



CALIFORNIA High-Speed Rail Authority

RFP No. 13-57

**Construction Package 2-3
First Construction Segment
of the
California High-Speed Rail System**

Design-Build Contract Term Sheet

This document provides background information and summarizes certain terms in the Contract Documents included in Addendum No. 5 of the Request for Proposals for Construction Package 2-3 of the First Construction Segment of the California High-Speed Rail System. This document is not a restatement or interpretation of the contract requirements. There are numerous details, exceptions and qualifications associated with the provisions of the Contract Documents that can only be ascertained by reviewing the Contract Documents.

1. Contract Overview	
Project	Construction Package 2-3 of the First Construction Segment of the California High-Speed Rail System.
Authority	California High-Speed Rail Authority
Contractor	[Dragados/Flatiron/Shimmick]
Contractor-Related Entity	<ol style="list-style-type: none"> 1. Contractor; 2. If Contractor is a joint venture, partnership or limited liability company, any joint venture member, partner or member of the Contractor; 3. Any Subcontractors; 4. Their employees, agents and officers; and 5. All other Persons for whom Contractor may be legally or contractually responsible.
Contract Documents/ Order of Precedence	<p>The Contract Documents shall include the following documents, in the following descending order of precedence:</p> <ol style="list-style-type: none"> 1. Signature Document 2. Special Provisions 3. General Provisions 4. Scope of Work 8. Community Benefits Agreement 9. Third Party Agreements 10. Design Criteria 11. Other Technical Documents 12. Proposal (provided that if the Authority determines that the Proposal contains a provision that is more restrictive/beneficial to the Authority than is specified elsewhere in the Contract Documents, that Proposal provision shall take precedence). <p>Alternative Technical Concepts, supplements, amendments and Change Orders will have the priority just above the document that is being amended.</p>
Federal Requirements	The Contract will comply with High-Speed Intercity Passenger Rail (HSIPR) Program requirements (including the American Recovery and Reinvestment Act of 2009 (ARRA) requirements).
DBE/SBE Requirements	The Contract will address DBE/SBE requirements. Contractor shall comply with the Authority SBE Policy and Plan goal of 30% small business participation. Contractor shall also comply with 41 C.F.R Part 60, 49 C.F.R. Part 26, Executive Order 11246 and Title VI of the Civil Rights Act of 1964.
Community Benefits Agreement	Contractor will comply with the Community Benefits Agreement with the State Building and Construction Trades Council of California and the Signatory Craft Councils and Local Unions. Contractor will require each Subcontractor (at all tiers) to comply with the Community Benefits Agreement.

2. Work	
General Responsibility	Contractor will be solely responsible for all materials, services and efforts necessary to achieve Final Acceptance on or before the Final Acceptance Deadline, and such materials, services and efforts are included in the Contract Price, except as otherwise specifically provided in the Contract Documents.
Design Liability	<p>The Authority will provide a Preliminary Design which will include:</p> <ul style="list-style-type: none"> • Initial design plans prepared with the intent of supporting state and federal environmental review and approval; • Existing Composite Utility Plans; and • Non-Standard/Complex Structures Plans <p>Contractor assumes full responsibility and liability with respect to design of the Project, including identifying and correcting any errors, omissions, inconsistencies or other defects in the Preliminary Design, if Contractor elects to use the Preliminary Design.</p>
Standards	<p>Contractor will design and construct the Project in conformity with the Design Criteria (subject to any variances approved by the Authority) and the Directive Drawings.</p> <p>The design will conform to all professional engineering principles generally accepted as standards of the industry in California, will be suitable for its intended purpose and will be free of defects.</p> <p>Construction will be performed in a workmanlike manner and will conform to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in California.</p>
Permits and Approvals	<p>Authority will provide a Fresno to Bakersfield Final EIR/EIS and acquire certain governmental approvals for which it has been specifically identified as the party responsible for obtaining (Authority-Provided Governmental Approvals).</p> <p>Contractor will be responsible for obtaining and paying for, as part of the Contract Price, all other permits and governmental approvals and any supplements, revisions or amendments to the governmental approvals and Final EIR/EIS that are approved by the Authority thereto.</p> <p>Contractor will comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect the Final EIR/EIS, and all governmental approvals, except to the extent that such responsibility is expressly assigned in the Contract to another Person.</p>
Right of Way (ROW)	<p>Authority will obtain the ROW identified in the ROW Acquisition Plan by the deadlines provided therein.</p> <p>Contractor may be entitled to a Change Order for additional costs and a time extension, including overhead, profit and delay damages, due to failure of Authority to provide a parcel by the specified deadline. The Contractor will work proactively with the Authority's representative to resolve right-of-way acquisition changes and to adjust its construction schedule to accommodate</p>

	<p>these changes.</p> <ol style="list-style-type: none"> 1. Contractor may request additional ROW during the term of the Contract. If Authority determines that such additional ROW is necessary to build the Project, then Authority will acquire such additional property at Authority's cost. 2. If additional ROW is necessary as a result of an Authority-directed change, the additional ROW costs will be addressed in the Change Order for the Authority-directed change. <p>Authority will require up to 24 months to acquire any ROW not identified on the ROW acquisition plan. Note: Contractor may request additional ROW as part of an Alternative Technical Concept or Value Engineering Change Proposal (VECP). Allocation of responsibility for Alternative Technical Concepts and VECPs is addressed in Section 3, below</p>
<p>Temporary Construction Easements (TCEs)</p>	<p>Contractor is responsible for identifying any TCEs required to construct the Work. Contractor will reimburse the Authority for payments made to property owners for the required TCEs. Authority will be responsible for acquiring the TCEs within the following timeframes:</p> <ul style="list-style-type: none"> • For unoccupied properties, within 6 months from Contractor request or date of adjoining or nearest fee acquisition (whichever is latest). • For occupied properties, within 12 months from Contractor request or date of adjoining or nearest fee acquisition (whichever is latest). • For TCEs that require condemnation proceedings, within 12 months from the date that the Public Works Board passes and adopts a resolution of necessity for that TCE. <p>Contractor may acquire additional TCEs it determines to be beneficial for the construction of the Project at its own cost.</p>
<p>Utilities and Other Third Parties</p>	<p>Contractor is responsible for removing, relocating or otherwise adjusting all existing utilities and other Third Party facilities as needed for the Project, except where the applicable cooperative agreement assigns such work to the Third Party. Contractor is also responsible for reimbursing relocation work by Third Parties having "prior rights" (i.e., the legal right to reimbursement for relocation work), and for collecting payments owing from Third Parties for Contractor's relocation work. However, the Pacific Gas & Electric (PG&E) Facility Work will be payable from a Provisional Sum.</p> <p>A Third Party Conflict Matrix is included in the RFP showing the location and type of utility facility for each identified Relocation. Contractor will be able to rely on certain information in the Third Party Conflict Matrix describing existing Third Party Facilities. Contractor will prepare, negotiate and obtain execution of a task order for each Relocation, subject to Authority's approval. Contractor's work on new Third Party facilities not resulting from Relocations is also generally subject to the requirements of the Contract Documents pertaining to Relocations.</p> <p>See the "Utilities and Other Third Parties" provision under Section 3 (Change Orders) below for information regarding Change Orders.</p>

<p>Railroads</p>	<p>The Contract initially includes draft Railroad Agreements.</p> <p>Generally, Contractor will be responsible for fulfilling Authority’s obligations (including those obligations assigned to Authority’s contractor) under the Railroad Agreements with Authority’s continued participation.</p> <p>See the “Railroads” provision under Section 3 (Change Orders) below for information regarding Change Orders.</p>
<p>Hazardous Materials</p>	<p>Contractor is responsible for remediating any hazardous materials discovered on the Site. See the “Hazardous Materials” provision under Section 3 (Change Orders) below for information regarding Change Orders.</p> <p>As between Contractor and Authority, Authority will be considered the generator and arranger for hazardous materials other than hazardous materials brought onto the Site by any Contractor-Related Entity or hazardous materials where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity. Whenever Authority has such arranger liability, Contractor’s remediation plans will be subject to the prior written approval of Authority and Authority will have exclusive decision-making authority regarding selection of the destination facility to which such hazardous materials will be transported. Authority will comply with the applicable standards for generators and arrangers with regard to such hazardous materials, including the responsibility to sign manifests for the transport of hazardous wastes. Authority will indemnify, save, protect and defend Contractor from third party claims, causes of action and losses arising out of or related to generator or arranger liability for such hazardous materials.</p> <p>As between Contractor and Authority, Contractor will be considered the generator and arranger for hazardous materials brought onto the Site by any Contractor-Related Entity or hazardous materials where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity.</p>
<p>Non-Conforming Work</p>	<p>Authority may require nonconforming Work to be remedied, removed or replaced. Contractor is responsible for taking all necessary actions to close out any non-conformances to the satisfaction of Authority. Authority may, but is not obligated to, accept nonconforming Work without requiring it to be fully corrected, in which case the Contract Price will be decreased accordingly.</p> <p>Authority may elect to correct nonconforming Work and charge Contractor for the cost if Contractor fails or refuses to:</p> <ol style="list-style-type: none"> 1. Correct any nonconforming Work within seven days of receipt of written notice thereof by Authority; or 2. Provide Authority with a schedule for correcting nonconforming Work, commence corrective Work and diligently prosecute such correction in accordance with the schedule.
<p>Verification and Validation</p>	<p>Contractor is required to implement a verification, validation and self-certification process and plan.</p>
<p>Quality</p>	<p>Contractor is required to establish and implement an Authority-approved Quality Management Plan conforming to the CHSRA’s Master Quality Plan,</p>

	<p>Independent Assurance Program Plan, and Statistical Sampling and Testing Program Plan.</p> <p>Authority may:</p> <ol style="list-style-type: none"> 1. Audit the Contractor, at any time, to verify and validate compliance; 2. Witness any quality control or quality assurance test, acceptance test or inspection; and 3. Conduct independent tests and/or assessments of any material or equipment to be incorporated in the Work.
3. Change Orders	
<p>Change Orders</p>	<p>An Authority signed Change Order or directive letter is required for any Contract Price increase or time extension.</p> <p>Authority may issue a unilateral directive letter and Contractor will proceed immediately with the Work as directed in the directive letter, pending the execution of a formal Change Order (or, if the order states that the Work is within the original scope of the Work, Contractor will proceed with the Work as directed but will have the right pursuant to the disputes provision to request that Authority issue a Change Order with respect to the directive letter).</p> <p>Contractor may request a Change Order only for those events and situations that the Contract Documents expressly contemplate that a Change Order is permitted.</p> <p>Contractor is required to provide prompt written notice of the event or situation, to be followed by a Change Order Proposal including the anticipated price impacts, time impacts, scope of work and any changes to the Contract Documents.</p> <p>Each Change Order Proposal must contain a sworn certification by Contractor (and Subcontractor(s), for any Subcontractor involved in the Work or event contemplated by the Change Order) including that the Change Order is made in good faith and in accordance with the terms of the Contract, the amount of time and/or compensation requested accurately reflects the appropriate adjustments and includes all known and anticipated impacts that may be incurred as a result of the event giving rise to such proposed change and that the Contractor (and each Subcontractor, as applicable) has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented. Each Change Order proposal involving Subcontractor Work must include a sworn certification including that Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for Subcontractor's claim is falsely represented.</p> <p>Change Orders are subject to strict procedural requirements, including requirements regarding timely notice of the event or situation giving rise to a Change Order.</p>
<p>Authority-Directed Changes</p>	<p>Authority may, at any time, require Contractor to make changes to the Work or its schedule. Contractor may be entitled to a Change Order for additional costs and a time extension, including delay damages, overhead and profit,</p>

	<p>resulting from the changes.</p>
<p>Differing Site Conditions</p>	<p>The RFP will include documents setting forth assumed geotechnical conditions for Proposers to use in developing their bids.</p> <p>Prior to construction, the Contractor will prepare a Geotechnical Baseline Report for Construction (GBR-C). Contractor may be entitled to a Change Order for any additional costs and a time extension, or Authority may be entitled to a Change Order for any reduced costs as a result of material increases/decreases in cost/time based on the GBR-C compared to the baseline documents.</p> <p>After establishment of the GBR-C, Contractor may be entitled to a Change Order for additional costs and a time extension, excluding delay damages but including overhead and profit, due to Differing Site Conditions.</p> <p>Differing Site Conditions are defined as:</p> <ol style="list-style-type: none"> 1. Subsurface or latent physical conditions encountered that differ materially from those indicated for such locations in the GBR-C; or 2. Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. <p>Differing Site Conditions exclude:</p> <ol style="list-style-type: none"> 1. Conditions which Contractor had, or should have had, actual or constructive knowledge as of the Proposal Deadline. 2. Utility facilities, hazardous materials, non-contaminated water and any conditions which constitute or are caused by Force Majeure. 3. Conditions that could have been discovered by reasonable Site investigation or review of other available information prior to the date of the GBR-C. 4. Variations in soil moisture content from that represented in reports, borings or tests included in the Contract.
<p>Force Majeure</p>	<p>Contractor may be entitled to a Change Order for additional costs directly attributable to changes in the Work and a time extension, including overhead and profit on any actual damages but excluding delay damages, due to Force Majeure.</p> <p>Force Majeure is defined as any of the following events, provided it is beyond the control and not due to an act or omission of Contractor or Authority and could not have been avoided by due diligence or use of reasonable efforts by Contractor:</p> <ol style="list-style-type: none"> 1. Earthquake exceeding 3.5 on the Richter scale; 2. Tidal wave; 3. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion; 4. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed in the Contract; 5. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the

	<p>Project or the granting or renewal of any governmental approval of the Project; and</p> <p>6. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Contractor-Related Entity.</p> <p>Force Majeure excludes:</p> <ul style="list-style-type: none"> a. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God; b. Except as provided in subparagraph 3 above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence; c. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Contractor-Related Entity); and d. All other matters not caused by or beyond the control of Authority or a Contractor-Related Entity and not listed in subparagraphs 1 through 6 above. <p>Refer to the Builder’s Risk Policy described in the “Insurance” provision under Section 6 (Security, Indemnities, Insurance, Maintenance, Risk of Loss, Warranties) below.</p>
<p>Permits and Approvals</p>	<p>Contractor may be entitled to a Change Order for additional costs and a time extension, excluding delay damages but including overhead and profit, due to the suspension, termination, interruption or nonrenewal of any Authority - Provided Governmental Approval (except for modifications to such approvals or any new such approvals required to allow Contractor’s design concepts to be incorporated into the Project).</p>
<p>Change in Law</p>	<p>Contractor may be entitled to a Change Order for additional costs and a time extension, excluding delay damages but including overhead and profit on actual damages, due to a change in one or more applicable laws or the adoption of a new law after the date 30 days prior to the Proposal Deadline, excluding the following:</p> <ul style="list-style-type: none"> 1. Changes in law that were passed or adopted but not yet effective as of 30 days prior to the Proposal Deadline. 2. Changes in law relating to taxes. 3. Changes in law that do not require a material modification in the Work or do not require Contractor to obtain a new major environmental approval (unless the Project or Contractor is specifically targeted by the change in law).
<p>Utilities and other Third Parties</p>	<p>Contractor may be entitled to a Change Order for additional costs resulting from certain inaccuracies in the RFP regarding existing utilities. In those cases, Contractor is entitled to overhead and profit but is not entitled to delay damages and disruption damages other than damages for idle time of equipment.</p>

	<p>The RFP includes both executed cooperative agreements for some Third Parties and draft cooperative agreements for other Third Parties. A change in the determination of cost liability for a Relocation or any other material change from the terms of a cooperative agreement included in the RFP, may be grounds for an increase or decrease in the Contract Price (as applicable) but not an extension for time.</p> <p>Contractor may be entitled to a time extension for delays resulting from:</p> <ol style="list-style-type: none"> 1. Inaccuracies regarding unidentified or misidentified Utilities which entitle Contractor to additional compensation. 2. A material change in the terms of a cooperative agreement from the version included in the RFP. 3. Delays to PG&E Facility Work directly attributable to PG&E failing to timely perform its obligations under a Utility Agreement. 4. A Third Party's, other than PG&E, failure to timely complete any relocation task assigned to it by the applicable cooperative agreement to the extent there is no executed task order. To the extent there is an executed task order, Contractor will not be entitled to a time extension under the Contract (although Contractor may be entitled to relief under the executed task order). <p>If Contractor is entitled to a time extension under item 4 above, Contractor will be entitled to one day of extension for every two days of delay.</p> <p>There will be no change in compensation, nor any time extension, for any of the following:</p> <ol style="list-style-type: none"> a. Reallocation of responsibility for relocation work between Contractor and a Third Party. b. Any Betterments (provided that Contractor will be entitled to collect compensation for any added Betterments directly from the Third Party). c. Contractor's increased relocation costs for performing work or reimbursing Third Parties for their work resulting from a Contractor-initiated change in the Project design. d. Failure of a Third Party without "prior rights" to reimburse Contractor for its relocation work on the Third Party's facilities.
<p>Railroads</p>	<p>The RFP includes draft Railroad Agreements. To the extent executed agreements materially change Contractor's obligations, either party may be entitled to an increase or decrease in the Contract Price and/or a time extension.</p> <p>Contractor will be entitled to one day of extension for every two days of delay caused by a railroad's failure to timely perform its obligations under a Railroad Agreement.</p>
<p>Hazardous Materials</p>	<p>Contractor may be entitled to a Change Order for its direct remediation costs, excluding overhead, delay damages and profit, and a time extension, in the event Contractor encounters any hazardous materials. To the extent the hazardous materials are within a category for which unit prices are provided in the Signature Document, compensation will be based on the unit prices.</p> <p>The Contractor will not be entitled to a Change Order for:</p>

	<ol style="list-style-type: none"> 1. Investigation or characterization of hazardous materials or preparation of a remediation plan. 2. Hazardous materials brought onto the Site by any Contractor-Related Entity or hazardous materials where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity. 3. Hazardous materials that could have been avoided by reasonable design modifications or construction techniques. 4. Hazardous materials on additional properties requested by Contractor.
Profit and Overhead	<p>Profit and overhead will be paid at 10% of the direct costs plus, if the Work is subcontracted, 7% of the direct costs, regardless of the number of lower-tier subcontractors involved in any and all changed Work, for a total maximum markup of 17%. This amount will fully compensate Contractor (and all subcontractors) for administration, general superintendence, overhead, profit and all other expenses not otherwise directly recoverable with respect to a Change Order.</p>
Limitation on Contract Price Increases	<p>Any increase in the Contract Price will exclude:</p> <ol style="list-style-type: none"> 1. Costs caused by breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity. 2. Costs which could reasonably have been avoided by Contractor, including by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment). 3. Costs for (a) any rejected Work that failed to meet the requirements of the Contract Documents and (b) any necessary remedial Work.
Limitation on Time Extensions	<p>Any extension of a Completion Deadline will exclude any delay to the extent that it:</p> <ol style="list-style-type: none"> 1. Did not impact the Critical Path affecting a Completion Deadline. 2. Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity. 3. Could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves an Authority-caused delay, Authority shall have agreed, if requested to do so, to reimburse Contractor for its costs incurred, if any, in resequencing, reallocating, or redeploying its forces). 4. Was concurrent with any other delay for which Contractor is not entitled to an extension. <p>Contractor will be required to demonstrate to the Authority's satisfaction that the change in the Work or other event or situation which is the subject of a Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable delay of the Work which has impacted the Critical Path activity affecting a Completion Deadline.</p>

<p>Delay Damages and Disruption Damages</p>	<p>Contractor is entitled to reimbursement of delay damages only for those events and situations that the Contract Documents expressly contemplate that delay damages are permitted, generally consisting of those events and situations caused by Authority.</p> <p>Delay damages are limited to direct costs actually and reasonably incurred by Contractor directly attributable to the delay of the Completion Deadline. Home office overhead is excluded from delay damages and not compensable under the Contract. Before Contractor may obtain any increase in the Contract Price to compensate for any delay damages, Contractor must demonstrate to Authority’s satisfaction that:</p> <ol style="list-style-type: none"> 1. The Project schedule in fact sets forth a reasonable method for completion of the Work. 2. The change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable delay of the Work and impact the Critical Path affecting a Completion Deadline. 3. The delay damage was not due to any breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment). 4. The delay for which compensation is sought is not concurrent with any other delay for which Contractor is not entitled to delay damages. 5. Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to Authority. <p>Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable under the Contract (except as stated above for certain utility-related delays). Disruption damages include costs of (i) rearranging Contractor’s Work plan not associated with an extension of a Completion Deadline and (ii) loss of efficiency, momentum or productivity.</p> <p>Contractor may also be entitled to compensation for idle time of certain equipment as described in the “Utilities” provision of this Section 3 (Change Orders) above.</p>
<p>Alternative Technical Concepts</p>	<p>Contractor will be solely responsible for obtaining third party approvals required to implement approved Alternative Technical Concepts. If Contractor fails to obtain such approval or if it fails in any other way to implement the approved Alternative Technical Concepts, Contractor will comply with the corresponding baseline requirements without any increase in the Contract Price or extension of Completion Deadlines. Note: Contractor may request additional temporary or permanent ROW in its Proposal as part of an approved Alternative Technical Concept and the Authority will acquire any such additional property at Contractor’s sole cost.</p>

Value Engineering	Contractor may submit, for approval by Authority, Value Engineering Change Proposals (VECPs) that would reduce the cost of the Project without impairing essential functions or characteristics of the Project as determined by Authority. VECPs cannot be based solely on a change in quantities. Authority and Contractor will share any cost savings on a 50/50 basis. Note: if additional ROW is required by a VECP, or ROW requirements are reduced, that will be factored into the savings sharing.
4. Payment	
Contract Price	The total Contract Price is the sum of the PG&E Provisional Sum and the lump sum firm fixed bid determined through the procurement. [Dragados/Flatiron/Shimmick submitted a Fixed Bid Price in the amount of \$1,205,335,890.00.]
PG&E Provisional Sum	The Authority has reserved funds in the amount of \$160,000,000 in a Provisional Sum to pay for the PG&E Facility Work. To be eligible for payment from the PG&E Provisional Sum, each item of the PG&E Facility Work must be approved by the Authority in a Provisional Sum task order stating the scope, costs, and schedule for the work to be performed. The task order shall include (1) a sworn certification by the Contractor that (a) the task order is made in good faith and in accordance with the terms of the Contract and (b) the schedule and compensation requested accurately reflects the PG&E Facility Work eligible for reimbursement from the PG&E Provisional Sum; and (2) sufficient backup documentation to support all costs eligible for payment from the PG&E Provisional Sum.
Retainage	Retainage will be withheld under the Contract at the rate of 5% of all invoices paid up to a cap of \$10,000,000.00.
Payments	<p>Progress payments will be made monthly based on verification of completed work against an approved, cost loaded schedule. Additionally, the following items will be paid as follows in lieu of measured progress payments.</p> <ol style="list-style-type: none"> 1. Mobilization: <ul style="list-style-type: none"> • 0.5 percent of the Contract Price at NTP + 30 days • 0.5 percent of the Contract Price when 2.5 percent of the construction value of the Contract Price is earned • 2 percent of the Contract Price when 5 percent of the construction value of the Contract Price is earned 2. Premiums for payment and performance bonds required under the Contract will be paid as a dollar for dollar pass-through of Contractor's actual costs as incurred. 3. Premiums for insurance required under the Contract will be paid as a dollar for dollar pass-through of Contractor's actual costs as incurred.
5. Commencement of Work; Completion Deadlines	
Notice to Proceed	Contractor will not proceed with any Work under the Contract without a written notice to proceed for such Work from Authority. Any Work performed or expenses incurred by Contractor prior to Contractor's receipt of a written notice to proceed for such Work is Contractor's risk.

	<p>Authority may issue NTP within 270 days after the Proposal Deadline without escalation and Authority may issue NTP between 270 days and 360 days after the Proposal Deadline upon application of a prescribed escalation formula (based on the change in the Construction Cost Index as published by Engineering News Record) set forth in the Special Provisions (except to the extent that such failure is caused by Contractor). Either party may terminate the Contract if NTP has not been issued within 360 days after the Proposal Deadline.</p>
<p>Prerequisites for Start of Construction</p>	<p>Contractor will not start construction of any portion of the Project until all the following prerequisites have been fully satisfied with respect to the Work proposed to be constructed:</p> <ol style="list-style-type: none"> 1. Authority has issued NTP 2. All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such governmental approvals that are a prerequisite to commencement of such construction have been performed. 3. All insurance policies and payment and performance bonds required to be delivered to Authority under the Contract have been submitted to Authority and remain in full force and effect. 4. All necessary rights of access for such portion of the Project have been obtained. 5. Ready for construction submittals have been issued for that portion of the Work and approved by Authority. 6. Contractor has submitted to Authority and Authority has approved a GBR-C. 7. Contractor has certified that the Work will comply with the Environmental Requirements. 8. Any additional conditions for construction set forth in the Contract have been fully satisfied.
<p>Completion Deadlines</p>	<p>Substantial Completion generally consists of completion of all physical Work other than punch list items and that the Project can be used without damage to the Project or any other property on or off the Site, and without injury to any Person. The Substantial Completion Deadline is 980 Working Days after NTP.</p> <p>Final Acceptance consists of completion of all Work including all punch list items and documentation. The Final Acceptance Deadline is 1025 Working Days after NTP.</p>
<p>Liquidated Damages</p>	<p>Liquidated damages will be assessed if Contractor fails to achieve Substantial Completion by the Substantial Completion Deadline in the amount of \$106,000/day.</p> <p>Liquidated damages will be subject to a cap equal to 10% of the initial Contract Price.</p> <p>Assessment of liquidated damages for delay will not preclude Authority from exercising its other rights and remedies set forth in the Contract other than the right to collect damages associated with such delay.</p>

Float	Float belongs to either Contractor or Authority.
6. Security, Indemnities, Insurance, Maintenance, Risk of Loss, Warranties	
Surety Bonds	A payment bond in the amount of 100% of the Contract Price and a performance bond in the amount of 50% of the Contract Price are required upon execution of the Contract.
Guaranty	<p>If Contractor is a limited liability company, each limited liability company member will be required to provide a guaranty of Contractor's obligations. If Contractor or its members submitted parent company financial statements in response to the RFQ or RFP, each such parent company will be required to provide a guaranty of Contractor's obligations. Authority may also require an additional performance guaranty based on the financial information provided in response to the RFQ or RFP.</p> <p>The guaranty will require the guarantor to financially support, unconditionally, all obligations of Contractor under the Contract during the Contract term, including the warranty period(s).</p>
Indemnities	<p>Contractor will fully defend, indemnify and hold harmless Authority, FRA and all of their directors, officers, employees, and agents and their respective successors and assigns ("Indemnified Persons") from any and all claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to:</p> <ol style="list-style-type: none"> 1. The breach of, alleged breach of, failure to perform or alleged failure to perform the Contract or any subcontract thereunder by any Contractor-Related Entity; 2. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable Law; 3. The breach of or alleged breach of or failure to alleged failure to perform any contract or agreement to use private property for any purpose under the Contract; 4. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault, of any Contractor-Related Entity arising out of or related to any contract or agreement to use private property for any purpose under the Contract; 5. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault of any Contractor-Related Entity; 6. Any service or design, or product called for in any service or design, provided by any Contractor-Related Entity that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret or other proprietary right of a third party; 7. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Contractor-Related Entity with respect to any payment for the Work made to or earned by such Contractor-Related Entity under the Contract Documents;

	<p>8. Any and all stop notices and/or liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any stop notice or lien, provided that Authority is not in default in payments owing to Contractor with respect to such Work;</p> <p>9. Any release or threatened release of hazardous materials (a) brought onto the Site by any Contractor-Related Entity or (b) where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity; or</p> <p>10. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors or failure of any Contractor-Related Entity to cooperate reasonably with other contractors.</p> <p>Contractor will fully defend, indemnify and hold harmless the Indemnified Persons from any and all claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the design documents, regardless of whether such errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects were also included in the Directive Drawings, Preliminary Design or other Reference Documents. Contractor will acknowledge that the Directive Drawings, Preliminary Design or other Reference Documents do not constitute "design furnished" by Authority for purposes of anti-indemnity laws.</p>
<p>Insurance</p>	<p>Contractor is required to provide the following insurance:</p> <ol style="list-style-type: none"> 1. Automobile Liability Insurance. The minimum combined single limit for primary coverage is \$1,000,000 per accident. 2. Workers' Compensation and Employer's Liability Insurance. Statutory limits on Workers' Compensation Insurance and Employer Liability Limits of: <ul style="list-style-type: none"> - \$1,000,000 Bodily Injury with Accident – Each Accident - \$1,000,000 Bodily Injury by Disease – Policy Limit - \$1,000,000 Bodily Injury by Disease – Each Employee 3. Commercial General Liability Insurance. Combined Bodily Injury and Property Damage Limit of \$2,000,000 per occurrence, \$4,000,000 General Aggregate. 4. Excess/Umbrella Liability Insurance of not less than \$200,000,000 per occurrence in excess of the above underlying coverages. 5. Professional Liability Insurance with limits of not less than \$10,000,000 per claim and in the aggregate. 6. Contractor's pollution liability insurance with limits of not less than \$10,000,000 per loss and in the aggregate. 7. Builder's risk insurance with coverage per occurrence up to the full replacement cost or a \$100,000,000 loss limit. The policy may include appropriate sublimits for earthquake, earth movement, tsunami and flood but not less than \$50,000,000 aggregate each for earthquake and flood.

	<ol style="list-style-type: none"> 8. Railroad protective liability coverage as may be required by any railroad, with a limit of not less than \$25,000,000 per occurrence and in the aggregate. 9. Aircraft Liability insurance, if applicable, with a limit of not less than \$10,000,000 per occurrence. 10. Watercraft Liability insurance, if applicable, with a limit of not less than \$10,000,000 per occurrence.
Maintenance / Risk of Loss During Construction	<p>Contractor is responsible for maintenance and risk of loss of the Project. Refer to the Builder’s risk insurance described in the “Insurance” provision above.</p>
Warranties	<p>Contractor warrants that:</p> <ol style="list-style-type: none"> 1. The Work conforms to the requirements of the Contract. 2. All design Work conforms to all professional engineering principles generally accepted as standards of the industry in California, is suitable for its intended purpose and is free of errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects. 3. The construction Work is performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in California. 4. Materials and equipment furnished under the Contract are of good quality and, except if otherwise set forth in the Contract, when installed, is new. 5. The Project is fit for the purposes intended. <p>The warranty period commences upon Substantial Completion and continues for a period of two years from Final Acceptance.</p> <p>The warranties on any repair, rework or replacement will extend beyond the original warranty period if necessary to provide at least a one year warranty period from the date of acceptance of the repairs, rework, or replacement.</p> <p>Upon Final Acceptance, Contractor will have the right to replace the performance bond with a replacement bond in the amount of 10% of the Contract Price in a form satisfactory to the Authority in its sole discretion guaranteeing due and punctual performance of Contractor’s obligations under the Contract that survive Final Acceptance, or with such other security as is approved by Authority in its sole discretion.</p> <p>Contractor’s and Subcontractors’ warranties are assignable by Authority immediately upon providing written notice to Contractor.</p>
7. Defaults, Remedies, Suspensions, Terminations	
Contractor Defaults	<ol style="list-style-type: none"> 1. Contractor refuses or fails to commence the Work within the time required by the Contract. 2. Contractor refuses or fails to prosecute the Work or any separable part with the diligence that will ensure its completion within the time specified in the Contract. 3. Contractor refuses or fails to provide sufficient resources to complete the Work in an acceptable manner and without delay or promptly pay its

	<p>Subcontractors.</p> <ol style="list-style-type: none"> 4. Contractor refuses or fails to complete the Work within the time specified in the Contract. 5. Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted in the Contract. 6. Contractor or any guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors. 7. Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against Contractor or any guarantor and not dismissed within 60 days. 8. Contractor fails to provide and maintain the performance and payment bonds, and any guaranty as required under the Contract. 9. Contractor fails to provide and maintain insurance as required under the Contract. 10. Any material representation or warranty made by Contractor or any guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents is false or materially misleading when made. 11. Contractor violates any law in performance of the Work. 12. Any guarantor revokes or attempts to revoke its obligations under its guaranty, or otherwise takes the position that such instrument is no longer in full force and effect. 13. Contractor breaches any other agreement, representation or warranty contained in the Contract Documents, or Contractor fails to perform any other obligation under the Contract Documents.
<p>Cure Periods</p>	<p>Contractor and its surety under the performance bond is entitled to the following notice and cure periods:</p> <ol style="list-style-type: none"> 1. No notice or cure period with respect to a breach described under paragraphs 10 and 12 of the “Contractor Defaults” provision above. 2. 5-day cure period with respect to the failure to maintain insurance as described in paragraph 9 of the “Contractor Defaults” provision above. 2. 30-day cure period with respect to a breach described under paragraphs 1 through 8, 10 and 12 of the “Contractor Defaults” provision above. <p>If Contractor is unable to cure the applicable default within the time period specified, but in Authority’s reasonable determination (i) Contractor has diligently and continuously undertaken efforts to cure such default and (ii) such failure to cure is beyond the control of Contractor, Authority may extend the cure period in accordance with its discretion up to 90 days.</p>
<p>Authority Remedies</p>	<p>Upon an event of default, Authority may terminate Contractor’s right to proceed with the Work or Authority may take over the Work and complete it by contract or otherwise. The rights and remedies of Authority provided for under the Contract are in addition to any other rights and remedies provided by law.</p>

<p>Consequential Damages</p>	<p>Contractor and Authority will not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of the Contract, tort (including negligence) or any other theory of liability, and each party releases the other party from any such liability. The foregoing limitation on liability for consequential damages will not apply to or limit any right of recovery respecting the following:</p> <ol style="list-style-type: none"> 1. Losses (including defense costs) to the extent covered by (a) the proceeds of insurance required to be carried under the Contract or (b) the proceeds of insurance actually carried by or insuring Contractor under policies solely with respect to the Project and the Work; 2. Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence; 3. Contractor's or Authority's indemnities under the Contract; 4. Contractor's obligation to pay liquidated damages in accordance with the Contract; 5. Specific amounts owing under the express provisions of the Contract; 6. Losses arising out of releases of hazardous materials by Contractor or Authority; and 7. Contractor's obligation to pay the Authority's costs of repair or of correcting or replacing non-conforming Work.
<p>Limitation of Contractor's Liability</p>	<p>Contractor's liability to Authority for damages resulting from breach of the Contract will be limited to the sum of:</p> <ol style="list-style-type: none"> 1. All those costs reasonably incurred by Authority or any party acting on Authority's behalf (minus the unpaid portion of the Contract Price) in completing the Work or having the Work completed by another Person; 2. All those costs reasonably incurred by Authority or any party acting on Authority's behalf in correcting the Work or having the Work corrected by another Person; and 3. An amount equal to 40 percent of the Contract Price ; <p>Provided, however, that excluded from the cap will be:</p> <ol style="list-style-type: none"> 1. Losses (including defense costs) to the extent covered by (a) the proceeds of insurance required to be carried under the Contract or (b) the proceeds of insurance actually carried by or insuring Contractor under policies solely with respect to the Project and the Work; 2. Any liquidated damages paid; and 3. Any type of cost arising from fraud, gross negligence, intentional misconduct or criminal acts of any Contractor-Related Entity.
<p>Suspension</p>	<p>Authority may order Contractor to suspend all or any part of the Work for the period of time that Authority deems appropriate.</p> <ol style="list-style-type: none"> 1. Suspension for cause. No adjustment will be made for suspensions: <ul style="list-style-type: none"> - required to correct conditions unsafe for Project personnel or the general public; - required to comply with any governmental approval, law or otherwise carry out the requirements of the Contract; or

	<ul style="list-style-type: none"> - to the extent that performance would have been suspended or delayed by any other cause, including the fault or negligence of Contractor for which an equitable adjustment is provided for or excluded under any other provision of the Contract. <p>2. Suspension for convenience. Contractor is entitled to a Change Order for additional costs (including overhead and delay damages but excluding profit) and a time extension for suspensions beyond a 240-hour cumulative period.</p> <p>In the event of a suspension for convenience for more than 180 consecutive days, Contractor will have the right to consider the Contract to have been terminated for convenience.</p>
<p>Termination for Convenience</p>	<p>Authority may, whenever the interests of Authority so require, terminate the Contract, in whole or in part, for the convenience of Authority.</p> <p>Contractor and all Subcontractors will not be entitled to anticipatory or unearned profit or consequential or other damages as a result of a termination or partial termination for convenience.</p>
<p>8. Other Contract Provisions</p>	
<p>Dispute Resolution</p>	<p>Any disputes will be required to go through a formal partnering process and be adjudicated by a dispute resolution board before a party can bring the dispute to binding arbitration. The standing dispute resolution board will consist of one member selected by Authority (who will be a professional engineer) and approved by Contractor, one member selected by Contractor (who will be a professional engineer) and approved by Authority, and a third member (who will be an attorney) who will be the chairperson will be selected by the first two members subject to the approval of the parties. Decisions of the dispute resolution board will be non-binding. Disputes not resolved through this process may be submitted to binding arbitration.</p>
<p>Coordination</p>	<p>Contractor will coordinate with Authority and other contractors performing work on or near the Site. Contractor will conduct its Work without interfering with the work being performed by other contractors.</p> <p>If Contractor asserts that any of Authority's other contractors have interfered with the Work, then Contractor's sole remedy will be to seek recourse against such other contractors.</p>
<p>Partial Completion</p>	<p>The Contractor's Baseline Schedule shall include deadlines for Partial Completion of contiguous Project sections sufficient in length for the performance of ballast and trackwork installation by other contractors prior to Substantial Completion of the entire Project. Upon the acceptance of such a Project section by the Authority, (a) the warranty term for such Work shall commence and (b) if the Authority provides access to such Project section to a trackwork contractor, the Contractor shall no longer be responsible for maintenance of and risk of loss of such Work.</p>
<p>Escrowed Proposal Documents (EPDs)</p>	<p>Contractor's detailed Proposal pricing information will be kept by Authority in a locked cabinet with Contractor controlling the key. The EPDs are available for joint review by Contractor, Authority and the DRB or other dispute resolvers in connection with approval of the schedule of values, payment</p>

	<p>milestones, negotiation of Change Orders, resolution of disputes and to determine whether the EPDs are complete.</p> <p>Concurrently with submission of quotations or revisions to quotations provided in connection with proposed amendments to the Contract and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order will be added to the cabinet to be held with the other EPDs. Contractor will require each Subcontractor whose Subcontract price equals or exceeds \$5,000,000 to submit to Contractor a copy of all documentary information used in determining its subcontract price, immediately prior to executing the subcontract or change orders or amendments thereto, to be held in the same manner as the EPDs and which shall be accessible by Contractor, Authority, the DRB and other dispute resolvers, on terms substantially similar to those that apply to Contractor.</p> <p>The EPDs will be maintained until: (a) expiration of Contractor's warranties or termination of the Work; (b) all disputes regarding the Contract have been settled; and (c) final payment on the Contract has been made by Authority and accepted by Contractor.</p>
<p>Assignment</p>	<p>Contractor may not assign the Contract, any part of the Contract or any monies due or to become due under the Contract without the prior written approval of Authority.</p> <p>Authority may assign without Contractor's consent all or any portion of the Contract, payment and performance bonds or guaranty to any entity that succeeds to the governmental powers and authority of Authority.</p>