

California High-Speed Train Project



Request for Proposal for Design-Build Services

RFP No.: HSR 11-16

Book 3, Part D, Subpart 7 Caltrans and Railroad Agreements Caltrans SR99

EXECUTION VERSION

Revision(s)	Date	Description
1	12/14/2012	Addendum 7
2	01/08/2013	Addendum 9

**EXHIBIT A
 SCOPE OF WORK**

1. This Agreement is between the California High-Speed Rail Authority, referred to as CHSRA and California Department of Transportation, referred to as CALTRANS.

For the purpose of this Agreement, the term PARTIES collectively refers to CHSRA and CALTRANS (all signatory parties to this Agreement). The term PARTY refers to any one of those signatory parties individually.

2. All inquiries during the term of the Agreement will be directed to the project representatives listed below:

California High Speed Rail Authority	Department of Transportation
Section/Unit: Central Valley Regional Director	Section Unit: 06-129
Contract Manager: Diana Gomez	Contract Manager: Garth Fernandez
Address: 770 L Street, Suite 800 Sacramento, CA 95814	Address: 2015 East Shields Ave, #100 Fresno, CA 93726
Phone No.: 559 801-1164	Phone No.: 559-243-8012
Fax No.: N/A	Fax No.: 559-243-3426
Email: dgomez@hsr.ca.gov	Email: garth_fernandez@dot.ca.gov

3. Scope of Work

- A. This Agreement outlines the terms and conditions of cooperation between PARTIES to complete Plans, Specifications and Estimate (PS&E), Right of Way (R/W) and Construction for roadway improvements on State Route 99 (SR 99) from Ashlan Avenue to Clinton Avenue, in the City of Fresno.
- B. PARTIES also entered into a Master Agreement 53-2009 on November 11, 2009, and Amendment 53-2009-A1 on February 14, 2010, that defined how PARTIES would cooperate to perform PA&ED for High Speed Train System within CALTRANS's right of way.
- C. For the purpose of this Agreement, performing PS&E, R/W and Construction activities for the roadway improvements from Ashlan Avenue to Clinton Avenue, in the City of Fresno and the removal of existing infrastructure and preparation of sub-ballast will together be referred to as PROJECT. All responsibilities assigned in this Agreement to the PROJECT will be referred to as OBLIGATIONS. All scope activities included in this Agreement to the PROJECT will be referred to as WORK.
- D. This PROJECT will be implemented as a Design-Bid-Build or Construction Manager General Contractor project.
- E. Following are the major elements of the scope of the PROJECT, (Attachment 1), which includes but is not limited to:

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- Realignment of SR99 from South of Clinton Avenue to South of Ashlan Avenue.
- Auxiliary lane on SR 99 from Olive Avenue to Clinton Avenue.
- Replacement of Ashlan Overhead (OH).
- Replacement of Ashlan Avenue from the Ashlan Avenue Overcrossing (OC) to east of Marty Avenue.
- Improvement at the SR99 off ramps at Ashlan Ave.
- Replacement of Clinton Avenue Interchange (IC) from west of Vassar Avenue to east of North Webber Avenue, including overcrossing and overhead structures.
- Connection of North Golden State Boulevard to Clinton Avenue.
- Reconnection of North Golden State Boulevard from the SR 99 northbound off ramp at Ashlan Avenue.
- Reconnection of West Dakota Avenue and North Valentine Avenue.
- Construct Parkway cul-de-sacs 2.
- Connection at West Shields Avenue and North Marks Avenue.
- Connection at North Woodson Avenue and Cambridge Avenue.
- Closure of partial interchanges at Princeton, Shields, and Dakota Avenues.
- Retaining wall between relocated highway and high speed train lines.
- Intrusion barrier between high speed train lines and Union Pacific Railroad (UPRR)-CT will design to loading specs provided by CHSRA. CT will not crash test barrier.
- Removal of existing highway infrastructure and preparation to sub-ballast the section of existing SR99 to be used for CHSRA infrastructure.
- Freeway landscape/ erosion control and replacement planting.

F. In this Agreement capitalized words represent defined terms and acronyms. The Definitions Section below contains a complete definition for each capitalized term.

G. From this point forward, PARTIES define in this Agreement the terms and conditions under which they will accomplish OBLIGATIONS.

5. Responsibilities

- CHSRA is the SPONSOR for the PROJECT.
- CHSRA is the only FUNDING PARTY for PROJECT.
- CHSRA is CEQA lead for PROJECT.
- FRA is NEPA lead for PROJECT.

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- CALTRANS is a CEQA responsible agency for PROJECT.
- CALTRANS is IMPLEMENTING AGENCY for PS&E, R/W and CONSTRUCTION.

6. General Scope

- A. PARTIES will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; and FRA, FHWA, and CALTRANS STANDARDS. For the WORK specific to the CHSRA infrastructure work within the existing section of SR 99, PARTIES will perform all OBLIGATIONS in accordance with CHSRA Design Manual.
- B. CHSRA will develop the Project Report for PROJECT.
- C. CHSRA will provide design specifications and guidelines for facilities and structures for the work within the existing section of SR99 that will become CHSRA right of way. CALTRANS will comply with these specifications and guidelines for all work within this portion of SR99.
- D. CHSRA shall provide preliminary design plans and related preliminary utility plans, base mapping, surveys, traffic handling and related project documents, for PROJECT in its possession within 30 days after execution of this agreement.
- E. CHSRA shall provide investigative studies and technical environmental reports for PROJECT in its possession within 30 days after execution of this agreement.
- F. Each PARTY will ensure that all of its personnel participating in OBLIGATIONS are appropriately qualified, and if necessary licensed, to perform the tasks assigned to them.
- G. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional as determined by CHSRA has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
- H. If HM-1 or HM-2 is found during WORK, CALTRANS will immediately notify CHSRA.
- I. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 when funds become available.
- J. CHSRA, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside of the existing SHS right of way. CHSRA will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 within the limits described in this Article.

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- K. CHSRA may elect to fund HM-1 MANAGEMENT ACTIVITIES as an OBLIGATIONS cost to maintain PROJECT schedule.
- L. If HM-2 is found within PROJECT limits, CALTRANS being responsible for the advertisement, award, and administration of the PROJECT construction contract will perform the HM MANAGEMENT ACTIVITIES related to HM-2.
- M. CALTRANS's acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS's policy on such acquisition.
- N. PARTIES will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTY's responsibilities in this agreement.
- O. CALTRANS will designate a project manager to manage the project and serve as a primary point of contact for CHSRA. The CALTRANS project manager shall maintain PROJECT MANAGEMENT PLANS necessary to control the WORK related to the PROJECT.
- P. CHSRA will designate a project manager to manage the project and serve as a primary point of contact for CHSRA.
- Q. CALTRANS will furnish CHSRA with written monthly progress reports during the implementation of OBLIGATIONS in that component.
- R. If CALTRANS anticipates that funding for WORK will be insufficient to complete WORK, CALTRANS will promptly notify CHSRA. CALTRANS has no obligation to perform WORK if funds to perform WORK are unavailable.
- S. Each PARTY accepts responsibility to complete the activities that it selected on the SCOPE and RESPONSIBILITY SUMMARY (Attachment 2). Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this Agreement.

7. Environmental Permits, Approvals and Agreements

- A. CHSRA will prepare the environmental documentation for PROJECT.
- B. CHSRA shall secure all environmental permits required for PROJECT to comply with all applicable laws and regulations. CHSRA will obtain preliminary programmatic level permits as a part of the preliminary design phase of the PROJECT. Once CALTRANS advances the design to a point sufficient to obtain PROJECT level permits, CALTRANS will complete draft permit applications for transmittal to CHSRA who will finalize applications and submit to the appropriate permitting agencies for approval. CALTRANS and CHSRA will work cooperatively

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to complete permit applications and respond to comments and requests for additional information on a timely basis.

- C. CALTRANS shall fulfill all environmental commitments and mitigation required for PROJECT subject to the provisions of the Master Agreement referenced in Section 3.B of this Exhibit A, as amended.
- D. CALTRANS must review and approve any environmental mitigation proposed within CALTRANS existing or future right of way subject to the provisions of the Master Agreement referenced in Section 3.B of this Exhibit A, as amended.

8. Scope: Plans, Specifications, and Estimate (PS&E)

- A. CALTRANS will prepare the plans, specifications, and estimate for PROJECT.
- B. CALTRANS will identify and locate all utility facilities within PROJECT area as part of PS&E responsibilities. The plans, specifications, and estimate for PROJECT will identify all utility facilities not relocated or removed in advance of the construction PROJECT COMPONENT.
- C. CHSRA will provide oversight and approval of plans and specifications, in writing, for the portion of the project located within the existing section of SR99. All PARTIES and CP1 CONTRACTOR shall work cooperatively to resolve all comments.
- D. CALTRANS shall furnish complete PROJECT plans to CHSRA for comments at 30 percent design, 60 percent design and 90 percent design.
- E. CALTRANS shall consider the City of Fresno Design Guidelines regarding its design and shall conform its aesthetics concepts to the CP 1 CONTRACTOR's design, as approved by CHSRA, for the portion of the PROJECT located within the existing section of SR99.
- F. Based on the requirements implemented in the National Highway Systems (NHS) Act of 1995, Federal Highway Administration (FHWA) Regulation Title 23 United States Code (USC), Section 106 and 627, CALTRANS and CHSRA will work cooperatively to complete a Value Analysis (VA) for PROJECT. CALTRANS and CHSRA shall provide qualified staff to fully participate in the VA process.

9. Right of Way (R/W)

- A. CALTRANS agrees to exercise its power of eminent domain to acquire all properties necessary to complete the PROJECT, in accordance with California Code of Civil Procedure §1240.320(a), and accordingly will provide right of way activities for PROJECT as defined in Attachment 2

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- B. CALTRANS will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of PROJECT or that violate CALTRANS encroachment policy. Utility relocations will be accomplished in accordance with CALTRANS policies and all requirements imposed by FRA and FHWA on utility relocations to be reimbursed with federal funds, including 23 CFR 645. Whenever practical, all longitudinal utilities should be relocated outside of the section of SR 99 to be transferred to CHSRA. Utilities that are to remain or are to be placed within the section of SR 99 to be transferred to CHSRA must also comply with the CHSRA Design Manual. Location and occupancy rights of utilities that permanently remain in the CHSRA right of way will be documented by CALTRANS in a form consistent with CHSRA policy.
- C. CALTRANS's responsibility for CROSS BORDER UTILITIES in accordance with Section 9.B shall extend to the tie-in location determined by coordination among CALTRANS, CHSRA and CHSRA's CP 1 CONTRACTOR, regardless of whether the tie-in location is located within, on or outside the boundaries of the SR 99 Project area. All relocations of CROSS BORDER UTILITIES assigned to CALTRANS, including those within the CP 1 project area, will be accomplished in accordance with CALTRANS policies, including issuance by CALTRANS of Notices to Relocate. Notwithstanding the foregoing, and regardless of the tie-in location, the following tasks with respect to CROSS BORDER UTILITIES will be divided between CALTRANS and the CP 1 CONTRACTOR at the boundary line between the SR 99 Project area and the CP 1 project area: (a) investigations of existing utilities, and (b) right of way/documentation work needed for those relocations. Utilities that are to remain or be placed within the CP 1 CONTRACTOR's project area must comply with the CHSRA Design Manual.
- D. All real property to be conveyed from CALTRANS to CHSRA shall be conveyed by Transfer of Jurisdiction in a form acceptable to CHSRA, subject to no liens or encumbrances other than those reasonably acceptable to CHSRA. All right of way conveyances must be completed prior to OBLIGATION COMPLETION.
- E. Caltrans will acquire all right of way with title vested in the "State of California". In accordance with policy, Caltrans will sell or dispose of any excess land not necessary for PROJECT, and the net proceeds will be transferred to CHSRA.
- F. Requests for adoption of Resolutions of Necessity for right of way acquisitions for the PROJECT shall be submitted by CALTRANS to, and be heard by, the California Transportation Commission.

10. Coordination

- A. CALTRANS shall coordinate all of its WORK on the PROJECT with CHSRA and CHSRA's CP-1 CONTRACTOR. CHSRA and CALTRANS shall develop a process for all PARTIES to provide regular updates on the PROJECT and CHSRP'S CP 1 project.

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- B. During WORK, representatives of all PARTIES will cooperate and consult with each other and the CP 1 CONTRACTOR to assure that all WORK is accomplished according to Section 6, A of this agreement.
- C. CALTRANS shall conform the horizontal and vertical alignments of the PROJECT to the alignments established by CHSRA,
- D. CALTRANS shall participate in CHSRA CP 1 CONTRACTOR'S Interface Coordination and Design Integration Workshops.
- E. CALTRANS shall coordinate all tie-ins, including tie-ins regarding third party facilities and utilities, with CHSRA, and CHSRA'S CP 1 CONTRACTOR.
- F. CALTRANS shall coordinate with any utility companies performing relocation work associated with the CHSRA alignment to the north and south of the PROJECT limits.
- G. CHSRA and CALTRANS will develop a public information process for dissemination of PROJECT information to the public. In addition to regular updates, this process will also include provisions for time sensitive or emergency notifications. CALTRANS shall coordinate with CHSRA prior to disseminating information regarding the PROJECT, consistent with the process to be developed as a requirement of this section.
- H. CALTRANS shall coordinate all maintenance of traffic activities with CHSRA and its representatives, including CHSRA'S CP 1 CONTRACTOR.
- I. CALTRANS will comply with any relevant terms and conditions regarding work on or adjacent to existing Union Pacific Railroad property, as contained in the "Engineering, Construction, and Maintenance Agreement Related to the California High-Speed Rail Authority Merced to Fresno Segment" (Attachment 5).

11. Construction

- A. CALTRANS will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code.
- B. CALTRANS need not advertise the construction contract until CHSRA verifies full funding of CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL.
- C. By accepting responsibility to advertise and award the construction contract, CALTRANS also accepts responsibility to administer the construction contract.

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- D. If the construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, all PARTIES must be involved in determining how to proceed. If PARTIES do not agree in writing on a course of action within 15 working days of bid opening, then CALTRANS shall not award the construction contract.
- E. CALTRANS will require the construction contractor to furnish payment and performance bonds naming CALTRANS as obligee and to carry liability insurance in accordance with CALTRANS specifications. CHSRA shall be included as an additional obligee on any payment and performance bonds and as an additional insured under the insurance policies. CALTRANS will ensure that the forms and amounts of all bonds and policies shall be reasonably acceptable to CHSRA.
- F. As IMPLEMENTING AGENCY for CONSTRUCTION, CALTRANS is responsible for maintenance within PROJECT limits as part of the construction contract until the completion, inspection and acceptance of WORK within the section of SR 99 to be transferred to CHSRA, by both CALTRANS and CHSRA.
- G. PARTIES will execute a separate Maintenance Agreement to define the maintenance responsibilities for any joint use facilities and appurtenances located in either of the PARTIES' rights of way. Said agreement will cover any joint use facilities within PROJECT limits, but may also cover other joint use facilities along the CHSRA alignment. (An example of a joint use facility would be a CALTRANS bridge over the CHSRA alignment where one PARTY may be responsible for the superstructure and another the deck and related appurtenances.) The Maintenance Agreement shall be executed prior to OBLIGATION COMPLETION.
- H. Upon WORK completion, inspection and acceptance of WORK within the section of SR 99 to be transferred to CHSRA, by both CALTRANS and CHSRA, CHSRA will operate and maintain all PROJECT facilities within this section of SR99, at its own cost until a Maintenance Agreement is executed or an existing agreement, if any, is amended to incorporate the maintenance of these new PROJECT facilities.
- I. Upon satisfactory completion of all WORK under this Agreement, as determined by CALTRANS and CHSRA, actual ownership and title to materials, equipment, and appurtenances installed within the operating SHS right of way for SHS operations will be vested in CALTRANS, and actual ownership and title to materials, equipment, and appurtenances installed within the operating CHSRA right of way will be vested in the CHSRA. Any materials, equipment and appurtenances installed outside the operating SHS and CHSRA rights of way will automatically be deemed to be under the control of CHSRA until such a time as CHSRA enters separate Maintenance Agreements with appropriate third parties. (An example of a third party would be the City of Fresno with joint use facilities including but not limited to the Ashlan and Clinton Avenue overcrossings). No further agreement will be necessary to transfer ownership or control as herein before stated, provided that if either

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PARTY or a third party requests documentation of transfer, the other PARTY(S) will provide mutually agreeable documentation to evidence said transfer

- J. For the work that occurs within the portion of SR99 to be transferred to CHSRA, CALTRANS will require the construction contractor to warrant its work and to obtain from its subcontractors, manufacturers and suppliers all warranties that are included in CHSRA's CP 1 contract which is available on the CHSRA website. All warranties described in the preceding sentence shall run directly to, and be enforceable by, CHSRA (or CHSRA's assignee) as well as CALTRANS. Upon request by CHSRA, CALTRANS will assign such warranties to CHSRA or CHSRA's assignee.

12. Schedule

- A. Project Approval and Environmental Documentation is estimated to be completed by February 2013.
- B. The estimated date for completion of the removal of infrastructure and sub ballast preparation on the section of SR 99 between Ashlan Avenue and Clinton Avenue to be transferred to CHSRA, is February 2018
- C. The estimate date for Contract Acceptance is June 2018.
- D. The estimated date for OBLIGATION COMPLETION is June 2020

13. Definitions:

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the CALTRANS Guide to Capital Project Delivery Workplan Standards (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

CEQA (California Environmental Quality Act) – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

CONTRACT ACCEPTANCE – The date CALTRANS accepts completed construction project.

CONSTRUCTION SUPPORT – See PROJECT COMPONENT.

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CP 1 CONTRACTOR – Design Build Team to be selected by CHSRA to complete construction of the high speed rail bed and other related features from approximately Avenue 17 in Madera County to American Avenue in Fresno County.

CROSS BORDER UTILITIES – A Utility which is located within both the SR99 project area and the CP 1 project area.

FHWA – Federal Highway Administration

FRA – Federal Rail Administration

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

FRA STANDARDS – Federal Rail Administration regulations, policies and procedures, including, but not limited to, all applicable guidance issued by FRA.

FUNDING PARTY – A PARTY that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTY accepts responsibility to provide the funds identified on the FUNDING SUMMARY under its name.

FUNDING SUMMARY – The table that designates an agreement's funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are "not-to-exceed" amounts for each FUNDING PARTY.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTY responsible for managing the scope and schedule of a PROJECT COMPONENT to ensure the completion of that component.

NEPA (National Environmental Policy Act of 1969) – The federal act that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

EXHIBIT A SCOPE OF WORK

OBLIGATION COMPLETION – PARTIES have fulfilled all OBLIGATIONS included in this Agreement, and all amendments to this agreement.

OBLIGATIONS – All responsibilities included in this Agreement.

PARTY – Any individual signatory party to this Agreement.

PARTIES – The term that collectively references all of the signatory agencies to this Agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTY's individual actions legally bind the other PARTIES.

PROJECT – Realignment of SR 99 and the removal of existing infrastructure and preparation to sub-ballast on the existing section of SR 99 from Ashlan Avenue to Clinton Avenue in the City of Fresno, as more particularly described in Section 3.E.

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

PA&ED (Project Approval and Environmental Document) – The activities required to deliver the project approval and environmental documentation for PROJECT.

PS&E (Plans, Specifications, and Estimate) – The activities required to deliver the plans, specifications, and estimate for PROJECT.

R/W (Right of Way) SUPPORT – The activities required to obtain all property interests for PROJECT.

R/W (Right of Way) CAPITAL – The funds for acquisition of property rights for PROJECT.

CONSTRUCTION SUPPORT – The activities required for the inspection, administration, acceptance, and final documentation of the construction contract for PROJECT.

CONSTRUCTION CAPITAL – The funds for the construction contract.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project's execution and control throughout that project's lifecycle.

SCOPE SUMMARY – The attachment in which each PARTY designates its commitment to specific scope activities within each PROJECT COMPONENT as outlined by the CALTRANS's Guide to Capital Project Delivery Workplan Standards (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

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SHS (State Highway System) – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPONSOR – The PARTY that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fully fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. Scope adjustments that affect SHS must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

WORK – All scope activities included in this Agreement.

EXHIBIT B BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing

- A. For services satisfactorily rendered and approved by the CHSRA and upon receipt and approval of the invoices, CHSRA agrees to compensate CALTRANS for actual allowable costs incurred as specified in Section 4, Rate. Incomplete or disputed invoices shall be returned to CALTRANS, unpaid, for correction.
- B. Invoices shall include the Agreement Number and invoice number and shall be submitted in duplicate, not more frequently than monthly in arrears, to:

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

- C. Invoices shall be submitted showing each billable hour increment, identified staff by name, classification and a description of the task and itemized TEC. The appropriate number of billable hours will be identified by the Contract Manager.
- D. Invoices shall be paid after review and approval by CHSRA within 45 calendar days of receipt of the invoice meeting the requirements of Exhibit B by CHSRA.

2. Budget Contingency Clause

- A. It is mutually agreed that if funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this PROJECT, the CHSRA shall have the option to either: 1) cancel this Agreement with no liability occurring to the CHSRA; or 2) offer a contract amendment to CALTRANS to reflect the reduced amount.
- B. This Agreement is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Agreement. Funding for this Agreement may be subject to the approval of the U.S. Federal Railroad Administration (FRA) and to any additional restrictions, limitations, or conditions imposed by FRA, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement. If Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

3. Disputed Invoices

- A. In the event the invoice is disputed by CHSRA, the invoice shall be returned to:

Department of Transportation
Division of Accounting

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

Abatement and Reimbursement Receivables – North Section
P.O. Box 168043
Sacramento, CA 95816 - 8043

- B. The invoice shall be accompanied with a letter that includes Agreement number, invoice number, amount, date received, and reason for the dispute.

4. Rates

- A. Rates for these services may be found on Attachment 4 of this Agreement.
- B. Attachment 4 is subject to revisions based on employee compensation rates, Payroll Reserve Assessment Rates, and Indirect Cost Rate each fiscal year. CALTRANS will provide current rates each fiscal year.
- C. If CALTRANS has not entered into an Agreement with a Federal Agency and therefore is not bound by that Federal Agency's negotiated rates, the basis for determining overhead and indirect costs shall be based upon SAM Section 8752.

5. Payment

- A. Costs for this Agreement shall be computed in accordance with State Administrative Manual (SAM) Sections 8752 and 8752.1.
- B. Nothing herein contained shall preclude advance payments pursuant to Article 1, Chapter 3, Part 1, Division 3, and Title 2 of the California Government Code.
- D. The method of payment for this Agreement will be based on actual costs as set forth herein. Actual costs shall not exceed the costs set forth in Attachment 3, CALTRANS's Detailed Budget without prior written agreement between CALTRANS and CHSRA. In addition, CALTRANS will be reimbursed for direct costs, other than salary costs. Such costs may include, but are not limited to, experts, consultants, surveyors, appraisers, title reports, escrow costs and accountants.
- E. Transportation and subsistence costs shall not exceed rates authorized to be paid non-represented state employees under current State Department of Personnel Administration rules.

6. Cost Limitation

- A. The total amount of this Agreement shall not exceed **\$225,900,000.00**
- B. It is understood and agreed that this total is an estimate and that CHSRA will pay for only those services actually rendered as authorized by CHSRA.

7. Cost Principles

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- A. CALTRANS agrees to comply with Federal procedures in accordance with Title 2 Code of Federal Regulations (CFR) Part 225, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 225).
- B. CALTRANS agrees to comply with Federal procedures in accordance with Title 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR 18).
- C. Any costs for which payment has been made to CALTRANS that are determined by subsequent audit to be unallowable under the 2 CFR 225 or 49 CFR 18 is subject to repayment by CALTRANS.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

8. Cost

- A. All OBLIGATION costs shall be borne by CHSRA as the sole FUNDING PARTY. The designation of any cost as an OBLIGATION cost in this Section 8 shall be subject to any other provision of this Agreement that assigns responsibility of such costs to CALTRANS
- B. All WORK necessary for OBLIGATION COMPLETION of PROJECT is an OBLIGATION cost (See Article ten (10)).
- C. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS cost.
- D. CHSRA independent of PROJECT will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits, and outside of the SHS right of way. In the interest of PROJECT schedule, CHSRA may elect to pay for HM MANAGEMENT ACTIVITIES related to HM-1 found within the PROJECT limits and within the SHS right of way
- E. CALTRANS, independent of PROJECT, will pay or cause to be paid, all cost for HM-1 MANAGEMENT ACTIVITIES related to HM-1 found within the SHS right of way.
- F. HM MANAGEMENT ACTIVITIES costs related to HM-2 are OBLIGATION costs.
- G. The cost to comply with and implement the commitments and mitigation set forth in the environmental documentation is an OBLIGATIONS cost.
- H. The cost to ensure that PROJECT remains in environmental compliance during the work is an OBLIGATIONS cost.

EXHIBIT B BUDGET DETAIL AND PAYMENT PROVISIONS

- I. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS cost.
- J. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments prior to PROJECT acceptance is an OBLIGATIONS cost.
- K. CALTRANS will invoice CHSRA an initial deposit that represents two (2) months estimated PS&E support costs in the amount of \$1,000,000 upon execution of this agreement.
- L. CALTRANS will invoice CHSRA an initial deposit that represents one month estimated Right of Way and utility capital costs in the amount of \$2,000,000 upon execution of this agreement.
- M. CALTRANS will invoice CHSRA an initial deposit that represents two (2) months estimated Right of Way support costs in the amount of \$250,000 upon execution of this agreement.
- N. CALTRANS will invoice CHSRA an initial deposit that represents approximately one month estimated CONSTRUCTION CAPITAL costs in the amount of \$2,000,000, 45 days in advance of Advertisement.
- O. CALTRANS will invoice CHSRA an initial deposit that represents approximately two month estimated CONSTRUCTION support costs in the amount of \$800,000, 45 days in advance of Advertisement.
- P. Construction claims are CHSRA costs.
- Q. The cost of all state furnished materials (SFM) is a CONSTRUCTION CAPITAL cost. CALTRANS will invoice CHSRA for the actual cost of any SFM as a CONSTRUCTION CAPITAL cost.
- R. After PARTIES agree that all WORK is complete, CALTRANS will submit a final accounting for all CHSRA costs. Based on the final accounting, PARTIES will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

9. Electronic Fund Transfer

CHSRA will seek Electronic Funds Transfer (EFT) certification from CALTRANS. If approved, CHSRA will use the EFT mechanism and follow all EFT procedures to pay all invoices issued by Caltrans.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

10. Detailed Budget

See Attachment 3

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EXHIBIT D SPECIAL TERMS AND CONDITIONS

GIA 610 – The General Terms and Conditions are included in this Agreement. **GIA-610.**

1. **APPROVAL:** This Agreement is not valid until signed by both parties and approved by the Department of General Services, if required.

2. **AUDIT:** The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.

3. **PAYMENT:** Costs for this Agreement shall be computed in accordance with State Administrative Manual Section 8752 and 8752.1.

4. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.

5. **SUBCONTRACTING:** All subcontracting must comply with the requirements of the State Contracting Manual, Section 3.06.

6. **ADVANCE PAYMENT:** The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code Sections 11257 through 11263.

7. **DISPUTES:** The agency performing work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.

8. **TIMELINESS:** Time is of the essence in this Agreement.

9. **NON-PAYMENT OF INVOICES – FUND TRANSACTION REQUEST:** In accordance with Government Code Section 11255, the parties agree that when an invoice is not paid by the requested due date to the Contractor (agency providing the service) and the invoice is not disputed by the contracting Department (agency receiving the service), Contractor may send the contracting Department a 30-day notice that it intends to initiate a transfer of funds through a Transaction Request sent to the State Controller's Office. To facilitate a Transaction Request should one be needed, the contracting Department shall no later than 10 business days following execution of this agreement provide data to the Contractor for the appropriation to be charged including: fund number, organization code, fiscal year, reference, category or program, and, if applicable, element, component, and task.

EXHIBIT D SPECIAL TERMS AND CONDITIONS

1. Termination

- A. Both PARTIES, CHSRA and CALTRANS, reserve the right to terminate this Agreement without cause upon thirty (30) days written notice to the other PARTY, or immediately in the event of a material breach. In the event of termination, CALTRANS shall be paid for all allowable costs incurred up to the date of termination.
- B. In the event that the total Agreement amount is expended prior to the expiration date, CHSRA may, at its sole discretion, terminate this Agreement with 30 days' notice to CALTRANS.
- C. Upon termination of this Agreement pursuant to either this Exhibit D, Section 1 or Exhibit B, Section 2, the PARTIES shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the PARTIES relating to such termination.

2. Contracting

CALTRANS may, following consultation with CHSRA, employ consultants, experts, surveyors, appraisers, title companies, escrow companies, and accountants to perform services as determined by CALTRANS.

- A. Any contract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement that are applicable to contractors.
- B. CALTRANS may, following consultation with CHSRA, make a substitution of contractors.
- C. In addition to any other contracting requirement specified in this Agreement, CALTRANS shall insure that contractor requirements in State Contract Manual (SCM), Section 3.06 have been met. Any revisions to this provision of the SCM that are made during the term of this Agreement shall be made a part of this Agreement and incorporated herein by reference. Failure to comply with these requirements may result in the termination of this Agreement.

3. Retention of Records/Audits

- A. For the purpose of determining compliance with Government Code Section 8546.7, CALTRANS, contractors and CHSRA shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All PARTIES shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the

EXHIBIT D SPECIAL TERMS AND CONDITIONS

contract. CHSRA, the State Auditor, FRA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CALTRANS that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

- B. Any contract entered into as a result of this Agreement shall contain all the provisions of this Section.

4. Disputes

- A. Any dispute arising under this Agreement that is not disposed of within ninety (90) calendar days by CHSRA and CALTRANS employees normally responsible for the administration of this Agreement, shall be brought to the attentions of the CHSRA Contract Manager and the CALTRANS Contract Manager, or their designated representatives, for joint resolution. If agreement cannot be reached by the Contract Managers, either PARTY may seek its remedies through a court of competent jurisdiction.
- B. The rights and remedies provided in Article A of this Section shall not be exclusive and are in addition to any rights and remedies provided by law or under the Agreement.
- C. CHSRA and CALTRANS agree to continue to perform their obligations under this Agreement, pending the resolution of the dispute.

5. Resolution of Conflicts

- A. PARTIES will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of CHSRA will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.
- B. Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of OBLIGATIONS in accordance with the terms of this agreement. However, if any PARTY stops fulfilling OBLIGATIONS, any other PARTY may seek equitable relief to ensure that OBLIGATIONS continue.
- C. Except for equitable relief, no PARTY may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

EXHIBIT D SPECIAL TERMS AND CONDITIONS

- D. PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides. The prevailing PARTY will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.
- E. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution. A dispute resolution process mutually agreeable to both PARTIES will be utilized.
- F. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTIES will amend this agreement to include completion of those additional tasks.
- G. PARTIES will execute a formal written amendment if there are any changes to OBLIGATIONS.

6. Federal Lobbying Activities Certification

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

- A. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of CALTRANS, 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.
- B. 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 Federal Agreement, grant, loan, or cooperative agreement, CALTRANS shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- C. 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 Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EXHIBIT D SPECIAL TERMS AND CONDITIONS

- D. CALTRANS 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.

7. Federal Funding Requirements

During the performance of this Agreement, CALTRANS, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

- A. **Federal Contract:** The Contractor understands that CHSRA has received Federal funding from FRA for the PROJECT and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. The Contractor acknowledges that federal laws, regulations, policies and related administrative practices may change and that such changed requirements will apply to the PROJECT. The Contractor shall ensure compliance by its subcontractors and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein.

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

- B. **Federal Standards:** The Contractor agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48 inclusive, whichever may be applicable, and with applicable supplementary U.S. DOT or FRA directives or regulations. If determined necessary for proper PROJECT administration, FRA reserves the right to review the Contractor’s technical specifications and requirements.
- C. **Compliance with regulations:** The Contractor shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of Caltrans - Title 49 Code of Federal Regulations Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

EXHIBIT D SPECIAL TERMS AND CONDITIONS

- D. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations (Title 49, C.F.R.), including employment practices when the Agreement covers a program whose goal is employment.
- E. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- F. **Site Visits:** The Contractor agrees that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review PROJECT accomplishments and for other reasons. If any site visit is made by FRA on the premises of the Contractor or any of its subcontractors under this Contract, the Contractor shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Contractor or subcontractor.
- G. **Safety Oversight:** To the extent applicable, the Grantee agrees to comply with any Federal regulations, laws, or policy 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.
- H. **Debarment and Suspension:** This Contract is a covered transaction for purposes of 2 C.F.R. 1200. As such, the Contractor is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Contractor must verify that the subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties

EXHIBIT D SPECIAL TERMS AND CONDITIONS

Listing System” at <http://epls.gov/>. The Contractor shall obtain appropriate certifications from each such subcontractor and provide such certifications to the CHSRA.

- I. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations (49 C.F.R., Part 21), or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the CHSRA or any duly authorized representative of the Federal Government to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to CHSRA, or any duly authorized Federal Agency as appropriate, and shall set forth what efforts it has made to obtain the information.
- J. **Sanctions for Noncompliance:** In the event of the Contractor’s noncompliance with the nondiscrimination provisions of this Agreement, CHSRA shall impose such Agreement sanctions as it or any Federal funding agency may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
 2. Cancellation, termination or suspension of the Agreement, in whole or in part.
- K. **Incorporation of Provisions:** The Contractor shall include the provisions of Articles (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor will take such action with respect to any subcontractor or procurement as CHSRA or any Federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request CHSRA to enter into such litigation to protect the interest of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. Environmental Protection:

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

EXHIBIT D SPECIAL TERMS AND CONDITIONS

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

9. Rebates, Kickbacks and Other Unlawful Consideration

CALTRANS warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any state agency employee. For breach or violation of this warranty, CHSRA shall have the right, in its discretion, to terminate the Agreement without liability, to pay only for the value of work performed, or to deduct from the Agreement price or otherwise recover the full amount of each rebate, kickback or other unlawful consideration.

EXHIBIT D SPECIAL TERMS AND CONDITIONS

10. Indemnification and Hold Harmless Requirement

- A. Neither CHSRA nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CALTRANS under, or in connection with any work, authority, or jurisdiction delegated to CALTRANS under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CALTRANS shall fully defend, indemnify, and save harmless CHSRA and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury or damage occurring by reason of anything done or omitted to be done by CALTRANS under or in connection with any work, authority, or jurisdiction delegated to CALTRANS under this Agreement.
- B. Neither CALTRANS nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CHSRA under, or in connection with any work, authority, or jurisdiction delegated to CHSRA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CHSRA shall fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury or damages occurring by reason of anything done or omitted to be done by CHSRA under or in connection with any work, authority, or jurisdiction delegated to CHSRA under this Agreement.
- C. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release any PARTY from its obligation to indemnify as to any claims or cause of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred subsequent to the effective date of this Agreement and prior to the effective date of termination or completion.

11. Confidentiality and Information

CHSRA may provide its own intellectual property, confidential business and technical information to CALTRANS in connection with the work to be performed by CALTRANS under this Agreement. Such intellectual property and information shall be designated as confidential upon or prior to disclosure by CHSRA. In addition, the preparation and specifications of the Deliverables shall in all instances be treated as confidential, unless and until disclosed publicly by CHSRA. All confidential written materials shall be marked with the legend "California High-Speed Rail Authority – Confidential." CALTRANS shall use its best efforts to prohibit any use or disclosure of CHSRA confidential information, except as necessary to perform work under this Agreement.

EXHIBIT D SPECIAL TERMS AND CONDITIONS

12. State-Owned Data - Integrity and Security

- A. CALTRANS shall comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
1. Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect CALTRANS data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space. Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
 2. Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
 3. Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
 4. Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
 5. Notify the Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
 6. Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.
- B. CALTRANS shall use the State-owned data only for State purposes under this Agreement.
- C. CALTRANS shall not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) section 5335.1)

EXHIBIT D SPECIAL TERMS AND CONDITIONS

13. Additional Conditions

Subcontractors: CALTRANS shall affirmatively bind, by contract, any of its subcontractors or service vendors (hereinafter "CALTRANS's Subcontractor") providing services under this Agreement to conform to the provisions of Exhibit D, Section 2 Subcontracting, Article D. CALTRANS's Subcontractor shall then provide the signed contract to CALTRANS, who shall provide it to CHSRA's Contract Manager prior to the commencement of any work. In performing services under this Agreement, CALTRANS's Subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If CALTRANS's Subcontractor becomes aware of any such possible infringement in the course of performing any work under this Agreement, CALTRANS's Subcontractor shall immediately notify CALTRANS in writing. CALTRANS will then immediately notify the CHSRA's Contract Manager in writing.

14. Small Business Utilization Goals

The California High Speed Rail program has a small business utilization goal of 30%. Elements of the PROJECT that are completed by contract will be subject to this same small business utilization goal. PROJECT elements completed by CALTRANS staff are not subject to the small business goal. CALTRANS will comply with Title VI of the Civil Rights Act of 1964 and related statutes.

- 1. ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
- 2. ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
- 3. PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
- 4. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS (Buy America):** Contractor agrees that in accordance with the Passenger Rail Investment and Improvement Act (PRIIA) of 2008, Pub. L. 110-432, section 24405(a), which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the US Secretary of Transportation. For more information on FRA's Buy America requirements and processes please see FRA's Answers to Frequently Ask Questions (FAQ) available at, <http://www.fra.dot.gov/Page/P0391>.
- 5. WAGE RATE REQUIREMENTS:** Payment of prevailing wages on the PROJECT is required by 49 U.S.C. 24405(c)(2) and ARRA section 1606. For PROJECT components uses or would use rights-of-way owned by a railroad, the Contractor shall comply with the Provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For PROJECT components that do not use or would not use rights-of-way owned by a railroad, the Contractor will comply with the provisions of 40 U.S.C 3141 et seq.
- 6. INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
- 7. WHISTLEBLOWER PROTECTION:** Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of

law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

- 8. FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
- 9. REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
- A. The total amount of ARRA funds received by Contractor during the Reporting Period;
 - B. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - C. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:
 - (1.) The name of the project or activity;
 - (2.) A description of the project or activity;
 - (3.) An evaluation of the completion status of the project or activity; and
 - (4.) An estimate of the number of jobs created and /or retained by the project or activity;
 - D. For any contracts equal to or greater than \$25,000:
 - (i.) The name of the entity receiving the contract;
 - (ii.) The amount of the contract;
 - (iii.) The transaction type;
 - (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - (v.) The Program source;
 - (vi.) An award title descriptive of the purpose of each funding action;
 - (vii.) The location of the entity receiving the contract;
 - (viii.) The primary location of the contract, including the city, state, congressional district and country;
 - (ix.) The DUNS number, or name and zip code for the entity headquarters;
 - (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
 - (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) 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.;

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

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

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