



CALIFORNIA

High-Speed Rail Authority

Trainset Agreement No.: HSR 14-30

SCHEDULES TO GENERAL PROVISIONS

INDUSTRY REVIEW DRAFT – 1/30/2015

Table of Contents

- Schedule 1 – Performance Specification
- Schedule 2 – Testing and Commissioning Program Requirements
- Schedule 3 – Milestones
 - 3-A – Milestones for Fleet 1
 - 3-B – Milestones for Fleets 2 - 5
- Schedule 4 – Escalation Adjustment
- Schedule 5 – Form of Certificates of Acceptance
 - Schedule 5-1 - Certificate of Acceptance for Preliminary Submittals
 - Schedule 5-2 - Certificate of Acceptance for Baseline Program and PMP
 - Schedule 5-3 - Certificate of Acceptance for Mock-Ups
 - Schedule 5-4 - Certificate of Acceptance for Driving Simulator
 - Schedule 5-5 – Certificate of Acceptance for Maintenance Training Plan and Maintenance Plan
 - Schedule 5-6 – Certificate of Provisional Acceptance
 - Schedule 5-7 – Certificate of Conditional Acceptance
 - Schedule 5-8 – Certificate of Final Acceptance
 - Schedule 5-9 – Certificate of Authority-Owned Spares Acceptance
 - Schedule 5-10 – Certificate of Fleet Acceptance
 - Schedule 5-11 – Certificate of Special Tools Acceptance
 - Schedule 5-12 – Non-Conformances
- Schedule 6 – Performance Standards
 - Appendix 1 to Schedule 6 – Allowable Percentages of Missed Trips for first 360 days of Revenue Service
- Schedule 7 – Form of Performance Bond (Maintenance)
- Schedule 8 – Letters of Credit
 - Schedule 8 -1 – Form of Letter of Credit (Manufacturing)
 - Schedule 8-2 – Form of Letter of Credit (Maintenance)
- Schedule 9 – Form of Guaranty
- Schedule 10 – DRB Agreement Form
- Schedule 11 – Draft Tier III Rule
- Schedule 12 – Termination for Convenience - Maintenance Obligations Provisions
- Schedule 13 – Maintenance Facility Requirements
 - Attachment 1 to Schedule 13 – Form of Payment Bond (Maintenance Facility)



SCHEDULE 1
PERFORMANCE SPECIFICATION
[PROVIDED SEPARATELY]

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SCHEDULE 2
TESTING AND COMMISSIONING PROGRAM REQUIREMENTS

1. DEVELOPMENT OF TESTING AND COMMISSIONING PROGRAM

Contractor shall develop the Testing and Commissioning Program in accordance with the requirements of this Schedule 2. No later than 120 days after Authority's issuance of NTP for Fleet 1, Contractor shall submit its proposed Testing and Commissioning Program to Authority for review.

The Testing and Commissioning Program will be developed and expanded during the course of the Contract. Contractor shall continuously monitor the Testing and Commissioning Program as the Work is progressed, and propose such revisions, for Authority's review, as are necessary to ensure that the implementation of the Testing and Commissioning Program achieves the requirements set out in this Schedule 2. In addition, Authority may from time to time, after consultation with Contractor, require Contractor to revise the Testing and Commissioning Program as Authority determines necessary to achieve the requirements set forth in this Schedule.

2. OBJECTIVES

The principal purpose of the implementation of the Testing and Commissioning Program is to demonstrate to Authority that the Contract requirements, including performance, function, quality and safety, have been met or exceeded and that execution is in accordance with design requirements and is fit for purpose. A key requirement is to prove that all parts of the system function correctly together in a properly integrated manner with no adverse effects to or from others. The Testing and Commissioning Program shall reflect the requirement on Contractor to provide completed and fully functioning Work.

Authority may identify specific tests that will be required. Contractor shall demonstrate that the test requirements consider:

- (a) Compliance with the Contract requirements, including:
 - i. Comfort, which shall be considered to be a function of: vehicle ride, including vertical and lateral accelerations and jerks; interior noise, vibration and harshness; vehicle heating, ventilation and air quality; pressure pulses; and passenger amenities including toilets and information systems
 - ii. Journey time, including traction and braking performance and an overspeed test to 390 kph (242 mph)
 - iii. Other technical requirements, such as current collection
 - iv. System stability under worst case conditions, in particular the ability of software to function effectively.

- (b) Compliance with environmental requirements, including:
 - i. Emitted noise limits
 - ii. Vibration parameters
 - iii. EMI, EMC and psophometric currents
 - iv. Pressure gradient limits



- v. Ambient conditions.
- (c) Conformance with the RAMS requirements, including demonstration of safety items including:
 - i. Vehicle strength
 - ii. Fire protection
 - iii. Emergency egress
- (d) Compliance with the Quality Plan
- (e) Operations Plan stability including:
 - i. Abnormal operating conditions
 - ii. Recovery from fault conditions, degraded modes of operation

In order to achieve a satisfactory demonstration of the above, different types of tests will be required at different stages of the Work.

3. TESTING REQUIREMENTS

The Testing and Commissioning Program shall identify general requirements applicable to all tests and specific requirements and protocols for each test. The Program shall propose a series of recommended inspections, including the FACI, that should be undertaken by Authority in connection with the Testing and Commissioning Program.

3.1. General Requirements Applicable to All Tests

The Testing and Commissioning Program shall include an overview of the general requirements for testing and commissioning, including:

- (a) Safety management - (The Testing and Commissioning Program shall require that safety be afforded the highest priority in the planning and undertaking of all tests. The Program shall give particular attention to tests involving high voltages or movements of Trainsets);
- (b) Organization chart and curriculum vitae of key personnel in the testing and commissioning team - (The Testing and Commissioning Program shall require that only appropriately qualified personnel, using properly calibrated test equipment, shall undertake tests);
- (c) Manpower requirements;
- (d) Control systems - (The Testing and Commissioning Program shall require that control systems be tested in all operating modes through simulation of their environment before being allowed onto the Test Track);
- (e) Schedule of test specification submission - (The Testing and Commissioning Program shall require that all test specifications be submitted to Authority, and may allow for previous testing and service history of equipment to be used to demonstrate compliance);
- (f) Scheduling of testing;
- (g) Format and schedule of submission of results; and
- (h) Requirements and scheduled intervals for equipment calibration.

3.2. Authority Trainee Drivers



The Testing and Commissioning Program shall allow for Authority's trainee drivers to be incorporated into Contractor's tests, if requested by Authority, and at no cost to Authority. The Program shall provide that the trainee drivers be under the direct supervision of Contractor, with Contractor responsible for the performance of the trainee drivers.

3.3. Specific Test Requirements

The Testing and Commissioning Program shall provide that 50 days before the scheduled commencement of each of the tests, Contractor shall submit individual detailed procedures to Authority for review. The individual test procedures shall include:

- (a) Objective of each test;
- (b) Safety management;
- (c) Functions to be monitored, and pass/fail criteria;
- (d) Method of analysis;
- (e) Format and schedule of submission of results;
- (f) Applicable standards;
- (g) Test equipment required;
- (h) Schedule of testing;
- (i) Locations of testing;
- (j) Staffing requirements;
- (k) Identification of test manager and key personnel; and
- (l) Organization chart and curriculum vitae of key personnel where not previously submitted.

4. TYPE TESTS

The Testing and Commissioning Program shall require type tests to be conducted on first articles to demonstrate proof of design. The Program shall require Contractor to provide a list of all Equipment to be covered by type testing for Authority's review. The Program shall require further type tests to be undertaken on Equipment following changes within the production build. The Program shall require type tests to verify as appropriate:

- Conformity with Contract requirements and Contractor's design;
- Ability to function satisfactorily in the railway environment in California;
- Compliance with safety standards;
- Protection, insulation, and enclosure requirements;
- Circuit protection;
- Procedures covered by instruction manuals; and
- Degraded operation.

The Testing and Commissioning Program may allow permit the use of previous type test results for Equipment on the standard product, assuming the supplier remains unchanged, in lieu of new testing conducted specifically for this Contract. However, in such cases Authority will review the output test reports from such previous testing to determine their applicability. If, in Authority's determination, the application, and system interfaces or manufacturing source have changed, then further testing shall be required.



For software controlled systems where the final software will be tested during latter tests, the Program shall allow for test software to be used to allow adequate type testing of the hardware.

5. ROUTINE TESTS

The Testing and Commissioning Program shall require Contractor to perform routine tests, including pre-shipment tests, to demonstrate that all components, assemblies, systems and complete Trainsets are built to a consistent quality and that they meet the Contract requirements at all stages of the production sequence. The Program shall require that these tests demonstrate adequate integration of all subsystems where appropriate.

6. PROTOTYPE TESTING

In addition to the testing required to achieve Provisional Acceptance, Conditional Acceptance and Final Acceptance, the Testing and Commissioning Program shall include a comprehensive proof-of-design type regime (Prototype Testing) for the Prototype Trainsets to demonstrate that the Trainsets, as designed, manufactured and delivered meet the Contract's performance criteria.



SCHEDULE 3

MILESTONES

Table of Contents:

Schedule 3-A – Milestones for Fleet 1

Schedule 3-B – Milestones for Fleets 2 - 5

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SCHEDULE 3-A
MILESTONES FOR FLEET 1

| # | Milestone | Milestone Payment Percentage (% of Milestone Contract Amount for Fleet 1) |
|----|--|---|
| 1 | Acceptance of Preliminary Submittals | 10.0% |
| 2 | Acceptance of Baseline Program and PMP | 5.0% |
| 3 | Acceptance of Mock-ups | 2.5% |
| 4 | Acceptance of Driving Simulator | 2.5% |
| 5 | Acceptance of Maintenance Training Plan and the Maintenance Plan | 2.5% |
| 73 | Provisional Acceptance of Trainsets | 50.0% (50.0% / 16 per Trainset) |
| 8 | Final Acceptance of Trainsets | 15.0% (15.0% / 16 per Trainset) |
| 9 | Acceptance of Authority-Owned Spares | 2.5% |
| 10 | Fleet Acceptance | 10.0% |
| | Milestone Contract Amount (Fleet 1) | 100.0% |



SCHEDULE 3-B**MILESTONES FOR FLEETS 2-5**

| Milestone | Milestone Payment Percentage (% of Milestone Contract Amount for Fleet 2, Fleet 3, Fleet 4 or Fleet 5, as applicable) |
|--|--|
| Provisional Acceptance of each optional Trainset | 70% (75% / Number of Trainsets in Fleet) |
| Final Acceptance of optional Trainset | 20% (20% / Number of Trainsets in Fleet) |
| Fleet Acceptance of optional Fleet | 10% (5% / Number of Trainsets in Fleet) |

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SCHEDULE 4**ESCALATION ADJUSTMENT**

In the event that the any of the indices set forth in this Schedule are discontinued from publication or deemed no longer applicable for the purposes of adjustment due to (i) significant changes to the components or sub-components of the Contract requirements, (ii) changes in the production process for components and sub-components, Contractor shall submit alternative indices and their applicable weightings for approval by Authority. Authority has sole approval right over the use of an alternative index and weighting proposed by Contractor.

1. Milestone Contract Amount, Options Unit Prices and Authority-Owned Spares

The Fleet 1 Milestone Contract Amounts and the Fleets 2-5 Options Unit Prices set forth in Attachment B-1 to the Signature Document, and the prices for Authority-Owned Spares set forth in Attachment B-2 to the Signature Document shall be adjusted from the Close Date to the Price Adjust Date based on the following formula:

$$P_{PAD} = P_0 \times [(W_M \times (M_{PAD} / M_0)) + (W_E \times (E_{PAD} / E_0)) + (W_L \times (L_{PAD} / L_0))]$$

Where:

Metals Index = not seasonally adjusted Producer Price Index (PPI) Commodities for Metals and metal products – Fabricated structural metal products as published by the United States Bureau of Labor Statistics (BLS) – Series ID WPU107.

Equipment Index = not seasonally adjusted PPI Commodities for Machinery and equipment as published by the BLS – Series ID WPU11.

Labor Index = not seasonally adjusted Average Hourly Earnings of Production and Nonsupervisory Employees from the Current Employment Statistics survey (National) as published by the BLS – Series ID CEU3100000008.

Price Adjust Date =

- (i) for the Fleet 1 Milestone Contract Amount and the Fleets 2-5 Options Unit Prices, the date Authority issues a Preliminary Notice for the applicable Fleet under Article 5.2 of the General Provisions; or
- (ii) for the Authority-Owned Spares set forth in Attachment B-2 to the Signature Document, the date Authority issues a Directive Letter under Article 15.4 of the General Provisions.

P_{PAD} = Fleet 1 Milestone Contract Amount, Fleets 2-5 Options Unit Prices or prices for Authority-Owned Spares in Attachment B-2, as applicable, at the Price Adjust Date.



P_0 = Fleet 1 Milestone Contract Amounts, Fleets 2-5 Options Unit Prices or prices for Authority-Owned Spares in Attachment B-2, as applicable, at the Close Date.

W_M = Weight of the Metals Index (30%).

W_E = Weight of the Equipment Index (10%).

W_L = Weight of the Labor Index (60%).

M_{PAD} = Metals Index as of the Price Adjust Date.

M_0 = Metals Index as of the Close Date.

E_{PAD} = Equipment Index as of the Price Adjust Date.

E_0 = Equipment Index as of the Close Date.

L_{PAD} = Labor Index as of the Price Adjust Date.

L_0 = Labor Index as of the Close Date.

2. Mileage Incremental Service Amount and Trainset Incremental Service Amount

Annual Escalation – The Mileage Incremental Service Amount and the Trainset Incremental Service Amount shall be adjusted on an annual basis on June 30 based on the following formula:

$$P_i = P_0 \times [(W_M \times (M_i / M_0)) + (W_E \times (E_i / E_0)) + (W_L \times (L_i / L_0))]$$

Where:

Metals Index = not seasonally adjusted Producer Price Index (PPI) Commodities for Metals and metal products – Fabricated structural metal products as published by the United States Bureau of Labor Statistics (BLS) – Series ID WPU107.

Equipment Index = not seasonally adjusted PPI Commodities for Machinery and equipment as published by the BLS – Series ID WPU11.

Labor Index = not seasonally adjusted Average Hourly Earnings of Production and Nonsupervisory Employees from the Current Employment Statistics survey (National) as published by the BLS – Series ID CEU3100000008.

P_i = Mileage Incremental Service Amount, or Trainset Incremental Service Amount, as applicable, at year i of the Contract Term.

P_0 = Mileage Incremental Service Amount, or Trainset Incremental Service Amount, as applicable, at Close Date.

W_M = Weight of the Metals Index (30%).

W_E = Weight of the Equipment Index (10%).



W_L = Weight of the Labor Index (60%).

M_i = Metals Index as of the most recent publication to June 30 of every year.

M_0 = Metals Index as of the Close Date.

E_i = Equipment Index as of the most recent publication to June 30 of every year.

E_0 = Equipment Index as of the Close Date.

L_i = Labor Index as of the most recent publication to June 30 of every year.

L_0 = Labor Index as of the Close Date.

3. Liquidated Damages

Annual Escalation – The liquidated damage amounts set forth in Articles 12.1, 12.2 and 12.3 of the General Provisions shall be adjusted on an annual basis on June 30 based on the following formula:

$$P_i = P_0 \times (CPI-U_i / CPI-U_0)$$

Where:

P_i = Liquidated damages at year i of the Contract Term.

P_0 = Liquidated damages at the Close Date as set forth in Articles 12.1, 12.2 and 12.3 of the General Provisions.

$CPI-U_i$ = US CPI-U index as published by the US Bureau of Labor Statistics as of the most recent publication to June 30 of every year.

$CPI-U_0$ = US CPI-U index as published by the US Bureau of Labor Statistics as of the most recent publication at the Close Date.

4. Performance-Based Payment Reductions

Annual Escalation – The Performance-Based Payment Reduction amounts set forth in Schedule 6 to the General Provisions shall be adjusted on an annual basis on June 30 based on the following formula:

$$P_i = P_0 \times (CPI-U_i / CPI-U_0)$$

Where:

P_i = Performance-Based Payment Reductions at year i of the Contract Term.

P_0 = Performance-Based Payment Reductions at the Close Date as set forth in Schedule 6 to the General Provisions.

$CPI-U_i$ = US CPI-U index as published by the US Bureau of Labor Statistics as of the most recent publication to June 30 of every year.



CPI-U₀ = US CPI-U index as published by the US Bureau of Labor Statistics as of the most recent publication at the Close Date.

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SCHEDULE 5

FORM OF CERTIFICATES OF ACCEPTANCE

Table of Contents:

Schedule 5-1 - Certificate of Acceptance for Preliminary Submittals

Schedule 5-2 - Certificate of Acceptance for Baseline Program and PMP

Schedule 5-3 – Certificate of Acceptance for Mock-Ups

Schedule 5-4 - Certificate of Acceptance for Driving Simulator

Schedule 5-5 - Certificate of Acceptance for Maintenance Training Plan and Maintenance Plan

Schedule 5-6 – Certificate of Provisional Acceptance

Schedule 5-7 – Certificate of Conditional Acceptance

Schedule 5-8 – Certificate of Final Acceptance

Schedule 5-9 – Certificate of Authority-Owned Spares Acceptance

Schedule 5-10 – Certificate of Fleet Acceptance

Schedule 5-11 – Certificate of Special Tools Acceptance

Schedule 5-12 – Non-Conformances



SCHEDULE 5-9

CERTIFICATE OF AUTHORITY-OWNED SPARES ACCEPTANCE

Contract No: _____ **Date of Contract:** _____

Contractor Name: _____

Contractor certifiesthat Contractor has satisfied all of the conditions set forth in Article 10.9 of the General Provisions for issuance by Authority of this Certificate of Authority-Owned Spares Acceptance.

The person signing below on behalf of Contractor represents that s/he is the Contractor Representative. All capitalized terms not otherwise defined in this Certificate have the meaning given them in the Contract. Issuance of this Certificate does not constitute a waiver by Authority of any claims.

The date of Authority-Owned Spares Acceptance is _____ (Month/Day/Year).

By: _____ **Title:** _____ **(Date)** _____
(Signature of Contractor Representative)

AUTHORITY ACCEPTANCE:

Name: _____ **(Date)** _____
(Signature of Authority Representative)

(Date) _____

(Date)



SCHEDULE 6
PERFORMANCE STANDARDS

1. GENERAL

There are three Performance Standards for the assessment of Performance-Based Payment Reductions. These Performance Standards measure:

- Missed Trips, which relates to the Trips contained in the Timetable;
- Late Trips, which relates to the timeliness of the Timetabled service; and
- Mission Quality, which relates to the proper functioning of equipment necessary for the comfort and convenience of passengers.

Performance Standards for Missed Trips and Late Trips shall be measured over four measurement periods: a 10-day measurement period, a 30-day measurement period, a 90-day measurement period and a 180-day measurement period. Performance Standards for Mission Quality shall only be measured over a 90-day measurement period and a 180-day measurement period. All days in each measurement period shall be consecutive. The four measurement periods shall run concurrently.

Performance Standards shall be measured for the 10-day measurement periods, the 30-day measurement periods, the 90-day measurement periods and 180-day measurement periods described above, commencing in each case on the first day of Timetabled service and ending on the last day of the last 10-day measurement period, 30-day measurement period, 90-day measurement period and 180-day measurement period respectively.

If the number of Missed Trips, Late Trips or Mission Quality Failures exceeds the allowable number of Missed Trips, Late Trips or Mission Quality Failures, as applicable, over the relevant measurement periods, Authority shall assess Performance-Based Payment Reductions. The assessment of Performance-Based Payment Reductions under the various measurement periods is cumulative, such that a single Missed Trip, Late Trip or Mission Quality Failure can result in the assessment of Performance-Based Payment Reductions under more than one measurement period.

A "Trip" is a Timetable scheduled passenger carrying revenue service Trainset trip.

1.1 Performance-Based Payment Reductions

(a) Missed Trips

The allowable number of Missed Trips is specified in Section 2 below.

For each Missed Trip in excess of the allowable number of Missed Trips over a 10-day measurement period, the sum of [\$24,500] shall be deducted from any Trainset Incremental Service Payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Missed Trips.

For each Missed Trip in excess of the allowable number of Missed Trips over a 30-day measurement period, the sum of [\$29,000] shall be deducted from any Trainset Incremental



Service Payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Missed Trips. For each Missed Trip in excess of the allowable number of Missed Trips over a 90-day measurement period, the sum of [\$38,000] shall be deducted from any Trainset Incremental Service Payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Missed Trips. For each Missed Trip in excess of the allowable number of Missed Trips over a 180-day measurement period, the sum of [\$48,000] shall be deducted from any Trainset Incremental Service Payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Missed Trips.

(b) Late Trips

The allowable number of Late Trips is specified in Section 3 below.

For each Late Trip in excess of the allowable number of Late Trips over a 10-day measurement period, the sum of [\$615] shall be deducted from any Service Period payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Late Trips. For each Late Trip in excess of the allowable number of Late Trips over a 30-day measurement period, the sum of [\$615] shall be deducted from any Service Period payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Late Trips. For each Late Trip in excess of the allowable number of Late Trips over a 90-day measurement period, the sum of [\$615] shall be deducted from any Service Period payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Late Trips. For each Late Trip in excess of the allowable number of Late Trips over a 180-day measurement period, the sum of [\$615] shall be deducted from any Service Period payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Late Trips.

(c) Mission Quality Failures

The allowable number of Mission Quality Failures is specified in Section 4 below.

For each Mission Quality Failure in excess of the allowable number of Mission Quality Failures over a 90-day measurement period, the sum of [\$12,200] shall be deducted from any Service Period payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Mission Quality Failures. For each Mission Quality Failure in excess of the allowable number of Mission Quality Failures over a 180-day measurement period, the sum of [\$____] [*To be provided*], shall be deducted from any Service Period payments due, or to become due, to Contractor as a Performance-Based Payment Reduction for Mission Quality Failures.

1.2 Excused Late Trips, Missed Trips and Mission Quality Failures

Notwithstanding Section 1.1, a Late Trip, Missed Trip or Mission Quality Failure shall not count towards the assessment of Performance-Based Payment Reductions if Contractor can establish that Authority, the Trainset operator, a third party, or a Force Majeure Event is wholly responsible for the Late Trip, Missed Trip or Mission Quality Failure.

1.3 Performance-Based Payment Reduction Relief

In order to provide Contractor an incentive to correct performance failures, Contractor shall be entitled to claim relief pursuant to this Section 1.3 from 50% of any Performance-Based



Payment Reductions imposed under this Schedule 6 for (a) Missed Trips in excess of the allowable number of Missed Trips over a 10-day measurement period and/or (b) Late Trips in excess of the allowable number of Late Trips over a 10-day measurement period if:

- i. During the 180-day measurement period (described in Section 1) in which Authority assessed the Performance-Based Payment Reduction at issue, Contractor does not exceed the allowable number of Missed Trips and/or Late Trips with respect to any other 10-day measurement period for Missed Trips or Late Trips; and
- ii. During the subsequent 180-day measurement period, Contractor does not exceed the allowable number of Missed Trips or Late Trips for any 10-day measurement period.

Such relief, if any, shall take the form of a rebate paid to Contractor with the monthly payments due Contractor during the Overall Trainset Service Period. Contractor shall invoice Authority for the rebate in accordance with Article 11.6 of the General Provisions. In no event shall Contractor be entitled to any relief under this Section 1.3 for Performance-Based Payment Reductions assessed as a result of Missed Trips or Late Trips in excess of the allowable number of Missed Trips or Late Trips over any 30-day, 90-day or 180-day measurement periods or assessed for Mission Quality Failures.

2. MISSED TRIPS

A "Missed Trip" is a Trip which, due to a Failure, either (i) does not start, or (ii) if it does start, is not completed by a Trainset under its own power.

Authority may in its sole discretion, substitute a stand-by Trainset (if available) for a Trainset which, due to a Failure, is not able to start or complete a Trip. In the event of such a substitution, the Trip that could not be started or completed, as the case may be, without that substitution, shall be counted as a Missed Trip.

Authority may in its sole discretion use for a Trip a Trainset that Authority is aware contains defects which have not as at that time been rectified, provided that such defects do not have an adverse impact on safety or cause damage to the Core System or other parts of the high-speed train system and no other Trainset is available. In the event of such use, the Trip for which the defective Trainset is used shall be counted as a Missed Trip. If the defect would count as a Mission Quality Failure had the defect been discovered during the Trip, Contractor shall nevertheless be assessed a Performance-Based Payment Reduction for a Missed Trip and not a Mission Quality Failure.

Authority's substitution of a stand-by Trainset and use of defective Trainsets as described in this section shall not operate as a waiver by Authority of due performance by Contractor or the Authority's right to assess Performance-Based Payment Reductions.

The number of Missed Trips shall be provided by the ADS and recorded by Authority.

2.1. Allowable Percentage of Missed Trips

The percentage of Missed Trips shall be calculated for each measurement period as the total number of Missed Trips divided by the total number of Trips in such measurement period, expressed as a percentage.



To allow for a break-in period, the allowable percentage of Missed Trips in any measurement period during the first 360 days, starting on the day of the first Timetabled Trip, shall be as set forth below in Appendix 1 to this Schedule.

Starting the day after the first 360 days of Timetabled service, the allowable percentage of Missed Trips shall be set thereafter at 0.05% of Trips during each 10-day measurement Period, 0.10% of Trips during each 30-day measurement period, 0.15% during each 90-day measurement period and 0.22% during each 180-day measurement period.

For each measurement period, the allowable number of Missed Trips is the product of the total number of Trips for the measurement period multiplied by the allowable percentage of Missed Trips for that measurement period. For the avoidance of doubt, where the product of the total number of Trips multiplied by the allowable percentage of Missed Trips is not an integer, the allowable number of Missed Trips shall be the product rounded to the nearest integer, that is decimal fractions less than 0.5 shall be rounded down to the next lowest integer and decimal fractions equal to or greater than 0.5 shall be rounded up to the next highest integer.

3. LATE TRIPS

A Late Trip shall be deemed to have occurred whenever, due to a Failure, any Trainset arrives later than its allowable lateness at its scheduled arrival at any station or at the Transfer Track according to the Timetable. If due to a Failure, a Trainset is delayed in its scheduled arrival according to the Timetable and, as a consequence, that Trainset is delayed in its subsequent Timetable scheduled arrivals and/or any Trainset following that Trainset is delayed in its Timetable scheduled arrival, all such delays shall count as a Late Trip if the arrival time of the delayed Trainset is later than the allowable lateness. Any early arrival is counted as an on time arrival.

Time shall be as recorded on the ADS, rounded down to the previous 15 seconds increment. In the first 120 days of Timetabled service the allowable lateness shall be 300 seconds. For the subsequent 180 days of Timetabled service the allowable lateness shall be 150 seconds. For all subsequent days of Timetabled service the allowable lateness shall be 120 seconds.

3.1. Allowable Percentage of Late Trips

The percentage of Late Trips shall be calculated for each measurement period as the total number of Late Trips divided by the total number of arrivals according to the Timetable (but irrespective of the scheduled time for arrival specified by the Timetable) in such measurement period, expressed as a percentage.

In the first 360 days of Timetabled service, the Allowable Percentage of Late Trips in each 10-day measurement period, 30-day measurement period, 90-day measurement period, and 180-day measurement period shall be equal to 10% of Trips during the applicable measurement period.

In the subsequent 180 days of Timetabled service, from the 361st day to the 540th day, the allowable percentage of Late Trips in each 10-day measurement period, 30-day measurement period, 90-day measurement period, and 180-day measurement period shall be equal to 5% of Trips during the applicable measurement period.



In the periods after the first 540 days of Timetabled service, the allowable percentage of Late Trips in each 10-day measurement period, 30-day measurement period, 90-day measurement period and 180-day measurement period shall be equal to 3% of Trips during the applicable measurement period.

For each measurement period, the allowable number of Late Trips is the product of the total number of arrivals according to the Timetable (but irrespective of the scheduled time for arrival specified by the Timetable) in the measurement period multiplied by the Allowable Percentage of Late Trips for that measurement period. For the avoidance of doubt, where the product of the total number of arrivals multiplied by the Allowable Percentage of Late Trips is not an integer, the allowable number of Late Trips shall be the product rounded to the nearest integer, that is decimal fractions less than 0.5 shall be rounded down to the next lowest integer and decimal fractions equal to or greater than 0.5 shall be rounded up to the next highest integer.

4. MISSION QUALITY

Mission Quality measures the proper operation of those systems that are essential for the comfort and convenience of passengers. Failure of the systems or components shall be recorded on the MMIS.

The list of Failures to be used by the Parties to measure Mission Quality shall be developed by Contractor for Authority's approval prior to the commencement of the Overall Trainset Service Period. The list shall include, but not be limited to:

- (a) Failure of the HVAC system in any car;
- (b) Failure of lighting within a car;
- (c) Failure of a toilet resulting in its being locked out of service; and
- (d) Failure of the pressure sealing in any car.

A Mission Quality Failure is a Failure described in the list developed by Contractor and approved by Authority, as described above, where the Failure so described cannot be rectified successfully by the Trainmaster re-setting the equipment or system.

4.1. Allowable Number of Mission Quality Failures

The number of Mission Quality Failures shall be assessed over a 90-day measurement period and a 180-day measurement period. The allowable number of Mission Quality Failures is the number of Mission Quality Failures allowed over actual distance travelled.

In each of the first four 90-day measurement periods, the allowable number of Mission Quality Failures shall be one Mission Quality Failure per 100,000 miles. In subsequent 90-day measurement periods, the allowable number of Mission Quality Failures shall be one Mission Quality Failure per 200,000 miles.

In each of the first two 180-day measurement periods, the allowable number of Mission Quality Failures shall be one Mission Quality Failure per _____ miles [*To be provided*]. In subsequent 180-day measurement periods, the allowable number of Mission Quality Failures shall be one Mission Quality Failure per _____ miles [*To be provided*].



APPENDIX 1 TO SCHEDULE 6

Allowable Percentages of Missed Trips for first 360 days of Revenue Service

(See Following Page)

DRAFT



Allowable Percentage of Missed Trips for 10-Day Measurement Periods from the start of revenue service to the end of the Trainset Service Period

| 10-Day Measurement Period | Allowable Percentage of Missed Trips |
|---------------------------|--------------------------------------|
| 1st | 2.41 |
| 2nd | 2.35 |
| 3rd | 2.28 |
| 4th | 2.21 |
| 5th | 2.15 |
| 6th | 2.08 |
| 7th | 2.01 |
| 8th | 1.95 |
| 9th | 1.88 |
| 10th | 1.81 |
| 11th | 1.75 |
| 12th | 1.68 |
| 13th | 1.61 |
| 14th | 1.55 |
| 15th | 1.48 |
| 16th | 1.41 |
| 17th | 1.35 |
| 18th | 1.28 |
| 19th | 1.21 |
| 20th | 1.15 |
| 21st | 1.08 |
| 22nd | 1.01 |
| 23rd | 0.95 |
| 24th | 0.88 |
| 25th | 0.81 |
| 26th | 0.75 |
| 27th | 0.68 |
| 28th | 0.61 |
| 29th | 0.55 |
| 30th | 0.48 |
| 31st | 0.41 |
| 32nd | 0.35 |
| 33rd | 0.28 |
| 34th | 0.21 |
| 35th | 0.15 |
| 36th | 0.08 |



Allowable Percentage of Missed Trips for 30-Day Measurement Periods from the start of revenue service to the end of the Trainset Service Period

| 30-day measurement period | Allowable percentage of Missed Trips |
|---------------------------|--------------------------------------|
| 1st | 2.40 |
| 2nd | 2.20 |
| 3rd | 2.00 |
| 4th | 1.80 |
| 5th | 1.60 |
| 6th | 1.40 |
| 7th | 1.20 |
| 8th | 1.00 |
| 9th | 0.80 |
| 10th | 0.60 |
| 11th | 0.40 |
| 12th | 0.20 |

Allowable Percentage of Missed Trips for 90-Day Measurement Periods during the start of revenue service to the end of the Trainset Service Period

| 90-day measurement period | Allowable percentage of Missed Trips |
|---------------------------|--------------------------------------|
| 1st | 2.25 |
| 2nd | 1.65 |
| 3rd | 1.05 |
| 4th | 0.45 |

Allowable Percentage of Missed Trips for 180-Day Measurement Periods during the start of revenue service to the end of the Trainset Service Period

[To be provided.]



SCHEDULE 7
FORM OF PERFORMANCE BOND (MAINTENANCE)

Contract No.: HSR 14-30

Bond No.: _____

WHEREAS, the California High-Speed Rail Authority (“Obligee”), has awarded to _____, a _____

(“Principal”), Contract No. HSR-14-30

dated as of _____, 20____ (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____, a _____, and _____, a _____ (collectively “Co-Sureties”), each an admitted surety insurer in the State of California, are held

and firmly bound unto Obligee in the amount of \$ _____ (the “Bonded Sum”), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Contract is incorporated by reference herein.

This bond specifically guarantees the performance of each and every obligation of Principal under the Contract, as it may be amended and supplemented, including but not limited to its liability for liquidated damages as specified in the Contract, but not to exceed the Bonded Sum.

In the event that Principal is in default, is declared by Obligee to be in default under the Contract, and provided that Obligee is not then in material default thereunder, Co-Sureties shall promptly perform the following actions:

- Remedy such default;



- Complete the Contract in accordance with the terms and conditions of the Contract then in effect; or
- Select a contractor or contractors to complete the Work for which a notice to proceed has been issued in accordance with the terms and conditions of the Contract then in effect, using a procurement methodology approved by Obligee, arrange for a contract between such contractor or contractors and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph), sufficient funds to pay the cost of completion less the unpaid balance of the Contract Amount, but not exceeding, including other costs and damages for which Co-Sureties are liable hereunder, the Bonded Sum.

No alteration, modification or supplement to the Contract of the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Co-Sureties under this bond and Co-Sureties hereby waive notice thereof.

The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be:

_____ and the initial agent for service of process shall be: _____

No right of action shall accrue on this bond or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this bond to be executed and delivered as of _____, 20____.

Principal: _____
 By: _____
 Its: _____

[SEAL]



Co-Surety:

By: _____

[SEAL]

Its: _____

Co-Surety:

By: _____

[SEAL]

Its: _____

[ADD APPROPRIATE CO-SURETY ACKNOWLEDGMENTS]

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SCHEDULE 8
LETTERS OF CREDIT

Table of Contents:

Schedule 8-1 – Form of Letter of Credit (Manufacturing)

Schedule 8-2 – Form of Letter of Credit (Maintenance)

DRAFT



SCHEDULE 8-1

FORM OF LETTER OF CREDIT (MANUFACTURING)

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: _____

PLACE FOR PRESENTATION OF DRAFT: _____

(Name and Address of Bank/Branch – Must be an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means)

APPLICANT: *[Insert name of Contractor]*

BENEFICIARY: CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Attn: Rebecca Harnagel, P.E.

770 L Street, Suite 620 MS 2

Sacramento, CA 95814

LETTER OF CREDIT NUMBER: _____

PLACE AND DATE OF ISSUE: _____

AMOUNT: _____ **United States Dollars (US\$** _____ **)**

EXPIRATION DATE: _____

Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of the Beneficiary, for any sum or sums up to the aggregate amount of

_____ **United States Dollars (US\$** _____ **),**
available by draft(s) at sight drawn on Issuer and payable immediately.

Any draft(s) under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. State one of the following:



“This drawing is due to the failure of _____ (Applicant’s name) _____ to pay or perform when due any obligations under the Trainset Agreement (Agreement No. HSR 14-30) between Applicant and Beneficiary (the “Agreement”).”

or

“This drawing is due to the failure of Applicant, as required under the Agreement, to deliver to Beneficiary a new or replacement letter of credit, on the same terms, by not later than 30 days before the expiration date of this letter of credit.”

or

“This drawing is due to the fact that within 30 days of Beneficiary notifying Applicant that Issuer does not meet the minimum requirements for the Issuer set forth in the Agreement, Applicant has failed to provide a substitute letter of credit issued by a financial institution that meets these minimum requirements.”

All drafts will be honored if presented to _____ (Bank/Branch - Name & Address) _____ on or before _____ (Expiration Date) _____ or any extended expiration date.

Drawings by facsimile to facsimile number () _____ are acceptable (each such drawing, a "Fax Drawing") provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer’s receipt of such Fax Drawing by calling Issuer at telephone number () _____. Issuer will acknowledge Beneficiary’s presentment by e-mail to the e-mail address provided to Issuer in the Fax Drawing.

This Letter of Credit shall allow for multiple draws.

This Letter of Credit shall be automatically extended for successive periods of one year, without amendment, from the stated expiration date and each extended expiration date unless we send Beneficiary written notice of our intent not to extend the credit; which notice must be sent at least 30 days prior to the expiration date of the original term hereof or any extended one year term, by registered or certified mail or overnight courier, to Beneficiary at the address for Beneficiary stated above or any other address specified in writing from an executive officer of Beneficiary to Issuer at Issuer’s address stated above.

This Letter of Credit is subject to the rules of the “International Standby Practices” ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by California law.

Issuer:

By: _____ (Authorized signature of Issuer) _____



SCHEDULE 8-2

FORM OF LETTER OF CREDIT (MAINTENANCE)

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: _____

PLACE FOR PRESENTATION OF DRAFT: _____

(Name and Address of Bank/Branch – Must be an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means)

APPLICANT: *[Insert name of Contractor]*

BENEFICIARY: CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Attn: Rebecca Harnagel, P.E.

770 L Street, Suite 620 MS 2

Sacramento, CA 95814

LETTER OF CREDIT NUMBER: _____

PLACE AND DATE OF ISSUE: _____

AMOUNT: _____ **United States Dollars (US\$** _____ **)**

EXPIRATION DATE: _____

Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of the Beneficiary, for any sum or sums up to the aggregate amount of

_____ **United States Dollars (US\$** _____ **),**
available by draft(s) at sight drawn on Issuer and payable immediately.

Any draft(s) under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. State one of the following:



“This drawing is due to the failure of _____ (Applicant’s name) _____ to pay or perform when due any obligations under the Trainset Agreement (Agreement No. HSR 14-30) between Applicant and Beneficiary (the “Agreement”).”

or

“This drawing is due to the failure of Applicant, as required under the Agreement, to deliver to Beneficiary a new or replacement letter of credit, on the same terms, by not later than 30 days before the expiration date of this letter of credit.”

or

“This drawing is due to the fact that within 30 days of Beneficiary notifying Applicant that Issuer does not meet the minimum requirements for the Issuer set forth in the Agreement, Applicant has failed to provide a substitute letter of credit issued by a financial institution that meets these minimum requirements.”

All drafts will be honored if presented to _____ (Bank/Branch - Name & Address) _____ on or before _____ (Expiration Date) _____ or any extended expiration date.

Drawings by facsimile to facsimile number () _____ are acceptable (each such drawing, a "Fax Drawing") provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer’s receipt of such Fax Drawing by calling Issuer at telephone number () _____. Issuer will acknowledge Beneficiary’s presentment by e-mail to the e-mail address provided to Issuer in the Fax Drawing.

This Letter of Credit shall allow for multiple draws.

This Letter of Credit shall be automatically extended for successive periods of one year, without amendment, from the stated expiration date and each extended expiration date unless we send Beneficiary written notice of our intent not to extend the credit; which notice must be sent at least 30 days prior to the expiration date of the original term hereof or any extended one year term, by registered or certified mail or overnight courier, to Beneficiary at the address for Beneficiary stated above or any other address specified in writing from an executive officer of Beneficiary to Issuer at Issuer’s address stated above.

This Letter of Credit is subject to the rules of the “International Standby Practices” ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by California law.

Issuer:

By: _____ (Authorized signature of Issuer) _____



SCHEDULE 9
FORM OF GUARANTY

GUARANTY

This Guaranty (this "Guaranty") is made as of _____, 20 ____

by _____,

a _____

("Guarantor"),

in favor of the California High-Speed Rail Authority, a public entity of the State of California (the "Authority").

RECITALS

- A. _____
- (the "Contractor")
- and Authority are parties to Authority's Contract No. HSR 14-30 (the "Contract").
- B. Guarantor has agreed to enter into this Guarantee to induce Authority to issue a Notice to Proceed for Fleet _____ (the "Fleet") under the Contract.
- C. Contractor is a _____
- [describe relationship with Guarantor]*

The execution of the Contract by Authority and the consummation of the transactions contemplated thereby will materially benefit Guarantor.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty** – Guarantor guarantees to Authority and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Contractor arising out of, in connection with, under or related to the Contract, including manufacturing obligations, Maintenance Facilities, stabling, Trainset Service Period obligations (including maintenance of the Trainsets and the provision of Spares) and liability for liquidated damages and warranties for the Fleet from Notice to Proceed for the Fleet until five years after Fleet Acceptance for the Fleet. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."
2. **Unconditional Obligations** – This Guaranty is a guaranty of payment and performance and not of collection. This Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred and, except as provided in the "Permitted Defenses; Contract Amendments" clause of this Guaranty, whether or not enforceable against



Contractor. If any payment made by Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released or discharged by:

- i. Any change in the Contract or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Contractor, Guarantor or their respective assets, and
- ii. The existence of any claim or set-off which Contractor has or Guarantor may have against Authority, whether in connection with this Guaranty or any unrelated transaction. Provided that nothing in this Guaranty will be deemed to be a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit.

Except as provided in the "Permitted Defenses; Contract Amendments" clause of this Guaranty, this Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the following:

- i. The genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or
 - ii. The existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations or this Guaranty.
- 3. Independent Obligations** – Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Contractor is joined therein. Authority may maintain successive actions for other defaults of Guarantor. Authority's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.
- i. Guarantor agrees that Authority may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Contractor. Guarantor hereby waives the right to require Authority to proceed against Contractor or any other Person, to exercise any right or remedy under the Contract or to pursue any other remedy or to enforce any other right.
 - ii. Guarantor will continue to be subject to this Guaranty notwithstanding any of the following:
 - a. Modification, agreement or stipulation between Contractor and Authority or their respective successors and assigns, with respect to the Contract or the Guaranteed Obligations;



- b. Failure to enforce any of the terms, covenants or conditions contained in the Contract or any modification thereof; or
 - c. Release or subordination of any collateral then held by Authority as security for the performance by Contractor of the Guaranteed Obligations.
- iii. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract or the pursuit by Authority of any remedies which Authority either now has or may hereafter have with respect thereto under the Contract.
- 4. Liability of Guarantor** - Authority may enforce this Guaranty upon the occurrence of a breach by Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between Authority and Contractor with respect to the existence of such a breach.

Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

Authority, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may do any of the following:

- i. With respect to the financial obligations of Contractor, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations;
- ii. Settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto;
- iii. Request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations;
- iv. Release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations;
- v. Enforce and apply any security hereafter held by or for the benefit of Authority in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Authority may have against any such security, as Authority in its discretion may determine; and
- vi. Exercise any other rights available to it under the Contract.

This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether



or not Guarantor will have had notice or knowledge of any of them:

- i. Any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto;
 - ii. Any modification, agreement or stipulation between Contractor and Authority or their respective successors and assigns, with respect to the Contract or the Guaranteed Obligations; or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract or any agreement or instrument executed pursuant thereto;
 - iii. Authority's consent to the change, reorganization or termination of the corporate structure or existence of Contractor;
 - iv. Any set-offs or counterclaims that Contractor may allege or assert against Authority in respect of the Guaranteed Obligations;
 - v. Any failure to enforce the Guaranteed Obligations or any of the terms, covenants or conditions contained in any of the Contract or any modification thereof;
 - vi. Any waiver by Authority of the Guaranteed Obligations that is not in writing and signed by the Authority Representative or that is made in the context of a bankruptcy or insolvency proceeding in which Contractor is the debtor, unless otherwise specified in said waiver;
 - vii. Any release of Contractor from liability that is not in writing and signed by the Authority Representative or that is made in the context of a bankruptcy or insolvency proceeding in which Contractor is the debtor, unless otherwise specified in said release; or
 - viii. Any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.
- 5. Waivers** - To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of the following:
- i. Any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Contractor or any other Person or the failure of Authority to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person;
 - ii. Any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;
 - iii. All notices to Guarantor or to any other Person, including notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Contractor under the Contract, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, provided that the foregoing shall not be constructed as a waiver of any defense based on failure to



- provide required notices to Contractor;
- iv. Any defense based on statutes of limitations other than State of California statutes;
 - v. Any requirements of diligence or promptness on the part of Authority;
 - vi. Any defense based upon any act or omission of Authority which directly or indirectly results in or aids the discharge or release of Contractor, Guarantor or any security given or held by Authority in connection with the Guaranteed Obligations, except with respect to a release of Contractor from liability that is in writing and signed by the Authority Representative, other than any such release that is made in the context of a bankruptcy or insolvency proceeding in which Contractor is the debtor, unless otherwise specified in said release; and
 - vii. Any and all suretyship defenses under applicable law, including any defense under Sections 2787 through 2855, inclusive, of the California Civil Code.
- 6. Waiver of Subrogation and Rights of Reimbursement** - Until the Guaranteed Obligations have been performed in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of Authority against Contractor, or any other security or collateral that Authority now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

7. Representations and Warranties

Guarantor represents and warrants that:

- i. It is a _____
 duly (check one) organized formed, validly existing, and in good standing
 under the laws of the State of _____
 and qualified to do business and is in good standing under the laws of the State of California;
- ii. It has all requisite (check one)
 - Corporate
 - Partnership
 - Limited Liability Company power and authority to execute, deliver, and perform this Guaranty;
- iii. The execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor;
- iv. This Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, subject only to bankruptcy, insolvency or other similar laws affecting creditors' rights generally;
- v. Neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or



- cancellation, or a loss of rights under:
- a. Check one
 - the certificate of incorporation or by-laws
 - certificate of limited partnership or partnership agreement
 - certificate of formation or limited liability company agreement of Guarantor,
 - b. Any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or
 - c. Any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;
 - vi. It now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract or referred to therein, the financial status of Contractor and the ability of Contractor to pay and perform the Guaranteed Obligations;
 - vii. It has reviewed and approved copies of the Contract and is fully informed of the remedies Authority may pursue, with or without notice to Contractor, Guarantor or any other Person, in the event of default of any of the Guaranteed Obligations; it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Contractor and will keep itself fully informed as to all aspects of the financial condition of Contractor, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of Authority to disclose any matter, fact or thing relating to the business, operations or conditions of Contractor now known or hereafter known by Authority;
 - viii. No consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and
 - ix. There is no pending or, to the best of its knowledge, threatened, action, suit, proceeding, arbitration, litigation, or investigation of or before any governmental authority which challenges the validity or enforceability of this Guaranty.
- 8. Notices** - Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Authority: California High-Speed Rail Authority
770 L Street, Suite 800



Sacramento, CA 95814

Attention: _____

Telephone: _____

Telecopy: _____

If to the Guarantor: _____

Attention: _____

Telephone: _____

Telecopy: _____

Either Guarantor or Authority may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Article are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

Any demand/claim under this Guaranty shall be signed by the Authority Representative, shall state that Contractor is in default under the Contract and shall state the nature of such default.

9. Permitted Defenses; Contract Amendments - Notwithstanding any other provision of this Guaranty to the contrary:

- i. Guarantor shall be entitled to the benefit of all defenses (excluding any rights of set-off or counterclaims) available to Contractor under the Contract except:
 - a. Those expressly waived in this Guaranty;
 - b. Failure of consideration, lack of authority of Contractor and any other defense to formation of the Contract; and
 - c. Defenses available to Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors; and
- ii. In the event that Contractor's obligations have been changed by any modification, agreement or stipulation between Contractor and Authority or their respective successors or assigns, the term "Guaranteed Obligations" as used herein shall mean the Guaranteed Obligations as so changed, except that the Guaranteed Obligations shall be determined without regard to the effect of any such modification, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which Contractor is the debtor, unless otherwise specified in the modification, agreement or stipulation.



- 10. General Provisions** - Should any one or more of the provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be affected by such determination. The rights of Authority hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against Guarantor or any other entity with liability for the Guaranteed Obligations or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed and expiration or termination of the Contract. Guarantor agrees to execute, have acknowledged and delivered to Authority such other and further instruments as may be required by Authority to effectuate the intent and purpose hereof. No right of action shall accrue on this Guaranty to or for the use of any person or entity other than Authority or its successors and assigns until Authority's claims have been satisfied in full. All words used herein in the singular shall be deemed to have been used in the plural when the context or construction so require. This Guaranty shall be governed by and be construed in accordance with the laws of the State of California. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and Authority, but is not assignable by Guarantor without the prior written consent of Authority, which consent may be granted or withheld in Authority's sole discretion. Any initially capitalized terms used but not defined in this Guaranty shall have the meaning given them in the Contract.
- 11. No Waiver** - Any forbearance or failure to exercise, and any delay by Authority in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.
- 12. Bankruptcy** - The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Contractor or by any defense which Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Authority is not obligated to file any claim relating to the Guaranteed Obligations if Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of Authority so to file will not affect Guarantor's obligations under this Guaranty.
- 13. Consent to Jurisdiction**
GUARANTOR AND AUTHORITY AGREE THAT ANY ACTION OR PROCEEDING TO RESOLVE A DISPUTE BETWEEN GUARANTOR AND AUTHORITY CONCERNING THE INTERPRETATION, APPLICATION OR ENFORCEMENT OF THE TERMS OF THIS GUARANTY MAY ONLY BE BROUGHT IN SACRAMENTO COUNTY SUPERIOR COURT LOCATED IN SACRAMENTO COUNTY, CALIFORNIA OR U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. EACH OF GUARANTOR AND AUTHORITY ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS.
- 14. Agent for Service of Process** - If not a resident of the State of California, Guarantor has appointed the following individual residing in the State of California to be its agent for service of process in any court action between Authority and Guarantor arising out of



or based upon this Guaranty:
[If applicable, insert name of agent for service of process.]

Delivery to such agent of a copy of any process in any such court action shall constitute valid service upon Guarantor. Guarantor may replace its agent for service of process with another individual meeting the requirements set forth in this Article by sending Authority a prior written notice meeting the requirements of Article 8 with the replacement agent's information. Otherwise, Guarantor shall maintain its agent for service of process for the term of the Contract.

If for any reason service of process upon Guarantor's agent for service of process is not possible, then in such event Guarantor may be personally serviced with such process outside the State of California, and Guarantor agrees that such service shall constitute valid service upon Guarantor; and it is further expressly agreed that Guarantor is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

a _____
By: _____
Name: _____
Title: _____



SCHEDULE 10

[Under review.]

DRB AGREEMENT FORM

THIS DISPUTES RESOLUTION BOARD AGREEMENT (“DRB Agreement”) is made and entered into this ____ day of _____, 20__, among California High-Speed Rail Authority, a public entity of the State of California (“Authority”), _____, a _____ (“Contractor”), and

_____ (collectively, the “DRB Members”), with reference to the following facts:

- Authority and Contractor are parties to Authority’s Contract No. 14-30, dated as of _____ (as amended from time to time, the “Contract”). Pursuant to the Contract, Contractor has agreed to design, manufacture, test, certify, commission and maintain Trainsets ordered by Authority, and perform other tasks, all in accordance with the Contract (collectively, the “Project”).
- A. _____
- B. The Contract provides for the establishment and operation of a Disputes Resolution Board (the “DRB”) to assist in resolving disputes and claims among Authority, Contractor, and others in respect to the Project.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and agreements contained herein, the parties hereto agree as follows:

1. Establishment of Disputes Resolution Board

The Disputes Resolution Board (DRB) shall begin operation upon execution of this DRB Agreement by Authority, Contractor, and the DRB Members, and shall terminate five years thereafter, unless sooner terminated in accordance with this DRB Agreement or applicable law. The DRB shall consist of three members selected jointly by Authority and Contractor.

Each member of the DRB represents, warrants, and covenants on his/her behalf that he or she meets the following criteria:

- A. Is not an Affiliate or otherwise have a financial interest in Contractor, any Subcontractor, the Contract, the Project, the California High-Speed Train Project or in the outcome of any dispute decided hereunder, except for payment for serving on the DRB;
- B. Has not been previously employed by Authority, Contractor or any Affiliate (including any work for such entity through an arrangement with his or her direct employer), except for fee-based consulting services on other projects which are disclosed to all Parties, and has not otherwise had financial ties to any Party to the Contract for two years preceding his or her engagement for the DRB;
- C. Has not had a professional or personal relationship, with Contractor, any Subcontractor, Authority, or an employee of any of the foregoing of a nature which could affect his/her ability to impartially resolve disputes;



- D. Has not had substantial prior involvement in the Project or the California High-Speed Train Project of a nature which could affect his/her ability to impartially resolve disputes and does not know of any reason why he or she cannot be impartial in rendering decisions;
- E. Does not have a conflict of interest as described in Authority's Organizational Conflict of Interest Policy;
- F. Shall not accept employment by Authority or Contractor or any Affiliate during the term hereof and for as long thereafter as any obligations remain outstanding under the Contract, except as a member of other disputes boards; and
- G. Shall not discuss employment, nor make any agreement regarding employment, with Authority, Contractor, or any Affiliate during the term hereof and for as long thereafter as any obligations remain outstanding under the Contract.

Prior to hearing the first dispute, and thereafter upon request of Authority or Contractor from time to time, and at least annually, each DRB Member shall provide to Authority and Contractor a declaration under penalty of perjury affirming that such member meets the qualifications set forth in Article 31.5 of the General Provisions and the "Establishment of DRB" clause hereof, and agrees to be bound by the terms of the Contract. Each DRB Member shall promptly notify Authority and Contractor if any circumstances are likely to prevent a prompt and fair hearing and decision, or if the member fails to meet such qualifications. Any DRB Member failing at any time to meet such qualifications shall be removed from the DRB.

2. DRB Organization and Responsibilities

The DRB is organized in accordance with Article 31.3 of the General Provisions for the purposes described therein. The DRB is intended to fairly and impartially consider the disputes under the Contract, Subcontracts thereunder, and other contracts relating to the Project placed before it, and to provide written reasoned decisions for resolution of such disputes. The DRB Members shall perform the services necessary to participate in the DRB's actions in accordance with this DRB Agreement and the Contract.

The DRB Members shall visit the Site prior to commencement of construction, and after commencement of construction shall visit the Site periodically to keep abreast of construction activities and to develop a familiarity with the Work in progress, or as may be deemed desirable or necessary in the consideration of any claim or dispute. A special Site visit shall be scheduled at the request of either party or any DRB Member; provided that all reasonable efforts shall be made to allow issues to be raised at the regularly scheduled Site visits except where a special visit is warranted due to special circumstances such as the need to observe Site conditions before they are disturbed. Representatives of Authority and Contractor shall have the right to accompany the DRB on any such visit.

All DRB Members are to act independently in the consideration of facts and conditions surrounding any dispute. Seeking the DRB Members' advice or consultation, ex parte, is expressly prohibited; provided, however, that either party may seek such advice or consultation from the entire DRB, at a DRB meeting, after first giving notice to all parties who might thereafter be parties before the DRB in a dispute involving that problem. A DRB Member who



has ex parte contact with a party or party representative shall be subject to removal from the DRB for cause.

DRB Members may withdraw from the DRB upon delivery of written notice of withdrawal to Authority, Contractor, and the other DRB Members, which notice shall specify a withdrawal date at least 28 days following the date of delivery of the notice. Should the need arise to appoint a replacement DRB Member, the replacement member shall be selected jointly by Authority and Contractor. The selection of a replacement DRB Member shall begin promptly upon notification of the necessity for a replacement, and shall be completed within 28 days thereafter. The change in DRB membership shall be evidenced by the new member's signature on the DRB Agreement.

This DRB Agreement may be terminated by mutual agreement of Authority and Contractor at any time upon not less than four weeks written notice to the other parties. Authority and Contractor shall each have the right, one time only, to require appointment of a new disputes resolution board to resolve future disputes, which right may be exercised at any time by delivery of notice to such effect to the other party and to the current DRB Members. In such event a new agreement in the same form as this DRB Agreement will be executed establishing the new DRB, and except as otherwise mutually agreed by Authority and Contractor, the work to be performed by the DRB established under this DRB Agreement shall be limited to disputes submitted to the DRB before delivery of the notice requiring appointment of a new DRB.

The personal services of the DRB Member are a condition to receiving payment hereunder. No DRB Member shall assign any of his or her work pursuant to this DRB Agreement without the prior written consent of both Authority and Contractor.

Each DRB Member, in the performance of his or her duties on the DRB, is acting as an independent contractor and not as an employee of either Authority or Contractor. No DRB Member will be entitled to any employee benefits.

3. Hearings and Decisions

Each Dispute under the Contract shall be heard by the DRB as provided in Article 31 of the General Provisions.

In general, the DRB shall have the right to establish its own procedures and time limits, including the right to establish or to waive evidentiary rules and procedures, except for evidentiary rules pertaining to privilege. Each party shall retain the right to discovery as provided in the Contract and to present its witnesses and evidence at its own discretion, within the parameters established by the DRB.

Upon receipt by the DRB of a notice of appeal, either from Contractor or Authority, the DRB shall convene a hearing to review and consider the matter as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Both Authority and Contractor are encouraged to provide exhibits, calculations, and any other pertinent material to the DRB for review prior to the hearing. All such material shall concurrently be given to the other party.



The DRB shall convene to consider questions presented to it, and shall at the conclusion of each hearing either provide the DRB Decision or advise the parties when the DRB Decision will be forthcoming.

4. Provision of Documents to DRB

Contractor, with assistance of Authority, shall furnish to each DRB Member one copy of all documents it might have, other than those furnished by Authority, which are pertinent to the performance of the Contract and necessary to the DRB's work.

Authority shall furnish each DRB Member one copy of all Contract, all design documents (following preparation thereof by Contractor and approval thereof by Authority), and other documents pertinent to the performance of the Contract and necessary to the DRB's work.

Each DRB Member agrees to execute and deliver a confidentiality agreement as described in Article 26.1 of the General Provisions with respect to copies of EPDs that may be provided to the DRB.

5. Expenses

Payment for costs related to work performed and services rendered by the DRB shall be shared equally by Authority and Contractor, and shall be paid in accordance with this Article 5.

Authority and Contractor shall agree in writing on the billing rates for the DRB Members prior to authorizing the DRB Members to commence any work under the DRB Agreement.

DRB Members may submit invoices to Authority and Contractor for payment for work performed and services rendered for their participation in authorized meetings not more often than once per month. Such invoices shall be in a format approved by Authority and accompanied by a general description of activities performed during that billing period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the DRB Member together with direct, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts, and miscellaneous supporting data.

Each DRB Member shall keep available for inspection, for a period of three years after final payment, the cost records and accounts pertaining to this DRB Agreement.

6. Miscellaneous

Capitalized terms used but not defined herein shall have the meanings set forth in the Contract.

Notices hereunder shall be sent as provided in the Contract. The addresses for the DRB Members are set forth on the signature pages hereof.

This DRB Agreement shall be governed by and construed in accordance with the law of the State of California. To the extent that the Federal Arbitration Act may apply to disputes considered hereunder, to the maximum extent allowed by law, the parties hereby waive any requirements of the Federal Arbitration Act that are inconsistent with the provisions of this DRB Agreement and the Contract.



No DRB Member shall release any material or data prepared or received by the DRB under this DRB Agreement to any other person or agency. All press releases or information to be published in newspapers, magazines, or electronic media, shall be distributed only after first being authorized by Authority and Contractor.

The parties hereto mutually understand and agree that all DRB Members, in the performance of their duties on the DRB, are acting in the capacity of independent contractors and not as employees of Authority or Contractor. The DRB Members shall have no personal or professional liability arising from the services provided under this DRB Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this DRB Agreement as of the day and year first above written.

DRB MEMBERS

Address

Signature:

Printed Name

Address

Signature:

Printed Name:

Address

Signature:

Printed Name:

CONTRACTOR

Signature:

Printed Name:

Title:

Signature:

Printed Name:

Title:



SCHEDULE 11

DRAFT TIER III RULE

[Version 001-03 provided separately.]

DRAFT



SCHEDULE 12

TERMINATION FOR CONVENIENCE - MAINTENANCE OBLIGATIONS PROVISIONS

[To be provided.]

DRAFT



SCHEDULE 13**MAINTENANCE FACILITY REQUIREMENTS****General Requirements**

Contractor shall comply with the following requirements:

1. Contractor shall construct sufficient Maintenance Facilities on the Authority-Provided Property to perform its maintenance obligations under the Contract.
2. One of the Maintenance Facilities shall be a facility for the performance of Trainset overhauls, and that facility shall be located on the Authority-Provided Property on the Central Valley Segment. Two other Maintenance Facilities shall be facilities for stabling, inspection and running repairs, and those facilities shall be located on Authority-Provided Property.
3. The Maintenance Plan and Baseline Program shall identify all such facilities and/or contracts, including the timing for constructing each facility.
4. Maintenance Facilities on Authority-Provided Property shall have a design life of no less than 50 years.
5. Contractor shall submit to Authority for review the designs for Maintenance Facilities to be provided on Authority-Provided Property. Contractor shall receive Authority's approval or issuance of a Statement of No Objection for such design documents as a condition to commencing construction. Authority's issuance of an approval or Statement of No Objection for such design documents shall constitute approval of the design by Authority for purposes of Government Code section 830.6, but shall not be deemed to relieve Contractor of liability for the design.
6. Maintenance Facilities shall comply with standards and codes applicable to the State of California. Prior to commencing construction of a Maintenance Facility, Contractor shall submit to Authority a listing of the specific standards and codes that apply to the design and construction of such Maintenance Facility.
7. Contractor shall track all Maintenance Facility costs separate from other costs it incurs to perform the Work.
8. Contractor may use the Authority-Provided Property to build any manufacturing and maintenance facilities under the jurisdiction of FRA, in addition to Maintenance Facilities. Contractor may use such facilities to work on other projects. All uses of the Authority-Provided Property other than manufacturing and maintenance facilities under jurisdiction of FRA are subject to Authority's approval.
9. *[Requirements for Contractor to provide crew facilities for the Trainset operator at the Transfer Track to be provided.]*



10. *[Requirements for Contractor to provide stabling facilities for the Trainsets to be provided.]*
11. At the conclusion of the Overall Trainset Service Period or termination of the Contract, Contractor shall transfer the Maintenance Facilities, including equipment but excluding hand tools and portable equipment, constructed on Authority-Provided Property to Authority. All such Maintenance Facilities and equipment must be turned over to Authority in a state of good repair. Any maintenance contracts shall be assignable to Authority at Authority's option and at no additional cost to Authority.
12. In maintaining the Maintenance Facilities, Contractor shall comply with the maintenance standards requirements set forth in Article 2.30 of the Supplemental General Provisions.

Public Works Requirements

The following requirements shall apply to the design and/or construction of the Maintenance Facilities on Authority-Provided Property:

1. Contractor and its Subcontractors shall comply with the current version, including any addenda, of the Community Benefits Agreement executed by Authority with the State Building and Construction Trades Council of California and the Signatory Craft Councils and Local Unions, as amended.
2. Payment Bond:

As a condition to Contractor commencing the design and/or construction of any Maintenance Facility on Authority-Provided Property, Contractor shall provide to Authority a properly executed payment bond in the form included as Attachment 1 to this Schedule 13 in the amount of 100% of the cost to design and/or construct the Maintenance Facility. All bond and surety requirements set forth in the General Provisions shall apply to the payment bond(s) required hereunder, except that Contractor shall maintain such payment bond(s) in place and in full force and effect until Contractor submits a written certification, signed by the Contractor Representative, that (i) there are no outstanding claims under the bond, (ii) all potential claimants under the bond have been paid in full, and (iii) all deadlines for potential claimants to file a claim under the bond have passed.

3. Subletting and Subcontracting Fair Practices Act:

Except in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Sections 4100 et seq., Contractor shall not have the right to make any substitution of identified Subcontractors who will construct any Maintenance Facilities on Authority-Provided Property (whether identified in the Proposal or at a later date) with a price in excess of one-half of 1 percent of the total amount bid for all construction of any Maintenance Facilities on Authority-Provided Property under the Contract.

Contractor shall, prior to soliciting any bids for the construction of Maintenance Facilities on Authority-Provided Property or labor or rendering of services in or



about the construction of any Maintenance Facilities on the Authority-Provided Property, submit to Authority for its review and approval (which approval will not be unreasonably withheld) a procedure for the conduct of the bidding and approval process applicable to all subcontracts (or combination of subcontracts with a single Subcontractor) with a price in excess of one-half of 1 percent of the total amount bid for all construction of any Maintenance Facilities on Authority-Provided Property under the Contract.

Such procedure shall include times for each step of the process and shall provide that award of any subcontract will go to the lowest responsive bid by a responsible bidder approved by Authority (which approval shall not be unreasonably withheld). Contractor shall promptly notify Authority in writing of the identity of each Subcontractor selected.

Except with Subcontractors listed in the Proposal or Subcontractors selected in accordance with the foregoing procedure, Contractor shall not enter into any subcontracts (or combinations of subcontracts with a single Subcontractor) for the construction of any Maintenance Facilities on Authority-Provided Property with a total price in excess of one-half of 1 percent of the total amount bid for all construction of the Maintenance Facilities on Authority-Provided Property under the Contract.

4. Employment Violations:

Consistent with California Public Contract Code section 6101, Contractor represents and warrants that from five years prior to Contractor submitting the Proposal until Contract award, Contractor and each of its members, if any, was not convicted of violating a state or federal law respecting the employment of undocumented aliens.

5. Ineligible Contractors and Subcontractors:

Consistent with California Public Contract Code section 6109, Contractor represents and warrants that at the time Contractor submitted its Proposal, at Contract award and throughout the term of the Contract, Contractor and each of its members, if any, and the Subcontractors were not and will continue to not be ineligible to perform work on public works projects pursuant to Section 1777.1 or 1777.7 of the California Labor Code.

6. Assignment of Causes of Action:

Contractor's attention is directed to the following requirements in California Public Contract Code Section 7103.5:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or Subcontractor offers and agrees to assign to the awarding 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 California



Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

7. Surface Mining and Reclamation Act:

Imported borrow or aggregate material must come from a surface mine permitted under the Surface Mining and Reclamation Act of 1975, California Public Resources Code, Section 2710-2796 (SMARA), or from a source not subject to SMARA.

For the list of permitted sites, information may be obtained from the California Department of Conservation, Office of Mine Reclamation at the following site:

http://www.conservation.ca.gov/omr/SMARA%20Mines/ab_3098_list/Pages/Index.aspx

When import borrow or aggregate material are used on the Project from a surface mine not on this list, Contractor shall submit written proof that the source is not subject to SMARA.

8. Seismic Safety:

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all Work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

9. Flood Hazards:

Contractor agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012(a).

10. Handicap Accessibility:

Contractor agrees to comply with the handicap accessibility requirements of Title 1, Division 5, Chapter 7 of the California Government Code.

11. Utility Relocations:

[To be provided.]

12. Labor Code Requirements:

a. Worker's Compensation



By executing the Contract, Contractor makes the following certification, as required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing performance of the work under this contract.

b. Prevailing Wages

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

c. Hours of Work

Eight hours labor constitutes a legal day's work.

d. Specific Labor Code Provisions

Contractor's attention is directed to the following requirements of the Labor Code. A copy of each such Code section shall be included in each subcontract.

i. Labor Code Section 1771

Except for public works projects of \$1,000 or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

ii. Labor Code Section 1775



Contractor and any Subcontractor under Contractor shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the Contract by Contractor or, except as provided in subdivision (b) of Section 1775, by any Subcontractor under Contractor.

The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

- a) Whether the failure of Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor or Subcontractor;
- b) Whether Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations;
- c) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor or Subcontractor;
- d) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if Contractor or Subcontractor has been assessed penalties within the previous 3 years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned; and
- e) The penalty may not be less than one hundred and twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

If the amount due under this section is collected from Contractor or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or Subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or Subcontractor pursuant to this section.

The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid



less than the prevailing wage rate, shall be paid to each worker by Contractor or Subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

If a worker employed by a Subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the Subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) of Section 1775 unless the prime contractor had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with the following requirements:

- a) The contract executed between Contractor and the Subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1776, 1777.5, 1813, and 1815.
- b) Contractor shall monitor and ensure the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees, by periodic review of the certified payroll records of the Subcontractor.
- c) Upon becoming aware of the failure of the Subcontractor to pay his or her workers the specified prevailing rate of wages, Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public works project.
- d) Prior to making final payment to the Subcontractor for work performed on the public works project, Contractor shall obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

The Division of Labor Standards Enforcement shall notify Contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a Subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

iii. Labor Code Section 1776

Each contractor and Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- a) The information contained in the payroll record is true and correct; and



- b) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

The payroll records enumerated under subdivision (a) of Section 1776 shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

- a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request;
- b) A certified copy of all payroll records enumerated in subdivision (a) of Section 1776 shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations; and
- c) A certified copy of all payroll records enumerated in subdivision (a) of Section 1776 shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2) of Section 1776, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of Contractor.

The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified in subdivision (a) of Section 1776.

Contractor or Subcontractor shall file a certified copy of the records enumerated in subdivision (a) of Section 1776 with the entity that requested the records within 10 days after receipt of a written request.

Except as provided in the paragraph below, any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded the contract or the Subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. § 175a) shall be



marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision of Section 1776 may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records. Any copies of records or certified payrolls made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

Contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a) of Section 1776, including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

Contractor or Subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a) of Section 1776. In the event that Contractor or Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 [commencing with Section 1798] of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of



reasonable fees to be charged for reproducing copies of records required by this section.

Regulations implementing Labor Code Section 1776 are located in Sections 16000, 16400, 16401, 16402, 16403, and 16500 of Title 8, California Code of Regulations.

iv. Labor Code Section 1777.5

Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered, and shall be employed only at the work of the craft or trade to which he or she is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

- a) The apprenticeship standards and apprentice agreements under which he or she is training; and
- b) The rules and regulations of the California Apprenticeship Council.

When Contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, Contractor shall employ apprentices in at least the ratio set forth in this section, and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving Contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving Contractor, shall arrange for the dispatch of apprentices to the Contractor. Contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "Contractor" includes any Subcontractor under a contractor who performs any public works not excluded by subdivision (o) Section 1777.5.



Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and Subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where Contractor agrees to be bound by those standards; but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite, and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. Contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a Subcontractor, before the end of the subcontract. However, Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1 to 5 ratio required by subdivision (g) of Section 1777.5.



Upon proper showing by Contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting Contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting Contractor from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:

- a) Unemployment for the previous three-month period in the area exceeds an average of 15 percent;
- b) The number of apprentices in training in the area exceeds a ratio of 1 to 5;
- c) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; and
- d) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

When an exemption is granted pursuant to subdivision (k) of Section 1777.5 to an organization that represents contractors in a specific trade from the 1 to 5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

Contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. Contractor may take as a credit for payments to the council any amounts paid by Contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. Contractor may add the amount of the contributions in computing his or her bid for the contract.

At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to



approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

- a) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made;
- b) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program; and
- c) All training contributions not distributed under subparagraphs (A) and (B) of Section 1777.5 shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation of the Legislature, all money in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

v. Labor Code Section 1813

Contractor or Subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In



awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

vi. Labor Code Section 1815

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

vii. Labor Nondiscrimination

Contractor's attention is directed to Section 1735 of the Labor Code, which reads as follows:

A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

Contractor's attention is directed to the following "Nondiscrimination" clause that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

viii. Nondiscrimination

During the performance of this Contract, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age or sexual orientation. Contractors and Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code of Regulations, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract 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 Contract.

DRAFT



ATTACHMENT 1 TO SCHEDULE 13
FORM OF PAYMENT BOND (MAINTENANCE FACILITY)

Contract No.: HSR 14-30

Bond No.: _____

WHEREAS, the California High-Speed Rail Authority (“Obligee”), has awarded to _____, a _____

(“Principal”), Contract No. HSR-14-30

dated as of _____, 20____ (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing payment of claims for public works as described in Public Contract Code 7103 concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____,
a _____,
and _____,
a _____

(collectively “Co-Sureties”), each an admitted surety insurer in the State of California, are held and firmly bound unto Obligee in the amount of \$ _____
[insert 100 percent of the cost of the facilities constructed on the Authority-Provided Property]
(the “Bonded Sum”), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall fail to pay any of the persons named in Civil Code Section 9100; or any amounts due under the Unemployment Insurance Code; or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Principal and subcontractors pursuant to the Unemployment Insurance Code Section 13020, with respect to the Work, then Co-Sureties shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void.

The Contract is incorporated by reference herein.

No alteration, modification, or supplement to the Contract or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall



in any way affect the obligations of Co-Sureties under this bond and Co-Sureties hereby waive notice thereof.

The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be:

_____ and the initial agent for service of process shall be: _____

This bond shall inure to the benefit of the persons named in Civil Code Section 9100 so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this bond to be executed and delivered as of _____, 20____.

Principal:

By: _____ [SEAL]

Its: _____

Co-Surety:

By: _____ [SEAL]

Its: _____

Co-Surety:

By: _____ [SEAL]

Its: _____

[ADD APPROPRIATE CO-SURETY ACKNOWLEDGMENTS]

