

## California High-Speed Rail



# Agreement Status

### Entity: Fresno Irrigation District

<b>Entity Role:</b>	<u>The Fresno Irrigation District will review and approve Facility Plans and have a reasonable number of representatives on site of Project to verify that the Facility Work is being properly performed by Authority's Contractor and approve that work.</u>
<b>Master Agreement:</b>	<u>Master Agreement technical review is 100% complete. The Fresno Irrigation District is conducting a final legal review. Master Agreement is expected to be executed by September 14, 2012.</u>
<b>Task Orders:</b>	<u>Draft Task Order 1 and 2 has been prepared. The Fresno Irrigation District has provided comments to Draft Task Order 1 and has provided no comments to Draft Task Order 2.</u>

**DISCLAIMER:** Because the Master Agreement has not yet been approved by the Fresno Irrigation District Board of Directors, the Authority cannot represent that there will be no substantive changes to the draft Master Agreement as provided, although the Fresno Irrigation District staff has reviewed the Master Agreement. The Master Agreement and draft Task Orders are being provided for informational purposes only and are subject to the express limitations set forth in the General Provisions.



**AGREEMENT REGARDING HIGH-SPEED RAIL CROSSING OF  
FRESNO IRRIGATION DISTRICT FACILITIES**

THIS AGREEMENT is made effective as of \_\_\_\_\_, 2012 by and between (i) the California High Speed Rail Authority, an agency of the State of California (“AUTHORITY”) and (ii) the Fresno Irrigation District, a California irrigation district (“FID”). AUTHORITY and FID are sometimes referred to below individually as “Party” and together as the “Parties.”

RECITALS

A. FID owns, operates, and maintains certain facilities for the delivery of agricultural irrigation water and groundwater recharge (“FID Facilities”) under its authority as an irrigation district under Section 20500 et seq. of the California Water Code. FID’s service area includes portions of the AUTHORITY’S high-speed rail corridor.

B. The AUTHORITY desires to install, maintain, repair and replace certain high-speed rail related facilities (“Rail Facilities”) in and over real property in which FID has rights of way or owns in fee for FID Facilities. In many instances, the construction and operation of the Rail Facilities will require modification or replacement of FID Facilities.

C. The Parties desire to provide terms for the modification or replacement of various FID Facilities in connection with construction of Rail Facilities (“Projects”). The parties further desire to provide for the common use of their respective rights-of-way where such areas overlap.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, the Parties agree as follows:

Article I  
DEFINITIONS

The following terms shall have the following meanings as used in this Agreement:

“AUTHORITY” is defined in the Preamble.

“AUTHORITY Project” means a segment of the Rail Facilities (as determined by the AUTHORITY) and the work undertaken or contracted for by the AUTHORITY to construct, improve, maintain and/or operate such segment (including new construction as well as reconstruction of, or other modification of existing Rail Facilities). All references herein to the “AUTHORITY Project” refer to the AUTHORITY Project that impacts the FID Facilities, and when used in reference to a particular FID Facility, refer to the AUTHORITY Project that impacts the referenced FID Facility.

“Betterment” means ~~the difference in cost between the intended relocation of FID’s Facilities as proposed and submitted by AUTHORITY or Authority’s Contractor and~~ the cost of any upgrades to the FID Facilities ~~esy~~ not attributable to the AUTHORITY Project and made solely for the benefit, and at the election of FID. As employed herein, for the sake of clarification Betterment does not include: (i) those differences in cost caused by changes in manufacturing

standards, availability of materials, regulatory requirements or any upgrades required by FID’s customary practices, drawings and standard specifications, and or (ii) standards of practice and construction methods applied to comparable FID Facilities constructed by or for FID at its own expense, that are in effect as of the date of execution of the specific Task Order for that FID Facility esy Work, or (iii) facility upgrades that would be otherwise be required of private parties whose activities affect FID Facilities, in anticipation of future system requirements to handle increased stormwater flows resulting from development.

“Claims” is defined in Section 4.1.

“Common Use Area” is defined in Section 5.1.

“Common Use Agreement” is defined in Section 5.1.

“Construction Contract” means the contract between the AUTHORITY and the Authority’s Contractor for construction (with or without design) of the Project work that is impacting FID. All references herein to “the Construction Contract” refer to the Construction Contract(s) for the Project(s) that impact FID Facilities, and when used in reference to a particular FID Facility, refer to the Construction Contract that impacts the referenced FID Facility.

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“Authority’s Contractor” is defined in Section 3.2.

“Engineer” is defined in Section 2.1.

“FID” is defined in the Preamble. For any provision of this Agreement where FID is to be indemnified, “FID” shall also include FID’s directors, officers, employees, agents and volunteers.

“FID Facilities” is defined in Recital A.

“FID Facility Work” is, in general, the modification, protection or Relocation of existing FID Facilities, or the construction of new FID Facilities (or any combination thereof) that will be or remain the property of FID.

“FID Right-of-Way” shall mean any real property rights held by FID for the location and operation of FID Facilities, including, but not limited to, fee title and easement rights.

“Hazardous Material(s)” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

“Rail Facilities” is defined in Recital B.

“Plans and Specifications” is defined in Section 2.1.

“Prior Rights” is defined in Section 3.11.

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“Projects” is defined in Recital C.

“Relocation” means removal, protection or any other rearrangement or modification of an FID Facility as ordered and approved by the AUTHORITY to accommodate any of the AUTHORITY’S Projects that may impact FID Facilities. Relocation shall include, but not be limited to, the preparation and submission by Authority’s Contractor of Relocation plans or drawings sufficiently engineered to allow for the construction of the ordered Relocation, and a detailed estimate by FID of the actual and necessary cost of the ordered Relocation including review and inspection for approval by the Authority and/or FID.

“Stakeholders” shall mean the AUTHORITY, the Authority’s Contractor, and all parties with property or facilities affected by a Project.

“Task Order” is defined in Section 3.3.

“Unforeseen Work” means any new and/or extra work found essential to the satisfactory completion of the Projects and not covered by any of the various Task Orders ~~for which there is a bid price or by combination of such items~~.

“Wasted Work” means design, design review, ~~or~~ construction work or inspection performed by FID upon written direction from the AUTHORITY, for a ~~Relocation~~ rendered useless or unnecessary as a result of AUTHORITY’S cancellation and/or changes in the scope of work as agreed to by the Parties. This term includes any other design or construction work that is needed to ~~accomplish~~ accommodate the ~~scope of work of the~~ AUTHORITY Project and is subsequently rendered unnecessary ~~at some later date~~.

## Article II DESIGN AND ENGINEERING

2.1 Design/Build. AUTHORITY shall cause the Authority’s Contractor (as defined below) to prepare drawings, plans and specifications as necessary to set forth in detail the requirements for the FID Facility Work to be performed under this Agreement (the “Plans and Specifications”), as otherwise provided in Exhibit A hereto. The AUTHORITY shall cause Authority’s Contractor to select either Provost & Pritchard Engineering Group, Inc. or Blair, Church & Flynn, to design the Plans and Specifications (the “Engineer”).

## Article III WORK TO BE DONE

3.1 FID Facility Work. The AUTHORITY or the Authority’s Contractor (as defined below) shall perform the FID Facility Work in accordance with the Plans and Specifications applicable to each Project. FID Facility Work includes the permitting related to the Relocation, as well as any necessary certification or coordination with regulatory agencies and any other miscellaneous work related to the Relocation of an existing or construction of a new (or any combination thereof) FID Facility. FID Facility Work specific to a particular FID Facility’s Relocation or replacement shall be detailed in a subsequently executed Task Order.

3.2 Authority's Contractor. The FID Facility Work shall be performed by licensed, qualified contractors to be hired by the AUTHORITY (each an "Authority's Contractor"). The Authority's Contractor, subcontractors or other individuals directly or indirectly hired or employed by the AUTHORITY shall have the skills and experience required to perform the FID Facility Work assigned to them. ~~The AUTHORITY shall cause the Authority's Contractor to select from the list of sub-contractors identified in Exhibit B to perform the types of work described in Exhibit B.~~

**Comment [A1]:** Deleted since exhibit B did not identify contractors

3.3 Task Orders. Work specific to ~~a~~ particular FID Facilities relocation (i.e., a Project) shall be detailed in a subsequently executed Task Order Agreement to be executed by the AUTHORITY, the Authority's Contractor and FID ("Task Order"). Any deviation from the Plans and Specifications for a Task Order must be agreed upon by the Parties and memorialized in an amendment to the relevant Task Order, and no such deviation from the original Task Order shall commence without a fully executed amendment. The Task Order will set forth the arrangements between the Parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the FID Facilities Work for a specific FID Facilities. Format of the Task Order and its content shall be mutually agreed upon by the AUTHORITY, the Authority's Contractor, and FID, subject to the compliance of the requirements of this Agreement. Task Orders may cover relocation of a single FID Facility, or of a group of FID Facilities.

3.4 General AUTHORITY Responsibility. In performing the FID Facility Work, the AUTHORITY (either directly or through its Contactor) shall be solely responsible for:

- (a) Ensuring that that all construction means, methods, techniques, sequences and procedures, and construction quality conform to the Plans and Specifications, as modified by agreement of the Parties and Authority's Contractor;
- (b) Project site safety, including implementing, maintaining and supervising a project safety plan;
- (c) Coordinating all portions of the Project;
- (d) Implementation of all reasonable measures and precautions to prevent damage, injury or loss to: (i) all persons who are on the Project site or who could foreseeably be affected by construction of the Project; (ii) the Project and materials and equipment to be incorporated therein; and (iii) other property at or adjacent to the Project site;
- (e) Provision of appropriate security for the Project site;
- (f) ~~Continuous-Reasonable~~ clean-up of the Project site at the end of each day during which work on the Project site is performed;
- (g) Risk of loss for damage to or loss to the FID Facility Work or of any property at the Project site occurring prior to final acceptance by FID;
- (h) Securing, at its expense, any permits and governmental approvals necessary for the proper execution and completion of the Project;

(i) Giving any notices required by laws, ordinances, rules, regulations and lawful orders of public authorities;

(j) Ensuring that all Projects remain free and clear of any and all claims for laborer, materials, and design services; ~~and~~

(h) Perform the FID Facility Work using best professional skill and judgment, acting with due care and in accordance with professional standards of care and construction practices generally accepted as standards of the industry in the State of California; ~~and~~

(i) Complete the FID Facility Work on a timely basis, with due consideration given to FID's irrigation schedules.

When all or portions of the FID Facility Work are performed by the Authority's Contractor, FID shall have access to all phases of the FID Facility Work for the purpose of inspection to ensure that ~~the work~~the relevant FID Facility Work is completed in accordance with the Task Order pertaining to that work; however, all questions regarding the work being performed will be directed to the AUTHORITY or its authorized agent for evaluation and final disposition. Notwithstanding the foregoing, FID shall not disrupt or interfere with the FID Facility Work or the AUTHORITY Project.

~~Upon AUTHORITY's written notice to FID, FID shall consider Authority's Contractor as acting on behalf of AUTHORITY on all matters pertaining to Projects that are specifically identified in said notice and shall treat any direction given by Authority's Contractor on those identified matters as if it were given by AUTHORITY.~~

3.5 General Project Construction Requirements. General construction requirements for FID Facility Work are set forth in Exhibit C hereto. Exceptions from such requirements may be made for specific Projects by notice from the AUTHORITY to FID.

3.6 FID Representatives. FID shall be entitled to have a reasonable number of representatives, including the Engineer, on the site of each Project to verify that the work is being properly performed by the Authority's Contractor. The presence of such representative, however, is solely for FID's benefit, and shall not relieve the AUTHORITY of its obligation to supervise and perform the FID Facility Work in accordance with the Plans and Specifications and otherwise in accordance with this Agreement and the applicable Task Order. Notwithstanding the foregoing, FID representatives, including the Engineer, shall not disrupt or interfere with the FID Facility Work or the AUTHORITY Project.

3.7 Acceptance. Upon completion of a Project in accordance with the Plans and Specifications, as provided in writing by AUTHORITY or Authority's Contractor to FID, and after the expiration of the enforcement period for any stop notices filed in connection with the Project, FID ~~and after the expiration of~~ agrees to ~~shall~~ accept ownership and maintenance of the constructed ~~FID #~~Facilities. FID shall not be required to accept ownership of any Project which is the subject of filed and ongoing litigation.

3.8 Unforeseen Work. If ~~unforeseen-Unforeseen work-Work~~ arises during the performance of the FID Facility Work, it shall be performed under the Task Order that is

applicable to the FID Facility Work it arose in connection with. The AUTHORITY shall be responsible for the cost of any ~~unforeseen~~-Unforeseen workWork.

3.9 Hazardous Material. Upon discovery of Hazardous Material in connection with the FID Facility Work, both FID and the AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action in compliance with existing statutes or regulations concerning the disposition of Hazardous Material. ~~The Authority's Contractor~~AUTHORITY will pay, in its entirety, those costs for additional necessary effort undertaken within the AUTHORITY'S right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that FID Facility Work, unless ~~such conditions~~the Hazardous Materials are attributable to or were exacerbated by the FID's ~~existing installation~~Facilities or FID's operations. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the AUTHORITY'S right of way which ~~is~~are required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of this Article III. Each party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.

3.10 Betterment Work at FID's Request. Any work considered a Betterment, as defined herein, ~~made at FID's request~~ shall be agreed upon in advance by the Parties and detailed in a Task Order, along with costs and allocation of responsibility for such costs to FID.

3.11 Liability for Work. Liability for the cost of FID Facility Work shall be determined by statute, superior rights, prescriptive rights (under court order), contractual rights, ~~or by permit~~ or common law, as applicable, collectively referred to as Prior Rights. FID is responsible to prepare, document, and submit a claim for its declared right of occupancy ~~in the defined property area where any FID's Facility is located~~for each FID Facility for which it claims Prior Rights, which claim shall be subject to the AUTHORITY'S approval. For each FID Facility, the allocation of liability determined pursuant to this Section 3 shall be stated in the relevant Task Order.

### 3.12 Authority's Expense.

(a) Unless FID agrees otherwise herein in writing, FID Facility Work will be performed at the AUTHORITY'S expense ~~in circumstances~~ where by Prior Rights, ~~it is determined~~ dictate that the cost for such work shall be borne by the AUTHORITY. FID shall have no responsibility to pay for any Facility Work, except as provided in Section 3.13 below. ~~The AUTHORITY or Authority's Contractor~~ shall defend, indemnify, and hold FID harmless from any claims for design, labor, materials or similar items in connection with any FID Facility Work, except as provided in Section 3.13 below.

(b) The burden of establishing Prior Rights rests with FID. Prior Rights may be established by (i) recorded documents, plat maps, or other county records, (ii) originals or copies of documents granting an interest in the real property in question to FID, executed by the grantor, (iii) a written statement, executed by an officer of FID, indicating that according to FID's written records, FID has maintained a given facility in its current location for a ~~certain~~the

period of time necessary to establish Prior Rights, or (iv) any other historic document evidencing that an irrigation facilities (public or private) has been located in a given location for a ~~certain~~ the period of time necessary to establish Prior Rights.

3.13 FID's Expense. FID Facility Work will be performed at FID's ~~Expense~~ expense where: (a) work is ~~mutually~~ determined herein ~~writing~~ to be a Betterment ~~as defined in Article I;~~ (b) FID is unable to produce adequate documentation of its Prior Rights ~~to the property area where FID's Facility is located pursuant to Section 3.12(b) above;~~ (c) it is determined by Prior Rights that the cost for such work shall be borne by FID; or (d) FID agrees ~~herein~~ in writing.

3.13 Shared Expense. FID Facility Work will be performed at the shared expense of ~~the~~ the AUTHORITY and FID in circumstances where the Parties agree in ~~advance~~ writing to do so. The proportion of FID Facility Work expense to be borne by each Party shall be ~~detailed~~ clearly identified in the Task Order for that FID Facility Work.

3.14 Liability in Dispute. In signing this Agreement, neither ~~the~~ the AUTHORITY nor FID shall diminish their respective positions nor waive any of their respective rights nor does either Party accept liability for any disputed work. ~~The~~ The AUTHORITY and FID reserve the right to have ~~disputes regarding~~ liability resolved by future negotiations or as otherwise provided in this Agreement.

3.15 Claims by Authority's Contractor. In the event ~~the~~ the Authority's Contractor makes any claim against ~~the~~ the AUTHORITY relating to the FID Facility Work, ~~the~~ the AUTHORITY will notify FID of the claim, and FID will cooperate with ~~the~~ the AUTHORITY in assessing and resolving the claim within ~~a reasonable time~~ the required by the Construction Contract.

3.16 Stakeholder Collaboration. In signing this Agreement, FID agrees to collaborate with ~~the~~ the AUTHORITY, ~~the~~ the Authority's Contractor, and any other third-party entities affected by the Project(s), including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as Stakeholders, to identify collaborative methods for resolving issues that may arise as part of the Project and/or FID Facility Work in an effort to achieve a quality AUTHORITY Project that meets the AUTHORITY Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the Project. During the initial workshop, Stakeholders will develop procedures and agreements (including Task Orders) as specified in Exhibit D, "Stakeholder Collaboration," included herein, to facilitate the Stakeholder relationship and aid in identifying and resolving issues as they arise throughout the Project(s).

Reimbursement to FID for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made by ~~the~~ either the AUTHORITY ~~or or the~~ Authority's Contractor.

Subject to the requirements of the California Public ~~Information-Records~~ Information-Records Act, relevant judicial reference statutes and the California Evidence Code, neither the language of this Stakeholder clause, including the language in Exhibit D, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents

prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

3.17 Cost of FID Facility Work. Cost of FID Facility Work includes the actual, allowable, allocable and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled FID Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to ~~that such FID Facility w~~Work, and any necessary new FID Right-of-~~way-Way~~involved in the FID Facility Work, except that, the AUTHORITY shall be entitled to credit for the cost of any Betterment to the FID Facility included as part of the Project. A credit allowance for age shall not be applied to existing FID Facilities. Except as otherwise provided in this Agreement, eligible FID costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A.

In any case in which the AUTHORITY is required under the provisions of this Agreement to pay its share of the cost of relocation of any FID Facility, AUTHORITY shall be entitled to credits as follows:

(1) The amount of any Betterment to the FID Facilities resulting from such relocation; ~~and-~~

(2) The salvage value of any materials or parts salvaged or retained by FID.

A credit shall not be allowed against any portion of the cost that is otherwise chargeable to FID.

A credit allowance for age shall not be applied to publicly owned sewers.

Eligible FID costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. FID agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

In conjunction with the foregoing, FID acknowledges and agrees that it shall have no right to salvage any of the materials or parts contained within the FID Facilities and hereby assigns all such salvage rights to the AUTHORITY.

### 3.18 Payment for the Cost of FID Facility Work.

(a) If the FID Facility Work is at the AUTHORITY's expense, then the AUTHORITY shall pay the Authority's Contractor directly, less the credits determined. FID shall be responsible to pay the Authority's Contractor for the amount of any credits given to the AUTHORITY as described ~~below~~in subsection (b) below.

(b) If FID Facility Work is at FID's expense and is performed by the Authority's Contractor, FID shall pay or cause payment to be made to the Authority's Contractor (as designated by the AUTHORITY in written notice to FID) in the amounts

established pursuant to this Agreement for the cost of FID Facility Work, plus the amount of any credits as determined in Section 3.17.

3.19 Invoicing Procedures. FID will invoice the Authority's Contractor in accordance with the invoicing procedures of the Authority's Contractor, which shall provide for payment to FID not later than 45 days after submission of invoice.

#### Article IV INDEMNITY AND INSURANCE

##### 4.1 Indemnity by AUTHORITY.

(a) To the fullest extent permitted by law, the AUTHORITY shall defend, indemnify, and hold FID harmless from and against any claims, liabilities, damages, losses and expenses, of any nature whatsoever, arising out of or resulting from the performance of the FID Facilities Work ("Claims"), excepting only such Claims as may be proximately caused by the fault or negligence of, or by the willful misconduct of, FID or its respective employees, directors, agents, servants, or independent contractors who are directly responsible to FID. Such indemnity shall extend to Claims occurring after completion of the Project in question, as well as during the construction of such Project.

(b) The AUTHORITY's obligation to defend and indemnify shall not be excused because of the AUTHORITY's inability to evaluate liability or because the AUTHORITY evaluates liability and determines the AUTHORITY is not liable or determines that FID is solely negligent or has acted with willful misconduct. Only a final adjudication or judgment finding that FID is solely negligent or has acted with willful misconduct shall excuse performance of this provision by the AUTHORITY. The AUTHORITY shall pay all costs and fees related to this obligation and its enforcement by FID. FID's delay in notifying the AUTHORITY of a claim shall not release the AUTHORITY of the above duty to defend.

(c) When the AUTHORITY receives notice of a Claim that may have been caused by FID in the performance of services required under this Agreement, the AUTHORITY will immediately forward the Claim to FID. The AUTHORITY and FID will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the ~~claim~~ Claim. After reviewing the Claim, the AUTHORITY will determine whether to require the participation of FID in the defense of the Claim or to require FID to defend AUTHORITY in such Claim. The AUTHORITY's failure to notify FID of a claim shall not release FID from any of the requirements of this section or Section 4.2.

4.2 Indemnity by FID. To the fullest extent permitted by law, FID shall defend, indemnify and hold the AUTHORITY harmless from and against any Claims arising out of or resulting from the sole or exclusive negligence or willful misconduct of FID or its employees, directors, agents, servants, or independent contractors who are directly responsible to FID. FID's obligation to defend and indemnify shall not be excused because of FID's inability to evaluate liability or because FID evaluates liability and determines FID is not liable or determines AUTHORITY is solely negligent or has acted with willful misconduct. Only a final adjudication

or judgment finding that the AUTHORITY is solely negligent or has acted with willful misconduct shall excuse performance of this provision by FID. FID shall pay all costs and fees related to this obligation and its enforcement by the AUTHORITY. The AUTHORITY's delay in notifying FID of a ~~claim~~ Claim shall not release FID of the above duty to defend.

4.3 Insurance. Any contract entered into by the AUTHORITY in connection with the FID Facility Work shall contain a provision which requires the Authority's Contractor, as part of the liability insurance requirements, to provide an endorsement (~~using the 1985 edition of form CG-20-10~~ in form acceptable to both Parties) to each policy of general or automobile liability insurance that names as additional insureds to such policy (not subject to any premiums or assessments) FID and the AUTHORITY and their respective officers and employees, as well as such other additional insureds as either Party shall reasonably require (provided that the risk and cost assumed by either Party under this Agreement does not increase as a result of naming such other additional insureds). The parties referred to in the previous sentence are collectively referred to herein as the "Additional Insured Group." Unless otherwise mutually agreed by the Parties, the Authority's Contractor shall provide evidence of at least required coverages and liability amounts to be determined. Prior to commencement of any FID Facility wWork, an insurance Certificate-certificate evidencing the required coverage shall be provided ~~directly by the insurer~~ to FID and the AUTHORITY, providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to FID and the AUTHORITY. ~~FID recognizes and agrees that all or part of such insurance can be provided by the AUTHORITY through an owner controlled (?) insurance program.~~

## Article V AREAS OF COMMON USE; RELOCATED FID FACILITIES

5.1 Common Use Areas. FID Facilities shall at all times remain the property of and be properly protected and maintained by FID; subject, however, to the following. Whenever affected FID Facilities will remain within the AUTHORITY's right-of-way (a "Common Use Area"), the AUTHORITY and FID shall jointly execute an agreement for common use of the subject area, such agreement shall be in accordance with the AUTHORITY'S policies and procedures for joint or common use of the AUTHORITY'S right of way and which shall include the terms and conditions set forth in ~~Exhibit E~~ hereto (a "Common Use Agreement").

5.2 Relocation of FID Rights-of-Way. Whenever affected FID Facilities are to be ~~relocated~~ Relocated from the existing FID Right-of-Way to a new location, the AUTHORITY shall convey or cause to be conveyed a new right-of-way for such relocated Facilities ~~as will correspond on terms and conditions that are substantially similar~~ to the existing FID Right-of-Way. For such ~~relocations~~ Relocations, the AUTHORITY shall issue, or cause to be issued, to FID, without charge to FID, appropriate replacement rights in the new location mutually acceptable to both the AUTHORITY and FID for those rights previously associated with the existing FID Right-of-Way. Without limiting the foregoing, if FID has exclusive rights to the existing FID Right-of-Way, any replacement right-of-way shall provide similar FID with similar exclusive rights, except to the extent -In the event- that the new location falls within the right-of-way under the jurisdiction of the AUTHORITY. In that event, the AUTHORITY and FID shall jointly execute a Common Use Agreement. In consideration for these replacement rights being

issued by the AUTHORITY, FID shall subsequently quitclaim to the AUTHORITY, or its nominee, within the AUTHORITY's Right-of-Way, all of its corresponding right, title and interest in and to the FID Right-of-Way so vacated. Upon completion of the FID Facility Work by the AUTHORITY, the new FID #F Facilities shall become the property of FID, and FID shall have the same rights in the new location that it had in the old location, as modified by agreements in writing between the AUTHORITY and FID.

5.3 Compensation for FID Fee Title. If the existing FID Right-of-Way includes fee title, the AUTHORITY shall acquire from FID, for just compensation under State-California law, those property rights required by the AUTHORITY for ~~its~~ the Rail Facilities by separate transaction, leaving to FID those remaining property rights appropriate for the placement and operation of the FID Facilities in the FID Right-of-Way, as reasonably determined by FID. Upon completion of FID Facility Work by the AUTHORITY or the Authority's Contractor, the new FID Facilities shall become property of FID, and FID shall have the same rights in the new location that it had in the old location, as modified by agreements in writing between the AUTHORITY and FID.

#### Article VI MISCELLANEOUS

6.1 Assignment to Authority's Contractor; AUTHORITY to Remain Liable. ~~The Authority's Contractor shall be considered AUTHORITY's agent under this Agreement, and~~ AUTHORITY shall be responsible to ensure that the Authority's Contractor performs all obligations required to be performed by the Authority's Contractor hereunder. The AUTHORITY may assign this Agreement to the Authority's Contractor, but such assignment shall not relieve the AUTHORITY from liability hereunder.

6.2 Compliance with Public Works Laws. The AUTHORITY shall be responsible to comply with or ensure compliance by ~~its~~ the Authority's Contractor with all applicable state California and federal laws relating to the construction of public works projects, including, but not limited to, applicable provisions of the California Public Contract Code, the California Labor Code, and any laws or regulatory requirements associated with the use of federal funds ("Public Works Laws"). The AUTHORITY acknowledges that FID does not have extensive experience with public works projects that involve state and federal funds, and that FID has elected to have the AUTHORITY perform the FID Facilities Work for, among other reasons, the purpose of utilizing the AUTHORITY's resources in complying with Public Works Laws. The AUTHORITY shall defend, indemnify and hold FID harmless from and against any liability Claims arising from failure to comply with Public Works Laws, except where the responsibility for compliance with such laws cannot legally be shifted from FID.

6.3 Compliance with CEQA. The AUTHORITY shall be solely responsible for all environmental review and other actions required under the California Environmental Quality Act and any other state or federal environmental review laws applicable to any Project ("Environmental Review Laws"), except for those actions which by law cannot be delegated to another agency and must be taken by FID. To the maximum extent permitted by law, the

AUTHORITY shall defend, indemnify and hold FID harmless from and against any ~~Liability~~ Claims arising from any failure to comply with Environmental Review Laws as described in this Section 6.3.

6.4 State Funds. No state funds or resources are allocated or encumbered as against this Agreement and ~~the~~ AUTHORITY's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.5 American Recovery and Reinvestment Act and Authority. To the extent applicable, the provisions included in Exhibit E, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in this Agreement.

6.6 Force Majeure. Neither FID nor ~~the~~ AUTHORITY shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, act of civil or military authority, riot, fire, earthquake, strike, flood, power blackout, natural catastrophe, or any other event beyond the reasonable control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has: (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible/practicable. ~~If any such event of Force Majeure occurs, FID agrees, if requested by AUTHORITY, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as AUTHORITY agrees to reimburse FID for the reasonable and actual costs of such efforts.~~

6.7 Time. Time is of the essence of this Agreement and each and all of its provisions.

6.8 Effect of Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

6.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the Parties hereto.

6.10 Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

6.11 Counterparts; Fax and Email Signatures. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument. Facsimile and electronic mail signature pages shall constitute originals, however, without affecting the enforceability of such signatures as originals, each party shall provide original signature pages to the other parties within five (5) business days of the execution of this Agreement.

6.12 Assignment; Binding Effect. Neither party shall assign any interest in this Agreement without the express written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, the AUTHORITY shall be permitted to assign this Agreement to the Authority's Contractors without the consent of FID. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

6.13 Interpretation. It is agreed and acknowledged by the parties that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

6.14Disputes. The AUTHORITY and the LOCAL AGENCY agree that, as a general principle, the PARTIES shall attempt to resolve any and all disputes arising under this Agreement through a collaborative partnering process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the LOCAL AGENCY disagrees with a determination or matter made by the AUTHORITY, the LOCAL AGENCY shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the PARTIES shall attempt to resolve such dispute through the partnering process, which may include escalation with the AUTHORITY at the AUTHORITY's discretion. If, within 14 days after conclusion of such partnering, the dispute persists, then the LOCAL AGENCY shall request a written statement of the AUTHORITY concerning its decision. The AUTHORITY shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the LOCAL AGENCY. The decision of the AUTHORITY shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the LOCAL AGENCY mails or otherwise furnishes a written appeal addressed to the AUTHORITY. The AUTHORITY shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either PARTY may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

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In connection with any appeal of the AUTHORITY'S decision, the LOCAL AGENCY shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the LOCAL AGENCY shall continue with or permit the continuance of the Work as directed, in a diligent manner, and without delay; shall conform to any of the AUTHORITY'S responses, decisions, or orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

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In the event either PARTY, within the timeframe specified above, elect to refer a dispute to binding arbitration, then within 30 days after such request, the PARTIES will seek to appoint a panel of three arbitrators with not less than 10 years' experience each in complex construction disputes involving public works transportation projects. If the PARTIES cannot agree on a panel of three arbitrators, then each PARTY shall appoint one arbitrator, with the two so selected

choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the PARTIES and any judgment on the award there rendered may be entered in the Superior Court for Madera County.

6.1 If it is determined, on appeal, that the AUTHORITY'S interpretation of the Agreement, direction to the LOCAL AGENCY, or any other action required by the AUTHORITY's decision was an erroneous determination of the rights and obligations of the PARTIES under the Agreement, the LOCAL AGENCY's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the LOCAL AGENCY with respect to the disputed matter (crediting the AUTHORITY for any corresponding reduction in the LOCAL AGENCY'S other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

6.2 ~~Dispute Resolution.~~ Notwithstanding any other provision of this Agreement, either party may choose to have any dispute regarding the construction or application of any of the terms, covenants, or conditions of this Agreement settled by arbitration as provided in this Section 6.14. This Section shall apply only to monetary disputes and requests for declaratory relief; the arbitrator(s) shall not have the power to compel specific performance or to provide injunctive relief.

(a) A party Party may demand arbitration by delivering a written demand to the other party within 60 after occurrence of the dispute. Such arbitration shall comply with and be governed by the provisions of California Code of Civil Procedure Section 1280 through 1294.2, except to the extent those provisions are inconsistent with the provisions of this Section 6.14, in which case the provisions of this Section 6.14 shall govern.

(b) The Pparties may agree on one arbitrator. If they cannot agree on one arbitrator, there shall be three: one named in writing by each of the parties Parties within five days after demand for arbitration is given, and a third chosen by the two appointed. Should either party Party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex parte.

(c) A hearing on the matter to be arbitrated shall take place before the arbitrator(s) in Fresno, California, the time and place to be selected by the arbitrator(s). The arbitrator(s) shall give each party Party written notice of the time and place at least 20 days before the date selected. At the hearing, any relevant evidence may be presented by either partyParty, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the arbitrator(s). The arbitrator(s) shall hear and determine the matter and shall execute and acknowledge the award in writing and cause a copy of the writing to be delivered to each of the parties.

(d) If there is only one arbitrator, his or her decision shall be binding and conclusive on the partiesParties, and if there are three arbitrators, the decision of any two shall be binding and conclusive. A judgment confirming the award may be given by any superior court having jurisdiction, or that court may vacate, modify, or correct the award in accordance with the prevailing applicable provision of the California Arbitration Act.

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Comment [A2]: This section was replaced with the new section 6.14.

~~6.36.15~~ 6.36.15 Professionals' Fees. Should any action or proceeding be commenced between the ~~parties-Parties hereto~~ concerning this Agreement, or the rights and duties of any party in relation thereto, the ~~party-Party~~ prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing ~~party-Party~~ a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

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~~6.46.16~~ 6.46.16 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding shall lie in the County of Fresno, California.

~~6.56.17~~ 6.56.17 Construction. All words used in this Agreement shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present tense shall include the future as well as the present, and words used in the masculine gender shall include the feminine and neuter genders.

~~6.6~~ 6.6 Parties in Interest. ~~Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over and against any party to this Agreement.~~

~~6.76.18~~ 6.76.18 Survival. Each of the terms, provisions, representations, warranties, and covenants of the ~~parties-Parties~~ shall be continuous and shall survive the completion of any FID Facilities Work contemplated in this Agreement.

~~6.86.19~~ 6.86.19 Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by telecopier, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To AUTHORITY: California High Speed Rail Authority  
Thomas Fellenz, General Counsel  
770 L Street, Suite 800  
Sacramento, CA 95814  
Fax: (916) 322-0827

To FID: Fresno Irrigation District  
2907 South Maple Avenue  
Fresno, CA 93725-2218  
Attn: General Manager

Fax: (559) 233-8227

A ~~party~~ Party may change its address for notices by providing notice to the other parties as provided above.

~~6.9~~6.20 Severability. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

~~6.10~~6.21 Default. In the event that either Party breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by ~~Law~~law, the other Party may (a) pursue a claim for damages suffered, or (b) perform any work with its own forces or through subcontractors and seek repayment for the cost thereof. Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the AUTHORITY Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay the AUTHORITY Project or Project construction.

~~6.11~~6.22 Project Cancellation. If any portion of the AUTHORITY's Project(s) ~~which precipitated this Agreement~~ is canceled or modified so as to eliminate the necessity of the FID Facilities Work, the AUTHORITY will notify FID in writing, and the AUTHORITY reserves the right to terminate this Agreement as to such Project by amendment. The amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

California High Speed Rail Authority, an agency of the State of California

Fresno Irrigation District, a California irrigation district

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Jeff Neely, President

AUTHORITY Legal Review

By \_\_\_\_\_  
Gary R. Serrato, Secretary

By \_\_\_\_\_  
AUTHORITY Legal Counsel

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EXHIBIT A  
DESIGN BUILD PROCEDURES

The following process shall apply separately to each phase or segment of the Project, as established in accordance with the agreement between the Authority's Contractor and the AUTHORITY.

A-1 Initial Coordination.

(a) The AUTHORITY will develop 30% design submittals of the Rail Facilities, showing locations of existing FID Facilities.

(b) FID will furnish markups to the AUTHORITY of the 30% submittals within 15 working days.

(c) The AUTHORITY will prepare proposed preliminary design plans that indicate which FID Facilities are to be Relocated and conceptual arrangements of the Relocated facilities.

(d) FID will verify, to the best of its ability, the correctness of the proposed preliminary design plans prepared by the AUTHORITY.

(e) These plans will form the basis of the Plans and Specifications. Once the Plans and Specifications have been approved by FID, FID shall have sole and full responsibility for the accuracy of depicted FID Facilities.

A-2 Plans and Specifications. The Authority's Contractor, together with the Engineer, shall perform all design services for the FID ~~Facility-Facilities~~ Work in connection with each Project.

(a) The Authority's Contractor will provide a preliminary copy of Project-specific Plans and Specifications to FID according to the AUTHORITY's Contractor's approved schedule and may include intermediate, Released for Construction (RFC) and As Built Stages.

(b) FID shall have fifteen (15) working days from receipt of the preliminary Plans and Specifications intermediate submittal to review them, and to provide comments to the AUTHORITY's Contractor. FID shall also provide any applicable technical provisions and standard drawings along with its comments.

(c) At such time as the Authority's Contractor has prepared ~~final-RFC~~ Plans and Specifications for the FID ~~Facility-Facilities~~ Work, the AUTHORITY's Contractor will provide a copy thereof to FID. The ~~final-RFC~~ Plans and Specifications shall incorporate the comments of FID provided that the comments are reasonable.

(d) FID shall have fifteen (15) working days from receipt of the ~~final RFC~~ Plans and Specifications to review them and provide final comments to the AUTHORITY.

(e) The Authority's Contractor shall make final corrections to the RFC Plans and Specifications and provide a copy to FID.

(f) The Authority's Contractor shall perform the FID ~~Facility-Facilities~~ Work in accordance with the RFC Plans and Specifications as ~~approved-corrected~~ by FID.

(g) The AUTHORITY shall provide FID with as-built drawings of FID ~~Facilities~~ Work. The as-built drawings shall be in the format provided for in the Task Order for that particular FID ~~Facilities~~ Work.

(h) FID's failure to provide review and comment of plans submitted by the AUTHORITY or the AUTHORITY'S Contractor within the time periods specified in this Agreement, including but not limited to Plans and Specifications, shall be deemed approval of plans allowing the AUTHORITY to proceed with design and construction of FID Facility Work.

## EXHIBIT B

### General Project Construction Requirements

#### B-1 Replacement of Existing Pipelines and Small/Medium Channel Open Canals.

(a) All open channels and existing pipelines shall be replaced with ASTM C-361 Rubber Gasket Reinforced Concrete Pipe (RGRCP).

(b) All pipelines shall be buried to a minimum depth of 36 inches.

(c) If an FID Facility is to be relocated, the AUTHORITY shall acquire an exclusive easement on FID's behalf, at FID's standard widths for such facility and on FID's standard terms and conditions.

~~(e)~~(d) All work shall conform to FID standards and specifications.

B-2 Large Canal Crossing Requirements. Crossings for large canals shall protect the canal's integrity for an urban setting, and shall be designed to convey the water in a safe and efficient manner without altering the existing conditions in a negative manner in regards to FID's operations and maintenance. Additional requirements include:

(a) Minimum freeboard of 2.0 feet through the canal crossing shall be maintained where possible. Crossings shall be clear span bridges with no obstructions within the canal whenever reasonably possible.

(b) Multiple bay culverts or bridges with pilings design must include sufficient access to remove trash in a safe and efficient manner, including additional access easement rights if necessary. Maintenance accessibility for trash removal shall be evaluated based on channel size, the amount of trash anticipated at the location in question and accessibility. Galvanized steel or concrete catwalk will be required on the upstream side of the bridge/culvert structure for FID's crews to access the collected trash. Trash piers, board guides, aprons and ladders shall be constructed in accordance with FID's current requirements.

(c) Sufficient easement rights for FID to dredge the canals in accordance with its standard practices, including access for heavy equipment and trucks.

(d) Relocation of existing road crossings which parallel Rail Facilities, such as Golden State Boulevard, must include access to both canal banks from the road. In general, a 50-foot wide drive approach narrowing to 20 feet wide drive bank will be required for each canal bank; different road crossings may require different access routes.

(e) Culverts are to be extended past the AUTHORITY's right-of-way such that FID's equipment can safely access both banks for operations and maintenance purposes. All culverts require a minimum a minimum of 20 feet for 1 ton vehicle access; some crossings may need to be extended for larger equipment.

(f) Sufficient turnaround areas to accommodate the types of equipment necessary to maintain the FID Facility in question. Larger turnaround areas will be required for larger trucks and equipment.

(g) Gaps between bridges and culverts shall be of sufficient length for FID to reasonably maintain the gap area. Gaps that are too small for FID to maintain, as determined by FID in its reasonable discretion, shall not be permitted, and the two crossings shall be combined into a single crossing.

(h) At transition areas between bridge/culvert and open canal:

(i) Canal slopes shall be stabilized as necessary to shape side slopes to 1.5:1 (H:V) and shall be compacted to a minimum of 93 percent of maximum density.

(ii) All disturbed soil shall be concrete lined (both side slopes and bottom). In areas close to the Rail Facilities where access will be potentially dangerous for maintenance workers, structurally reinforced concrete will be required to minimize on-going maintenance activities.

(iii) Drive banks must be sloped a minimum of 2% away from the canal with provisions made for rainfall. Drainage will not be accepted into and must be routed away from canals, and must be conveyed to nearby public streets or drainage system by drainage swales or other alternatives reasonably acceptable to FID.

(iv) Drive banks shall be overlaid with 3 inches of Class 2 aggregate base course for all-weather access.

(v) All existing trees, bushes, debris, old canal structures, pumps, canal gates, and other non- or in-active FID and private structures must be removed within the FID Right-of-Way.

(v)(i) All work shall conform to FID standards and specifications.

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B-3 Construction Windows. All construction must occur outside FID's irrigation season. The permitted construction window is determined each year by the FID Board of Directors based on hydraulic conditions, but is typically between October 1 through February 22. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

~~(a) In years when the central Sierra snowpack is \_\_\_\_\_% of normal, FID may extend the irrigation season, delaying the start of the construction window to not later than \_\_\_\_\_; and~~

~~(b) In years of below average precipitation; FID may move the start of the construction window to an earlier date, in its sole discretion.~~

B-4 Stormwater Routings. Where FID Facilities are used by the Fresno Metropolitan Flood Control District and/or the Army Corps of Engineers for stormwater and flood control, a

bypass may be required, depending on the canal system, construction schedule, water season, and storm season. If a bypass is not constructed, all water will be required to pass through the Project site.

(a) FID will determine the minimum flow rate if a bypass is required. The Engineer shall design the bypass system at ~~the AUTHORITY's~~ Contractor's expense. The bypass system shall include facilities as necessary to convey waters downstream and away from the Project, and shall be the responsibility of ~~the AUTHORITY and/or the~~ Authority's Contractor to install and maintain at all times.

(b) Should a bypass channel be constructed, a drive bank on both sides of the channel shall be incorporated for maintenance and operation purposes.

(c) Cofferdams (if any) must be constructed one foot below the canal's high water level.

(d) ~~The~~ AUTHORITY shall obtain appropriate easements or other rights necessary for the construction and operation of any bypass facilities located outside the existing FID right of way. ~~The~~ AUTHORITY shall cause the landowner and any parties in possession of the property where the bypass channel is located to release FID from any liability in the operation of such bypass.

**B-5 Elevated Rail Facilities.** Where Rail Facilities are to be located above grade:

(a) Pilings or columns for elevated Rail Facilities crossing FID pipelines shall be located outside of the FID Right-of-Way. Alternatively, ~~the~~ AUTHORITY may cause the pipeline to be replaced with RGRCP as described in Section B-1 above, with large spread footings for pilings or columns.

(b) Pilings or columns for elevated Rail Facilities crossing FID open canals may not be located in FID Right-of-Way. Gaps between elevated Rail Facilities over open canals shall be of sufficient length for FID to reasonably maintain the gap area. Portions of canals within such gaps that are too small for FID to maintain, as determined by FID in its reasonable discretion, shall be replaced with underground pipe.

(c) Sufficient clearance shall be provided over both canal maintenance/access roads for FID's largest equipment being hauled on a large tractor truck and trailer, unless the Rail Facilities right-of-way is to be fenced, eliminating access.

(d) If the Rail Facilities right-of-way is to be fenced, ~~the~~ AUTHORITY shall pipe the canal or place the canal within a culvert, such that routine maintenance is no longer necessary, and shall provide FID with an additional upstream trash collection location.

**B-6 General.**

(a) To the extent the Authority's Contractor needs import material for the Project, FID has material available for export from FID ponding basin properties currently under its ownership, dependent on seasonal conditions. Authority's Contractor is responsible to verify that the material is suitable for use and material quantities available for exporting.

**Comment [A3]:** FID is ok with content of this section but will review to ensure their needs are meet.

(b) Without limiting the foregoing, new canals shall not be subject to materially greater amounts of siltation than the canals to be replaced.

**Comment [A4]:** Dave is trying to come up with an approach to mitigate maintenance cost or an approach to allow FID to be compensated by other means. After review with Authority, this sentence is not acceptable but are willing to review alternate suggestions within body of language to address this concern.

(c) All work shall be performed in accordance with FID's customary practices, drawings and specifications.

EXHIBIT C  
Terms for Common Use Agreements

FID shall consent to the construction, reconstruction, maintenance or use by the AUTHORITY of Rail Facilities over, along and upon FID Rights-of-Way subject to the following terms and conditions. Additional terms in any Common Use Agreement shall not be inconsistent with the following.

C.1 FID Prior Right. The AUTHORITY shall acknowledge FID's title (as established pursuant to Section 3.13 above) to FID's easement (or fee title) in said Common Use Area and the priority of FID's title over the title of the AUTHORITY therein.

C-2. Preservation of Existing Rights. Subject to FID's rights under Section C-5 below, Both the AUTHORITY and FID shall use said new location in such a manner as not to interfere unreasonably with the rights of the other. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which FID or the AUTHORITY may now have or may hereafter acquire resulting from the construction of additional facilities or the alteration of existing facilities by either the AUTHORITY or FID in such a manner as to cause an unreasonable interference with the use of said new location by the other party.

C-3 Damage to FID Facilities. The AUTHORITY shall repair or replace at the AUTHORITY's sole expense any FID Facilities damaged by or as a result of the maintenance, repair or replacement of the Rail Facilities. In the event the AUTHORITY fails, neglects, or refuses to commence to repair ~~or replace the~~ such damage within 30 days after written notice from FID or otherwise fails to proceed diligently in repairs or replacement, FID shall have the right, but shall not be required, to make any such repairs or replacements, and the AUTHORITY shall repay to FID the cost of any such repairs or replacement with interest at the rate of 10% per annum from the date(s) amounts were expended by FID.

~~C-4 Increased Maintenance Costs. The Parties acknowledge that, as a result of the installation of the Rail Facilities, FID's cost for maintenance of FID Facilities within areas of the common Common use Use Areas may be increased due to additional reasonable precautions and actions that will be necessary in order to access FID's Facilities without affecting the Rail Facilities. AUTHORITY agrees that FID is entitled to receive compensation for such increased maintenance costs along with other amounts paid to FID for placement of Rail Facilities within FID Rights of Way.~~

C-45 Operation of FID Facilities. The manner, method and time of conducting and discharging water through any FID ~~facilities~~ Facilities shall be in the sole and absolute control of FID, and the nature and extent of FID's rights to FID Facilities in any ~~areas of Joint~~ Common Use Areas shall in no way be diminished or restricted by the presence of any Rail Facilities. Except as herein otherwise provided, neither FID nor AUTHORITY shall have any right, title, or control over the other's property, except as provided by law.

C-56 Release. FID shall not be liable for any damage to Rail Facilities located within ~~areas of e~~ Common use Use ArReas, or to any other the AUTHORITY property associated with

such facilities, that may result from FID's operation of FID Facilities, with the exception of damages caused by FID's negligence or willful misconduct.

## EXHIBIT D – STAKEHOLDER COLLABORATION

In order to accomplish ~~PROJECT(s)~~the AUTHORITY Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 3.16 “Stakeholder Collaboration.” As part of this collaboration, a cooperative management team will developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Cooperation and collaboration are strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Use of the procedures described below is mandatory, but the results are non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of FID Facilityiesy Work.

### INITIAL KICK-OFF WORKSHOP

~~In order to achieve effective and efficient completion of the Project(s)~~†The Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the Project:

- A. “*Issues Resolution Ladder*” (*IRS*) – a hierarchy of those individuals within the Project including the Stakeholders ~~and Dispute Resolution Board~~ and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. “*Collaboration Implementation Plan*” (*CIP*) – the intention of the CIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the FID Facilityiesy Work to be addressed by the Stakeholders.
- C. “*Cooperative Charter*” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholders vision, goals and relationship. The charter will be signed by all Stakeholders.

### STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the stakeholders relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve Project issues.

## EXHIBIT E – ARRA AND AUTHORITY PROVISIONS

### 1. ARRA T&C

#### SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS

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:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
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 8C 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:

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**SUPPLEMENTAL TERMS AND CONDITIONS FOR  
CONTRACTS USING ARRA FUNDS**

- (i.) The name of the project or activity;
- (ii.) A description of the project or activity;
- (iii.) An evaluation of the completion status of the project or activity; and
- (iv.) 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](http://www.FederalReporting.gov). The additional requirements will be added to this contract(s).

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**2. CCC 307 – CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>	
<i>By (Authorized Signature)</i>			
<i>Printed Name and Title of Person Signing</i>			
<i>Date Executed</i>		<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about:
    - 1) the dangers of drug abuse in the workplace;
    - 2) the person's or organization's policy of maintaining a drug-free workplace;
    - 3) any available counseling, rehabilitation and employee assistance programs; and,
    - 4) penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on the proposed Agreement will:
    - 1) receive a copy of the company's drug-free workplace policy statement; and,
    - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)
3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. **CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

(Continued on next page)

## CCC 307 – CERTIFICATION

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.
6. SWEATFREE CODE OF CONDUCT:
  - a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.
  - b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.
7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

**NOTE:** This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document:  
<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

### 3. GTC 610

#### DEPARTMENT OF GENERAL SERVICES TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor/FID may not commence performance until such approval has been obtained.
2. 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.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor/FID, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor/FID 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. Contractor/FID agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor/FID agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor/FID agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor/FID agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor/FID in the performance of this Agreement.
6. DISPUTES: Contractor/FID shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor/FID fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor/FID under this Agreement and the balance, if any, shall be paid to the Contractor/FID upon demand.
8. INDEPENDENT CONTRACTOR: Contractor/FID, and the agents and employees of Contractor/FID, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor/FID shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor/FID and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave.

~~ContractorFID, its contractors~~ and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. ~~ContractorFID, its contractors~~ and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. ~~ContractorFID, its contractors~~ and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

~~ContractorFID~~ shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

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

13. **COMPENSATION:** The consideration to be paid ~~ContractorFID~~, as provided herein, shall be in compensation for all of ~~ContractorFID~~'s expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. **ANTITRUST CLAIMS:** The ~~ContractorFID~~ by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the ~~ContractorFID~~ shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. **CHILD SUPPORT COMPLIANCE ACT:** For any Agreement in excess of \$100,000, the ~~contractorFID~~ acknowledges in accordance with Public Contract Code 7110, that:

- | a. The ~~contractor~~FID recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- | b. The ~~contractor~~FID, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

- | 18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the ~~Contractor~~FID shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- | a. If for this Contract Contractor made a commitment to achieve small business participation, then ~~Contractor~~FID must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- | b. If for this Contract ~~Contractor~~FID made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**TASK ORDER NO. FID00001**  
CHSRP Interaction Removal or Relocation Plan

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Date: April 9, 2012  
Local Agency: Fresno Irrigation District  
Agreement No: 0000000  
Task Order No: FID00001  
Project Title: California High-Speed Rail Project

**GENERAL**

This TASK ORDER supplements and amends the ~~Construction Contract and Master~~ Master Agreement Regarding High Speed Rail Crossings of Fresno Irrigation District Facilities dated \_\_\_\_\_, 2012. The purpose of this TASK ORDER is to authorize the FACILITY WORK for FID. Each FACILITY that requires RELOCATION will be handled under a separate subtask of this TASK ORDER.

**Comment [FV1]:** Please clarify. What is the Construction Contract mentioned?

**Comment [v2]:** Construction Contract is referring to Contract with Authority's Contractor. We deleted reference.

**FACILITY WORK TO BE DONE**

**1. MASTER AGREEMENT**

This TASK ORDER is issued in order to authorize the FID FACILITY WORK described herein. This TASK ORDER does not express all of the terms and conditions relevant to the FID FACILITY WORK; accordingly, the MASTER AGREEMENT and all of the provisions thereof are incorporated into this TASK ORDER by this reference. Capitalized terms used but not identified in this TASK ORDER shall have the definitions set forth in the MASTER AGREEMENT. All attachments referenced in this TASK ORDER are incorporated herein by such reference. All FID FACILITY WORK shall be performed in accordance with the requirements of the MASTER AGREEMENT and, in the event of any inconsistency between the provisions of this TASK ORDER and the MASTER AGREEMENT, the provisions of the MASTER AGREEMENT shall prevail unless expressly provided otherwise.

**2. Scope of Work**

Each separate FID FACILITY that requires RELOCATION will be treated as a subtask to this TASK ORDER.

- **Location and General Description of the Work Covered by this TASK ORDER (Including Disposition of Existing Facilities):**

AUTHORITY'S CONTRACTOR will furnish all labor, material, equipment and supervision required to complete the RELOCATION of FACILITIES and appurtenances. All work shall be performed substantially in accordance with ~~Request for Proposal for Design Build Services~~ RFP No. 11-16 consisting of Hybrid Alternative, Contract Package 1A, Contract Package 1B and Contract ~~Package 1C~~, a copy of which is on file in the AUTHORITY'S office at 770 L S, Suite 800, Sacramento, CA 95814.

**Comment [FV3]:** Can we get a PDF copy?

**Comment [v4]:** TPA will follow up with Authority.

**Comment [v5]:** We have to leave reference to Package 1C since we are referring to the overall project.

- **Subject Work to be Performed by Parties Pursuant to this TASK ORDER:**

AUTHORITY'S CONTRACTOR performs all design and construction services for FID FACILITY WORK. FID will review and approve FACILITY PLANS and be entitled to have a reasonable number of representatives on site of PROJECT to verify that the FID FACILITY WORK is being properly performed by AUTHORITY'S CONTRACTOR and approve that work.

**TASK ORDER NO. FID00001**  
CHSRP Interaction Removal or Relocation Plan

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- **Subtask I1.01**

Scope: Secure proper permits, construct bypass facilities, traffic control, dewatering, removal and disposal of the existing Herndon Canal bridge crossing. Construct an approximately 64' x 43' rail bridge crossing over the Herndon Canal adjacent to Barstow Ave and Golden State Blvd. Construction of rail bridge includes PC/PS box girders, concrete channel lining, rock slope protection, parapet wall barriers, CIDH concrete piles, pile caps, waterproofing membrane, drilled shafts, drains, and any other facilities required to meet the intent of the basis of design. FID FACILITY WORK is shown on drawing ST-K1001, ST-K1002 and ST-K1003.

Period of Performance: During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

The estimated value for this FID FACILITY WORK is \$1,205,584

- **Subtask I1.02**

Construct a 62' x 54'- 11 ½" traffic bridge crossing over the Herndon Canal adjacent to Barstow Ave and Golden State Blvd. Construction of traffic bridge includes PC/PS box girders, concrete barriers, concrete channel lining, rock slope protection, structure approach slab, metal beam guard railing, abutments, CIP/PS concrete slab, ¾" polyester concrete overlay, PC/PS piles, pile caps and any other facilities required to meet the intent of the basis of design. FID FACILITY WORK is shown on drawing TT-3002, TT-D1002, ST-K1001, ST-K1002, ST-K1003, ST-I1001, ST-I1002, ST-I2003, CV-R1007-GSB, CV-G1006-GSB, UT-C4010, CV-G1002.

Period of Performance: During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

The estimated value for this FID FACILITY WORK is ~~\$2,300,256~~1,094,672

- **Subtask I1.03~~2~~**

Scope: Secure proper permits, construct bypass facilities, traffic control, dewatering, removal of approximately ~~288-520~~ LF of 36" concrete pipe and 900 LF of 24" concrete pipe irrigation FACILITIES. Furnish and Install approximately 481 LF of 36" RGRCP ASTM C-361, 233 LF of 66 RCP Casing, and 900 LF of 24" RGRCP ASTM C-361 irrigation FACILITIES at the Lisenby No 45 facility near Shaw Ave and Golden State Blvd. Irrigation FACILITIES include stand -pipes, concrete boxes, gates, metal covers, vents and other connections that are required to complete the work in accordance with FID standards. FID FACILITY WORK is shown on Drawing CV-G1009-GSB, CV-R1009-GSB, CV-G1010-R99, UT-C4015.

Period of Performance: ~~6 Months~~ During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

The estimated value for this FID FACILITY WORK is \$1,383,216.

Comment [v6]: Review

**TASK ORDER NO. FID00001**  
CHSRP Interaction Removal or Relocation Plan

- **Subtask 11.043:**

Scope: Secure proper permits, construct bypass facilities, traffic control, dewatering, removal and replacement of approximately 220 LF of 42" concrete pipe irrigation FACILITIES and replace with 42" RGRCP ASTM C-361 inside of a 78" RCP casing at the Victoria No 42 facility near Dakota and Hwy 99. Irrigation FACILITIES include stand-pipes, concrete boxes, gates, metal covers, vents and other connections that are required to complete the work in accordance with FID standards. FID FACILITY WORK is shown on Drawings CV-41009-R99, CV-G1010-R99, CV-G1009-R99, CV-1017-R99, CV-G1007, CV-R1017-R99, UT-C4019, UT-C4020, C4033.  
Period of Performance: During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.  
The estimated value for this FID FACILITY WORK is \$776,820.

**Comment [FV7]:** Update per plan review comments provided to CHRSA 5/16/2012.

- **Subtask 11.05**

Protect in place existing~~Remove and replace approximately 340 LF of 36" RCP irrigation line with RGRCP ASTM C-361 shown to remain~~ at the Victoria Colony No 43 facility near Dakota and Hwy 99. Irrigation FACILITIES include stand-pipes, concrete boxes, gates, metal covers, vents and other connections that are required to complete the work in accordance with FID standards. FID FACILITY WORK is shown on Drawings CV-41009-R99, CV-G1010-R99, CV-G1009-R99, CV-1017-R99, CV-G1007, CV-R1017-R99, UT-C4019, UT-C4020, C4033.  
Period of Performance: During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.  
The estimated value for this FID FACILITY WORK is \$~~1,048,820~~191,420.

**Comment [v8]:** Review

- **Subtask 11.064:**

Scope: Secure proper permits, construct bypass facilities, traffic control, dewatering and removal of approximately 601 LF of 30" concrete pipe irrigation FACILITIES and replace with approximately 476 LF of 30" RGRCP ASTM C-361 irrigation FACILITIES at the Tracy No 44 facility near Dakota and Hwy 99. FID FACILITY WORK is shown on Drawing UT-C4019.  
Period of Performance: 1 Month  
The estimated value for this FID FACILITY WORK is \$225,599.

- **Subtask 11.075:**

Scope: Secure proper permits, traffic control, deatering, removal, cap and dispose of approximately 1,580-730 LF of 60" concrete pipe irrigation FACILITIES at Cole West Branch No 40 facility near Clinton and Hwy 99. FID FACILITY WORK is shown on Drawings CV-G1004-R99, CV-G1004A-R99, CV-G1012-R99, CV-G1013-R99, UT-C4024, CV-G1009.  
Period of Performance: ~~1 Month~~During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.  
The estimated value for this FID FACILITY WORK is \$~~206,980~~1,081,250.

- **Subtask 11.086:**

Scope: Secure proper permits, construct bypass facilities, traffic control, dewatering, Protect in place~~removal and relocation of approximately 410 LF of 24" concrete pipe~~ irrigation FACILITIES at Cole South Branch No 40 facility near Pine Ave and Golden State Blvd. Irrigation FACILITIES

## TASK ORDER NO. FID00001

### CHSRP Interaction Removal or Relocation Plan

include stand-pipes, concrete boxes, gates, metal covers, vents and other connections that are required to complete the work in accordance with FID standards. FID FACILITY WORK is shown on Drawing UT-C4038.

Comment [v9]: Review

Period of Performance: During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

The estimated value for this FID FACILITY WORK is \$~~360,000~~217,710

- **Subtask 11.09:**

Scope: Secure proper permits, construct bypass facilities, traffic control, dewatering, construct a 203' x 45' canal culvert at Dry Creek No 75 facility near H St and Hwy 180 to allow HST to go underneath this facility ~~as well as remove and replace in-kind the culvert at Thorne Avenue near the intersection of Divisadero Street and Thorne Avenue. Construction of canal culvert shall include shoring, separation layer, inlet and outlet structures which include a slot for "stop planks", access roads and any other facilities required to meet the basis of design.~~ FID FACILITY WORK is shown on Drawing CV-R1001-THN, TT-D3007, TT-D1014, ST-Y3003, ST-Y1006, UT-C4053, CV-G1014.

Period of Performance: During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

The estimated value for this FID FACILITY WORK is \$593,875.

- **Subtask 11.10:**

Scope: Secure proper permits, construct bypass facilities, traffic control, dewatering, remove and replace in-kind the culvert at Thorne Avenue near the intersection of Divisadero Street and Thorne Avenue. Construction of canal culvert shall include shoring, separation layer, inlet and outlet structures which include a slot for "stop planks", access roads and any other facilities required to meet the basis of design. FID FACILITY WORK is shown on Drawing CV-R1001-THN, TT-D3007, TT-D1014, ST-Y3003, ST-Y1006, UT-C4053, CV-G1014.

Period of Performance: During the non-irrigation season. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

The estimated value for this FID FACILITY WORK is \$483,421.

### 3. Project Schedule

Deadlines for the completion of FID FACILITY WORK are provided for in the contract between AUTHORITY and AUTHORITY'S CONTRACTOR. Notwithstanding the foregoing, all FID FACILITY WORK must be completed prior to the commencement of FID's irrigation season unless FID-approved full bypass facilities are timely constructed to convey the irrigation water that would otherwise flow through the FID FACILITY in question. FID will determine the minimum flow rate if a bypass is required

### 4. Schedule for FID FACILITY WORK (This TASK ORDER Only)

AUTHORITY'S CONTRACTOR shall complete the design work in accordance with the schedule specified in this TASK ORDER. All construction must occur outside of FID's irrigation season. The permitted

**TASK ORDER NO. FID00001**

**CHSRP Interaction Removal or Relocation Plan**

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construction window is typically October 1 through February 22, however it is determined each year by the FID Board of Directors based on hydrologic conditions. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID. AUTHORITY'S CONTRACTOR shall commence construction work only after acceptance of the final design for such work in accordance with Appendix A – Design Build Procedures of the MASTER AGREEMENT.

**Design:**

**Start Date:** January 2013

**Completion Date:** June 2013

**Construction:**

**Start Date:** The permitted construction window is typically October 1 through February 22, however it is determined each year by the FID Board of Directors based on hydrologic conditions. June 2013 (for work not affecting water deliveryAn exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID. )

**Completion Date:** February 2016

## TASK ORDER NO. FID00001

### CHSRP Interaction Removal or Relocation Plan

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**PERFORMANCE OF THE FID FACILITY WORK.** AUTHORITY'S CONTRACTOR shall perform all design and construction services for FID FACILITY WORK.

#### 1. Design

The design furnished by AUTHORITY'S CONTRACTOR pursuant to this TASK ORDER shall be substantially in accordance with the Proposed Preliminary Design (~~see Appendix C~~~~see Exhibit A~~ – Design Build Procedures of the MASTER AGREEMENT) attached to this TASK ORDER, and shall be consistent with 30% design submittal of the PROJECT plans. All plans for FID FACILITY WORK are subject to review by AUTHORITY, FID, and AUTHORITY'S CONTRACTOR, in accordance with the time frames and procedures set forth in ~~Appendix C~~~~Exhibit A~~ – Design Build Procedures of the MASTER AGREEMENT. FID will be entitled to have a reasonable number of representatives on site of PROJECT to verify the FID FACILITY WORK is being properly performed by AUTHORITY'S CONTRACTOR in accordance with the PLANS AND SPECIFICATIONS.

#### 2. Construction

AUTHORITY'S CONTRACTOR will perform all FID FACILITY WORK in substantially and material compliance with the final PLANS AND SPECIFICATIONS. Deviations from the final PLANS AND SPECIFICATIONS may occur only in conformity with the MASTER AGREEMENT. FID FACILITY WORK shall not be deemed complete until accepted by FID as provided in Section 3.7 of the MASTER AGREEMENT as subject to LOCAL AGENCY approval.

#### **LIABILITY FOR THE COST OF THE WORK**

In accordance with Article III of the MASTER AGREEMENT, FID and AUTHORITY shall each be responsible for the cost of the FID FACILITY WORK as specified herein. The total estimated cost for the FID FACILITY WORK is \$6,~~602,167~~770,146.

#### **Cost Allocation**

AUTHORITY pays 100 % and FID pays 0 % of cost of FID FACILITY WORK

#### **COST ESTIMATE**

The amounts stated herein are estimates of the costs associated with the FID FACILITY WORK. Authorized expenditures and reimbursements will be based on the terms of the MASTER AGREEMENT.

AUTHORITY has prepared an initial cost estimate in the amount of \$6,~~602,167~~770,146 for the FID FACILITY WORK included in this TASK ORDER.

AUTHORITY'S CONTRACTOR shall prepare an independent cost estimate for the FID FACILITY WORK which shall be submitted for AUTHORITY's approval. Such estimate will reflect appropriate estimated charges for BETTERMENT and salvage value, if any. Upon approval, the parties shall revise this TASK ORDER to incorporate the approved estimate.

#### **CREDITS TO AUTHORITY FOR CERTAIN COSTS**

FID shall credit AUTHORITY for BETTERMENT and other costs as provided in Section 3.17 of the MASTER AGREEMENT, and pay the AUTHORITY'S CONTRACTOR for such costs (if any) as provided in Section 3.18 of the MASTER AGREEMENT.

The FID FACILITY WORK in this TASK ORDER does not include any BETTERMENT or other credits described in Section 3.17 of the MASTER AGREEMENT.

**TASK ORDER NO. FID00001**  
CHSRP Interaction Removal or Relocation Plan

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**CONTACTS**

The contacts for this TASK ORDER will be as follows:

FID: William R. Stretch

AUTHORITY: Tony Valdez

AUTHORITY'S CONTRACTOR:

**TASK ORDER NO. FID00001**  
CHSRP Interaction Removal or Relocation Plan

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**SIGNATURES**

This TASK ORDER shall become effective upon the later of:

- (A) The date of signing by the last party signing this TASK ORDER, or
- (B) The completion AUTHORITY's review as indicated by the signature of AUTHORITY's representative, below.

IN WITNESS WHEREOF, this TASK ORDER has been executed under the provisions of Agreement No. \_\_\_\_\_ between the AUTHORITY, FID, and AUTHORITY'S CONTRACTOR.

**FID:**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Signature

**Typed Name:** \_\_\_\_\_

**Typed Title:**

**FID Legal Review**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Signature –FID'S Legal Counsel

**California High Speed Rail Authority (AUTHORITY)**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Signature

**Typed Name:** \_\_\_\_\_

**Typed Title:** \_\_\_\_\_

**AUTHORITY Legal Review**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Signature - AUTHORITY Legal Counsel

**( CONTRACTOR):**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Signature

**Typed Name:** \_\_\_\_\_

**Typed Title:** \_\_\_\_\_

**TASK ORDER NO. FID00002**  
CHSRP Interaction Removal or Relocation Plan

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Date: April 9, 2012  
LOCAL AGENCY: Fresno Irrigation District  
Agreement No: 0000000  
Task Order No: FID00002  
Project Title: California High-Speed Rail Project

**GENERAL**

This TASK ORDER supplements and amends the Construction Contract and Master Agreement. The purpose of this TASK ORDER is to authorize the FACILITY WORK for LOCAL AGENCY. Each FACILITY that requires relocation will be handled under a separate subtask of this TASK ORDER.

**FACILITY WORK TO BE DONE**

**1. Master Agreement**

This TASK ORDER is issued in order to authorize the FACILITY WORK described herein (FACILITY WORK). This TASK ORDER does not express all of the terms and conditions relevant to the FACILITY WORK; accordingly, the Master Agreement and all of the provisions thereof are incorporated into this TASK ORDER by this reference. Capitalized terms used but not identified in this TASK ORDER shall have the definitions set forth in the Master Agreement. All attachments referenced in this TASK ORDER are incorporated herein by such reference. All FACILITY WORK shall be performed in accordance with the requirements of the Master Agreement and, in the event of any inconsistency between the provisions of this TASK ORDER and the Master Agreement, the provisions of the Master Agreement shall prevail.

**2. Scope of Work**

FACILITY WORK as defined in Section 2.1 of the Master Agreement is incorporated by reference. Each separate FACILITY that requires RELOCATION will be treated as a subtask to this TASK ORDER.

- **Location and General Description of the Work Covered by this TASK ORDER (Including Disposition of Existing Facilities):**  
AUTHORITY'S CONTRACTOR will furnish all labor, material, equipment and supervision required to complete the relocation of FACILITIES and appurtenances. All work shall be performed substantially in accordance with "Request for Proposal for Design Build Services-RFP No. 11-16 consisting of Hybrid Alternative, Contract Package 1A, Contract Package 1B and Contract Package 1C, a copy of which is on file in the AUTHORITY'S office at 770 L S, Suite 800, Sacramento, CA 95814.
- **Subject Work to be Performed by Parties Pursuant to this TASK ORDER:**  
AUTHORITY'S CONTRACTOR performs all design and construction services for FACILITY WORK. LOCAL AGENCY will review and approve FACILITY PLANS and be entitled to have a reasonable number of representatives on site of PROJECT to verify that the FACILITY WORK is being properly performed by AUTHORITY'S CONTRACTOR and approve that work.

**TASK ORDER NO. FID00002**  
CHSRP Interaction Removal or Relocation Plan

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- **Subtask I2.01:**  
Scope: Remove approximately 300 LF of 30" irrigation facilities and replace with approximately 300 LF of 30" irrigation facilities within an RCP casing at Braly No 14 facility near California Ave and Cherry Ave. FACILITY WORK is shown in Exhibit 9 Drawing.  
Period of Performance: 2 Months  
The estimated value for this FACILITY WORK is \$480,600.
  
- **Subtask I2.02:**  
Scope: Widen existing Fresno Colony No 24 facility near Golden State Blvd & Cedar Ave to clear viaduct column. FACILITY WORK is shown on Drawing SV2202.  
Period of Performance: 2 Months  
The estimated value for this FACILITY WORK is \$325,100.
  
- **Subtask I2.03:**  
Scope: Protect in place existing North Central No 26 facility near Cedar Ave and SR 99. FACILITY WORK is shown in Drawing 1668.  
Period of Performance: 36 Months  
The estimated value for this FACILITY WORK is \$360,000.
  
- **Subtask I2.04:**  
Scope: Construct a culvert that is 120 long by 40' wide at Central No 23 facility adjacent to the Central Ave roadway structure and construct a separate culvert that is 120' long by 40' wide at the North Central no 26 at the intersection of Cedar Ave and Central Ave. FACILITY WORK is shown in Drawing CB 1669 and CT1025.  
Period of Performance: 12 Months  
The estimated value for this FACILITY WORK is \$1,920,000.
  
- **Subtask I2.05:**  
Scope: Construct a culvert that is 120 long by 40' wide at Viau No 25 facility near Malaga and Cedar Ave to allow HST to cross this existing facility. FACILITY WORK is shown in Drawings CB1670.  
Period of Performance: 6 Months  
The estimated value for this FACILITY WORK is \$960,000.

### **3. Project Schedule**

Deadlines for the completion of FACILITY WORK are provided for in the contract between AUTHORITY and AUTHORITY'S CONTRACTOR.

### **4. Schedule for FACILITY WORK (This TASK ORDER Only)**

AUTHORITY'S CONTRACTOR shall complete the design work in accordance with the schedule specified in this TASK ORDER. AUTHORITY'S CONTRACTOR shall commence construction work only after acceptance of the final design for such work in accordance with Appendix C – Design Build Procedures of the Master Agreement.

**TASK ORDER NO. FID00002**  
CHSRP Interaction Removal or Relocation Plan

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**Design:**

**Start Date:** January 2013

**Completion Date:** June 2013

**Construction:**

**Start Date:** June 2013

**Completion Date:** February 2016

**PERFORMANCE OF THE FACILITY WORK**

**1. Design**

The design furnished by AUTHORITY'S CONTRACTOR pursuant to this TASK ORDER shall be substantially in accordance with the Proposed Preliminary Design (see Appendix C – Design Build Procedures of the Master Agreement) attached to this TASK ORDER, and shall be consistent with 30% design submittal of the PROJECT plans. All plans for FACILITY WORK are subject to review by AUTHORITY, LOCAL AGENCY, and AUTHORITY'S CONTRACTOR, in accordance with the time frames and procedures set forth in Appendix C – Design Build Procedures of the Master Agreement.

**BY LOCAL AGENCY:** LOCAL AGENCY will review FACILITY PLANS and be entitled to have a reasonable number of representatives on site of PROJECT to verify the FACILITY WORK is being properly performed by AUTHORITY'S CONTRACTOR.

**BY AUTHORITY'S CONTRACTOR:** AUTHORITY'S CONTRACTOR performs all design and construction services for FACILITY WORK.

**2. Construction**

AUTHORITY'S CONTRACTOR will perform all the construction services for the FACILITY WORK. The construction of FACILITY WORK shall be performed substantially in accordance with the final FACILITY PLANS. Deviations from the final FACILITY PLANS may occur only in conformity with the Master Agreement.

**LIABILITY FOR WORK**

In accordance with Section 3 of the Master Agreement, LOCAL AGENCY and AUTHORITY shall each be responsible for the cost of the FACILITY WORK as specified herein. The total estimated cost for the FACILITY WORK is \$2,815,963.

**Cost Allocation**

AUTHORITY pays 100 % and LOCAL AGENCY pays 0 % of cost of FACILITY WORK

**COST ESTIMATE**

The amounts stated herein are estimates of the costs associated with the FACILITY WORK. Authorized expenditures and reimbursements will be based on the terms of the Master Agreement.

**1. For Work by LOCAL AGENCY**

LOCAL AGENCY's costs for FACILITY WORK shall be developed pursuant to Section 5, "Payment of Work," of the Master Agreement, and shall be performed in accordance with the procedures set forth in Section 4, "Performance of Work" and Appendix C – Design Build Procedures of this Master Agreement.

**TASK ORDER NO. FID00002**  
CHSRP Interaction Removal or Relocation Plan

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**2. For Work by AUTHORITY'S CONTRACTOR**

AUTHORITY has prepared an initial cost estimate in the amount of \$2,815,963 for the FACILITY WORK included in this TASK ORDER.

AUTHORITY'S CONTRACTOR shall prepare an independent cost estimate for the FACILITY WORK which shall be submitted for AUTHORITY's approval. Such estimate will reflect appropriate estimated charges for BETTERMENT and salvage value, if any. Upon approval, the parties shall revise this TASK ORDER to incorporate the approved estimate.

**BETTERMENT, ACCRUED DEPRECIATION, SALVAGE**

LOCAL AGENCY shall credit AUTHORITY for the actual cost of any BETTERMENT, salvage value, and accrued depreciation on the FACILITIES as required pursuant to the Master Agreement, and pay the AUTHORITY'S CONTRACTOR for the actual cost of any BETTERMENT constructed by AUTHORITY'S CONTRACTOR.

The FACILITY WORK in this TASK ORDER does not include any BETTERMENT

**BILLING AND PAYMENT**

Billing and payment shall be in accordance with Section 5, "Payment for Work," of the Master Agreement.

**CONTACTS**

The contacts for this TASK ORDER will be as follows:

LOCAL AGENCY: Bill Stretch

AUTHORITY: Tony Valdez

AUTHORITY'S CONTRACTOR:

**TASK ORDER NO. FID00002**  
CHSRP Interaction Removal or Relocation Plan

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**SIGNATURES**

This TASK ORDER shall become effective upon the later of:

- (A) The date of signing by the last party signing this TASK ORDER, or
- (B) The completion AUTHORITY's review as indicated by the signature of AUTHORITY's representative, below.

IN WITNESS WHEREOF, this TASK ORDER has been executed under the provisions of Agreement No. \_\_\_\_\_ between the AUTHORITY, LOCAL AGENCY, and AUTHORITY'S CONTRACTOR. By signature below, the parties hereto agree that all terms and conditions of this TASK ORDER No. \_\_\_\_ and Agreement No. \_\_\_\_\_ shall be in full force and effect.

**LOCAL AGENCY:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Signature

Typed Name: \_\_\_\_\_

Typed Title: \_\_\_\_\_

**LOCAL AGENCY Legal Review**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Signature –LOCAL AGENCY'S Legal Counsel

**California High Speed Rail Authority (AUTHORITY)**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Signature

Typed Name: \_\_\_\_\_

Typed Title: \_\_\_\_\_

**AUTHORITY Legal Review**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Signature - AUTHORITY Legal Counsel

**( CONTRACTOR):**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Signature

**TASK ORDER NO. FID00002**  
CHSRP Interaction Removal or Relocation Plan

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Typed Name: \_\_\_\_\_

Typed Title: \_\_\_\_\_