

## 9 Kinder Morgan Energy Partners, L.P.

- Letter dated June 15, 2012 from Kinder Morgan SFPP, L.P. regarding General Guidance for Design-build Candidates
- Cooperative Agreement
- Task Order No. 1
- Task Order No. 2

ADDENDUM 7



Date June 15, 2012

ENG 421(930) (143.3 to 171.2 - 60)  
(0.4 - 119A)

**File Reference # 10-028-5**

Ron Price, CCM  
Parsons Brinckerhoff  
California High Speed Rail Project  
Suite 200  
2329 Gateway Oaks Drive  
Sacramento, CA 95833

General Guidance for Design/Build candidates

Dear Mr. Price,

This letter is in response to our conversation on June 11, 2012 and in consideration of information in the Draft Task Order No. KM-001. I understand that the Request for Proposals has been delivered to your set of qualified Design/Build (DB) teams. I have already been contacted by one team to better understand our alignment through the project area defined in Construction Package #1.

In the interest of public safety and for pipeline protection the following provisions must be considered in the design, construction planning and subsequent improvements near KM facilities.

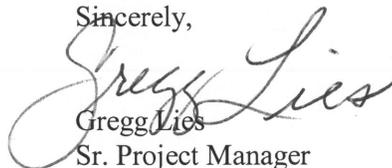
- Adherence to applicable provisions enumerated in the enclosed copy of (a) L-OM200-29 "Guidelines for Design and Construction" relating to proposed projects affecting Kinder Morgan pipelines and (b) copy of Information Bulletin #03-001, issued from the office of the California State Fire Marshal concerning encroachments within and adjacent to pipeline easement.
- Exact pipeline location and depth can only be determined by pothole, which must be performed by hand excavation in the presence of a KM representative. Notify KM Area Manager, Mr. Mike McWhorter (559) 493-2975 at least two weeks prior to commencement of work. Mr. McWhorter will arrange for a pipeline representative to be present during work near the pipeline.
- All potholes must be performed by hand excavation and in the presence of a KM pipeline representative. Backfill around the pipeline must be sand (or rock free dirt) and must be hand-compacted. Labor and equipment for potholes must be provided by the contractor.
- The Contractor shall pothole the pipeline at the lesser of 50 feet intervals, proposed utility crossings, or at locations determined by KM's on-site pipeline representative to potentially conflict with the KM pipelines. The purpose of this work is to determine if the pipeline has sufficient cover and horizontal clearance to accommodate the construction work.

- An executed inspection agreement must be in place prior to commencement of work within 10 feet of the pipeline during and subsequent to this project. KM must hire qualified outside contract inspectors to perform this service. The inspection cost is based on \$600 per day plus 19.4% for G&A overhead multiplied by the number of days estimated that work will be performed near the pipelines. Due to the magnitude of this project and the aggressive schedule, I recommend 3 dedicated inspectors be hired to coordinate the contractor's activities. The estimated cost for a 30 month period of performance would be approximately \$1,125,000.
- Protection: The contractor will be required to protect the line from overhead work, heavy equipment crossings and other similar hazards. Common methods are providing additional cover over the pipeline or placing steel plates over the pipeline. The cost of the protection measures will be borne by the contractor.
- Relocation: This is when the Kinder Morgan pipeline must be moved due to the project design. In this project structures and storm drains are most likely to initiate a relocation. Water line elevations can generally be adjusted to avoid KM assets. The Hybrid Alignment of the HST will cross Kinder Morgans LS 119A just north of Malagra Road.
- Line Interruptions: The successful bidder must plan for minimal interruption of pipeline activities. Any shutdown for relocation tie-in or construction work in close proximity must be planned 60 days in advance. Planned shutdowns are limited to 24 hours.

The above guidelines will help in understanding the requirements for working around Kinder Morgan's Pipeline. As the design progresses a better definition will be developed. Please call if you have any questions.

**To avoid delays in response to future correspondence, please refer to File Reference # 10-028.**

Sincerely,



Gregg Lies  
Sr. Project Manager

Attachment:

T: Quinn/letters/421(930)/10-028-4/GAL

cc: M. L. McWhorter

Bcc: M. Sandon  
L. G. Hosler  
S. Osborn  
J. Eggenberger  
J. Brothers  
D. R. Quinn

Date June 15, 2012

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Sincerely,

Gregg Lies  
Sr. Project Manager

Attachment: Kinder Morgan: Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities.  
California State Fire Marshall: Information Bulletin #03-001

T: Quinn/letters/421(930)/10-028-5/GAL

cc: M. L. McWhorter

Bcc: M. Sandon  
L. G. Hosler  
S. Osborn  
J. Eggenberger  
J. Brothers  
D. R. Quinn



## Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

Name of Company: \_\_\_\_\_

The list of design, construction and contractor requirements, including but not limited to the following, for the design and installation of foreign utilities or improvements on KM right-of-way (ROW) are not intended nor do they waive or modify any rights KM may have under existing easements or ROW agreements. Reference existing easements and amendments for additional requirements. This list of requirements is applicable for KM facilities on easements only. Encroachments on fee property should be referred to the ROW Department.

### Design

- KM shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KM's ROW to determine and resolve any location, grade or encroachment problems and provide protection of our facilities and the public **before** the actual work is to take place.
- Encroaching entity shall provide KM with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KM's ROW. The encroaching entity shall also provide a set of as-built drawings showing the proposed facilities in the vicinity of KM's ROW.
- Only facilities shown on drawings reviewed by \_\_\_\_\_ (Company) will be approved for installation on KM's ROW. All drawing revisions that effect facilities proposed to be placed on KM's ROW must be approved by KM in writing.
- KM shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KM will be at the expense of the developer or landowner.
- The depth of cover over the KM pipelines shall not be reduced nor drainage altered without KM's written approval.
- Construction of any permanent structure, building(s) or obstructions within KM pipeline easement is **not** permitted.
- Planting of shrubs and trees is not permitted on KM pipeline easement.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KM easement.
- Foreign line, gas, water, electric and sewer lines, etc., may cross perpendicular to KM's pipeline within the ROW, provided that a minimum of two (2) feet of vertical clearance is maintained between KM pipeline(s) and the foreign pipeline. Constant line elevations must be maintained across KM's entire ROW width, gravity drain lines are the only exception. Foreign line crossings below the KM pipeline must be evaluated by KM to ensure that a significant length of the KM line is not exposed and unsupported during construction. When installing underground utilities, the last line should be placed beneath all existing lines unless it is impractical or unreasonable to do so. Foreign line crossings above the KM pipeline with less than 2 feet of clearance must be evaluated by KM to ensure that additional support is not necessary to prevent settling on top of the KM hazardous liquids pipeline.
- A foreign pipeline shall cross KM facilities at as near a ninety-degree angle as possible. A foreign pipeline shall not run parallel to KM pipeline within KM easement without written permission of KM.
- The foreign utility should be advised that KM maintains cathodic protection on their pipelines. The foreign utility must coordinate their cathodic protection system with KM's. At the request of KM, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection. The KM Cathodic Protection (CP) technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KM. All costs associated with the correction of cathodic protection problems on KM pipeline as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.
- The metallic foreign line shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing unless otherwise requested by the KM CP Technician.



## Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

- AC Electrical lines must be installed in conduit and properly insulated.
- DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KM ROW.
- No power poles, light standards, etc. shall be installed on KM easement
- No pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble.

### Construction

- Contractors shall be advised of KM's requirements and be contractually obligated to comply.
- The continued integrity of KM's pipelines and the safety of all individuals in the area of proposed work near KM's facilities are of the utmost importance. Therefore, contractor must meet with KM representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KM's on-site representative will require discontinuation of any work that, in his opinion, endangers the operations or safety of personnel, pipelines or facilities.**
- The Contractor must expose all KM pipelines prior to crossing to determine the exact alignment and depth of the lines. A KM representative must be present. In the event of parallel lines, only one pipeline can be exposed at a time.
- KM will not allow pipelines to remain exposed overnight without consent of KM designated representative. Contractor may be required to backfill pipelines at the end of each day.
- A KM representative shall do all line locating. A KM representative shall be present for hydraulic excavation. The use of probing rods for pipeline locating shall be performed by KM representatives only, to prevent unnecessary damage to the pipeline coating.
- Notification shall be given to KM at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of Kinder Morgan, Inc.'s work site representative. Any Contractor schedule changes shall be provided to Kinder Morgan, Inc. immediately.
- Heavy equipment will not be allowed to operate directly over KM pipelines or in KM ROW unless written approval is obtained from (Company). Heavy equipment shall only be allowed to cross KM pipelines at locations designated by Kinder Morgan, Inc. Contractor shall comply with all precautionary measures required by KM to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires. Equipment excavating within ten (10) feet of KM Pipelines will have a plate guard installed over the teeth to protect the pipeline.
- Excavating or grading which might result in erosion or which could render the KM ROW inaccessible shall not be permitted unless the contractor/developer/owner agrees to restore the area to its original condition and provide protection to KM's facility.
- A KM representative shall be on-site to observe any construction activities within ten (10) feet of a KM pipeline or aboveground appurtenance. The contractor **shall not** work within this distance without a KM representative being on site. Only hand excavation shall be permitted within **two (2) feet** of KM pipelines, valves and fittings unless State requirements are more stringent. However, proceed with extreme caution when within three (3) feet of the pipe.
- A KM representative will monitor construction activity within 25 feet of KM facilities during and after the activities to verify the integrity of the pipeline and to ensure the scope and conditions agreed to have not changed. Monitoring means to conduct site inspections on a pre-determined frequency based on items such as: scope of work, duration of expected excavator work, type of equipment, potential impact on pipeline, complexity of work and/or number of excavators involved.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KM facility unless company representative is present.
- Temporary support of any exposed KM pipeline by Contractor may be necessary if required by KM's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KM's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KM's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.



## Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

- No blasting shall be allowed within 1000 feet of KM's facilities unless blasting notification is given to KM including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting. KM shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KM's facilities as a result of their activities whether or not KM representatives are present. KM shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.

No blasting shall be allowed within 300 feet of KM's facilities unless blasting notification is given to KM a minimum of one week before blasting. *(note: covered above)* KM shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KM in addition to meeting requirements for 500' and 1000' being met above. A written emergency plan shall be provided by the organization responsible for blasting. *(note: covered above)*

- **Any** contact with any KM facility, pipeline, valve set, etc. shall be reported immediately to KM. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- KM personnel shall install all test leads on KM facilities.
- Burning of trash, brush, etc. is not permitted within the KM ROW.

### Insurance Requirements

- All contractors, and their subcontractors, working on Company easements shall maintain the following types of insurance policies and minimum limits of coverage. All insurance certificates carried by Contractor and Grantee shall include the following statement: "Kinder Morgan and its affiliated or subsidiary companies are named as additional insured on all above policies (except Worker's Compensation) and waiver of subrogation in favor of Kinder Morgan and its affiliated or subsidiary companies, their respective directors, officers, agents and employees applies as required by written contract." **Contractor shall furnish Certificates of Insurance evidencing insurance coverage prior to commencement of work and shall provide thirty (30) days notice prior to the termination or cancellation of any policy.**
1. Statutory Coverage Workers' Compensation Insurance in accordance with the laws of the states where the work is to be performed. If Contractor performs work on the adjacent on navigable waterways Contractor shall furnish a certificate of insurance showing compliance with the provisions of the Federal Longshoreman's and Harbor Workers' Compensation Law.
  2. Employer's Liability Insurance, with limits of not less than **\$1,000,000** per occurrence and **\$1,000,000** disease each employee.
  3. Commercial General Liability Insurance with a combined single limit of not less than **\$2,000,000** per occurrence and in the aggregate. All policies shall include coverage for blanket contractual liability assumed.
  4. Comprehensive Automobile Liability Insurance with a combined single limit of not less than **\$1,000,000**. If necessary, the policy shall be endorsed to provide contractual liability coverage.
  5. If necessary Comprehensive Aircraft Liability Insurance with combined bodily injury, including passengers, and property damage liability single limits of not less than **\$5,000,000** each occurrence.
  6. Contractor's Pollution Liability Insurance this coverage shall be maintained in force for the full period of this agreement with available limits of not less then **\$2,000,000** per occurrence.
  7. Pollution Legal Liability Insurance this coverage must be maintained in a minimum amount of **\$5,000,000** per occurrence.



## INFORMATION BULLETIN

#03-001

Date Issued: June 20, 2003

SUBJECT: ENCROACHMENTS INTO OR ON PIPELINE EASEMENTS

The purpose of this informational bulletin is to delineate the position of the State Fire Marshal regarding encroachments onto the pipeline easements.

Section 51014.6 of the California Government Code states, “ (a) Effective January 1, 1987, no person, other than the pipeline operator, shall do any of the following with respect to any pipeline easement: (1) Build, erect, or create a structure or improvement within the pipeline easement or permit the building, erection, or creation thereof. (2) Build, erect, or create a structure, fence, wall, or obstruction adjacent to any pipeline easement which would prevent complete and unimpaired surface access to the easement, or permit the building, erection, or creation thereof. (b) No shrubbery or shielding shall be installed on the pipeline easement which would impair aerial observation of the pipeline easement. This subdivision does not prevent the revegetation of any landscape disturbed within a pipeline easement as a result of construction the pipeline and does not prevent the holder of the underlying fee interest or the holder’s tenant from planting and harvesting seasonal agricultural crops on a pipeline easement. (c) This section does not prohibit a pipeline operator from performing any necessary activities within a pipeline easement, including, but not limited to, the construction, replacement, relocation, repair, or operation of the pipeline.

It is the position of the State Fire Marshal that nothing shall encroach into or upon the pipeline easement, which would impede the pipeline operator from complete and unobstructed surface access along the pipeline right of way. Nor shall there be any obstructions, which would shield the pipeline right of way from observation. In the interest of public safety and the protection of the environment, it is imperative that the pipeline operator visually assesses the conditions along the easement to ensure the integrity of the pipeline.

It is the responsibility of the pipeline operator to ensure they have unimpeded surface access and to be able to physically observe all portions of their pipeline rights of way. In cases where this is not possible, the pipeline operator shall inform the State Fire Marshal. The State Fire Marshal shall in conjunction with the pipeline operator resolve the issue.

Questions regarding the issue of pipeline encroachment can be addressed to:

Bob Gorham, Chief

CALFIRE/State Fire Marshal  
Pipeline Safety Division  
3950 Paramount Blvd. Suite 210  
Lakewood, CA 90712

(562) 497-9100

(562) 497-9104 (fax)

[bob.gorham@fire.ca.gov](mailto:bob.gorham@fire.ca.gov)

**California High-Speed Train Project**



**Cooperative Agreement**

**Kinder Morgan**

DRAFT

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Appendix 1: Design-Build Procedures  
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### 1. AMENDMENT (CHANGE IN TERMS)

- a. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- b. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

### 1. TERMINATION

This section regarding termination is in addition to GTC 610.

- a. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- b. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

### 2. EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions



- a. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.
- b. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
  - i. A final revised cost proposal for all project-related costs for the revised termination date.
  - ii. A cost proposal specifically addressing the termination settlement costs only.

### **3. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION**

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

### **4. INVOICE SUBMITTAL UNDER EARLY TERMINATION**

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.



## **5. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS**

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

## **6. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION**

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 9 below.

## **7. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION**

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

## **8. RETENTION OF RECORD/AUDITS**

- a. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- b. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.



## 9. AUDIT REVIEW PROCEDURES

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.
- b. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- c. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

## 10. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

## 11. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

## 12. OWNERSHIP OF DATA

- a. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- b. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.



- c. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

### **13. CONFIDENTIALITY OF DATA**

- a. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- b. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- c. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- d. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- e. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

### **14. STATEMENT OF COMPLIANCE**

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.



**15. DEBARMENT AND SUSPENSION CERTIFICATION**

- a. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - v. Does not have a proposed debarment pending; and
  - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

**16. CONFLICT OF INTEREST**

- a. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
- b. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- c. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.



Appendix 3: Stakeholder Collaboration  
Appendix D: Third Party Special Conditions



|                       |  |                        |  |
|-----------------------|--|------------------------|--|
| Financial Project ID: |  | Federal Project ID:    |  |
| County:               |  | AUTHORITY Document No: |  |

## PARTIES

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Agreement" or "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and Kinder Morgan, Energy Partners, L.P., whose principal mailing address is 500 Dallas Street, Suite 100, Houston, Texas 77002, hereinafter referred to as the "Facility Owner".

## RECITALS

**WHEREAS**, the Facility Owner owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission; and

**WHEREAS**, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Facility Owner's Facilities; and

**WHEREAS**, the HST Project will be built in multiple phases; and

**WHEREAS**, the Authority and the Facility Owner desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Facility Owner's Facilities throughout the various phases of the HST Project.

**NOW AND THEREFORE**, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Facility Owner agree as follows:

## 1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

### 1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work, as defined herein, other than any Excluded Entity.



## 1.2 Authority Designated Holiday

“Authority Designated Holiday” means New Year’s Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President’s Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

## 1.3 Betterment

“Betterment” shall mean any upgrading of a replacement Facility that is not attributable to the construction of the HST Project and is made solely for the benefit of and at the election of the Facility Owner, including an increase in the capacity, capability, level of service, efficiency, duration or function of the replacement Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

- A. Any upgrading necessary for safe and effective construction of the HST Project;
- B. Replacement devices or materials that meet equivalent standards although they are not identical;
- C. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- D. Any upgrading required by applicable laws;
- E. Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or
- F. Any upgrading required by the applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Facility Owner at its own expenses, which are in effect as of the date of execution of the applicable Task Order.

## 1.4 Days

“Days” means calendar days, unless otherwise stated.

## 1.5 Excluded Entity

“Excluded Entity” means any public or private entity that enters into a contract with Authority to coordinate and/or perform work on its own facilities with work on the HST Project.



## 1.6 Facility

“Facility” or “Facilities” means any Utility, as defined herein, and/or or any publicly owned and operated road, street, bridge, or grade separation. The term “Facility” or “Facilities” includes traffic signals, street lights, and crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

## 1.7 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities or construction of new Facilities in conjunction with the HST Project.

## 1.8 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

## 1.9 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by notice to owner or otherwise) by an Excluded Entity, directly or indirectly, is specifically excluded from the definition of HST Project.

## 1.10 Notice to Proceed

“Notice to Proceed” means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.



### **1.11 Party**

“Party” refers to the Authority or the Facility Owner, as the context may require and “Parties” means the Authority and the Facility Owner, collectively.

### **1.12 Relocation**

“Relocation” means alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all of the Facility Owner’s Facilities that is necessary in order to accommodate or permit construction of the HST Project.

### **1.13 Right-of-way of Facility Owner**

“Right-of-way of Facility Owner” means a property right held by the Facility Owner in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Facility Owner for the Facility to be located in a defined area of real property, including but not limited to a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement. Right-of-way of Facility Owner does not include a franchise or license.

### **1.14 Service Line**

“Service Line” means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Facility Owner’s Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

### **1.15 Task Order**

“Task Order” means a work order or agreement among the Authority, the Authority’s Contractor, and the Facility Owner, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.

### **1.16 Unforeseen Work**

“Unforeseen Work” means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.



### 1.17 Utility

“Utility” means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines and drainage basins for storm water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

### 1.18 Wasted Work

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

### 1.19 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.

## 2 WORK TO BE COMPLETED

### 2.1 Facility Work

Facility Work specific to a particular Facility’s Relocation shall be detailed in a subsequently executed Task Order.

### 2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority’s Contractor and the Facility Owner. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by



the Authority's Contractor. The Task Order will set forth among other things, 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 Facility Work. Format of the Task Order and its content shall be mutually agreed upon by the Authority, the Authority's Contractor, and the Facility Owner.

### **2.3 Betterment Work at the Facility Owner's Request**

Any work considered Betterment made at the Facility Owner'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 the Facility Owner.

### **2.4 Unforeseen Work**

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Facility Owner shall be obligated to comply with the Authority's determination.

## **3 LIABILITY FOR WORK**

### **3.1 Prior Rights**

Liability for the cost of Facility Work shall be determined by applicable law, including, without limitation, statute, superior rights, or prescriptive rights, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the Facility Owner, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the Facility Owner's Facility is located.

### **3.2 Authority's Expense**

Unless the Facility Owner agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights the costs for such work shall be borne by the Authority.

### **3.3 Facility Owner's Expense**

Facility Work will be performed at the Facility Owner's expense where:

- A. Facility Work is a Betterment as defined in Section 1.3;
- B. The Facility Owner is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;



- C. It is determined by Prior Rights that the cost for such work shall be borne by the Facility Owner; or
- D. The Facility Owner agrees to perform the work at its own expense.

### **3.4 Shared Expense**

Facility Work will be performed at the shared expense of the Authority and the Facility Owner in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

### **3.5 Disputed Cost Liability**

In circumstances where a dispute exists between the Parties as to whether the Facility Owner has a Prior Right to maintain and operate its facilities in their present location and which Party must bear the expense of Facility Work required for a Relocation pursuant to a Task Order, the Parties agree to proceed with the Facility Work required by the Task Order and to reserve the issue of liability for the cost of the Facility Work detailed in the Task Order as hereinafter provided. In such case, the Authority, either directly or through Authority's Contractor, shall advance funds for the cost of the Facility Work as if such costs were Authority's expense as provided in Section 3.2, of this Cooperative Agreement,

Authority and Facility Owner agree that after execution of the Task Order for Facility Work where cost liability is disputed, they shall negotiate in good faith with the goal of reaching an agreement as to the allocation of costs for the Facility Work. If Facility Owner fails to negotiate in good faith, or if no agreement is executed and delivered on or before ten (10) days after the date of completion of the Facility Work, then notwithstanding the disputes resolution process set forth in Section 3.7 of this Cooperative Agreement, Authority shall have the immediate right to pursue a determination of the cost responsibility through either mandatory binding arbitration (pursuant to the arbitration process set forth in Section 3.7) or through litigation in a court of competent jurisdiction, in Authority's sole discretion. It is further agreed by Facility Owner and Authority that in case of disputed liability, (a) neither the advance or return of funds pursuant to this Cooperative Agreement nor the performance by Facility Owner of the Facility Work shall be deemed a waiver, compromise or admission of liability, (b) the fact that such advance and/or return of funds and performance of Facility Work occur shall not be pertinent to and shall not be considered or offered as evidence regarding the issue of liability, (c) the issue of liability shall be reserved for resolution by subsequent agreement, arbitration or litigation, and (d) the time for commencing an action for the recovery of any funds advanced by Authority for the cost of the Facility Work shall begin to run as of the tenth day after completion of the Facility Work, and Facility Owner waives any applicable statute of limitation to the contrary to the extent permitted by law.



In the event that Facility Owner ultimately is determined to be responsible for the Relocation costs, then Facility Owner shall within 45 days from the date of such determination reimburse the Authority or the Authority's Contractor as directed by the Authority the full amount of all sums advanced that were determined to be the Facility Owner's cost responsibility, plus interest from the date advanced or disbursed by Authority and computed in accordance with Section 1268.350 of the Code of Civil Procedure.

### **3.6 Claims by the Authority's Contractor**

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Facility Owner of the claim and the Facility Owner will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Facility Owner and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Facility Owner under this Agreement, the Authority may withhold reimbursement to the Facility Owner until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

### **3.7 Disputes**

The Authority and the Facility Owner agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HST Project impacting Facility Owner's Facilities a hierarchy of individuals within each Party's organization to whom issues may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HST Project and the Facility Work.

In the event the Facility Owner disagrees with a determination or direction made by the Authority in connection with the Facility Work, the Facility Owner shall provide prompt written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve such potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If, within 14 days after conclusion of such partnering, the dispute persists, then the Facility Owner may request a written statement of the Authority concerning its decision. The request shall state clearly, and in detail, the basis for the objection, a statement



of the facts asserted, and the nature and amount of the costs involved. The Authority shall reduce its decision to writing and provide notice of such decision, including a copy thereof, to the Facility Owner. Failure of the Authority to provide a written decision shall be deemed denial of Facility Owner's objection. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such decision, or if no written decision is received from the Authority, 42 days from the Facility Owner's original written objection, the Facility Owner appeals such decision by written notice to the Authority.

In connection with any appeal of the Authority's decision, the Facility Owner shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall then, within two weeks from the date of the hearing, or if no hearing is requested, from the date of Facility Owner's notice of appeal, either issue a modified decision, or such prior decision shall be deemed affirmed. 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.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such election to arbitrate, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of 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 Sacramento County.

If it is determined, on appeal, that the Authority's interpretation of this Cooperative Agreement, direction to the Facility Owner, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under this Cooperative Agreement, the Facility Owner's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the Facility Owner with respect to the disputed matter as a direct result of such erroneous determination (crediting the Authority for any corresponding reduction in the Facility Owner's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

At all times during the course of the dispute resolution process, the Facility Owner shall continue with or permit the continuance of the Facility 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 this Cooperative Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Cooperative Agreement irrespective of the ultimate outcome of any dispute.

## **4 PERFORMANCE OF WORK**

### **4.1 General**

All Facility Work (design and construction phases) or portion thereof may be performed by the Facility Owner, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

### **4.2 Facility Owner Performs Facility Work**

When all or a portion of the utility work is to be performed by the Facility Owner, the Facility Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Facility Owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, Facility Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Facility Owner agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Facility Owner in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The Facility Owner shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Facility Owner is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Facility Owner shall fully comply with the



provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The Facility Owner shall verify compliance with these requirements in the administration of its contracts referenced above.

#### **4.3 Authority's Contractor Performs Work**

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Facility Owner shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Facility Owner shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

#### **4.4 Insurance**

The Facility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Facility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Facility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the Parties, the construction contractor, design contractors and design/build contractors shall provide evidence of at least:

- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.



- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of at least \$2,000,000 per accident.
- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of at least \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. Insurance policies required to be provided by a contractor hereunder shall contain or be endorsed to contain the following provisions:
  - 1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
  - 2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

The minimum amounts of insurance specified above may be adjusted from time to time by Authority if commercially reasonable to do so.

Each policy of insurance and endorsement required to be provided by a contractor hereunder shall be in form and substance acceptable to Authority, in its sole discretion. Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Facility Owner and the Authority shall be transmitted directly by the insurer to the Facility Owner and the Authority. The Facility Owner recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controlled insurance program.

#### **4.5 Stakeholder Collaboration**

In signing this Agreement, the Facility Owner agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private Facility Owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST 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 HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," incorporated herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.

Reimbursement to the Facility Owner for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made by either the Authority or the Authority's Contractor, to be determined by Authority.

Subject to the requirements of the Public Information Act and to the maximum extent permitted by law, neither the language of this clause, including the language in Appendix C, 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.

## **5 PAYMENT FOR WORK**

### **5.1 Cost of Facility Work**

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:

- 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 Facility by the Facility Owner, the Authority shall be entitled to credits as follows:
  - 1. The amount of any Betterment to the utility Facility resulting from such relocation.
- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Facility Owner.



- C. Eligible Facility Owner costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. Facility Owner 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>

## 5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Facility Owner in the amounts as established for Facility Work performed by the Facility Owner, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Facility Owner may be delegated to the Authority's Contractor; in such circumstances, the Facility Owner agrees to the Authority's delegation of responsibility to the Authority's Contractor to make reimbursement payments to

Nevertheless, the Task Order shall provide that the Authority and the Authority's Contractor shall be jointly and severally liable for any payments required to be made to the Facility Owner under this Agreement or any Task Order, subject to Paragraph 3.6 of this agreement.

Any payment required to be made to the Facility Owner by the Authority's Contractor shall be made within 45 days of date of acceptance of invoice by the Authority's Contractor. The Authority's Contractor shall set up an escrow account on mutually agreed terms and with an a mutually acceptable third party ("Utility Escrow Account"), in the amount of \$150,000 ("Minimum Escrow Amount") for the benefit of the Facility Owner exclusively for the payment of required Relocation expenses. Any required payment due to the Facility Owner by the Authority's Contractor and not made within 45 days, related to a required Relocation expenses, shall be eligible for payment through Utility Escrow Account. If the Utility Escrow Account amount falls below the Minimum Escrow Amount, the Authority's Contractor shall add funds to the Utility Escrow Account within 5 working days to bring the balance of the Utility Escrow Account up to the Minimum Escrow Amount. Utility Escrow Account may be closed after final acceptance of Relocations from the Facility Owner. If Facility Work is at the Facility Owner's expense and is performed by the Authority or the Authority's Contractor, the Facility Owner shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work plus appropriate amounts for Betterments, salvage and expired service life. At the Authority's written direction given in its sole discretion, the Authority's Contractor may be authorized to accept such payment from the Facility Owner; in such circumstances, the Facility Owner agrees to the Authority's Contractor collection of reimbursement directly from the Facility Owner.

## 5.3 Invoicing Procedures

Invoicing procedures will be mutually agreed upon by the Authority, the Authority's



Contractor and the Utility Owner and set forth in Task Orders.

## 6 GENERAL CONDITIONS

### 6.1 Deactivated Facilities

The Facility Owner's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Facility Owner acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the Facility Owner to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Facility Owner. In the event of a breach of this Agreement by the Facility Owner, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Facility Owner shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Facility Owner to use due care in its dealings with others. The Facility Owner shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Facility Owner shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.
- E. The Facility Owner shall remove the Deactivated Facilities upon thirty (30) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Facility Owner and without any right of the Facility Owner to object or make any claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been



Deactivated. In the event that the Facility Owner fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Facility Owner's sole expense.

- F. Except as otherwise provided in this Section 6, the Facility Owner agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the Facility Owner. Except as otherwise provided in this Section 6, the Facility Owner shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

## 6.2 Default

In the event that the Facility Owner breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by law, the Facility Owner may pursue a claim for damages suffered.

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 Authority may unilaterally cancel this Agreement for refusal by the Facility Owner to allow access to all public documents, papers, letters, or other material that is made or received by the Facility Owner in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Facility Owner, the Authority will notify the Facility Owner in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.



Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. 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 HST Project. Consequently, the Authority shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

### **6.3 Indemnification**

Each Party shall hold harmless, indemnify and defend the other Party and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Agreement or under any Task Order executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Parties indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified Party.

When the Authority receives a notice of claim for damages that may have been caused by the Facility Owner in the performance of services required under this Agreement, the Authority will immediately forward the claim to the Facility Owner. The Facility Owner and the Authority 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. After reviewing the claim, the Authority will determine whether to require the participation of the Facility Owner in the defense of the claim or to require the Facility Owner to defend the Authority in such claim as described in this section. The Authority's failure to notify the Facility Owner of a claim shall not release the Facility Owner from any of the requirements of this section.

The Facility Owner's obligation to defend and indemnify shall not be excused because of the Facility Owner's inability to evaluate liability or because the Facility Owner evaluates liability and determines the Facility Owner is not liable or determines the Authority is solely negligent. Only a final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the Facility Owner. The Facility Owner shall pay all costs and fees related to this obligation and its enforcement by the Authority. The Authority's delay in



notifying the Facility Owner of a claim shall not release the Facility Owner of the above duty to defend.

#### **6.4 Force Majeure**

Neither the Facility Owner 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 the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed to the Facility Owner by the Authority of the Authority's Contractor;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Facility Owner related entity

The foregoing events shall relieve a Party of liability only if the Party's failure to perform as a result of such event is beyond its control and not due to an act or omission of the Facility Owner related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and 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.

If any such event of Force Majeure occurs, the Facility Owner agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the Facility Owner for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;
- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;



- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Facility Owner related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Facility Owner related entity and not listed in the definition of Force Majeure above.

## **6.5 Facility Owner's Facility and Right-of-way**

The Facility Owner's Facilities shall at all times remain the property of and be properly protected and maintained by the Facility Owner.

Whenever the Facility Owner's affected Facilities are to be relocated from the existing Right-of-way of Facility Owner to a new location that falls outside such existing Right-of-way of Facility Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Facility Owner, without charge to the Facility Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Facility Owner for those rights previously held by the Facility Owner in its existing right-of-way. In consideration for these replacement rights being issued by the Authority, the Facility Owner shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the existing Right of Way of Facility Owner so vacated.

If the existing Right-of-way of Facility Owner includes fee title, the Authority shall acquire from the Facility Owner, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Facility Owner those remaining property rights appropriate for the placement and operation of the Facility Owner's Facilities in the Right-of-way of Facility Owner.

Upon completion of Facility Work by the Authority, the Relocated Facilities shall become the property of the Facility Owner.

## **6.6 Applicability**

Except as otherwise provided in the following paragraph, this Cooperative Agreement applies to the Relocation of Facility Owner's Facilities to accommodate or permit construction of the HST Project.

Excluded Entities may perform construction activities related to the HST Project. Any activities undertaken by Facility Owner or Excluded Entities with respect to Facilities pursuant to



arrangements made with Excluded Entities are specifically excluded from the terms and conditions of this Cooperative Agreement.

**6.7 Agreement Final Expression of the Parties**

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the Parties understand and agree that the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award to Authority’s Contractor. Copies of the Authority policies and procedures will be provided to the Facility Owner as soon as practicable after they become available. To the extent otherwise allowable pursuant to Title 23 C.F.R. Part 645, Subpart A, the Authority shall pay for any incremental costs incurred by the Utility Owner as a result of the application of Authority’s policies and procedures that would not have been incurred pursuant to this Agreement absent such policies and procedures. This Agreement cannot be modified except by an instrument, in writing, signed by the Party to be charged.

**6.8 Severability**

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

**6.9 Governing Law and Venue**

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

**6.10 Notices**

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The Facility Owner shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

**If to Facility Owner:**

Facility Owner Name:

Person in Charge:

\_\_\_\_\_  
\_\_\_\_\_



Address: \_\_\_\_\_

Facsimile Number \_\_\_\_\_  
\_\_\_\_\_

**If to Authority:**

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800  
Sacramento, CA 95814

Facsimile Number \_\_\_\_\_  
\_\_\_\_\_

**6.11 Wasted Work**

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility’s Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

**6.12 Hazardous Material**

Upon discovery of Hazardous Material in connection with Facility Work, both the Facility Owner and the Authority’s Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Facility Owner shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

- A. The 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 Facility Work, unless such conditions are attributable to the Facility Owner's existing installation or operation.
- B. 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 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 Section 5, "PAYMENT FOR WORK."



- C. 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.

### **6.13 Successors and Assigns**

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Parties. None of the rights, obligations or interests of either party under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other party, not to be unreasonably withheld, in the form of a formal written amendment, except that either party may assign the Agreement to its successor or any entity acquiring all or substantially all of such party's assets.

### **6.14 Third Parties**

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

### **6.15 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.

### **6.16 American Recovery and Reinvestment Act and the Authority**

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders.

### **6.17 Special Terms and Conditions**

The provisions included in Appendix D, "SPECIAL TERMS AND CONDITIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions in connection with this Agreement and subsequent Task Orders. References in such Special Terms and conditions to "Contractor" shall be deemed to refer to Facility Owner. The Dispute provisions in Section C of the Special Terms and Conditions are superseded by the Dispute process in Section 3.6 of this Agreement.



**6.18 Appendices**

Appendices A, B, C and D to this Agreement are attached hereto and incorporated by reference herein. This Agreement and the Appendices are intended to be complementary and shall, to the extent reasonably feasible, be interpreted so as to give force and effect to all provisions. In case of conflict between the provisions of this Agreement and those set forth in the Appendices, or between the provisions of the Appendices, the provision with the most stringent standard applicable to the party to be charged shall take precedence.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.

FACILITY OWNER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

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

Approval by the California High Speed Rail Authority

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date:

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

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

AUTHORITY Legal Review

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date:

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

AUTHORITY Legal Counsel

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



## **Appendix 1: Design-Build Procedures**

### **1. INITIAL COORDINATION**

- A. The Facility Owner shall advise the Authority in writing of the place and the name and telephone number of a contact person for the Facility Owner who has charge over the Facility Work and will serve as the primary contact for the Facility Owner on all related issues.
- B. The Authority will compile information from the Facility Owner that will illustrate the nature and locations of the Facility Owner's existing Facilities. The Authority will present this information on a series of drawings and tables that will be used to determine conflicts with the HST Project.
- C. The Facility Owner will furnish markups to the Authority of their existing and proposed Facilities within 20 working days.
- D. The Authority will prepare preliminary design plans that indicate which utilities are to be relocated and conceptual arrangements of the relocated utilities.
- E. The Facility Owner will verify, to the best of its ability, the correctness and completeness of the plans prepared by the Authority.
- F. These plans will form the basis of subsequent design to be performed by the Facility Owner, the Authority or the Authority's Contractor, as the case may be; the Facility Owner shall take sole and full responsibility for the accuracy of its depicted Facilities.

### **17. PERFORMANCE OF THE FACILITY WORK (PERFORMANCE BY AUTHORITY'S CONTRACTOR)**

The method of performance to be utilized in the design and construction of the Facility Work, as described below ("Method"), will be specified in the executed Task Order for the particular Facility Work contemplated.

The Facility Owner agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the Facility Owner, and (b) the Authority's Contractor's collection of reimbursement directly from the Facility Owner having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work shall be in accord with the following Method:



The Authority's Contractor performs all design and construction services for the Facility Work. In addition, provided that the entities identified in this paragraph otherwise satisfy the criteria for selection of a subcontractor in the contract between the Authority and Authority's Contractor, the Authority's Contractor through Spec Services (Peter Di Somma, Tim Skirvin), TRC Solutions Inc. (Lee Munsell, Gerry Reed), or CH2M Hill performs all design services. The Authority's Contractor through ARB, WA Rasic, Snelson, Arizona Pipeline Co., or Southwest performs all construction services for the Facility Work.

- A. At such time as the Authority's Contractor has the HST Project plans prepared to a level where the impact on the Facility Owner's Facilities and the nature and extent of the Facility Work can be determined, the Authority's Contractor shall prepare plans for the Facility Work (hereinafter referred to as "Facility Plans") and provide a copy of the Facility Plans to the Facility Owner in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the Facility Owner's standards.
- B. The Facility Owner shall have fifteen (15) working days from receipt of the Facility Plans to review them and provide comments, including any applicable technical requirements and standards, to the Authority's Contractor and the Authority. Failure to provide comments within such fifteen (15) working days shall be deemed approval.
- C. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the Facility Owner. The final Facility Plans shall incorporate the comments of the Facility Owner provided such comments are reasonable and do not create inconsistencies with the contract between Authority and the Authority's Contractor. A detailed list of final method of inclusion of the Facility Owner's comments shall be provided to the Facility Owner by the Authority's Contractor.
- D. The Facility Owner shall have fifteen (15) working days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the Facility Owner's comments are not fully addressed or incorporated, the Facility Owner shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.
- E. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the Facility Owner. This section shall not apply until paragraph 2.E of Appendix A is satisfied.



- F. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans.
- G. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the Facility Owner, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original Facility Work. No deviation from the original Facility Work shall commence without a fully executed Amendment.
- H. The Facility Owner shall be entitled to have representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The Facility Owner's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
- I. Upon completion of the Facility Work, the Facility Owner agrees to accept ownership and maintenance of the constructed Facilities.
- J. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
- K. The Authority's Contractor shall provide the Facility Owner with as-built drawings of Facility Work outside the Authority's right-of-way. The as-built drawings shall be in AUTOCAD and PDF format for that particular Facility Work.



**Appendix 2: ARRA and Authority Provisions**

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610
- SPECIAL TERMS AND CONDITIONS

If any term or condition in Appendix B conflicts with any term or condition elsewhere in the Cooperative Agreement, the term or condition in Appendix B will apply.

**DEFINITIONS**

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Facility Owner. The Facility Owner, however, is not a contractor.

“State” includes Authority.



**SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS****18. ARRA FUNDED PROJECT:**

Funding for this contract has been provided through the America 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.

**19. ENFORCEABILITY:**

Contractor agrees that if the 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 allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

**20. 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.

**21. 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 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 the United States obligations under international agreements. The contractor understands that these requirements may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

**22. WAGE RATE REQUIREMENTS:**

In accordance with ARRA, Section 1605, the Contractor assures that it and its sub-recipients 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 subconsultants on project 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 Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

### **23.INSPECTION OF RECORDS:**

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.

### **24.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 the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a 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.

## **25.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.

## **26.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:

- b. The total amount of ARRA funds received by Contractor during the Reporting Period;
- c. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- d. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
  - i. The name of the project or activity;
  - ii. A description of the project 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;
- e. 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 county;
  - 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 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.;
- f. For any contract 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 instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at [www.FederalRegister.gov](http://www.FederalRegister.gov). The additional requirements will be added to this contract(s).



**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.

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

**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.

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>.*



**GTC 610****GENERAL 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 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, either in whole or in part, without the consent of the State in the form of a formal written amendment.

**4. AUDIT:**

Contractor 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 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 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 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 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 in the performance of this Agreement.



**6. DISPUTES:**

Contractor 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 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 under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

**8. INDEPENDENT CONTRACTOR:**

Contractor, and the agents and employees of Contractor, 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 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 and its 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. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor 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. Contractor 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.

Contractor 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 Contractor, as provided herein, shall be in compensation for all of Contractor'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 Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor 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 contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor 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, 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 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 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 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).)



## **SPECIAL TERMS AND CONDITIONS**

### **21. AMENDMENT (CHANGE IN TERMS)**

- c. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- d. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

### **22. TERMINATION**

This section regarding termination is in addition to GTC 610.

- c. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- d. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

### **23. EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT**

General Conditions

- c. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.



- d. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
  - i. A final revised cost proposal for all project-related costs for the revised termination date.
  - ii. A cost proposal specifically addressing the termination settlement costs only.

#### **24. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION**

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

#### **25. INVOICE SUBMITTAL UNDER EARLY TERMINATION**

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

#### **26. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS**

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the



termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

## **27. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION**

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 9 below.

## **28. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION**

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

## **29. RETENTION OF RECORD/AUDITS**

- c. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

## **30. AUDIT REVIEW PROCEDURES**

- d. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.



- e. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- f. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

### **31. PURCHASE OF EQUIPMENT**

No equipment identified in this Agreement is approved for purchase.

### **32. INSPECTION OF WORK**

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

### **33. OWNERSHIP OF DATA**

- e. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- f. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- g. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or



for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.

- h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

#### **34. CONFIDENTIALITY OF DATA**

- f. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- g. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- h. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- i. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- j. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

#### **35. STATEMENT OF COMPLIANCE**

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

#### **36. DEBARMENT AND SUSPENSION CERTIFICATION**

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



- iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - v. Does not have a proposed debarment pending; and
  - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- d. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

### **37. CONFLICT OF INTEREST**

- e. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
- f. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- g. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
- h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.



## **Appendix 3: Stakeholder Collaboration**

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

### **1. INITIAL KICK-OFF WORKSHOP**

In order to achieve effective and efficient completion of the HST Project 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 HST Project:

**“Issues Resolution Ladder” (IRL)** – a hierarchy of those individuals within the HST 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.

**“Stakeholder Implementation Plan” (SIP)** – the intention of the SIP 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 Facility Work to be addressed by the Stakeholders.

**“Stakeholder 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 stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.



## **2. STAKEHOLDER MEETINGS**

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



## Appendix D: Third Party Special Conditions

In the interest of public safety and for pipeline protection the following provisions must be considered in the design, construction planning and subsequent improvements near KM facilities.

- Adherence to applicable provisions enumerated in the enclosed copy of (a) L-OM200-29 “Guidelines for Design and Construction” relating to proposed projects affecting Kinder Morgan pipelines and (b) copy of Information Bulletin #03-001, issued from the office of the California State Fire Marshal concerning encroachments within and adjacent to pipeline easement.
- Exact pipeline location and depth can only be determined by pothole, which must be performed by hand excavation in the presence of a KM representative. Notify KM Area Manager, Mr. Mike McWhorter (559) 493-2975 at least two weeks prior to commencement of work. Mr. McWhorter will arrange for a pipeline representative to be present during work near the pipeline.
- All potholes must be performed by hand excavation and in the presence of a KM pipeline representative. Backfill around the pipeline must be sand (or rock free dirt) and must be hand-compacted. Labor and equipment for potholes must be provided by the contractor.
- The Contractor shall pothole the pipeline at the lesser of 50 feet intervals, proposed utility crossings, or at locations determined by KM’s on-site pipeline representative to potentially conflict with the KM pipelines. The purpose of this work is to determine if the pipeline has sufficient cover and horizontal clearance to accommodate the construction work.
- An executed inspection agreement must be in place prior to commencement of work within 10 feet of the pipeline during and subsequent to this project. KM must hire qualified outside contract inspectors to perform this service. The inspection cost is based on \$600 per day plus 19.4% for G&A overhead multiplied by the number of days estimated that work will be performed near the pipelines. Due to the magnitude of this project and the aggressive schedule, I recommend 3 dedicated inspectors be hired to coordinate the contractor’s activities. The estimated cost for a 30 month period of performance would be approximately \$1,125,000.
- Protection: The contractor will be required to protect the line from overhead work, heavy equipment crossings and other similar hazards. Common methods are providing additional cover over the pipeline or placing steel plates over the pipeline. The cost of the protection measures will be borne by the contractor.
- Relocation: This is when the Kinder Morgan pipeline must be moved due to the project design. In this project structures and storm drains are most likely to initiate a relocation. Water line elevations can generally be adjusted to avoid KM assets. The Hybrid Alignment of the HST will cross Kinder Morgans LS 119A just north of Malagra Road.
- Line Interruptions: The successful bidder must plan for minimal interruption of pipeline activities. Any shutdown for relocation tie-in or construction work in close proximity must be planned 60 days in advance. Planned shutdowns are limited to 24 hours.





## Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

Name of Company: \_\_\_\_\_

The list of design, construction and contractor requirements, including but not limited to the following, for the design and installation of foreign utilities or improvements on KM right-of-way (ROW) are not intended nor do they waive or modify any rights KM may have under existing easements or ROW agreements. Reference existing easements and amendments for additional requirements. This list of requirements is applicable for KM facilities on easements only. Encroachments on fee property should be referred to the ROW Department.

### Design

- KM shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KM's ROW to determine and resolve any location, grade or encroachment problems and provide protection of our facilities and the public **before** the actual work is to take place.
- Encroaching entity shall provide KM with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KM's ROW. The encroaching entity shall also provide a set of as-built drawings showing the proposed facilities in the vicinity of KM's ROW.
- Only facilities shown on drawings reviewed by \_\_\_\_\_ (Company) will be approved for installation on KM's ROW. All drawing revisions that effect facilities proposed to be placed on KM's ROW must be approved by KM in writing.
- KM shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KM will be at the expense of the developer or landowner.
- The depth of cover over the KM pipelines shall not be reduced nor drainage altered without KM's written approval.
- Construction of any permanent structure, building(s) or obstructions within KM pipeline easement is **not** permitted.
- Planting of shrubs and trees is not permitted on KM pipeline easement.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KM easement.
- Foreign line, gas, water, electric and sewer lines, etc., may cross perpendicular to KM's pipeline within the ROW, provided that a minimum of two (2) feet of vertical clearance is maintained between KM pipeline(s) and the foreign pipeline. Constant line elevations must be maintained across KM's entire ROW width, gravity drain lines are the only exception. Foreign line crossings below the KM pipeline must be evaluated by KM to ensure that a significant length of the KM line is not exposed and unsupported during construction. When installing underground utilities, the last line should be placed beneath all existing lines unless it is impractical or unreasonable to do so. Foreign line crossings above the KM pipeline with less than 2 feet of clearance must be evaluated by KM to ensure that additional support is not necessary to prevent settling on top of the KM hazardous liquids pipeline.
- A foreign pipeline shall cross KM facilities at as near a ninety-degree angle as possible. A foreign pipeline shall not run parallel to KM pipeline within KM easement without written permission of KM.
- The foreign utility should be advised that KM maintains cathodic protection on their pipelines. The foreign utility must coordinate their cathodic protection system with KM's. At the request of KM, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection. The KM Cathodic Protection (CP) technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KM. All costs associated with the correction of cathodic protection problems on KM pipeline as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.
- The metallic foreign line shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing unless otherwise requested by the KM CP Technician.





## Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

- AC Electrical lines must be installed in conduit and properly insulated.
- DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KM ROW.
- No power poles, light standards, etc. shall be installed on KM easement
- No pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble.

### Construction

- Contractors shall be advised of KM's requirements and be contractually obligated to comply.
- The continued integrity of KM's pipelines and the safety of all individuals in the area of proposed work near KM's facilities are of the utmost importance. Therefore, contractor must meet with KM representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KM's on-site representative will require discontinuation of any work that, in his opinion, endangers the operations or safety of personnel, pipelines or facilities.**
- The Contractor must expose all KM pipelines prior to crossing to determine the exact alignment and depth of the lines. A KM representative must be present. In the event of parallel lines, only one pipeline can be exposed at a time.
- KM will not allow pipelines to remain exposed overnight without consent of KM designated representative. Contractor may be required to backfill pipelines at the end of each day.
- A KM representative shall do all line locating. A KM representative shall be present for hydraulic excavation. The use of probing rods for pipeline locating shall be performed by KM representatives only, to prevent unnecessary damage to the pipeline coating.
- Notification shall be given to KM at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of Kinder Morgan, Inc.'s work site representative. Any Contractor schedule changes shall be provided to Kinder Morgan, Inc. immediately.
- Heavy equipment will not be allowed to operate directly over KM pipelines or in KM ROW unless written approval is obtained from (Company). Heavy equipment shall only be allowed to cross KM pipelines at locations designated by Kinder Morgan, Inc. Contractor shall comply with all precautionary measures required by KM to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires. ~~Equipment excavating within ten (10) feet of KM Pipelines will have a plate guard installed over the teeth to protect the pipeline.~~
- Excavating or grading which might result in erosion or which could render the KM ROW inaccessible shall not be permitted unless the contractor/developer/owner agrees to restore the area to its original condition and provide protection to KM's facility.
- A KM representative shall be on-site to observe any construction activities within ten (10) feet of a KM pipeline or aboveground appurtenance. The contractor **shall not** work within this distance without a KM representative being on site. Only hand excavation shall be permitted within **two (2) feet** of KM pipelines, valves and fittings unless State requirements are more stringent. However, proceed with extreme caution when within three (3) feet of the pipe.
- A KM representative will monitor construction activity within 25 feet of KM facilities during and after the activities to verify the integrity of the pipeline and to ensure the scope and conditions agreed to have not changed. Monitoring means to conduct site inspections on a pre-determined frequency based on items such as: scope of work, duration of expected excavator work, type of equipment, potential impact on pipeline, complexity of work and/or number of excavators involved.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KM facility unless company representative is present.
- Temporary support of any exposed KM pipeline by Contractor may be necessary if required by KM's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KM's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KM's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.





## Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

- No blasting shall be allowed within 1000 feet of KM's facilities unless blasting notification is given to KM including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting. KM shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KM's facilities as a result of their activities whether or not KM representatives are present. KM shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.

No blasting shall be allowed within 300 feet of KM's facilities unless blasting notification is given to KM a minimum of one week before blasting. *(note: covered above)* KM shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KM in addition to meeting requirements for 500' and 1000' being met above. A written emergency plan shall be provided by the organization responsible for blasting. *(note: covered above)*

- **Any** contact with any KM facility, pipeline, valve set, etc. shall be reported immediately to KM. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- KM personnel shall install all test leads on KM facilities.
- Burning of trash, brush, etc. is not permitted within the KM ROW.

### Insurance Requirements

- All contractors, and their subcontractors, working on Company easements shall maintain the following types of insurance policies and minimum limits of coverage. All insurance certificates carried by Contractor and Grantee shall include the following statement: "Kinder Morgan and its affiliated or subsidiary companies are named as additional insured on all above policies (except Worker's Compensation) and waiver of subrogation in favor of Kinder Morgan and its affiliated or subsidiary companies, their respective directors, officers, agents and employees applies as required by written contract." **Contractor shall furnish Certificates of Insurance evidencing insurance coverage prior to commencement of work and shall provide thirty (30) days notice prior to the termination or cancellation of any policy.**
  1. Statutory Coverage Workers' Compensation Insurance in accordance with the laws of the states where the work is to be performed. If Contractor performs work on the adjacent on navigable waterways Contractor shall furnish a certificate of insurance showing compliance with the provisions of the Federal Longshoreman's and Harbor Workers' Compensation Law.
  2. Employer's Liability Insurance, with limits of not less than **\$1,000,000** per occurrence and **\$1,000,000** disease each employee.
  3. Commercial General Liability Insurance with a combined single limit of not less than **\$2,000,000** per occurrence and in the aggregate. All policies shall include coverage for blanket contractual liability assumed.
  4. Comprehensive Automobile Liability Insurance with a combined single limit of not less than **\$1,000,000**. If necessary, the policy shall be endorsed to provide contractual liability coverage.
  5. If necessary Comprehensive Aircraft Liability Insurance with combined bodily injury, including passengers, and property damage liability single limits of not less than **\$5,000,000** each occurrence.
  6. Contractor's Pollution Liability Insurance this coverage shall be maintained in force for the full period of this agreement with available limits of not less than **\$2,000,000** per occurrence.
  7. Pollution Legal Liability Insurance this coverage must be maintained in a minimum amount of **\$5,000,000** per occurrence.





INFORMATION BULLETIN  
#03-001

Date Issued: June 20, 2003

SUBJECT: ENCROACHMENTS INTO OR ON PIPELINE EASEMENTS

The purpose of this informational bulletin is to delineate the position of the State Fire Marshal regarding encroachments onto the pipeline easements.

Section 51014.6 of the California Government Code states, “ (a) Effective January 1, 1987, no person, other than the pipeline operator, shall do any of the following with respect to any pipeline easement: (1) Build, erect, or create a structure or improvement within the pipeline easement or permit the building, erection, or creation thereof. (2) Build, erect, or create a structure, fence, wall, or obstruction adjacent to any pipeline easement which would prevent complete and unimpaired surface access to the easement, or permit the building, erection, or creation thereof. (b) No shrubbery or shielding shall be installed on the pipeline easement which would impair aerial observation of the pipeline easement. This subdivision does not prevent the revegetation of any landscape disturbed within a pipeline easement as a result of construction the pipeline and does not prevent the holder of the underlying fee interest or the holder’s tenant from planting and harvesting seasonal agricultural crops on a pipeline easement. (c) This section does not prohibit a pipeline operator from performing any necessary activities within a pipeline easement, including, but not limited to, the construction, replacement, relocation, repair, or operation of the pipeline.

It is the position of the State Fire Marshal that nothing shall encroach into or upon the pipeline easement, which would impede the pipeline operator from complete and unobstructed surface access along the pipeline right of way. Nor shall there be any obstructions, which would shield the pipeline right of way from observation. In the interest of public safety and the protection of the environment, it is imperative that the pipeline operator visually assesses the conditions along the easement to ensure the integrity of the pipeline.

It is the responsibility of the pipeline operator to ensure they have unimpeded surface access and to be able to physically observe all portions of their pipeline rights of way. In cases where this is not possible, the pipeline operator shall inform the State Fire Marshal. The State Fire Marshal shall in conjunction with the pipeline operator resolve the issue.

Questions regarding the issue of pipeline encroachment can be addressed to:

Bob Gorham, Chief

CALFIRE/State Fire Marshal  
Pipeline Safety Division  
3950 Paramount Blvd. Suite 210  
Lakewood, CA 90712

(562) 497-9100  
(562) 497-9104 (fax)  
[bob.gorham@fire.ca.gov](mailto:bob.gorham@fire.ca.gov)



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# California High-Speed Train Project



## Draft Task Order

**Date:** November 21, 2012  
**Local Agency:** Kinder Morgan  
**Agreement No:** \_\_\_\_\_  
**Task Order No:** 1  
**Project Title:** California High-Speed Rail Project  
**Description:** CHSRP Interaction Removal or Relocation Plan

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# Task Order No. 1

## GENERAL

This Task Order supplements and amends the Construction Contract and Cooperative Agreement. The purpose of this Task Order is to authorize Facility Work for the Facility Owner. Each Facility that requires relocation will be handled under a separate subtask of this Task Order.

## WORK TO BE DONE

### 1 Cooperative Agreement

This Task Order is issued in order to authorize Facility Work described herein. This Task Order does not express all of the terms and conditions relevant to Facility Work; accordingly, the Cooperative 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 Cooperative 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 Cooperative Agreement and, in the event of any inconsistency between the provisions of this Task Order and the Cooperative Agreement, the provisions of the Cooperative Agreement shall prevail.

### 2 Scope of Work

Facility Work as defined in the definitions section of the Cooperative Agreement is incorporated by reference. Each separate Facility that requires Relocation will be treated as a subtask to this Task Order.

#### 2.1 Location and General Description of the Work Covered by this Task Order (Including Disposition of Existing Facilities):

The 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 St, Suite 800, Sacramento, CA 95814.

#### 2.2 Facility Work to be Performed by Parties Pursuant to this Task Order:

The Authority's Contractor performs all design and construction services for Facility Work, The Utility Owner will review and approve Facility plans and be entitled to have a reasonable



number of representatives on site of HST Project to verify that Facility Work is being properly performed by the Authority's Contractor and approve that Facility Work.

### 2.2.1 Subtask 1.01

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located near the San Joaquin River in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities.

Facility is shown on Drawing on sheet 11 and 12 of 25, CHSTP Utility Exhibit Hybrid Alternative

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

### 2.2.2 Subtask 1.02

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located near the Herndon Canal in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT-C4010.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

### 2.2.3 Subtask 1.03

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located near Shaw Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.



Facility is shown on Drawing UT-4012.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

#### **2.2.4 Subtask 1.04**

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located near Santa Anna Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT-C4014.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

#### **2.2.5 Subtask 1.05**

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located along Golden State Blvd between Shaw Ave and Ashlan Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT-C4015.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

#### **2.2.6 Subtask 1.06**

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located adjacent to McKinley Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities.



Facility is shown on Drawing UT-C4037.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

### 2.2.7 Subtask 1.07

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located adjacent to Olive Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT – C4039.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

### 2.2.8 Subtask 1.08

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located adjacent to Belmont Ave accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT –C4042.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$550,000

### 2.2.9 Subtask 1.9

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located adjacent to the Tulare St Underpass in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER



Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT – C4056.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$250,000

### **2.2.10 Subtask 1.10**

**Scope:** Authority's Contractor is to relocate 12" high pressure (approximately 1,400 PSI) facilities located between Fresno St and Highway 41 to accommodate the temporary shoofly track alignment and replace the facilities in the original location in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT – C4055.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$2,250,000

### **2.2.11 Subtask 1.11**

**Scope:** Authority's Contractor shall reimburse the UTILITY OWNER for all costs resulting from plan check review, permits, inspection and testing (inspection & testing in an oversight Quality Assurance capacity only). Authority's Contractor is still responsible to provide Quality Assurance and Quality Control for design and construction through project completion and closeout.

**Estimated Period of Performance:** Duration of Project

**Estimated value of this Facility Work:** \$75,000

## **3 Project Schedule**

Deadlines for the completion of Facility Work are provided for in the contract between the Authority and the Authority's Contractor.

### **3.1 Schedule for Facility Work (This Task Order Only)**

The Authority's Contractor shall complete the design work in accordance with the schedule specified in this Task Order. The 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 Cooperative Agreement. The Authority's Contractor must comply with or receive a written variance for applicable city and county laws, regulations, and ordinances including permitting, inspection processes, work hours regulations, traffic management plan, dust control and noise regulations.

| <b>Design:</b>          |               | <b>Construction:</b>    |               |
|-------------------------|---------------|-------------------------|---------------|
| <b>Start Date:</b>      | June 2013     | <b>Start Date:</b>      | December 2013 |
| <b>Completion Date:</b> | December 2013 | <b>Completion Date:</b> | February 2017 |

## 4 Performance of Work

### 4.1 Design

The design furnished by the Authority's Contractor pursuant to this Task Order shall be substantially in accordance with the Proposed Preliminary Design (see Appendix A – Design Build Procedures of the Cooperative Agreement) attached to this Task Order, and shall be consistent with 30% design submittal of the HST Project plans. All plans for Facility Work are subject to review by the Authority, the Facility Owner, and the Authority's Contractor, in accordance with the time frames and procedures set forth in Appendix A – Design Build Procedures of the Cooperative Agreement.

**By Facility Owner:** The Facility Owner will review Facility plans and be entitled to have a reasonable number of representatives on site of HST Project to verify Facility Work is being properly performed by the Authority's Contractor.

**BY Authority's Contractor:** The Authority's Contractor performs all design and construction services for Facility Work.

### 4.2 Construction

The 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 Cooperative Agreement.

## 5 Liability For Work

In accordance with section 3, "Liability for Work," of the Cooperative Agreement, the Facility Owner and the Authority shall each be responsible for the cost of Facility Work as specified herein.

The total estimated cost for Facility Work is: \$4,800,000

### 5.1 Cost Allocation

The Authority pays 100 % and Facility Owner pays 0 % of cost of Facility Work, to be determined by Prior Rights.



## 6 Cost Estimate

The amounts stated herein are estimates of the costs associated with Facility Work. Authorized expenditures and reimbursements will be based on the terms of the Cooperative Agreement.

### 6.1 For Work by Facility Owner

The Facility Owner's costs for Facility Work shall be developed pursuant to section 5, "Payment of Work," of the Cooperative Agreement, and shall be performed in accordance with the procedures set forth in section, "Performance of Work" and Appendix A – Design Build Procedures of this Cooperative Agreement.

### 6.2 For Work by Authority's Contractor

Authority has prepared an initial cost estimate in the amount of \$4,800,000 for Facility Work included in this Task Order.

The Authority's Contractor shall prepare an independent cost estimate for Facility Work which shall be submitted for the 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.

## 7 Betterment, Accrued Depreciation, Salvage

The Facility Owner shall credit the Authority for the actual cost of any Betterment, salvage value, and accrued depreciation on the Facilities as required pursuant to the Cooperative Agreement, and pay the Authority's Contractor for the actual cost of any Betterment constructed by Authority's Contractor.

Facility Work in this Task Order does not include any Betterment.

## 8 Billing and Payment

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

## 9 Contacts

The contacts for this Task Order will be as follows:

Local Agency: \_\_\_\_\_

Authority: \_\_\_\_\_

Authority's Contractor: \_\_\_\_\_



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# California High-Speed Train Project



## Draft Task Order

**Date:** November 21, 2012  
**Local Agency:** Kinder Morgan  
**Agreement No:** \_\_\_\_\_  
**Task Order No:** 2  
**Project Title:** California High-Speed Rail Project  
**Description:** CHSRP Interaction Removal or Relocation Plan

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## Task Order No. 2

### GENERAL

This Task Order supplements and amends the Construction Contract and Cooperative Agreement. The purpose of this Task Order is to authorize Facility Work for the Facility Owner. Each Facility that requires relocation will be handled under a separate subtask of this Task Order.

### WORK TO BE DONE

#### 1 Cooperative Agreement

This Task Order is issued in order to authorize Facility Work described herein. This Task Order does not express all of the terms and conditions relevant to Facility Work; accordingly, the Cooperative 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 Cooperative 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 Cooperative Agreement and, in the event of any inconsistency between the provisions of this Task Order and the Cooperative Agreement, the provisions of the Cooperative Agreement shall prevail.

#### 2 Scope of Work

Facility Work as defined in the definitions section of the Cooperative Agreement is incorporated by reference. Each separate Facility that requires Relocation will be treated as a subtask to this Task Order.

##### 2.1 Location and General Description of the Work Covered by this Task Order (Including Disposition of Existing Facilities):

The 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 St, Suite 800, Sacramento, CA 95814.

##### 2.2 Facility Work to be Performed by Parties Pursuant to this Task Order:

The Authority's Contractor performs all design and construction services for Facility Work, The Utility Owner will review and approve Facility plans and be entitled to have a reasonable



number of representatives on site of HST Project to verify that Facility Work is being properly performed by the Authority's Contractor and approve that Facility Work.

### 2.2.1 Subtask 2.01

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located adjacent to Van Ness Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities.

Facility is shown on Drawing UT-C4062.

|   |                            |
|---|----------------------------|
| <b>Estimated Period of Performance:</b>       | <u>Duration of Project</u> |
| <b>Estimated value of this Facility Work:</b> | <u>\$250,000</u>           |

### 2.2.2 Subtask 2.02

**Scope:** Authority's Contractor is to protect in place Facility Owner's existing 12" high pressure (approximately 1,400 PSI) facilities located adjacent to Belgravia Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT-C4063.

|   |                            |
|---|----------------------------|
| <b>Estimated Period of Performance:</b>       | <u>Duration of Project</u> |
| <b>Estimated value of this Facility Work:</b> | <u>\$250,000</u>           |

### 2.2.3 Subtask 2.03

**Scope:** Authority's Contractor is to protect in place, relocate or providing casing as required, Facility Owner's existing 8" & 12" high pressure (approximately 1,400 PSI) facilities located adjacent to Malaga Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility is shown on Drawing UT-C4075.



|   |                            |
|---|----------------------------|
| <b>Estimated Period of Performance:</b>       | <u>Duration of Project</u> |
| <b>Estimated value of this Facility Work:</b> | <u>\$500,000</u>           |

#### 2.2.4 Subtask 2.04

**Scope:** Authority's Contractor is to protect in place, relocate or providing casing as required, Facility Owner's 12" high pressure (approximately 1,400 PSI) facilities are located adjacent to Cedar Ave and Central Ave in accordance with "Guidelines for Design & Construction near Kinder Morgan Hazardous Liquid Operated Facilities" and "Kinder Morgan Letter dated June 15, 2012 regarding General Guidance for Design / Build Candidates". Facility Owner will provide representative(s) on the site of the PROJECT to monitor construction activity to verify the integrity of the UTILITY OWNER Facilities. Authority's Contractor will design and relocate facilities that will interfere with the Authority's Contractor Facility Work.

Facility Work is shown on Drawing UT-C4086.

|   |                            |
|---|----------------------------|
| <b>Estimated Period of Performance:</b>       | <u>Duration of Project</u> |
| <b>Estimated value of this Facility Work:</b> | <u>\$250,000</u>           |

#### 2.2.5 Subtask 2.05

**Scope:** Authority's Contractor shall reimburse the UTILITY OWNER for all costs resulting from plan check review, permits, inspection and testing (inspection & testing in an oversight Quality Assurance capacity only). Authority's Contractor is still responsible to provide Quality Assurance and Quality Control for design and construction through project completion and closeout.

|   |                            |
|---|----------------------------|
| <b>Estimated Period of Performance:</b>       | <u>Duration of Project</u> |
| <b>Estimated value of this Facility Work:</b> | <u>\$25,000</u>            |

### 3 Project Schedule

Deadlines for the completion of Facility Work are provided for in the contract between the Authority and the Authority's Contractor.

#### 3.1 Schedule for Facility Work (This Task Order Only)

The Authority's Contractor shall complete the design work in accordance with the schedule specified in this Task Order. The 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 Cooperative Agreement. The Authority's Contractor must comply with or receive a written variance for applicable city and county laws, regulations, and ordinances



including permitting, inspection processes, work hours regulations, traffic management plan, dust control and noise regulations.

| <b>Design:</b>          |               | <b>Construction:</b>    |               |
|-------------------------|---------------|-------------------------|---------------|
| <b>Start Date:</b>      | June 2013     | <b>Start Date:</b>      | December 2013 |
| <b>Completion Date:</b> | December 2013 | <b>Completion Date:</b> | February 2017 |

## 4 Performance of Work

### 4.1 Design

The design furnished by the Authority's Contractor pursuant to this Task Order shall be substantially in accordance with the Proposed Preliminary Design (see Appendix A – Design Build Procedures of the Cooperative Agreement) attached to this Task Order, and shall be consistent with 30% design submittal of the HST Project plans. All plans for Facility Work are subject to review by the Authority, the Facility Owner, and the Authority's Contractor, in accordance with the time frames and procedures set forth in Appendix A – Design Build Procedures of the Cooperative Agreement.

**By Facility Owner:** The Facility Owner will review Facility plans and be entitled to have a reasonable number of representatives on site of HST Project to verify Facility Work is being properly performed by the Authority's Contractor.

**BY Authority's Contractor:** The Authority's Contractor performs all design and construction services for Facility Work.

### 4.2 Construction

The 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 Cooperative Agreement.

## 5 Liability For Work

In accordance with section 3, "Liability for Work," of the Cooperative Agreement, the Facility Owner and the Authority shall each be responsible for the cost of Facility Work as specified herein.

The total estimated cost for Facility

Work is: \$1,275,000

### 5.1 Cost Allocation

The Authority pays 100 % and Facility Owner pays 0 % of cost of Facility Work, to be determined.



## 6 Cost Estimate

The amounts stated herein are estimates of the costs associated with Facility Work. Authorized expenditures and reimbursements will be based on the terms of the Cooperative Agreement.

### 6.1 For Work by Facility Owner

The Facility Owner’s costs for Facility Work shall be developed pursuant to section 5, “Payment of Work,” of the Cooperative Agreement, and shall be performed in accordance with the procedures set forth in section, “Performance of Work” and Appendix A – Design Build Procedures of this Cooperative Agreement.

### 6.2 For Work by Authority’s Contractor

Authority has prepared an initial cost estimate in the amount of \$1,275,000 for Facility Work included in this Task Order.

The Authority’s Contractor shall prepare an independent cost estimate for Facility Work which shall be submitted for the 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.

## 7 Betterment, Accrued Depreciation, Salvage

The Facility Owner shall credit the Authority for the actual cost of any Betterment, salvage value, and accrued depreciation on the Facilities as required pursuant to the Cooperative Agreement, and pay the Authority’s Contractor for the actual cost of any Betterment constructed by Authority’s Contractor.

Facility Work in this Task Order does not include any Betterment.

## 8 Billing and Payment

Billing and payment shall be in accordance with section 5, “Payment for Work,” of the Cooperative Agreement.

## 9 Contacts

The contacts for this Task Order will be as follows:

Local Agency: \_\_\_\_\_

Authority: \_\_\_\_\_

Authority’s Contractor: \_\_\_\_\_

