in sufficient time to permit the Consultant to meet the required performance schedule, the Consultant and its Subcontractors will be held liable for damages of such delay or failure.

4 PREVAILING WAGES

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

5 STANDARD OF CARE

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

6 DAMAGES DUE TO ERRORS AND OMISSIONS

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

7 LEGAL NOTICE

- 7.1 This clause is not intended to apply to normal, daily communication between the parties related to the progress of work. This clause applies to situations where notice is required to be given by the Agreement or the parties are asserting their legal rights and remedies. This section is not intended to replace any other applicable legal requirements.
- 7.2 Any communication, notice, or demand of any kind whatsoever which any party may be required or may desire to give or to serve upon another must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

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

- 7.3 The project representatives identified in Exhibit A, Section 1.5 shall be notified via email when a notice is sent.
- 7.4 Notice shall be effective when received, unless a legal holiday for the State commences on the date of attempted delivery. In such cases, the effective date shall be postponed until the next Business Day.

8 LICENSES AND PERMITS

- 8.1 The Consultant shall be an individual or firm authorized to do business in California and shall obtain at its sole expense all license(s) and permit(s) required by law, including professional licenses and registrations, for accomplishing any work required in connection with this Agreement.
- 8.2 If the Consultant is located within the State of California, a business license from the city/county in which the Consultant is headquartered is necessary; however, if the Consultant is a corporation, a copy of the incorporation documents/letter from the Secretary of State's Office can be submitted. If the Consultant's headquarters is located outside the State of California, the Authority requires a copy of the business license (or that state's equivalent documentation) for the company's respective state showing that the company is in good standing in that state, and proof of registration as a foreign corporation qualified to do business in California.
- 8.3 In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, Consultant agrees to provide the Authority a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date. In the event the Consultant fails to keep in effect at all times all required license(s) and permit(s), the Authority may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.
- 8.4 All Subcontractors shall be licensed for the Work they are conducting if licensing would be required of the Consultant for that Work.

9 INSURANCE

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

9.1 Workers' Compensation Insurance

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

9.2 General Liability Insurance

The Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$5 million per occurrence and \$5 million general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Limits may be achieved by any combination of primary and excess or umbrella liability insurance.

9.3 Automobile Liability Insurance

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

9.4 Professional Liability (Errors & Omissions) Insurance

The Consultant shall maintain professional liability insurance that covers the Work to be performed in connection with this Agreement, in the minimum amount of \$5 million per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement.

9.5 Environmental Professional Liability Insurance

Environmental Professional Liability Insurance shall be written on a form acceptable to Authority providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. This coverage may be arranged in combination with Professional Liability insurance or as a stand-alone policy. The policy limit shall be no less than \$1 million per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." If the insured is using subconsultants, the Policy must include work performed "by or on behalf" of the insured. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement. The cost of such insurance shall be included in Consultant's bid. Insurance as required in this paragraph above may not exclude:

1. Bodily injury;
2. Property damage;
3. Pollution conditions arising out of environmental work;

4. Asbestos-related claims; and,
5. Testing, monitoring, measuring operations, or laboratory analyses.

9.6 Other Provisions or Requirements

9.6.1 Proof of Insurance

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

9.6.2 Duration of Coverage

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

9.6.3 Authority's Rights of Enforcement

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

9.6.4 Acceptable Insurers

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

9.6.5 Waiver of Subrogation

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

9.6.6 Enforcement of Agreement Provisions (non estoppel)

Exhibit E: Additional Provisions

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

9.6.7 Requirements Not Limiting

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

9.6.8 Notice of Cancellation

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

9.6.9 Additional Insured Status

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

9.6.10 Authority's Right to Revise Specifications

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

9.6.11 Self-insured Retentions

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

9.6.12 Timely Notice of Claims

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

9.6.13 Additional Insurance

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

9.6.14 Subcontractors

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

10 COMPUTER SOFTWARE

10.1 For agreements in which software usage is an essential element of performance under this Agreement, the Consultant certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

11 EQUIPMENT RENTAL AGREEMENTS

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

12 OWNERSHIP/INVENTORY/DISPOSITION OF STATE EQUIPMENT

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

12.2 No equipment shall be purchased under the auspices of the Agreement without prior written authorization of the Authority. All equipment of any kind, purchased or reimbursed with Agreement funds or furnished by the Authority under the terms of this Agreement and not fully consumed in the performance of this Agreement, shall be considered the property of the Authority.

12.3 The Authority may, at its option, repair any damage or replace any lost or stolen items and deduct the cost thereof from the Consultant's invoice to the Authority, or require the Consultant to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Authority with no expense to the Authority.

12.4 The Consultant should maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment should include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment (SAM section 8600). A copy of the inventory record must be submitted to the Authority on request by the Authority.

13 CONTINGENT FEE

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

14 NON ELIGIBLE ALIEN CERTIFICATION

- 14.1 In accordance with 8 U.S. Code section 1621, the Consultant certifies by execution of this Agreement, that it is not an alien who is not:
1. A qualified alien (as defined in 8 U.S. Code section 1641),
 2. A nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or
 3. An alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for less than one year.

15 THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

- 15.1 By entering into this Agreement that mentions or refers to the California Environmental Quality Act (CEQA), Environmental Impact Report (EIR) and state environmental permitting laws/agencies and initially authorizes related work, the Authority does not: (a) waive the Authority's rights regarding the application of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), including the defense that ICCTA preempts CEQA's application to the High-Speed Rail Project; or (b) create an implied agreement that CEQA and/or such environmental permitting requirements apply to the Project.

16 LABOR CODE 1771.1

- 16.1 A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- 16.2 Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
- 16.3 An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

1. The subcontractor is registered prior to the bid opening.
 2. Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
 3. The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
- 16.4 Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.
- 16.5 The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.
- 16.6 A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.
- 16.7 This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

The Authority will include the registration requirements in Labor Code Section 1771.1 in all public works construction procurements and contracts. The Authority will also notify the Department of Industrial Relations of contract awards using form DIR-PWC-100.

17 PREVAILING WAGES

- 17.1 Pursuant to the provisions of section 1773 of the Labor Code, the Authority will obtain the general prevailing rate of wages (which includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in section 1773.1 of said Code, apprenticeship or other training programs authorized by section 3093 of said Code, and similar purposes) as applicable to the work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification, or type of worker concerned. Copies of the prevailing rates of wages are on file at Authority's offices, and will be furnished to the Contractor and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, the Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations. If there is any conflict between the state prevailing wage, the federal prevailing wage and the Authority's Community Benefits Agreement, the highest rate shall be paid.
- 17.2 The Contractor is required to maintain ongoing registration with the Department of Industrial Relations pursuant to Labor Code 1771.1 beginning at the time of Proposal (if applicable) or Agreement execution, whichever is earlier, through Agreement completion. The Authority will also notify the Department of Industrial Relations of public work construction Agreement awards via form DIR-PWC-100.

EXHIBIT F: FEDERAL TERMS AND CONDITIONS

1 FEDERAL REQUIREMENTS

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

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

2 COMPLIANCE WITH FEDERAL REQUIREMENTS

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

3 FEDERAL PROCUREMENT STANDARDS

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

4 FEDERAL LOBBYING ACTIVITIES CERTIFICATION

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

- 4.1 No state or federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any state or Federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress in connection with the awarding of any State or Federal agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal agreement, grant, loan, or cooperative agreement.
- 4.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- 4.3 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- 4.4 The Consultant also agrees that by signing this document, it shall require that the language of this certification be included in all lower-tier Subcontracts, which exceed \$100,000, and that all such Subcontractors shall certify and disclose accordingly.

5 DEBARMENT AND SUSPENSION

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

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

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

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

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

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

6 SITE VISITS

The Consultant 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 Consultant or any of its Subcontractors under this Agreement, the Consultant 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 Consultant or Subcontractor.

7 SAFETY OVERSIGHT

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

8 ENVIRONMENTAL PROTECTION

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

- 8.1 **Clean Air:** The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.* The Consultant agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate Environmental Protection Agency Regional Office.
- 8.2 **Clean Water:** The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 *et seq.* The Consultant agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.
- 8.3 **Energy Conservation:** The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. sections 6421 *et seq.*)
- 8.4 **Agreement Not To Use Violating Facilities:** The Consultant agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Consultant shall promptly notify the Authority if the Consultant or any Subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Consultant's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.
- 8.5 **Environmental Protection:** The Consultant shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. sections 4321 *et seq.*
- 8.6 **Incorporation of Provisions:** The Consultant shall include the above provisions (A) through (F) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with federal assistance provided by the FRA.

9 CIVIL RIGHTS

The following requirements apply to this Agreement:

- 9.1 **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. section 2000d; section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6102; section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. section 12132; and 49 U.S.C. section 306, the Consultant agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Agreement. In addition, the Consultant agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.
- 9.2 **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this Agreement:
1. **Race, Color, Religion, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e, the Consultant agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," including 41 C.F.R 60 et seq. (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant 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 Consultant agrees to comply with any implementing requirements FRA may issue.
 2. **Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. section 623, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FRA may issue.
 3. **Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. section 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. Further, in accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Consultant also agrees that it will comply with the requirements of U.S. Department of Transportation, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FRA may issue.

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

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

10 ARRA FUNDED PROJECT

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

11 ENFORCEABILITY

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

12 PROHIBITION ON USE OF ARRA FUNDS

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

13 ACCESS AND INSPECTION OF RECORDS

1. In accordance with ARRA sections 902, 1514, and 1515, the Consultant agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:
 - a. Access and reproduce any books, documents, papers and records of the Consultant that directly pertain to, and involve transactions relating to, this Agreement for the purposes of making audits, examinations, excerpts and transcriptions; and,
 - b. Interview any officer or employee of the Consultant or any of its Subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA.

2. Pursuant to 49 C.F.R. section 18.26(i)(11), 49 C.F.R. section 19.26, or A-133 (whichever applicable), the Consultant agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Consultant agrees to maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. The Consultant shall notify the Authority not less than six months prior to disposal of any books, records, accounts and reports required under this Agreement.
3. The Consultant agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. section 552(a).

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

14 WHISTLEBLOWER PROTECTION

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

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

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

15 FRAUD AND FALSE CLAIMS ACT

The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. Part 13), as amended, 31 U.S.C. section 3801 et seq., and the U.S. DOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to this Project. Upon execution of this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FRA assisted project, for which Work is being performed under this Agreement. In addition to other penalties that may be applicable, the Consultant 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 Consultant to the extent the Federal Government deems appropriate.

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

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

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

16 WAGE RATE REQUIREMENTS

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

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

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

17 REPORTING REQUIREMENTS

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

- 17.1 The total amount of funds received by the Consultant during the time period defined in the Authority’s request;
- 17.2 The amount of funds actually expended or obligated during the time period requested;
- 17.3 A detailed list of all projects or activities for which funds were expended or obligated, including:
 1. The name of the project or activity;
 2. A description of the project activity;

3. An evaluation of the completion status of the project or activity; and,
4. An estimate of the number of jobs created and/or retained by the project or activity.

17.4 For any contracts or subcontracts equal to or greater than \$25,000:

1. The name of the entity receiving the contract;
2. The amount of the contract;
3. The transaction type;
4. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number, if known;
5. The location of the entity receiving the contract;
6. The primary location of the contract, including city, state, congressional district, and county;
7. The DUNS number, or name and zip code for the entity headquarters, if known;
8. A unique identifier of the entity receiving the subagreement and the parent entity of Consultant, should the entity be owned by another; and,
9. The names and total compensation of the five most highly compensated officers of the company if received:
 - a. 80 percent or more of its annual gross revenues in Federal awards;
 - b. \$25,000,000 or more in annual gross revenue from Federal awards; and,
 - c. If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.

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

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

18 REPRINTS OF PUBLICATIONS

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

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

“This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative Agreement FR-HSR-0009-10-01-05, dated December 5, 2012. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT.”

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

19 FLY AMERICA

The Consultant agrees to comply with 49 U.S.C. section 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their Consultants 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 Consultant shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier, and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

No international travel is authorized under this Agreement.

20 SMALL BUSINESS/ DISADVANTAGE BUSINESS ENTERPRISE

The Authority encourages the Consultant to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals, also known as Disadvantaged Business Enterprises (DBE), in carrying out the Agreement. The Authority has established a Revised Small and Disadvantaged Business Enterprise (SB/DBE) Program for Professional Services Contracts, and an overall 30 percent goal for small business utilization, to include within the 30 percent goal, a ten percent goal for DBE and 3 percent Disabled Veteran Business Enterprise (DVBE) in the Authority’s contracting and procurement program. The SB/DBE Program is in compliance with the Best Practices of 49 C.F.R. Part 26, Executive Order S-02-06, Military and Veterans Code 999 and Title VI of the Civil Rights Act of 1964 and related statutes.

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

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

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

21 PATENT RIGHTS

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

22 RIGHTS IN DATA AND COPYRIGHT

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

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