



U.S Department of Transportation

Federal Railroad Administration

Cooperative Agreement

1. RECIPIENT NAME AND ADDRESS California High-Speed Rail Authority 925 L St Ste 1425 Sacramento, CA 95814-3704		2. AGREEMENT NUMBER: FR-HSR-0009-10-01-06		3. AMENDMENT NO. 6	
		4. PROJECT PERFORMANCE PERIOD: FROM 08/17/2010 TO 12/31/2022			
		5. FEDERAL FUNDING PERIOD: FROM 08/17/2010 TO 09/30/2017			
1A. IRS/VENDOR NO. 911879327		6. ACTION Extension with/without Funds			
1B. DUNS NO. [REDACTED]					
7. CFDA#: [REDACTED]					
8. PROJECT TITLE California High-Speed Train Program ARRA Grant		TITLE		TOTAL	
		9. PREVIOUS AGREEMENTS		5,058,327,462.00	
		10. THIS AGREEMENT		0.00	
		11. TOTAL AGREEMENT		5,058,327,462.00	
12. INCORPORATED ATTACHMENTS THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF: Amended Terms and Conditions, Attachment 1					
13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT American Recovery and Reinvestment Act of 2009, Public Law 111-5 (February 17, 2009)					
14. REMARKS					
GRANTEE ACCEPTANCE			AGENCY APPROVAL		
15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Mr. Jeff Morales			17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL Mr. Mathew Lorah Grants Management Specialist		
16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL Electronically Signed		16A. DATE 05/16/2016	18. SIGNATURE OF AUTHORIZED FRA OFFICIAL Electronically Signed		18A. DATE 05/18/2016
AGENCY USE ONLY					
19. OBJECT CLASS CODE: 41010			20. ORGANIZATION CODE: 9013000000		
21. ACCOUNTING CLASSIFICATION CODES					
DOCUMENT NUMBER	FUND	BY	BPAC	AMOUNT	
FR-HSR-0009-10-01-00	2709120718	2010	91010029Y0	0.00	
FR-HSR-0009-10-01-00	2709120718	2011	91010029Y0	0.00	

AWARD ATTACHMENTS

California High-Speed Rail Authority

FR-HSR-0009-10-01-06

1. Amended Terms and Conditions, Attachment 1

Attachment 1 to Amendment No. 6

The parties, intending to be legally bound, agree to amend their Agreement of September 22, 2010, as amended on December 22, 2010, August 8, 2011, September, 19, 2011, April 16, 2012, and December 5, 2012, as follows:

- A. In the Notice of Grant Award cover sheet, section 4, the end date of 9/30/2017 is deleted, and the end date of 12/31/2022 is substituted therefor.
- B. Attachment 1 is deleted in its entirety, and the following is substituted therefor:

Special Provisions, Attachment 1

1. Identification of Awarding Agency and Grantee:

The California High-Speed Rail Authority (CHSRA or Grantee), an agency of the State of California, and the Administrator of the Federal Railroad Administration (FRA), acting by delegation from the Secretary of Transportation, have entered into this Cooperative Agreement (“Agreement”) to conduct and fund this project, as more specifically set forth in the Statement of Work, Attachment 3, attached hereto and made a part hereof and any supplements thereto. As used in this Agreement, the term “Project” refers to the overall effort identified in Section 8 of the Grant/Cooperative Agreement and as that term is defined in Subsection 1(h) of Attachment 2. As used herein, the term “individual work efforts” refers to the individual tasks and subtasks set forth in the Statement of Work (Attachment 3) and any future supplements or amendments thereto. Unless otherwise provided, reporting requirements in this Agreement may be aggregated with respect to the individual work efforts. However, progress reporting (Section 10 of Attachment 1), and budgeting and payment processing (Sections 4 and 7 of Attachment 2) may not be aggregated, and must be accounted for on the basis of the individual work efforts involved.

2. Scope:

The Grantee shall furnish all personnel, facilities, equipment, and other materials and services (except as otherwise specified herein) necessary to perform the Project, as set forth in the Statement of Work (Attachment 3), and any supplements thereto, which the Parties agree is pursuant to the representations, certifications, and assurances set forth in the Grantee’s application(s), and any amendments thereto (Application), incorporated herein by reference and made a part hereof.

3. Awarding Agency Participation:

The FRA will provide, on an “as available” basis, one professional staff person, to be designated as the Grant Manager, to review work or work products in progress, and arrange for the review of the Project results upon completion. If this award is made as a cooperative agreement, FRA will have substantial programmatic involvement. Substantial involvement means that, after award, technical, administrative, or FRA programmatic staff will assist, guide, coordinate, or otherwise participate in Project activities.

4. Term:

Unless sooner terminated in accordance with its terms, this Agreement shall be valid for the period described in Section 4 of the Grant/Cooperative Agreement. While all Federal funds must be expended consistent with Attachment 1B, Section 8, the period described in Section 4 of the Grant/Cooperative Agreement includes the period for both completion of the Project, and completion and submission of a final report on Project results, as described in Section 12 and/or other deliverables as agreed to between the parties.

5. Total Project Cost; Cost-Sharing Responsibility:

- a. The total amount of federal funding and Grantee matching cash contribution provided under this Agreement is \$5,058,327,462.00 and is to be apportioned as set forth in subsections (b)-(f) of this section 5. The costs for completing the tasks required in Attachments 3 in the funding percentages identified in subsections (c) and (e) of this section 5 and all costs in excess of those provided by FRA as identified in this section will be the responsibility of the Grantee as described in subsection (i) of this section 5.
- b. For the funds obligated in the Original Agreement and Amendment No. 1, FRA funding assistance is limited to 49.8182% of the amount in subsection (a) of this section 5 (excluding the total funding added by Amendment No. 2), or \$2,466,176,231.00, whichever is less.
- c. For the funds obligated in the Original Agreement and Amendment No. 1, Grantee funding assistance shall not be less than 50.1818% of the amount in subsection (a) of this section 5, which is currently estimated not to be less than \$2,484,176,231.00.
- d. For the funds obligated in Amendment No. 2, FRA funding assistance is limited to 80.000% of the total amount of \$107,975,000, which is \$86,380,000.00.
- e. For the funds obligated in Amendment No. 2, Grantee funding assistance shall not be less than 20.000% of the total amount of \$107,975,000, which is currently estimated to be not less than \$21,595,000.00.
- f. Of the amount specified in subparagraph (a) of this section 5, the total Grantee funding contribution (both subparagraphs (c) and (e) of this section 5) is estimated to be not less than \$2,505,771,231.00.
- g. When requesting payment, the Grantee must identify: (1) the total amount of costs; (2) Grantee funding assistance applied to the Project; and (3) the balance of Federal assistance dollars requested for each payment. Payment requests must include a designation of the individual work effort involved. The Grantee may provide its funding assistance under this subsection from permissible non-Grantee sources.

h. Funding responsibility under this Agreement is recapped as follows:

	FRA Funding Assistance	+	Grantee Cash Contribution	+	Grantee In-Kind Contribution	=	Total Funding
\$ Original Agreement	\$ 194,000,000	+	\$ 194,000,000	+	\$0	=	\$ 388,000,000
\$ Amendment No. 1 (PE/NEPA/CEQA)	\$ 37,500,000	+	\$ 53,500,000	+	\$0	=	\$ 91,000,000
\$ Amendment No. 1 (FD/Construction)	\$2,234,676,231	+	\$2,236,676,231	+	\$0	=	\$4,471,352,462
\$ Amendment No. 2 (FD/Construction)	\$ 86,380,000	+	\$ 21,595,000	+	\$0	=	\$ 107,975,000
\$ Total Amount	\$2,552,556,231	+	\$2,505,771,231	+	\$0	=	\$5,058,327,462

- i. The Grantee will also provide any additional non-federal funding necessary to complete the Project, as further described in the Statement of Work and the Approved Project Budget.
- j. In accordance with Attachment 2, Sections 7(c)(5) and (d)(1) herein, FRA hereby authorizes the incurrence of pre-agreement costs by the Grantee on or after February 17, 2009, in anticipation of Agreement award, but such costs are allowable only to the extent that they are otherwise allowable under the terms of this Agreement.
- k. FRA recognizes that unless otherwise stated herein, the Grantee anticipates using proceeds of Proposition 1A bonds to provide the Grantee's match funding as required by Subsections 5(c), 5(e), and 5(f) hereof, but that the issuance and sale of Proposition 1A bonds are subject to certain other state legal requirements. In the event the Grantee does not expect such proceeds to be available in time to provide the contributory match concurrent with its request for grant funds, the Grantee shall make all reasonable efforts to secure a substitute funding source to deliver the required funding. Notwithstanding the foregoing, if the Grantee does not meet its obligations to deliver the Grantee contributory match according to the terms of this Agreement, FRA reserves all rights under law and this including those in Attachment 2, Section 23.

6. Program Income:

The Grantee is encouraged to earn income to defray Project costs. Unless prohibited by 49 C.F.R. Part 18.25 or 40 C.F.R Part 19.24, as applicable, or otherwise agreed to in writing to by FRA and the Grantee, any program income derived from the Project shall be committed under this Agreement to further eligible objectives of the Project.

7. Payment Method:

Payment of FRA: funding through FRA's Office of Financial Services, shall be made on reimbursable basis, whereby the Grantee will be reimbursed, after the submission of proper invoices, for actual expenses incurred. FRA may use the advanced payment method or working capital advance to fund requested expenses as permitted by 49 C.F.R.

18.21, where expenditures are consistent with the FRA-approved Funding Contribution Plan, and after receipt and FRA-approval of a written justification and request from the Grantee. Any written justification for a working capital advance must be sufficient to demonstrate that the Grantee meets the criteria in 49 C.F.R. 18.21(e), specify the activities that will be funded from the working capital advance, identify the amount requested, and describe the Grantee's plan to use the working capital advance and the timeframe in which it will be expended.

The Grantee will use the Automated Clearing House (ACH) Electronic Vendor Payment method for transfer of funds and submit either a SF-270 or SF-271 form. Requests for payment must be made through the Department of Transportation's Delphi eInvoicing System. Information on the Delphi eInvoicing System can be found at: <http://www.dot.gov/cfo/delphi-einvoicing-system.html>.

To obtain access to the Delphi eInvoicing System, please contact your grant Administrative Officer or Grant Manager.

8. Payment Conditions:

Concurrently with its submission of invoices for actual expenses incurred for each request for payment, and prior to FRA's issuance of each payment, the Grantee shall submit to FRA a statement certifying to the following conditions of payment:

- a. The purpose of the Project is to benefit intercity passenger rail service;
- b. That there has been no material adverse change in pending litigation, including the timeline for resolution, or change in any other circumstances that might prevent the Grantee from securing and delivering its required matching funding contribution, including any change in circumstances consistent with the Funding Contribution Plan required by this Agreement;
- c. That the Grantee has completed all actions necessary to provide its matching funding contribution as required by the terms of this Agreement and the Funding Contribution Plan required by this Agreement;
- d. Progress on the Project is being made in a sound, economical, and efficient manner, and in accordance with all applicable laws, regulations, and published policies;
- e. Progress on the Project is being made in accordance with the Approved Project Budget as described in Section 4 of Attachment 2 to this Agreement;
- f. There has been no change in law, conditions, or any other event, including litigation, that may affect the Grantee's ability to complete the Project in accordance with the terms of this Agreement;
- g. Where the Grantee has submitted a Risk Mitigation Strategy to FRA, that there has been no adverse change in circumstances that might alter the assessment of identified risks; and
- h. For payment of expenses related to final design and/or construction of the Project:
 - 1) Progress on the Project is consistent with and as described in the Grantee's project management plan, as described in Section 3 of Attachment 1A to this Agreement;

- 2) Progress on the Project is consistent with and as described in the Grantee's financial plan as described in Section 4 of Attachment 1A to this Agreement; and
- 3) Progress on the Project is within the scope of the environmental review described in Section 5 of Attachment 1A to this Agreement.

The Grantee agrees that FRA's issuance of each payment is conditioned upon Grantee's satisfaction of the above conditions. If Grantee fails to certify to any condition, FRA may withhold the requested payment.

9. Reports, Presentation and Other Deliverables:

Whether for technical examination, administrative review, or publication, all submittals shall be of a professional quality and suitable for their intended purpose.

10. Progress Reports:

Four quarterly progress reports following the form of Attachment 4 shall be submitted for periods: January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31. The Grantee shall furnish one (1) copy of the Grant Manager on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. Each report shall set forth concise statements concerning activities relevant to the Project, and shall include, but not be limited to, the following:

- a. Relate the state of completion of times in the Statement of Work to expenditures of relevant budget elements.
- b. An account of significant progress (findings, events, trends, etc.) made during the reporting period.
- c. A description of any technical and/or cost problems encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in the Agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered.
- d. An outline of work and activities planned for the next reporting period.

Semiannual Proposition 1A bond sale Progress Reports shall be submitted for periods: January 1 –June 30, July 1 –December 31. The Grantee shall furnish one (1) copy of the Proposition 1A bond sale Progress report to the Grant Manager on or before the thirtieth (30th) calendar day of the month following the end of the half year being reported. Each report shall set forth concise statements concerning activities relevant to the Project, and shall include, but not be limited to, the following:

- a. The Grantee's actions taken to issue and sell Proposition 1A bonds.
- b. The amount of Proposition 1A bond proceeds issued, sold and approved for Project use.

11. Quarterly Federal Financial Report:

The Grantee shall furnish one (1) copy of a quarterly financial status report to the Grant Manager, and one (1) copy to the Administrative Office, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. The Grantee shall use SF-425, Federal Financial Report, in accordance with the instructions accompanying the form, to report all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income.

12. Interim and/or Final Report(s):

If required, interim reports will be due at intervals specified in the Statement of Work. Within 90 days of the Project completion date or termination by FRA, the Grantee shall furnish one (1) hard copy and one (1) reproducible master original to the Grant Manager, and one (1) hard copy to the FRA Administrative Office of a Summary Project Report. A final version of this report, detailing the results and benefits of the Grantee's improvement efforts, shall be furnished by the expiration date of this Agreement.

13. Administrative Responsibility:

Mr. Matthew Lorah, Office of Financial Management is designated as FRA's Administrative Officer for this Project. All FRA administrative duties under this Agreement are to be performed by the Administrative Officer, unless otherwise specified.

14. Grant Manager:

- a. Ms. Mariam Ouhamou, Office of Railroad Policy and Development is designated as FRA's Grant Manager. The Grant Manager will oversee the technical administration of this Agreement and act as technical liaison with the Grantee. The Grant Manager is not authorized to change the Statement of Work or specifications as stated in this Agreement, to make any commitments or otherwise obligate the FRA, or authorized any changes which affect this Agreement's monetary amount, the delivery schedule, period of performance or other terms or conditions.
- b. The FRA official authorized to sign this Agreement is the only individual who can legally commit or obligate FRA for the expenditure of public funds. The technical administration of this Agreement shall not be construed to authorize the revision of the terms and conditions of this Agreement.

15. Delivery/Mailing Address:

Unless directed otherwise, all deliverables and copies of reports required to be delivered to the Grant Manager under this Agreement shall be delivered F.O.B. destination, under transmittal letter, to:

Federal Railroad Administration
Office of Railroad Policy and Development
1200 New Jersey, SE (**SELECT** Mail Stop 20 OR Mail Stop 25)
Washington, DC 20590
ATTN: Ms. Mariam Ouhamou

Unless directed otherwise, all deliverables and copies of reports required to be delivered to the Administrative Officer under this Agreement shall be delivered F.O.B. destination, under transmittal letter to:

Federal Railroad Administration
Office of Financial Management
1200 New Jersey Avenue, SE (Mail Stop 45)
Washington, DC 20590
ATTN: Mr. Matthew Lorah

16. Governing Regulations:

The Grantee acknowledges that its performance shall be governed by and in compliance with the following Administrative and Cost Principles:

For State, Local and/or Tribal Governmental Entities:

1. 49 C.F.R. Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”
2. OMB Circular A-87, “Cost Principles for State and Local Governments,” as amended.

For non-profit and for-profit:

1. 49 C.F.R. Part 19, “Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations” (applies to non-profit and for-profit organizations).
2. OMB Circular A-21, “Cost Principles for Education Institutions” (applies to educational institutions).
3. OMB Circular A-122, “Cost Principles for Nonprofit Organizations” (applies to private non-profit organizations).
4. Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, “Contracts with Commercial Organizations” (applies to for-profit organizations).

These identified circulars and regulations are hereby incorporated into this Agreement by reference as if fully set out herein.

17. Buy America:

The Grantee shall comply with the Buy America provisions set forth in 49 U.S.C. §24405(a) for the Project requiring the use of steel, iron, and manufactured goods produced in the United States, in accordance with the conditions therein set forth.

- C. Attachment 1A is deleted in its entirety, and the following is substituted therefor:

PRIIA Clauses for Corridor Programs, Attachment 1A

Section 1. Railroad Agreements.

The Grantee represents that it has entered into and will abide by, or will enter into and abide by, a written agreement, in form and content satisfactory to FRA, with any railroad owning property on which the Project is to be undertaken, in accordance with 49 U.S.C. 24405(c)(1) and section 4.2.6 of the High Speed Intercity Passenger Rail (HSIPR) Program Interim Guidance published in the Federal Register on July 1, 2010 (75 FR 38344). Such agreement shall provide for compensation for use, assurance regarding the adequacy of infrastructure capacity, a commitment to keeping railroad collective bargaining agreements in full force and effect, and compliance with liability requirements consistent with 49 U.S.C. 28103. The Grantee shall not enter into or agree to any substantive changes to the FRA approved written agreement with the railroad on which the Project is undertaken without FRA's prior written consent. The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of the final design and/or construction for the Project, or any component of the Project, without receiving FRA's prior written approval of the executed railroad agreement satisfying the requirements of this section.

Section 2. Service Outcome Agreements with Infrastructure Owners and Operators.

- a. The Grantee represents that it has or will have satisfactory continuing control over the use of Project improvements and the capability and ability to maintain the Project improvements for the useful life of the Project, in accordance with 49 U.S.C. 24402(b)(1) and (c)(1)(B). Satisfactory continuing control may be established by either the direct ownership of Project improvements or through a written agreement(s) in form and content satisfactory to FRA with the owners of infrastructure on which the Project is to be undertaken and the proposed service operator of any rail passenger service that benefits from the Project, which agreement(s) shall authorize construction of, access to, and/or use of Project improvements for a minimum of twenty years from the date the Project improvements are placed in service. Such agreements may be combined, if appropriate.
- b. The written agreement(s) shall include the following minimum terms and conditions tailored to the Project: (1) specific identification of Project benefits in terms relevant to the Project being implemented, including, as appropriate, additional frequencies, improved reliability, future availability of developed capacity, and improved schedules, (2) a firm commitment on the part of the infrastructure owner and operator to achieving the Project benefits included in the Grantee's application and reflected in the Statement(s) of Work attached to this Agreement, and (3) reasonable and appropriate enforcement mechanisms that provide for prompt resolution of disputes and the ability of the Grantee to obtain the Project benefits funded through this Agreement in an expeditious and reasonable manner.
- c. The Grantee shall not enter into or agree to any substantive changes in the FRA-approved written agreement(s) with the infrastructure owner and service operator without FRA's prior written consent.

- d. The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written approval of a fully executed agreement(s) satisfying the requirements of this section.
- e. The agreement required by this section 2 is supplemental to any agreement that may be required by section 1 of Attachment 1A, however, the requirements of sections 1 and 2 may be satisfied in one agreement, where appropriate.

Section 3. Project Management Plan.

The Grantee may not obligate or expend any funds (Federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written approval of a project management plan that complies with the requirements of 49 U.S.C. §24403(a) and section 4.2.6 of the High Speed Intercity Passenger Rail (HSIPR) Program Interim Guidance published in the Federal Register on July 1, 2010 (75 FR 38344). The project management plan should document assumptions and decisions regarding communications, management processes, execution and overall project control.

Section 4. Financial Plans.

The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written approval of a financial plan that complies with the requirements of section 2.2 of the High Speed Intercity Passenger Rail (HSIPR) Program Interim Guidance published in the Federal Register on June 23, 2009 (74 FR 29900) and that is consistent with the requirements described in Attachment 3 Task 5.

Section 5. Environmental Assessment.

Prior to initiating final design, or commencing construction for the Project or any component of the Project, the Grantee shall submit all necessary environmental documentation, in accordance with Attachment 2, section 21(d) of this Agreement, and receive FRA's written confirmation that relevant Project environmental reviews have been completed for the overall Project or for an individual component of the Project that the Grantee proposes to advance to final design or construction (see also the relevant section(s) of the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding (e.g. section 1.5 and Appendix 3.2.9 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900))). The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving such written confirmation from FRA.

Section 6. Final Design and Engineering.

Prior to commencing final design activities for the Project or any individual component of the Project, the Grantee shall submit to FRA a complete set of Preliminary Engineering

documents, prepared by or on behalf of the Grantee in accordance with the provisions of Appendix 2.3 of the High-Speed Intercity Passenger Rail (HSIPR) Program Interim Guidance published in the Federal Register on July 1, 2010 (75 FR 38350), and in accordance with the Statement(s) of Work incorporated into this Agreement. Except in unusual circumstances and where approved in advance by FRA, the submitted Preliminary Engineering documents shall include evidence of concurrence by infrastructure owners and operators of rail service whose operations would be affected by the Project improvements. The Grantee may not obligate or expend any funds (Federal, state or private) for final design and/or final engineering of the Project, or commence any part of final design and/or final engineering for the Project or any component of the Project, without receiving FRA's prior written approval of the Preliminary Engineering documents.

Section 7. Construction.

Prior to commencing construction activities for the Project or any individual component of the Project, the Grantee shall submit to FRA a complete set of Final Design documents, completed by or on behalf of the Grantee in accordance with the provisions of Appendix 2.4 of the High-Speed Intercity Passenger Rail (HSIPR) Program Interim Guidance published in the Federal Register on July 1, 2010 (75 FR 38350), and in accordance with the Statement(s) of Work incorporated into this Agreement. In unusual circumstances where the Preliminary Engineering documents approved by FRA did not contain evidence of concurrence by infrastructure owners and operators of rail service whose operations would be affected by Project improvement, then the submitted Final Design documents shall include evidence of concurrence by such infrastructure owners and operators. The Grantee may not obligate or expend any funds (Federal, state or private) for construction of the Project, as defined in the Statement(s) of Work, or commence any part of construction for the Project or any component of the Project, without receiving FRA's prior written approval of the Final Design documents.

Section 8. Design/Build Program Plan.

Project components being implemented by the Grantee through a design/build implementation Process shall, with FRA's concurrence, comply with this section 8 in lieu of sections 6 and 7. Prior to commencing any design activities that follow preliminary engineering/design, and expressly including the preparation of final construction plans and detailed specifications for the performance of construction work for the Project or any individual component of the Project, the Grantee shall submit to FRA a comprehensive Design/Build Program Plan completed by or on behalf of the Grantee, and as described in the Statement of Work attached to this Agreement. The Design/Build Program Plan shall include, at a minimum, a description identifying: (1) the suitability of the Project as a design/build candidate, (2) the performance metrics to be used to assess successful Project completion, (3) the composition of the design/build Project team, (4) Project scope, (5) the decision factors to be used for the selection from among the design/build proposals, and (6) methods for contract administration. FRA may issue additional guidance in the future further describing the required contents of Design/Build Program Plans. Except in unusual circumstances and where approved in advance by FRA, the Grantee will be responsible for providing in the Design/Build Program Plan evidence of concurrence by infrastructure owners and operators of rail service whose operations would be affected by the Project improvements. The Grantee may not obligate or expend any funds (federal, state or private)

for implementing the design/build implementation process for the Project (not including preparation of the Plan) or any component of the Project or commence any part of implementing the design/build implementation process (not including the preparation of the Plan) without receiving FRA's prior written approval of the Design/Build Program Plan.

Section 9. Property Acquisition.

The Grantee may not obligate or expend any funds (Federal, state, or private) to acquire any real property for the Project, including rights-of-way, unless property acquisition is specifically authorized in the Statement of Work incorporated as an attachment to this Agreement and unless the required National Environmental Policy Act (NEPA) documentation for the associated acquisition step is by then completed as determined in writing by FRA and any required California Environmental Quality Act (CEQA) documentation for the associated acquisition step is by then completed as determined by the Grantee.

Section 10. Detailed Statements of Work For Project Components.

The Grantee may not obligate or expend any funds (Federal, state or private) for the final design and/or construction of the Project or commence any activity on or for the Project, that is not specifically authorized in a Statement of Work incorporated as an attachment to this Agreement and/or which has not secured all required FRA approvals. The parties recognize that this Agreement contemplates a phased Project implementation process, whereby individual Project components or phases will be implemented as they are developed by the Grantee and approved by FRA. These phases may be reflected in terms of stages of Project development (e.g., preliminary engineering, final design, or construction) or in terms of individual Project components (e.g., stations, interlocking, or third track construction) of the larger Project. The parties contemplate a series of amendments to this Agreement that will add greater definition to the individual Project components to be undertaken by the Grantee for each phase or component of Project implementation, and will authorize the Grantee to initiate the next phase of Project implementation, as reflected in the agreed-upon amendments or supplements to the Statement of Work. It is the Grantee's responsibility to propose revised or additional statements of work (including a detailed scope, schedule and budget) significantly in advance of proposed implementation, to allow for the Grantee and the FRA to agree on the components of that next phase, and adopt a revised or supplemental Statement of Work through an amendment to this Agreement.

Section 11. Buy America.

The Grantee shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) for the Project with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth.

Section 12. Labor Provisions.

49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this Agreement shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C 231 et seq.), the

Railway Labor Act (43 U.S.C.151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). The Grantee shall reflect these provisions in its agreements with the entities operating rail services over such rail infrastructure to the extent required by 49 U.S.C. 24405(b) and other laws referenced above.

Section 13. Labor Protective Arrangements.

For a project that uses rights-of-way owned by a railroad, the Grantee shall comply with the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836, with respect to employees affected by actions taken in connection with the Project financed in whole or in part under this Agreement (See 49 U.S.C. 24405(c).) The Grantee agrees to include the applicable protective arrangements established by the Department of Labor under 45 U.S.C. 836. in its agreements with entities operating rail services over rail infrastructure constructed as part of the Project. The following definitions apply for purposes of applying those protective arrangements:

‘Protected employee’ means an employee of a railroad who had an employment relationship with such railroad on the date on which the Grantee first applied for financial assistance applicable to the Project involved and who is affected by actions taken pursuant to this Agreement; provided, however, that an employee who was benefitted solely as a result of the Project shall not be a protected employee under these provisions.

‘Railroad’ means a rail carrier or a common carrier by railroad or express as defined in 49 U.S.C. 10102, and includes the National Railroad Passenger Corporation and the Alaska Railroad as well as a person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made pursuant to this Agreement.

Section 14. Maintenance Responsibility and Refunds.

- a. Except as otherwise provided herein, the Grantee shall ensure the maintenance of Project property to the level of utility (including applicable FRA track safety standards) which exists when the Project improvements are placed in service (as set forth in the Statement(s) of Work incorporated into this Agreement) for a period of twenty (20) years from the date such Project property was placed in service, consistent with the satisfactory continuing control and maintenance responsibilities of 49 U.S.C. 24402(b)(1) and (c)(1) and as addressed in Section 2 above. In the event the Project property is not maintained as required by this section, for a period of time in excess of six (6) months, or such other period as may be mutually determined by the parties, and is not restored within a reasonable time to the level of utility which exists when the Project improvements are placed in service, the Grantee will refund to FRA a pro-rata share of the Federal contribution, based upon the percentage remaining of the twenty (20) year period that commenced when the Project property was placed in service.
- b. In the event that all intercity passenger rail service making use of the Project property is discontinued during the twenty (20) year period, the Grantee shall continue to ensure that maintenance of the Project property, as set forth above, for a period of one (1) year from the date of the discontinuance to allow for the possible reintroduction of intercity rail passenger service.

Section 15. Project Use for Intercity Passenger Rail Service and Refunds.

- a. The Grantee acknowledges that the purpose of the Project is to benefit intercity passenger rail service. In the event that all intercity passenger rail service making use of the Project improvements is discontinued (for any reason) at any time during a period of twenty (20) years from the date such Project improvements were placed in service, as set forth above, and if such intercity passenger rail service is not reintroduced during a one (1) year period following the date of such discontinuance, the Grantee shall refund to FRA, no later than eighteen (18) months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the twenty (20) year period remaining at the time of such discontinuance.
- b. To the extent necessary and appropriate, sections 14 and 15 shall be implemented in a manner so as to avoid any double counting of any refunds paid or required to be paid to the FRA.

Section 16. Davis-Bacon Act Provisions.

Payment of prevailing wages on the Project is required by 49 U.S.C. 24405(c)(2) for Project components that use or would use rights-of-way owned by a railroad. The Grantee shall comply with the provisions of 40 U.S.C. 25505(c)(2) and the relevant section(s) of the HSIPR Program Interim Guidance /NOFA through which this Project was selected for funding (e.g. section 1.5 and Appendix 3.2.9 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with the Davis-Bacon Act requirements.

Section 17. Replacement of Existing Intercity Passenger Rail Service.

49 U.S.C. 24405(d) requires any entity providing intercity passenger railroad transportation on a project funded by this Agreement to comply with certain requirements with respect to its employees and the employees of preexisting intercity rail passenger services. The Grantee shall comply with the applicable provisions of 49 U.S.C. 24405(d) to the extent it is or becomes a provider of intercity passenger railroad transportation. If it is not the operator or provider of the intercity passenger rail services benefitting from the Project funded under this Agreement, then it shall notify its selected operator of the requirements imposed by section 24405(d).

Section 18. Additional Guidance

Additional guidance for Grantees in complying with the requirements of this Attachment 1A (and with the Cooperative Agreement generally) is found in the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding. The Grantee should refer to this Guidance as necessary when carrying out the activities associated with implementing this Project.

D. Attachment 1B is deleted in its entirety, and the following is substituted therefor:

American Recovery and Reinvestment Act of 2009 Clauses, Attachment 1B

The Grantee will comply with the following clauses, which are an integral part of the Agreement to which these clauses are attached and made a part thereof.

Section 1. Grantee Certifications.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) requires three certifications, which the Grantee shall address as follows:

- a. **Maintenance of Effort Certification (Recovery Act Section 1201).** A Maintenance of Effort Certification was required from each State within thirty days of enactment of the Recovery Act (February 17, 2009) pursuant to section 1201 of the Recovery Act. With respect to the Recovery Act funds provided through this Agreement, the Grantee may rely on an existing certification submitted by the State to the Secretary of Transportation, so long as the Grantee certifies to the Administrator (c/o the Grant Manager identified in Attachment 2, section 14) as to the existence and continued validity of the existing certification. If a new certification is required, it should be submitted to the Secretary of Transportation, c/o Joel Szabat, Deputy Assistant Secretary of Transportation for Policy, at TigerTeam.Leads@dot.gov. Certifications may be submitted via e-mail as electronic, scanned copies, with original signed versions to be submitted via U.S. mail.
- b. **Responsible Investments Certification (Recovery Act Section 1511).** With respect to and prior to the receipt of the funds made available through this Agreement, the Governor or the head of the State Department of Transportation shall certify to the Secretary of Transportation that the infrastructure investments to be funded herein have received the full review and vetting required by law and that the Governor or head of the State Department of Transportation accepts responsibility that the infrastructure investments are an appropriate use of taxpayer dollars. The certification shall include a description of the investments, the estimated total cost, and the amount of Recovery Act funds to be used, and shall be submitted to the Secretary of Transportation, c/o Joel Szabat, Deputy Assistant Secretary of Transportation for Policy, at TigerTeam.Leads@dot.gov. Certifications may be submitted via e-mail as electronic, scanned copies, with original signed versions to be submitted via U.S. mail. As required by the Recovery Act, Certifications under Section 1511 shall be immediately posted on an appropriate State website and linked to the website established by the Recovery Accountability and Transparency Board. No funds will be reimbursed until such posting is made.
- c. **Appropriate Use of Funds Certification (Recovery Act Section 1607).** An Appropriate Use of Funds Certification was required from each State within 45 days of enactment of the Recovery Act (February 17, 2009) pursuant to section 1607 of the Recovery Act. With respect to the Recovery Act funds provided through this Agreement, the Grantee may rely on an existing certification submitted by the State to the Secretary of Transportation, so long as the Grantee certifies to the Administrator (c/o the Grant Manager identified in Attachment 2, Section 14) of the existence and continued validity of the existing certification. If a new certification is required, it should be submitted to the Secretary of Transportation, c/o Joel Szabat, Deputy Assistant Secretary of

Transportation for Policy, at TigerTeam.Leads@dot.gov. Certifications may be submitted via e-mail as electronic, scanned copies, with original signed versions to be submitted via U.S. mail.

- d. **Department of Transportation Guidance.** The Department has issued guidance on compliance with the certification requirements of the Recovery Act, which is found at <http://www.dot.gov/recovery/certguidance.htm>. The Grantee should refer to this guidance in evaluating the continued validity of any existing certifications and in preparing any new certifications required under this section 1.

Section 2. Whistleblower Protections.

An employee of the Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate for misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of – (1) gross mismanagement of an agency contract or grant relating to Recovery Act funds; (2) a gross waste of Recovery Act funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of Recovery Act funds; (4) an abuse of authority related to the implementation or use of Recovery Act funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to Recovery Act funds.

Section 3. False Claims Act.

The Grantee and any sub-grantee awarded funds made available under the Recovery Act and through this Agreement shall promptly refer to the Department of Transportation Inspector General any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

Section 4. Prohibited Activities.

None of the funds provided through this Agreement may be used for any casino or other gaming establishment, aquarium, zoo, golf course or swimming pool.

Section 5. Recovery Act Funding Announcement.

The Grantee is strongly encouraged to post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased or rehabilitated rail cars announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs or plaques will be consistent with guidance issued by the Office of Management and Budget and/or the Department of Transportation and approved by the FRA.

Section 6. Reporting Requirements.

- a. **Periodic Reports.** The Grantee shall submit periodic reports to the FRA Administrator, as required by section 1201(c) of the Recovery Act, and as described in this section, not later than February 17, 2011, and February 17, 2012. The periodic reports shall include information describing: (1) the amount of Federal funds appropriated, allocated, obligated, and outlaid under this Agreement; (2) the number of projects that have been put out to bid under this Agreement and the amount of Federal funds associated with such projects; (3) the number of projects for which contracts have been awarded under this Agreement and the amount of Federal funds associated with such contracts; (4) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts; (5) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts; (6) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under this Agreement and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of jobs created and the total increase in employment since February 17, 2009; and (7) information tracking the actual aggregate expenditures by the Grantee from Grantee sources (both internal and external) for projects eligible for funding under this Agreement during the period beginning on February 17, 2009 through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of February 17, 2009. The Department of Transportation or the FRA may issue additional guidance on the preparation and submission of periodic reports.
- b. **Jobs Accountability Reports.**
 - 1) As required by Section 1512(c) of the Recovery Act, and consistent with Office of Management and Budget (OMB) Guidance, dated June 22, 2009 and found at (http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf), the Grantee shall submit a jobs accountability report to <http://www.FederalReporting.gov> not later than ten days after the end of each quarter. The report shall contain:
 - (1) the total amount of Recovery Act funds received pursuant to this Agreement;
 - (2) the amount of Recovery Act funds received that were expended or obligated to projects or activities; and
 - (3) a detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including—(A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) detailed information on any subcontracts or subgrants awarded by the Grantee to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.
 - 2) Information from these reports will be made available to the public. The reporting responsibility should be passed down from the Grantee to the sub-grantee/sub-recipient or vendor, in order to ensure that the necessary information is provided to the Grantee, which is ultimately responsible for reporting the required elements. The

Office of Management and Budget may issue additional guidance on the preparation and submission of jobs accountability reports. The Grantee must also register with the Central Contractor Registration database (<http://www.ccr.gov>) or complete other registration requirements as determined by the Director of the Office of Management and Budget. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

Section 7. Contract Awards

As required by Section 1554 of the Recovery Act, the Grantee shall to the maximum extent possible award contracts funded under this Agreement as fixed-priced contracts through the use of competitive procedures. In rare circumstances where the Grantee awards a contract that is not fixed-price and not awarded using competitive procedures, the Grantee shall publicly and electronically post a summary of such contract on its website and electronically link such posting to the website created and maintained by the Recovery Accountability and Transparency Board pursuant to section 1526 of the Recovery Act.

Section 8. Deadline for Recovery Act Reimbursement

The Grantee acknowledges that pursuant to 31 U.S.C. § 1552 and as described in the High-Speed Intercity Passenger Rail (HSIPR) Interim Guidance published in the *Federal Register* on June 23, 2009 (74 FR 29900), the fixed appropriation account for funds made available under the Recovery Act closes on September 30, 2017 and any remaining balance (whether obligated or unobligated) in that account shall be cancelled and thereafter shall not be available for obligation or expenditure for any purpose. Therefore, the Grantee is responsible for submitting to FRA all materials necessary for Project Recovery Act closeout and meeting all other requirements for payment under 49 C.F.R. Part 18 with sufficient time for the completion of closeout and payment no later September 30, 2017. FRA shall process all such materials, and complete final closeout and reimbursement by September 30, 2017, provided that FRA receives such materials from CHSRA and determines those materials are consistent with the requirements above by July 31, 2017. Nothing in this Section 8 changes the Grantee's obligations to complete the tasks required in Attachments 3, and meet all other requirements, within the time period otherwise specified in Section 4 of this Cooperative Agreement.

E. Attachment 2 is deleted in its entirety, and the following is substituted therefor:

General Provisions, Attachment 2

1. Definitions. As used in this Agreement:

- a. **Agreement** means this Grant Agreement or Cooperative Agreement, including all attachments.
- b. **Application** means the signed and dated proposal by or on behalf of the Grantee, as may be amended, for Federal financial assistance for the Project, together with all explanatory, supporting, and supplementary documents heretofore filed with and accepted or approved by FRA.
- c. **Approved Project Budget** means the most recently dated written statement, approved in writing by FRA, of the estimated total cost of the Project, the items to be deducted from such total in order to calculate the estimated net Project cost, the maximum amount of Federal assistance for which the Grantee is currently eligible, the specific items (including contingencies specified) for which the total may be spent, and the estimated cost of each of such items. The term "Approved Project Budget" also includes "Financial Plan" as used in 49 C.F.R. Part 19.
- d. **Awarding Agency** means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant. In the case of a Federal Agency, the term "Awarding Agency" also includes "Federal Awarding Agency" as used in 49 C.F.R. Part 19.
- e. **Federal Railroad Administration** is an operating administration of the U.S. Department of Transportation.
- f. **Federal Government** means the United States of America and any executive department or agency thereof.
- g. **Grantee** means any entity that receives Federal grant assistance directly from FRA for the accomplishment of the Project.
- h. **Project** means the task or set of tasks set forth in the approved Application as now reflected in and refined by the individual work efforts set forth in Attachment 3 and any supplements thereto which the Grantee carries out pursuant to this Agreement.
- i. **Subgrantee** means any entity that receives FRA assistance from an FRA Grantee, rather than from FRA directly. The term "subgrantee" does not include "third party contractor."
- j. **U.S. DOT** means the U.S. Department of Transportation, including its operating administrations.
- k. **California High Speed Rail Authority (CHSRA or Grantee)**, an agency of the State of California established pursuant to California Public Utilities Code Section 185020, is the State of California entity responsible for planning, constructing and operating a high speed train system in California.

2. Accomplishment of the Project:

a. General Requirements:

The Grantee agrees to carry out the Project in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, grant guidance, the Application, the Approved Project Budget, the Statement of Work, Project schedules, and all applicable laws, regulations, and published policies. This includes, but is not limited to the following, as applicable:

- 1) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (common grant management rule), 49 C.F.R. Part 18, applies to Projects with governmental bodies.
- 2) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," 49 C.F.R. Part 19, applies to Projects with institutions of higher education and private nonprofit organizations. 49 C.F.R. Part 19 also applies to grants and cooperative agreements with private for-profit organizations.

b. Application of Federal, State, and Local Laws and Regulations.

- 1) Federal Laws and Regulations. The Grantee understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date the Agreement was executed may be modified from time to time. The Grantee agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if FRA specifies otherwise (as permitted by law) in writing or there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, the Grantee agrees to include in all sub-assistance agreements and third party contracts financed with FRA assistance, specific notice that Federal requirements may change and the changed requirements will apply to the Project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
- 2) State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Agreement shall require the Grantee to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Grantee to violate any applicable State or territorial law, the Grantee agrees to notify the FRA immediately in writing in order that FRA and the Grantee may make appropriate arrangements to proceed with the Project as soon as possible.

- c. **Funds of the Grantee.** Unless otherwise stated in this Agreement, the Grantee agrees to provide the matching contributory funds or cost share of the Project costs, if applicable, at or before the time that such funds are needed to meet Project expenses.

- d. **Changed Conditions of Performance (Including Litigation).** The Grantee agrees to notify FRA immediately of any change in local law, conditions, or any other event that may affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the Grantee agrees to notify FRA immediately of any decision pertaining to the Grantee's conduct of litigation that may affect FRA's interests in the Project or FRA's administration or enforcement of applicable Federal laws or regulations. Before the Grantee may name FRA as a party to litigation for any reason, the Grantee agrees first to inform FRA; this proviso applies to any type of litigation whatsoever, in any forum.
- e. **No FRA Obligations to Third Parties.** Absent FRA's express written consent, and notwithstanding any concurrence by FRA in or approval of the award of any contract of the Grantee (third party contract) or subcontract of the Grantee (third party subcontract) or the solicitation thereof, FRA shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person not a party to this Agreement in connection with the performance of the Project.

3. Ethics:

- a. **Standards of Conduct.** The Grantee agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by Federal funds. The code or standards shall provide that the Grantee's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors or subgrantees. The Grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by the Grantee's officers, employees, board members, or agents, or by contractors or subgrantees or their agents.
 - 1) **Personal Conflict of Interest.** The Grantee's code or standards must provide that no employee, officer, board member, or agent of the Grantee may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:
 - a) The employee, officer, board member, or agent;
 - b) Any member of his or her immediate family;
 - c) His or her partner; or
 - d) An organization that employs, or is about to employ, any of the above.
 - 2) **Organizational Conflicts of Interest.** The Grantee's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

- b. **Existing Provisions.** This section does not require the Grantee to implement a new code or standards of conduct where a State statute, or written code or standards of conduct, already effectively covers all of the elements of a.

4. Approved Project Budget:

The Grantee agrees to carry out the Project in accordance with the Approved Project Budget, written approval of which the Grantee shall secure prior to being paid under this Agreement. If the Approved Project Budget is included in this Agreement as Attachment 3, execution of the Agreement shall constitute such written approval. The Grantee agrees to obtain the prior written approval of FRA's Associate Administrator for Railroad Policy and Development or the Associate Administrator for Railroad Safety/Chief Safety Officer, as applicable, for any revisions to the Approved Project Budget that equal or exceed 10 percent any line item or pertain to a line item involving contingency or miscellaneous costs. For revisions to the Approved Project Budget that are less than 10 percent of any line item, and do not involve contingency or miscellaneous costs, the Grantee agrees to notify FRA of the revisions to the Approved Project Budget. Any revisions to the Approved Project Budget must not affect total project costs or the respective cost-sharing responsibilities set forth in Attachment 1, Section 5.

5. Accounting Records:

- a. **Project Accounts.** The Grantee agrees to establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 49 C.F.R. § 18.20, or 49 C.F.R. § 19.21, as amended, whichever is applicable.
- b. **Funds Received or Made Available for the Project.** Consistent with the provisions of 49 C.F.R. § 18.21, or 49 C.F.R. § 19.21, as amended, whichever is applicable, the Grantee agrees to record in the Project Account, and deposit in a financial institution all Project payments received by it from FRA pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the Project (Project Funds). The Grantee is encouraged to use financial institutions owned at least 50 percent by minority group members.
- c. **Documentation of Project Costs and Program Income.** All costs charged to the Project, including any approved services contributed by the Grantee or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee also agrees to maintain accurate records of all Program Income derived from Project implementation.
- d. **Checks, Orders, and Vouchers.** The Grantee agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

6. Record Retention:

- a. **Submission of Proceedings, Contracts and Other Documents.** During the course of the Project and for three years thereafter, the Grantee agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as FRA may require. Reporting and record-keeping requirements are set forth in-
- 1) 49 C.F.R. Part 18 for governmental Grantees; and
 - 2) 49 C.F.R. Part 19 for private non-profit and for-profit Grantees.

Project closeout does not alter these requirements.

b. Audit and Inspection.

- 1) General Audit Requirements. A Grantee that is:
 - a) a State, local government or Indian tribal government agrees to comply with the audit requirements of 49 C.F.R. § 18.26 and OMB Circular A-133, and any revision or supplement thereto.
 - b) an institution of higher education or nonprofit organization agrees to comply with the audit requirements of 49 C.F.R. § 19.26 and OMB Circular A-133, and any revision or supplement thereto.
 - c) a private for-profit organization agrees to comply with the audit requirements of OMB Circular A-133.

The Grantee agrees to obtain any other audits required by FRA. Project closeout will not alter the Grantee's audit responsibilities. Audit costs for Project administration and management are allowable under this Project to the extent authorized by OMB Circular A-87, Revised; OMB Circular A-21, Revised; or OMB Circular A-122, Revised.

- 2) Inspection by Federal Officials. The Grantee agrees to permit the Secretary and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its contractors pertaining to the Project. The Grantee agrees to require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

7. Payments:

- a. **Request by the Grantee for Payment.** The Grantee's request for payment of the Federal share of allowable costs shall be made to FRA via the Department of Transportation's Delphi eInvoicing System, and will be acted upon by FRA as set forth in this section. Information on the Delphi eInvoicing System can be found in Section 7 of Attachment 1, Special Provisions. Each payment made to the Grantee must comply with Department of the Treasury regulations, "Rules and Procedures for Funds Transfers," 31C.F.R. Part 205. To receive a Federal assistance payment, the Grantee must:

- 1) Have demonstrated or certified that it has made a binding commitment of non-Federal funds, if applicable, adequate when combined with Federal payments, to cover all costs to be incurred under the Project to date. A Grantee required by Federal statute or this Agreement to provide contributory matching funds or a cost share agrees:
 - a) to refrain from requesting or obtaining Federal funds in excess of the amount justified by the contributory matching funds or cost share that has been provided; and
 - b) unless otherwise stated in this Agreement, to refrain from taking any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized under this Agreement. The requirement for contributory matching funds or cost share may be temporarily waived only to the extent expressly provided in writing by FRA;
- 2) Have submitted to FRA all financial and progress reports required to date under this Agreement; and
- 3) Have identified the source(s) of financial assistance provided under this Project, if applicable, from which the payment is to be derived.

b. Payment by FRA.

- 1) Reimbursement Payment by FRA. Unless otherwise stated in this Agreement, FRA shall use the reimbursement method, whereby the Grantee agrees to:
 - a) Complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Vendor Payment System," to FRA; and
 - b) Complete and submit Standard Form 270, "Request for Advance or Reimbursement," to FRA.
- 2) Advance Payment by FRA. Consistent with Attachment 1, Section 7 of this Agreement and where provided for in this Agreement, FRA may use the Advance Payment method whereby the Grantee agrees to:
 - a) Provide FRA with evidence of the existence of an interest-bearing account established to hold the advanced payment and to prevent co-mingling of funds.
 - b) Develop and implement procedures that ensure that the time between FRA's payment and the Grantee's disbursement is no more than 3 days.
 - c) Complete and submit Standard Form 270, "Requests for Advance or Reimbursement" to FRA.

Advance payment of grant funds shall be made only against invoices received by the Grantee for allowable costs of the Grantee on or before the date of payment request;

- 3) Consistent with Attachment 1, Section 7 of this Agreement, FRA may approve the use of the working capital advance method of payment whereby the Grantee agrees to:
 - a) Expend the working capital advance only on the activities identified in its FRA-approved request; and
 - b) Expend the working capital advance within the timeframe approved by FRA, or such other timeframe as FRA may approve in writing; and

- c) Provide a monthly report to FRA that describes the expenditures made from the working capital advance, identifies the remaining funding, and provides an updated plan for expending the remaining funds (if necessary).
- 4) Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles), FRA will authorize payment by direct deposit, or if requested by the Grantee, by issuance of a Treasury check (allow 30-day processing time for issuance of check), provided the Grantee: (i) is complying with its obligations under this Agreement, (ii) has satisfied FRA that it needs the requested Federal funds during the requisition period, and (iii) is making adequate and timely progress toward Project completion. If all these circumstances are present, FRA may pay allowable costs incurred by the Grantee consistent with the detailed Project Budget on file with FRA and the Funding Contribution Plan required by this Agreement.
- 5) Other Payment Information.
 - a) The Grantee agrees to adhere to and impose on its subgrantees all applicable foregoing "Payment by FRA" requirements of this Agreement.
 - b) If the Grantee fails to adhere to the foregoing "Payment by FRA" requirements of this Agreement, FRA may revoke the portion of the Grantee's funds that has not been expended.
- c. **Allowable Costs.** FRA will provide payment only if the Grantee's expenditures or anticipated expenditures meet all requirements set forth below:
 - 1) Conform with the Project description, the Statement of Work, and the Approved Project Budget and all other terms of this Agreement;
 - 2) Be necessary in order to accomplish the Project;
 - 3) Be reasonable for the goods or services purchased;
 - 4) Be actual net costs to the Grantee (i.e., the price paid minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);
 - 5) Be incurred (and be for work performed) after the effective date of this Agreement, unless specific authorization from FRA to the contrary is received in writing;
 - 6) Unless permitted otherwise by Federal status or regulation, conform with Federal guidelines or regulations and Federal cost principles as set forth below:
 - a) For Grantees that are governmental organizations, the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments" apply;
 - b) For Grantees that are institutions of higher education, the standards of OMB Circular A-21, Revised, "Cost Principles for Educational Institutions" apply;
 - c) For Grantees that are private nonprofit organizations, the standards of OMB Circular A-122, Revised, "Cost Principles for Nonprofit Organizations" apply; and
 - d) For Grantees that are for-profit organizations, the standards of the Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" apply;

- 7) Be satisfactorily documented; and
 - 8) Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by FRA for the Grantee, and those approved or prescribed by the Grantee for its subgrantees and contractors.
- d. **Disallowed Costs.** In determining the amount of Federal assistance FRA will provide, FRA will exclude:
- 1) Any Project costs incurred by the Grantee before the obligation date of this Agreement, or amendment or modification thereof, whichever is later, unless specifically allowed by this Agreement, otherwise permitted by Federal law or regulation, or unless an authorized representative of FRA states in writing to the contrary;
 - 2) Any costs incurred by the Grantee that are not included in the latest Approved Project Budget; and
 - 3) Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FRA.

The Grantee agrees that payment of any cost under the "Payment by FRA," part of this Agreement does not constitute a final FRA decision about the allowability of that cost and does not constitute a waiver of any violation by the Grantee of the terms of this Agreement. The Grantee understands that FRA will not make a final determination about the allowability of any cost until an audit of the Project has been completed. If FRA determines that the Grantee is not entitled to receive any part of the Federal funds requested, FRA will notify the Grantee stating the reasons therefore. Project closeout will not alter the Grantee's obligation to return any funds due to FRA as a result of later refunds, corrections, or other transactions. Nor will Project closeout alter FRA's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, FRA may offset any Federal assistance funds to be made available under this Project as needed to satisfy any outstanding monetary claims that the Federal Government may have against the Grantee. Exceptions pertaining to disallowed costs will be assessed based on their applicability, as set forth in the applicable Federal cost principles or other written Federal guidance.

- e. **Bond Interest and Other Financing Costs.** To the extent permitted in writing by FRA, bond interest and other financing costs are allowable.
- f. **Requirement to Remit Interest.** The Grantee agrees that:
- 1) Any interest earned by the Grantee on FRA funds must be remitted to FRA, except as provided by 31 U.S.C. § 6503, or the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., and any regulations thereunder that may be issued by the U.S. Secretary of the Treasury.
 - 2) Irrespective of whether the Grantee has deposited funds in an interest-bearing account, the Grantee agrees to pay to FRA interest on any FRA funds that the Grantee has drawn down and failed to spend for eligible Project activities. Unless waived by FRA, interest will be calculated at rates imposed by the U.S. Secretary of the Treasury beginning on the fourth day after the funds were deposited in the Grantee's bank or other financial depository. This requirement does not apply to

any Grantee that is a state, state instrumentality, or Indian Tribal Government, except as permitted under applicable state law and by regulations that may be issued by the U.S. Secretary of the Treasury.

- 3) Upon notice by FRA to the Grantee of specific amounts due, the Grantee agrees to promptly remit to FRA any excess payment of amounts or disallowed costs, including any interest due thereon.
- g. **De-obligation of Funds.** Once the Project has been completed, FRA reserves the right to de-obligate unspent FRA funds prior to Project closeout.

8. Property, Equipment and Supplies:

Unless otherwise approved by FRA, the following conditions apply to property, equipment, and supplies financed under this Agreement:

- a. **Use of Property.** The Grantee agrees that Project property, equipment, and supplies shall be used for the provision of the Project activity for the duration of its useful life, as determined by FRA. Should the Grantee unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Grantee agrees that FRA may require the Grantee to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The Grantee further agrees to notify FRA immediately when any Project property or equipment is withdrawn from use in the Project activity or when such property or equipment is used in a manner substantially different from the representations made by the Grantee in its Application or the text of the Project description.
- b. **General Federal Requirements.**
 - 1) a Grantee that is a governmental entity agrees to comply with the property management standards of 49 C.F.R. §§ 18.31, 18.32, and 18.33, including any amendments thereto, and other applicable guidelines or regulations that are issued.
 - 2) a Grantee that is not a governmental entity agrees to comply with the property standards of 49 C.F.R. §§ 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued. Exceptions to the requirements of 49 C.F.R. §§ 18.31, 18.32, and 18.33, and 49 C.F.R. §§ 19.30 through 19.37 inclusive, must be specifically approved by FRA.
- c. **Maintenance.** The Grantee agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- d. **Records.** The Grantee agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section of this Agreement.
- e. **Transfer of Project Property.** The Grantee agrees that FRA may:
 - 1) require the Grantee to transfer title to any property, equipment, or supplies financed with FRA assistance made available by this Agreement, as permitted by 49 C.F.R. § 18.32(g) or 49 C.F.R. §§ 19.30 through 19.37 inclusive, whichever

may be applicable.

- 2) direct the disposition of property or equipment financed with FRA assistance made available under this Agreement, as set forth by 49 C.F.R. §§ 18.31 and 18.32 or 49 C.F.R. §§ 19.30 through 19.37 inclusive, whichever may be applicable.
- f. **Withdrawn Property.** If any Project property, equipment, or supplies are not used for the Project for the duration of its useful life, as determined by FRA, whether by planned withdrawal, misuse or casualty loss, the Grantee agrees to notify FRA immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 18.31 and 18.32 for a Grantee that is a governmental entity, or 49 C.F.R. §§ 19.30 through 19.37 inclusive, for a Grantee that is an institution of higher education or a private organization.
- g. **Encumbrance of Project Property.** Unless expressly authorized in writing by FRA, the Grantee agrees to refrain from:
- 1) Executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect FRA interest in any Project property or equipment; or
 - 2) Obligating itself in any manner to any third party with respect to Project property or equipment.

The Grantee agrees to refrain from taking any action or acting in a manner that would adversely affect FRA's interest or impair the Grantee's continuing control over the use of Project property or equipment.

9. Relocation and Land Acquisition:

The Grantee agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and U.S.DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.

10. Flood Hazards:

The Grantee 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. § 4012a(a), with respect to any construction or acquisition Project.

11. Procurement:

- a. **Federal Standards.** The Grantee agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48 inclusive, whichever may be applicable, and with applicable supplementary U.S. DOT or FRA directives or regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Grantee's technical specifications and requirements.
- b. **Cargo Preference -- Use of United States-Flag Vessels.** Pursuant to U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, the Grantee shall insert the following clauses in contracts let by the

Grantee in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

As required by 46 C.F.R. Part 381, the contractor agrees -

- 1) To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
 - 2) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.
 - 3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.
- c. **Notification Requirement.** With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the Grantee agrees to:
- 1) specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and
 - 2) express the said amount as a percentage of the total costs of the planned acquisition.
- d. **Debarment and Suspension; and Drug-Free Work Place.** The Grantee agrees to obtain certifications on debarment and suspension from its third party contractors and subgrantees and otherwise comply with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, and "Government wide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32.
- e. **Notification of Third Party Contract Disputes or Breaches.** The Grantee agrees to notify FRA of any current or prospective major dispute, breach, or litigation pertaining to any third party contract. If the Grantee seeks to name FRA as a party to litigation for any reason, the Grantee agrees first to inform FRA before doing so. This proviso applies to any type of litigation whatsoever, in any forum.
- f. **Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.**
- 1) The Grantee agrees to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.

- 2) An example of a best practice under (b) above would be to incorporate key elements of the Department's Disadvantage Business Enterprise (DBE) program (see 49 C.F.R. Part 26) in contracts under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Grantee would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a Grantee, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement.
- 3) The Grantee must provide FRA a plan for incorporating the above best practice into its implementation of the Project within 30 days following execution of this Agreement. If the Grantee is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the Grantee agrees to provide the FRA with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

12. Metric System:

The Grantee agrees to use the metric system of measurement in its Project activities to the extent practicable, in conformance with applicable regulations, guidelines, and policies that U.S. DOT or FRA may issue. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impracticable or likely to cause significant inefficiencies or loss of markets to U.S. firms.

13. Patent Rights:

- a. If any invention, improvement, or discovery of the Grantee or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Grantee agrees to notify FRA immediately and provide a detailed report. The rights and responsibilities of the Grantee, third party contractors and FRA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- b. If the Grantee secures a patent with respect to any invention, improvement, or discovery of the Grantee or any of its third party contractors conceived or first actually reduced to practice in the course of or under this Project, the Grantee agrees to grant to FRA a royalty-free, non-exclusive, and irrevocable license to use and to

authorize others to use the patented device or process for Federal Government purposes.

- c. The Grantee agrees to include the requirements of the "Patent Rights" section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

14. Rights in Data and Copyrights:

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.
- b. The following restrictions apply to all subject data first produced in the performance of this Agreement:
 - 1) Except for its own internal use, the Grantee may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Grantee authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.
 - 2) As authorized by 49 C.F.R. § 18.34, or 49 C.F.R. § 19.36, as applicable, FRA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a) Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and
 - b) Any rights of copyright to which a Grantee, subgrantee, or a third party contractor purchases ownership with Federal assistance.
- c. When FRA provides assistance to a Grantee for a Project involving planning, research, or development, it is generally FRA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FRA determines otherwise, the Grantee understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FRA may make available to any FRA Grantee, subgrantee, third party contractor, or third party subcontractor, either FRA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and

shall be delivered as FRA may direct.

- d. To the extent permitted by State law, the Grantee agrees to indemnify, save and hold harmless FRA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Grantee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Grantee shall not be required to indemnify FRA for any such liability arising out of the wrongful acts of employees or agents of FRA.
- e. Nothing contained in this section on rights in data, shall imply a license to FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FRA under any patent.
- f. The requirements of this section of this Agreement do not apply to material furnished to the Grantee by FRA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by the Grantee at the time of delivery of such work.
- g. Unless FRA determines otherwise, the Grantee agrees to include the requirements of this section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

15. Acknowledgment of Support and Disclaimer:

- a. An acknowledgment of FRA support and a disclaimer must appear in any grantee publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms:
 - “This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement, dated (Fill-in appropriate identification of grant/cooperative agreement).”
- b. All grantee publications must also contain the following:
 - “Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT.”
- c. The Grantee agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FRA identifying the Project and indicating that FRA is participating in the development of the Project.

16. Reprints of Publications:

At such time as any article resulting from work under this Agreement is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to FRA's Grant Manager, clearly referenced with the appropriate identifying information.

17. Site Visits:

FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and

to provide such technical assistance as may be required. If any site visit is made by FRA on the premises of the Grantee, subgrantee, contractor, or subcontractor under this Agreement, the Grantee shall provide and shall require its subgrantees or subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Grantee, subgrantee, contractor, or subcontractor.

18. Safety Oversight:

To the extent applicable, the Grantee agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

19. Civil Rights:

The Grantee agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex, (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title V111 of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing, (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the Grantee.

20. Americans With Disabilities Act:

The Grantee agrees to utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

21. Environmental Protection:

- a. All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.

- b. The Grantee will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued thereunder. The Grantee certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). The Grantee will notify the Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Grantee's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. The Grantee will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform the Grantee upon the receipt of a communication from the EPA concerning the matters set forth herein.
- c. The Grantee may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FRA has provided the Grantee with a written notice authorizing the Grantee to proceed.
- d. The Grantee shall assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, the Grantee may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).
- e. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by the Grantee without the prior written concurrence of FRA. The Grantee shall assist the FRA in complying with the requirements of 49 U.S.C. §303(c).
- f. The Grantee agrees to facilitate compliance with the policies of Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations

and Low-Income Populations," except to the extent that the FRA determines otherwise in writing.

22. Project Completion, Audit, Settlement, and Closeout:

- a. **Project Completion.** Within 90 days of the Project completion date or termination by FRA, the Grantee agrees to submit a final Federal Financial Report (Standard Form 425), a certification or summary of Project expenses, and third party audit reports, as applicable.
- b. **Audits.** Each governmental Grantee agrees to undertake the audits required by 49 C.F.R. § 18.26 and OMB Circular A-128 or any revision or supplement thereto. Each non-governmental Grantee agrees to undertake the audits required by 49 C.F.R. § 19.26 and OMB Circular A-133 or any revision or supplement thereto.
- c. **Remittance of Excess Payments.** If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee agrees to promptly remit that excess and interest as may be required by the "Payment by FRA" section of this Attachment.
- d. **Project Closeout.** Project closeout occurs when all required Project work and all administrative procedures described in 49 C.F.R. Part 18, or 49 C.F.R. Part 19, as applicable, have been completed, and when FRA notifies the Grantee and forwards the final Federal assistance payment, or when FRA acknowledges the Grantee's remittance of the proper refund. Project closeout shall not invalidate any continuing obligations imposed on the Grantee by this Agreement or by the FRA's final notification or acknowledgment.

23. Rights of FRA:

- a. **Suspension or Termination of Assistance.** Upon written notice, the Grantee agrees that FRA may suspend or terminate all or part of the financial assistance provided herein if the Grantee has violated the terms of this Agreement, or if FRA determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project, an FRA determination that the Grantee may be unable to meet the contributory match percentage identified in Attachment 1, Section 5 and complete the Project according to the Project Schedules included in Attachment 3, or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FRA to terminate this Agreement. In general, termination of any financial assistance under this Agreement may not invalidate obligations properly incurred by the Grantee and concurred in by FRA before the termination date, to the extent those obligations cannot be canceled. Expiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.
- b. **Repayment of Federal Funds.** If FRA determines that the Grantee has misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, FRA reserves the right to require the Grantee to repay the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by

FRA. FRA may also require repayment of any FRA funds provided under this Agreement if the Grantee fails to complete the Project or one of its Tasks or fails to adhere to the Funding Contribution Plan or FRA determines the Grantee will be unable to meet the contributory match percentage identified in Attachment 1, Section 5 and complete the Project according to the Project Schedules included in Attachment 3.

- c. **Offset.** FRA's decision to require the Grantee to repay all or part of the funds provided under this Agreement will be made in writing and shall constitute the collection of a claim of the United States Government and FRA's right to receive payment will be a claim of the United States Government as those terms are defined in Title 31, Subtitle III, Chapter 37 of US Code (or any replacement therefor). The Grantee acknowledges that FRA may collect on such a claim by means of administrative offset against funds payable by the United States to, or held by the United States for, the State of California. Such offsets may include all FRA funds payable to the State of California, other U.S. DOT funds payable to the State of California, and where these funds combined are not sufficient to fully offset the claim, or the claim is otherwise not satisfied, any other funds payable made by the United States to the State of California.
- d. **Suspension or Debarment.** If the Grantee fails to secure and deliver its required match funding contribution pursuant to the Funding Contribution Plan or fails to make reasonable use of the Project property, facilities, or equipment, or fails to adhere to the terms of this Agreement, FRA may suspend or debar the Grantee from further participation in any Federal financial assistance program relating to surface transportation administered by the U.S. DOT.
- e. **Amendment Following Suspension or Termination.** If FRA suspends or terminates the financial assistance provided herein pursuant to Section 23(a) of this Attachment 2, notwithstanding Section 26, of this Attachment 2, FRA may require an amendment to the Attachment 3 covering all future expenditures of grant funds to ensure responsible use of Federal funds in response to changed circumstances.
- f. **Consideration for Future Funding.** Failure of the Grantee to secure and deliver its required match funding contribution payment pursuant to the Funding Contribution Plan required by this Agreement or to make reasonable use of the Project property, facilities, or equipment, or to adhere to the terms of this Agreement may adversely affect any future decisions regarding any future requests for funding under any financial assistance programs administered by the FRA or the U.S. DOT.
- g. **Statement of Resolution.** If the Grantee fails to secure and deliver its required match funding contribution pursuant to the Funding Contribution Plan (required by this Agreement) or fails to make reasonable use of the Project property, facilities, or equipment, or fails to adhere to the terms of this Agreement, FRA may require that the Grantee provide a written description of the facts and circumstances leading to its failure and a detailed proposal and timeline for resolving those issues. FRA may accept the Grantee's proposal and allow the Grantee time to resolve the issues in accordance with the proposal, decline to accept the proposal, or accept the proposal with modifications. Acceptance of such a proposal may require an amendment to this Agreement.

24. Transparency Act Requirements—Reporting Subawards and Executive Compensation (Does not Apply to American Recovery and Reinvestment Act Funds):

The Grantee will insert the following clause in all first-tier subgrants of \$25,000 or more:

a. Reporting of First-Tier Subawards.

- 1) Applicability. Unless you are exempt as provided in paragraph d. of this section, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in subsection e. of this section).
- 2) Where and when to report.
 - a) You must report each obligating action described in subsection a.1) of this section to <http://www.fsrs.gov>.
 - b) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- 3) What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

- 1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - a) the total Federal funding authorized to date under this award is \$25,000 or more;
 - b) in the preceding fiscal year, you received—
 - (1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\) 78o\(d\) section 6104 of the Internal Revenue Code of 1986](#)). To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
- 2) Where and when to report. You must report executive total compensation described in subsection b.1) of this section:
 - a) As part of your registration profile at <http://www.ccr.gov>.
 - b) By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

- 1) Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - a) in the subrecipient's preceding fiscal year, the subrecipient received—
 - (1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); and
 - (2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - b) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\) 78o\(d\) section 6104 of the Internal Revenue Code of 1986](#)). To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execom.htm>.
- 2) Where and when to report. You must report subrecipient executive total compensation described in subsection c.1) of this section:
 - a) To the recipient.
 - b) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- 1) Subawards, and
- 2) The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this section:

- 1) Entity means all of the following, as defined in 2 CFR part 25:
 - a) A Governmental organization, which is a State, local government, or Indian tribe;
 - b) A foreign public entity;
 - c) A domestic or foreign nonprofit organization;
 - d) A domestic or foreign for-profit organization; and
 - e) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

- 2) Executive means officers, managing partners, or any other employees in management positions.
- 3) Subaward:
 - a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ——.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
 - c) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- 4) Subrecipient means an entity that:
 - a) Receives a subaward from you (the recipient) under this award; and
 - b) Is accountable to you for the use of the Federal funds provided by the subaward.
- 5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see [17 CFR 229.402\(c\)\(2\)](#)):
 - a) Salary and bonus.
 - b) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - c) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - e) Above-market earnings on deferred compensation which is not tax-qualified.
 - f) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

25. Entire Agreement:

This Agreement constitutes the entire agreement between the parties. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement.

26. Grant Amendments:

Modifications to this Agreement may be made only in writing, signed by the each party's authorized representative, and specifically referred to as a modification to this Agreement.

27. Flow Down Provisions:

The Grantee shall include provisions to carry out the purposes of this Agreement in all contracts or grant agreements with persons who perform any part of the work under this Agreement. There shall be provisions for a further flow down of such requirements to each sub-tier contractor or grantee as required.

28. Successors and Assignees:

This Agreement may not be assigned without the express prior written consent of the other party.

29. Execution:

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

30. Severability:

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement shall continue in full force and effect to the extent not inconsistent with such holding.

F. Attachment 3 is deleted in its entirety, and the following substituted therefor:

ATTACHMENT 3
STATEMENT OF WORK
(April 2016)

PE/NEPA/CEQA for Phase 1 of the California High-Speed Train Program and Final Design and Construction of the First Construction Section (FCS)

BACKGROUND

California High-Speed Train System Program Background

The California High-Speed Rail Authority (CHSRA) through the California High-Speed Train Program (CHSTP) is working to environmentally clear, design, and construct the high-speed train (HST) system. The new HST system will be fully grade-separated from road vehicle traffic in places where it will be operated on separate, dedicated tracks with a top operating speed of up to 220 mph. The 800-mile, statewide program will provide reliable, high-speed electrified train service between the Bay Area, the Central Valley, Sacramento, and Southern California. The CHSRA has been working to plan and design this HST system since at least 1996, when the California Legislature passed the California High-Speed Rail Act.

Phase 1 of the CHSTP would involve construction of about 520 miles of the HST system between San Francisco and Anaheim. Phase 1, when complete, would be designed to provide 2-hour and 40-minute nonstop service—competitive with air travel—between San Francisco and Los Angeles, compared with over 6 hours of travel time by automobile.

In 2005, 2008, 2010, and 2012, CHSRA and the Federal Railroad Administration (FRA) completed and certified Program-level environmental impact statements/reports (EIS/EIR) under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA)¹ covering the entire CHSTP. Phase 1 as defined in Program-level environmental studies and subsequent CHSRA business plans incorporate blended operations in portions of urban areas where high speed trains would share tracks with other passenger trains at slower speeds. CHSRA and FRA currently are preparing project-level NEPA/CEQA documents for each of the independent Project Sections listed below. CHSRA and FRA recognize that the Project Sections may change as part of the planning or environmental review process. Any such changes must be approved by FRA and may require a future amendment to this Agreement.

Project Sections²

- San Francisco-San Jose
- San Jose-Merced
- Merced-Fresno
- Fresno-Bakersfield
- Bakersfield-Palmdale
- Palmdale-Los Angeles
 - Palmdale-Burbank
 - Burbank-Los Angeles
- Los Angeles-Anaheim

Before construction begins on Phase 1 of the CHSTP, or any individual Project Section, CHSRA must finish any required environmental documentation and supporting preliminary engineering (PE). CHSRA and FRA will not make final decisions regarding specific facilities, construction, sections, alignments, or mitigation measures until the associated project-level NEPA document and any required state environmental document are complete.

Federal and State Funding

Federal Funding:

The American Recovery and Reinvestment Act (ARRA), enacted February 17, 2009, contained \$8 billion to fund high-speed and intercity passenger rail (HSIPR) projects

¹ Nothing in this Grant Agreement shall be interpreted as a waiver or implied agreement by FRA or CHSRA that CEQA applies to the Program, and FRA and CHSRA reserve the right to mutually amend this Agreement to address preemption of CEQA and similar state environmental permits.

² If FRA and the Authority determine that a supplemental or additional environmental document is requirement by law for any of the Project Sections, that supplemental or additional document is eligible to receive funding under this Agreement.

authorized through the Passenger Rail Investment and Improvement Act of 2008. Following enactment of ARRA, FRA created the High-Speed Intercity Passenger Rail Program and issued notices of funding availability soliciting applications for high speed and intercity passenger rail projects.

On January 28, 2010, the U.S. Department of Transportation (USDOT) announced the selection of CHSRA to receive up to \$2.25 billion in ARRA funds for environmental clearance and supporting preliminary engineering for Phase 1 and funding for certain CHSRA design-build Project Sections.³

In September 2010, FRA and CHSRA executed this Cooperative Agreement (Agreement) with a Federal award amount of \$194 million for environmental clearance and preliminary engineering (PE)). The initial work funded CHSRA's preparation of environmental documentation necessary to support final environmental decisions in the form of Federal Records of Decision (RODs) and state Notices of Determination (if required) for each Phase 1 Project Section, and other work required prior to the start of construction including right-of-way (ROW) acquisition planning and development of the necessary procurement plans and documents for final design and construction for the First Construction Section (FCS).

On October 28, 2010, USDOT announced the selection of CHSRA to receive an additional \$715 million in funding from the Transportation, Housing, and Urban Development and related Agencies Appropriations Act for 2010 (Div. A of Consolidated Appropriations Act, 2010 (Pub. L. 11-117, December 16, 2010)) (FY 10 Appropriations) to fund construction activities in California's Central Valley. FRA and the CHSRA have entered into a separate Cooperative Agreement obligating the funding from the FY10 appropriation (FY10 Grant).⁴

On December 9, 2010, USDOT announced the selection of CHSRA to receive an additional \$616,176,231 for PE/Environmental work and final design and construction of the initial Central Valley section. A large portion of the redistributed funding (up to \$578.7 million) is funded by this Agreement. The remaining funding is provided by the FY10 Appropriation and included in the FY10 Grant.

In May 2011, USDOT announced selection of CHSRA to receive an additional \$86,380,000 in ARRA funding and \$213,620,000 in FY10 Appropriations funding for final design and construction of the FCS in California's Central Valley. The \$86,380,000 is included in this Statement of Work (SOW) while the FY10 appropriations are addressed in the FY10 Grant Agreement.⁵

³ FRA awarded \$400 million of the \$2.25 billion to Transbay Joint Powers Authority (TJPA) for specific HSR-related improvements to Transbay Terminal, reducing the total funding amount to \$1.85 billion for Phase 1 PE/Environmental work and final design/construction.

⁴ Because these funds have a different statutory authority and associated requirements, they have been awarded in a separate Cooperative Agreement.

⁵ \$2.25 billion minus \$400 million allocated for TJPA's Transbay Terminal = \$1.85 billion minus \$194 million allocated to Phase 1 PE/Environmental work = \$1.656 billion plus \$616.2 million in redistributed HSIPR funds for

State/CHSRA Funding:

The CHSRA intends on providing its matching contribution using a number of available state sources. These funding sources include Proposition 1A (passed by California voters in 2008), which may be used for environmental studies, engineering and construction activities for the CHSTP. CHSRA may also use State cap and trade funds made available by the State budget (SB 852) which took effect on July 1, 2014. The budget for FY14/15 included funding for CHSRA staffing and resource needs, and \$250,000,000 in cap and trade funds to advance FCS construction and Phase I planning. For FY 15/16 and beyond, the Legislature also approved SB 862, which dedicates 25 percent of annual cap and trade auction proceeds (plus a one-time commitment of an additional \$400 million), without the need for annual appropriations, to the continued development and construction of Phase 1 of the CHSTP.

PROJECT OBJECTIVE

CHSRA will complete the Project which consists of the 10 Tasks described in this SOW. The Tasks include completing the required environmental reviews for all Phase 1 Project Sections; preliminary engineering and planning necessary to support such environmental reviews; completion of preliminary engineering necessary to support procurement for the FCS; activities related to Phase 1 including station area planning, network and operations planning, development of information to support FRA safety approvals, ridership forecasting, and small/disadvantaged business programs; ROW acquisition, including as necessary for the construction of the FCS; final design and construction of the FCS; and required administrative and professional services to support all 10 Tasks.

Tasks 1-10 through are funded through this Agreement. Tasks 5-10 of this Project are funded through this Agreement and the FY10 Grant. CHSRA is required to complete the Tasks enumerated in each of the grants and to provide FRA with all required deliverables. CHSRA will spend the Federal funds obligated through this Agreement and the required state contributory match to those funds before spending any funds obligated through the FY10 Grant. This funding sequence will be reflected in the FRA-approved FCP and may only be changed if CHSRA submits a Grant Adjustment Request Form and receives FRA approval.

DESCRIPTION OF WORK

The CHSRA will complete the following Tasks:

Task 1: Environmental Review

Under this Task 1 and working collaboratively with FRA, CHSRA will prepare the environmental analysis and documentation for each Project Section necessary to comply with NEPA, and other associated Federal environmental laws including, but not limited to,

final design/construction minus \$37.5 million in redistributed HSIPR funds for PE/Environmental = \$2.23 billion of Federal funds plus and additional \$86.38 million in HSIPR funds for final design/construction = \$2.321 billion.

Section 106 of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act, Section 7 of the Endangered Species Act, and the General Conformity requirements of the Clean Air Act. CHSRA is also responsible for complying with state laws as applicable that may include CEQA. FRA is the lead Federal agency responsible for NEPA compliance and CHSRA is the lead state agency responsible with complying with all applicable state environmental laws. CHSRA and FRA are jointly responsible for ensuring that the environmental review process is being conducted in accordance with relevant environmental laws. As part of the environmental review process, CHSRA will maintain all documents developed or received by CHSRA that support agency decision making and make them available to FRA upon request.

CHSRA and FRA have also entered into a Clean Water Act Section 404/408/NEPA Integration Memorandum of Understanding (MOU) with the U.S. Army Corps of Engineers (USACE) and the U.S. Environmental Protection Agency. The MOU is intended to facilitate the integration of the environmental review processes to facilitate USACE Section 404 and Section 408 permitting. Where applicable, CHSRA will develop any required documentation to comply with the MOU, while that MOU is in effect, and submit that documentation to FRA at the corresponding stage of the NEPA process.

CHSRA will complete the following activities and provide FRA with all required deliverables:

Notice of Intent (NOI)/Notice of Preparation (NOP):

Under NEPA for an EIS, an NOI is prepared and published by FRA in the *Federal Register*. Under CEQA an NOP is prepared and filed with the State Clearinghouse and advertised in local newspapers.

- **Deliverable:** NOI for FRA approval and NOP for review.

Scoping:

CHSRA, in consultation with FRA, will conduct NEPA scoping. For each Project Section, CHSRA will conduct public scoping meetings with presentation materials intended to inform the public of the proposed purpose and need for the Project Section, help the public understand the environmental review process, and receive comments from the public and agencies regarding issues and alternatives to be studied in the EIR/EIS document for the particular Project section.

- **Deliverable:** Scoping Report for FRA acceptance.

Agency Coordination:

CHSRA, along with FRA, will develop an Agency Coordination Plan that will bring together the appropriate local, regional, State, and Federal agencies to ensure compliance with their respective environmental approval and permitting requirements. The Agency Coordination Plan outlines the roles and responsibilities of these agencies and identifies the project information that will be shared with them for comment. Similar plans are prepared to facilitate public outreach to local communities including low income and minority populations, as well as Native American tribes and other consulting parties in the Section 106 process.

- **Deliverable:** Agency Coordination Plan for FRA review and comment.

Purpose and Need:

CHSRA, in consultation with FRA, will develop a project Purpose and Need Statement for each Section.

- **Deliverable:** Purpose and Need Statement for FRA acceptance.

Alternatives Analysis:

CHSRA, with FRA approval, will conduct an Alternatives Analysis (AA) in each Section to help identify the alignments and station locations to carry forward in the environmental review. The AA process will define potentially reasonable and feasible project alternatives, design options, and station locations that can meet the NEPA Purpose and Need and CEQA project objectives while avoiding or minimizing environmental impacts. Nothing in this Agreement shall preclude the consideration or further study (and associated funding under this Agreement) of any reasonable alternative(s) to complete the CHSTP, including reasonable alternative(s) outside the currently identified Section(s) set forth above and elsewhere in this Agreement as is appropriate under either NEPA or CEQA.⁶

- **Deliverable:** Alternatives analysis (preliminary and supplemental) for FRA review and approval.

Project Definition:

CHSRA will prepare a draft of the Project Definition/Description for each Section when the AA process is finished, and will update it upon completion of preliminary engineering necessary for environmental analysis and will update it when engineering design reaches 15% completion. CHSRA, with FRA, will proceed first with the preparation of Technical Reports, and then with the development of baseline conditions, impact analyses, and mitigation measures for the Draft EIR/EISs.

- **Deliverable:** Project Definition/Description for FRA approval.⁷

Administrative Draft EIR/EIS:

Prior to releasing the public Draft EIR/EIS, CHSRA will prepare an Administrative Draft EIR/EIS for FRA review and comment. FRA will review the Administrative Draft EIR/EIS for completeness and conformity with the applicable Federal requirements including NEPA. CHSRA will circulate an Administrative Draft EIR/EISs or relevant portions to cooperating agencies and potentially to other appropriate agencies.

- **Deliverable:** Administrative Draft EIR/EIS, including any technical reports for FRA review and comment.

Draft EIR/EIS:

⁶ Where CHSRA does not develop an AA, it will collaborate with FRA on the development of alternatives.

⁷ CHSRA may include the Project Definition/Description with the Administrative Draft EIR/EIS provided to FRA under this Agreement.

CHSRA will prepare and provide to FRA a Draft EIR/EIS for each Project Section for FRA's approval. After receiving FRA's approval, CHSRA will publish and circulate Draft EIR/EISs for public and agency review. A public review and comment period of at least the duration required by law will be provided for each of these publications. If FRA determines it is necessary, CHSRA, in consultation with FRA, will hold public meetings to provide the public an opportunity to comment on the Draft EIR/EIS.

- **Deliverable:** Draft EIR/EIS for FRA approval.

Administrative Final EIR/EIS:

Prior to releasing the public Final EIR/EIS, CHSRA will prepare an Administrative Final EIR/EIS for FRA review and approval. The Final EIR/EIS will include responses to substantive comments received on the Draft EIR/EISs. FRA will review the Administrative Final EIR/EIS for completeness and conformity with the applicable Federal requirements including NEPA. CHSRA will circulate Administrative Final EIR/EISs or relevant portions to cooperating agencies and potentially to other appropriate agencies.

- **Deliverable:** Administrative Final EIR/EIS for FRA review and comment.

Final EIR/EIS:

CHSRA will prepare and provide to FRA a Final EIR/EIS for each Project Section for approval. After receiving FRA's approval, CHSRA will circulate the Final EIR/EIS as required by law.

- **Deliverable:** Final EIR/EIS for FRA review and approval.

Agency Decision Documents:

CHSRA will support FRA in preparing any Draft RODs and prepare the documentation and analysis necessary to satisfy Section 4(f) of the Department of Transportation Act, Section 106 of the National Historic Preservation Act, and Section 7 of the Endangered Species Act and any other legal requirement necessary to support FRA's RODs. CHSRA will also prepare if and as required by then-applicable law, any analogous CHSRA decision-making documents.

- **Deliverable:** FRA Draft ROD for FRA approval.
- **Deliverable:** Any documentation and analysis necessary to support FRA's ROD for FRA approval.

Environmental Permits and Regulatory Agency Approvals:

CHSRA, in consultation with FRA, will secure all regulatory agency approvals necessary to allow FRA to issue a ROD and any additional Federal and state environmental permits and approvals necessary to support the construction of the FCS including but not limited to Clean Water Act Section 404, Section 401, and Section 408 permits.

Mitigation Implementation Planning:

CHSRA will develop a Mitigation Monitoring and Enforcement Plan (MMEP) containing the mitigation measures identified as commitments in the ROD and describing how these measures will be implemented.

- **Deliverable:** MMEP for FRA approval. For each Project Section, CHSRA will develop the MMEP pursuant to requirements under NEPA, FRA’s Environmental Procedures, and other applicable laws. The MMEP must address the timing of mitigation implementation, identify the party that will implement the mitigation measures (i.e., CHSRA or CHSRA’s contractor), and identify the point during Project development that the appropriate party must implement the mitigation measure.

Reexaminations:

Following the publication of the environmental documents covering the FCS (including FRA RODs and Federal permits), FRA and CHSRA may conduct additional environmental reviews necessary to address design modifications, alternative technical concepts (ATCs) proposed for the construction of the FCS, or new information relevant to environmental concerns.

- **Deliverable:** Any necessary additional environmental reviews, that may relate to FRA ROD’s or Federal permits to support FCS construction for FRA approval.

Resource Agency Coordination:

As permitted by Federal and State law, CHSRA may also contract with other State, regional and local entities as required to support environmental permitting and preliminary engineering, including State and local governments, railroads and utilities. The CHSRA’s use of Federal funds under this Agreement on any such activities must be consistent with the requirements of OMB Circular A-87 and be identified in the approved “Description of Outside Positions” deliverable.

- **Deliverable:** Description of outside positions and statewide agency agreements with environmental resource agencies as required to support the environmental permitting for FRA acceptance.

Subtask Structure for Task 1: Environmental Review:

Task 1 is broken down into subtasks that correlate to the most recent Work Breakdown Structure (WBS) provided to FRA under Task 5. The subtasks are included as line items in the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the appropriate subtask and will provide a brief narrative describing what activities in this Task 1 were completed.

Task 2: Preliminary Engineering (PE)

Under this Task 2, CHSRA will complete PE for the Phase 1 Project Sections and develop the documentation necessary to support design standards, rolling stock specifications, and operations & maintenance (O&M) plans as further described below.

Task 2 generally falls into two categories: PE to support Task 1; and development of technical design requirements, operational/maintenance plans, and safety requirements. Compliance with the technical design requirements is critical to ensure that the CHSTP provides the appropriate operational performance and complies with FRA’s safety regulations. CHSRA is required to comply with all applicable safety laws, regulations, and

guidance and to secure the legally necessary approvals before CHSRA can operate the California high-speed train for testing and passenger operations.

CHSRA will complete the following activities and provide FRA with all required deliverables:

Preliminary Engineering:

CHSRA will complete PE for each Project Section to a level sufficient to support the environmental analysis, approvals and permits required for Task 1.

CHSRA will assure design consistency and satisfaction of the legal requirements for all Phase 1 Project Sections by following the design criteria established in the Technical Memoranda and/or CHSTP Design Manual. Variances from the design criteria must be made pursuant to CHSRA's Design Variance process will be provided to FRA for review.

- **Deliverable:** PE to Support Task 1 (Environmental Review) for FRA review and acceptance

Design Criteria and O&M Plans:

CHSRA will develop design criteria and O&M plans to meet the Federal and state safety requirements and the performance objectives of the CHSTP. These design criteria, plus O&M plans, will inform the final design and construction of the high-speed rail system. The purpose of the O&M plans is to inform design and construction determinations and decision-making and will be limited in scope to achieve that purpose.

These design efforts are focused on five key areas of activity, all of which are required to ensure that the designed high-speed rail system will meet the specified performance objectives. These key areas include:

Systemwide Design Elements

CHSRA will produce, in consultation with FRA, CHSTP general requirements and design for a network-wide 2 × 25-kV traction power supply system.

CHSRA will produce, in consultation with FRA, design standards, and functional and performance requirements for track structure, overhead contact system (OCS), and ancillary facilities to confirm a consistent application across the CHSTP network.

CHSRA will produce, in consultation with FRA, train control and communications systems specifications that provide the CHSTP's requirements for performance, function, capacity, and safety and for consistent application across the CHSTP network.

Design Criteria

CHSRA will prepare design criteria, in consultation with FRA, that comply with FRA safety standards and safety requirements for all CHSTP System elements including designs related to trainsets, track alignment, bridge and viaduct design, tunnel design, building (including stations and maintenance facility) design, earthworks, drainage design, safety and security, geotechnical investigations and design, seismic

considerations, traction power facility equipment, traction power system analysis, OCS configuration, positive train control, system architecture and design requirements, system interfaces, and supervisory control and data acquisition.

CHSRA will document the design criteria in drawings and technical memoranda and include assessment of existing high-speed rail systems, analysis of what is appropriate for the California high-speed rail system, and design guidance for final design and construction. Design criteria will ensure that all subsystems deliver a reliable and safe high-speed train system commensurate with State law and FRA established safety requirements to provide a consistent design approach to be applied to each Project Section.

CHSRA will prepare, in consultation with FRA, the CHSTP Design Manual that will be the primary design reference for final design and construction. Standard specifications and special provisions will be developed for inclusion in the procurement documents.

- ***Deliverable:*** CHSTP Design Manual for FRA review and comment

Operational Planning and Concept of Operations Plan (CONOPS)

CHSRA will complete operational planning and prepare and submit a CONOPS to FRA that is consistent with the State of California-developed Network Integration Strategic Service Plan (SSP) and CHSRA-developed initial operating segment Service Development Plan (SDP) submitted under this Agreement. The CONOPS will include operational concepts for the CHSTP, or portion thereof, including operational objectives, mainline configuration, and control of operations, rolling stock storage, maintenance, and repair for the purpose of determining facility requirements that optimize system performance. The CONOPS plan should also include operating routes, operating speed and restrictions, design level of service, operating hours, operating schedule and station dwell times, normal and contingency modes of operations, recovery time, headways, and trainset length and seating requirements.

- ***Deliverable:*** A Phase 1 CONOPS plan for FRA review and comment which the CHSRA will update as necessary during this Agreement's Period of Performance.

Rolling Stock Specifications

CHSRA will prepare rolling stock performance specifications to support procurement and acceptance of trainsets that meet the applicable performance and safety requirements including maximum operating speed, acceleration rate and braking rates (service and emergency), trainset dimensions and clearances, trainset makeup, number of seats, number of trainsets, electric multiple units versus locomotive hauled, line voltage, bogies, heating, ventilating, and air-conditioning requirements, coupling systems (leading/trailing ends and intermediate), carbody, energy management systems and interfaces with signal and train control, and communication system requirements.

- ***Deliverable:*** Rolling stock performance specifications for FRA review and comment.

Systems Safety and Security Management Plan (SSMP):

CHSRA will complete and submit to FRA for approval an SSMP that is consistent with the most current Federal Transit Administration SSMP Guidance. The SSMP will

explain how CHSRA will manage system safety and security policies, processes, activities, and responsibilities throughout the CHSTP life cycle. Specific program areas include hazard management, risk acceptance, construction, testing, training, and certification. The SSMP will address safety and security from initial CHSTP planning through integration of safety and security into each phase of the CHSTP development process (including the FCS) and initiation into revenue service. CHSRA will also designate a primary and alternative Security Coordinator, as required by TSA. The Security Coordinator will act as a liaison with TSA and FRA to ensure communication of security concerns and threats to implement security regulation or industry practice.

- **Deliverable:** An SSMP for FRA approval. During this Agreement's Period of Performance, CHSRA will update the SSMP annually or when significant changes (as defined by FRA) to the scope or management of the CHSTP occur.

Subtask Structure for Task 2: Preliminary Engineering:

Task 2 is broken down into subtasks that correlate to the most-recent WBS provided to FRA under Task 5. These subtasks are included as line items in the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the appropriate subtask and will provide a brief narrative describing what activities in this Task 2 were completed.

Task 3: Other Related Work Needed Prior to Start of Construction

Under this Task 3, the CHSRA will complete the following activities and provide FRA with all required deliverables:

Station Area Planning:

CHSRA will assist local government entities that CHSRA and FRA mutually determine would benefit from the development of a station area plan incorporating a transit-oriented development (TOD) code and/or specific plan (or equivalent) to the local comprehensive plan for a one-half-mile area around Phase 1 HST stations (or such other area as CHSRA and FRA deem appropriate on a station-by-station basis). The station area plan may address but is not limited to station site(s) and conceptual design; surrounding infill development; transportation connectivity; development parcel economic viability analysis; and a financing/phasing plan. Station area plans should address the following goals for each station in a manner appropriate to the local context:

- Develop and recommend for adoption TOD measures at and around the locations of HST stations.
- Work with the local jurisdictions in which potential HST stations are being considered to facilitate adoption, amendment of City and County General Plans and zoning codes and/or adoption of Specific Plans consistent with HST station area development plans.
- Work with regional and local transit providers, and all other government agencies to establish, relocate, and add transit as necessary to the HST station to achieve a target percentage of all rail passengers accessing the station by transit.

- Treat the HST station as a new city gateway – consider the station’s form and spaces, both primary and secondary (backside, underside); the station’s place-making effects and iconic and readily identifiable design.
 - Plan intensified development for the one-half-mile area (or such other area as CHSRA and FRA deem appropriate on a station-by-station basis) around the station site – step up the development densities closer to the station; recommend minimums for dwelling units (DU)/acre for residential and floor area ratio (FAR) for commercial/light industrial; recommend development massing and setbacks from the street; and recommend urban design and building design treatments so public spaces within the “station district” will be inviting to walk through both day and night by people of all ages.
 - Plan an urban scale and streetscape that promotes walking, biking, and transit use – establish continuity of the public way; create a hierarchy of streets; design a walkable street pattern/grid; emphasize pedestrian spaces immediately around the HST station; accommodate bicyclists, transit, taxis, and passenger drop-off, car-sharing services, and access to parking.
 - Tailor a phased parking strategy to the station context and market, paying particular attention to the amount and price of parking in the station area – account for expected parking demand for the HST service; develop transportation demand management (TDM) and parking demand management (PDM) to encourage and account for possible substitution of additional transit services and pedestrians from adjacent development (including at the parking sites) for parking demand; and include parking policies that manage supply and charge locally appropriate market rates to encourage station access by transit, taxis, and walking.
 - Develop a financing and phasing plan as to how the station area plan’s public infrastructure will get financed and what financing and other tools will be used to attract private investment and development.
- *Deliverable:* Station Area plans for FRA review and comment.

ROW Acquisition Support:

CHSRA will:

- Identify parcels in Phase 1, if any exist, that could protect ROWs and preserve land for future high-speed rail uses based on the Program EIR/EIS decisions and consistent with environmental and other applicable legal requirements.
- Gather and document FCS parcel requirements to support negotiations, including survey documents and legal descriptions with respect to ownership, easements, and parcel size.
- Develop a ROW Acquisition Plan for ROW acquisitions necessary to deliver the FCS and a Relocation and Assistance Plan that conforms with the State and Federal relocation assistance requirements including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended) (Uniform Act), Department of Transportation Act regulations implementing the Uniform Act (49 CFR part 24) and other State and Federal provisions that would be required at the time of acquisition.

- Develop a CHSRA ROW Procedures Manual that includes the content necessary to provide that all ROW processes are consistent with applicable Federal and state law including the Uniform Act.
- ***Deliverable:*** ROW Acquisition Plan and Relocation Acquisition Plan for the FCS for FRA review and comment.
- ***Deliverable:*** CHSRA ROW Procedures Manual for FRA review and comment.

ROW Preservation:

Through this Agreement, funds are provided for the preservation and acquisition of property, rights-of-way, and the related environmental clearances and engineering activities that will enable HST to operate at Los Angeles Union Station (LAUS). Early preservation of these rights will ensure that the long term use of the station is secured and required features are available and dedicated for use by the HST system for the benefit of HST system operations, and CHSRA can work cooperatively to develop this major hub with current owners and rights holders and influence and benefit from future station development initiatives. CHSRA must demonstrate to FRA that this investment will immediately result in cooperative working relationship between all parties, that any environmental clearance required for the acquisition is complete, and that a plan is in place to develop the necessary agreements prior to committing funds.

Contingent Planning for Interim FCS Utilization:

To comply with FRA requirements for assuring operational independence of the FCS, FRA and the Authority have established an Interim Reserve Fund that, subject to FRA approval, will be for the infrastructure necessary to initiate early service operations on the FCS if it appears that high-speed rail revenue service on a longer operational segment that includes the FCS will be significantly delayed.

The Interim Use Reserve Fund is budgeted for \$108 million of 100% Federal funds (funded through the FY 10 Grant). This allocation does not alter or affect the overall Federal share associated with funding the Project.

The amount established in the Interim Use Reserve Fund is an estimate of the maximum funds required to implement early service operations including track, signal and communications elements, stations, and a limited maintenance facility.

Decision-making for use of the Interim Use Reserve Funds

In order to ensure intercity rail service on the FCS, CHSRA will, in cooperation with FRA, the California Transportation Agency (CalSTA), the California Department of Transportation (Caltrans), and other potential governmental agencies and private entities, prepare an FCS Contingency Plan for early service operations on the FCS. The FCS Contingency Plan will describe the alternatives for the utilization of the FCS, and outline the decision process necessary to implement early service operations.

1. Prior to the award of Construction Package 5 or any Construction Package that includes track, signals or other system elements, if FRA determines that sufficient funds are anticipated to be available to complete the investments necessary to build

and operate high speed rail revenue service on an operating segment that includes the FCS, then FRA may authorize the reallocation of the remaining Interim Reserve Funds to advance additional environmentally-cleared construction on the FCS. If FRA authorizes the reallocation, CHSRA will submit a Grant Adjustment Request Form describing the activities it proposes to fund for FRA approval.

2. Prior to the award of Construction Package 5 or any Construction Package that includes track, signals or other system elements, if FRA determines that there will be a significant delay in completing the investments needed to begin initial high-speed rail revenue service on an initial operating segment that includes the FCS, FRA may direct the CHSRA to use the Interim Use Reserve Fund to build any required capital investments necessary for early service operations that will ensure operations over the FCS for the minimum term of 20 years. Upon such an FRA determination and prior to letting any contracts necessary to implement the FRA-approved early service operations, the CHSRA will ensure operating and financial commitments are secured by the appropriate governmental agencies and/or private entities that would construct and operate such early service alternatives, which may include entering into an enforceable service outcome agreement meeting the requirements of Attachment 1A, Section 2.

To the extent funds remain in the Interim Reserve Fund that FRA and the CHSRA agree are not reasonably required to implement the early service operations, the FRA may authorize the reallocation of such remaining funds to advance environmentally cleared construction on the FCS. If FRA authorizes the reallocation, CHSRA will submit a Grant Adjustment Request Form describing the activities it proposes to fund for FRA approval.

- ***Deliverable:*** FCS Contingency Plan for FRA review and approval.

Ridership Forecasting:

Ridership Analysis

CHSRA will prepare ridership & revenue forecasts and station boardings to support the Phase 1 final environmental documents and the selection of station locations, updating operating and service patterns (e.g., Anaheim-Los Angeles Union Station 3-5 trains/hour), and evaluating maximum reasonable impacts (local traffic, regional & local air quality, parking requirements, etc.). CHSRA will update its ridership analysis with additional ridership and revenue forecasting as necessary for the FCS and an initial operating segment.

- ***Deliverable:*** Ridership forecasting analysis (and associated updates) for FRA review and comment.

Preliminary Engineering Necessary to Support FCS Procurement:

For the FCS, CHSRA will:

- (1) develop a staging and construction plan;
- (2) complete civil design, systems design, systems integration and any value engineering efforts;
- (3) develop an approach and bid packages for equipment and FCS construction procurement and other services, if needed;

- (4) develop detailed cost estimates as PE is completed; and
 - (5) support procurement and construction inspection for the FCS.
- ***Deliverable:*** PE to Support FCS Procurement for FRA review and acceptance.
 - ***Deliverable:*** Detailed construction cost estimate, construction sequence, and schedule for each construction package in Task 8 for FRA acceptance.⁸

Small/Disadvantaged Business Program:

CHSRA will develop and/or implement a Small/Disadvantaged Business Program (as described in Attachment 2 Section 11(g) of this Agreement) as well as introduce many other innovative strategies to promote the successful participation of Small and Disadvantaged Business concerns in the CHSRA's contracting program. CHSRA will describe the activities necessary to complete the Small/Disadvantaged Business Program in a Small/Disadvantaged Business Plan which shall be submitted to FRA and will include:

Small Business Program Administration and Support

CHSRA will hire or contract for a Small Business Administrator and other support as necessary to provide ongoing management and administration of the Small Business Program.

Availability and Disparity Study

As directed by FRA, the CHSRA will develop an Availability and Disparity Study that will explore all possible resources (including existing Disparity and Availability Studies) within the respective market to assess their applicability to the industries impacting the California High Speed Train Program. CHSRA will follow the methodology outlined in the National Cooperative Highway Research Program (NCHRP) Report 644, Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program and NCHRP Synthesis 416, Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs in conducting the required study. The CHSRA will provide FRA with a Scope of Work describing the work necessary to complete the Availability and Disparity Study for FRA review and input which will be incorporated into the Final Scope of Work. Once the study is completed, CHSRA will provide FRA with a copy and a Final Report.

Small Business Development (SBD) Program

As directed by FRA, the CHSRA will establish a small and disadvantaged business development program. The CHSRA intends to develop this program by entering into Memorandums of Understanding with the U.S. Office of Small and Disadvantaged Business Utilization (OSDBU) and the U.S. SBA, Small Business Development Program, also known as the Small Business Development Center (SBDC) Program. The OSDBU and SBDC's provide direct and personalized technical assistance to entrepreneurs through professional consulting, supplemented by low-cost or free seminars and

⁸ The cost estimate will include costs for the necessary mitigation for the FCS including measures developed in consultation with stakeholders such as permitting agencies, local jurisdictions, or others as applicable. The costs estimate will be commensurate with the level of available design.

conferences. These services are delivered throughout California via an extensive network of thirty-five SBDCs. The SBDCs provide comprehensive business guidance on most business issues. The CHSRA may also provide additional technical business development services to SB/DBEs who are interested in the CHSRA projects as necessary.

- **Deliverable:** Small Business Development Program Plan.
- **Deliverable:** Availability and Disparity Study Scope of Work and Final Report.

Subtask Structure for Task 3: Other Related Work:

Task 3 is broken down into the subtasks that correlate to the most recent WBS provided to FRA under Task 5 and are included as line items in the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the appropriate subtask and will provide a brief narrative describing what activities in this Task 3 were completed.

Task 4: Project Administration and Statewide Cost Allocation Plan (SWCAP)

Under this Agreement, CHSRA may seek reimbursement for allowable costs pertaining to the administration of the funds by the State and other indirect costs. The allowable costs may include costs incurred by CHSRA or other State agencies that provide services to CHSRA in administering the funds (e.g., the California Department of Finance, Department of General Services, and Department of Justice). CHSRA will administer the activities under this Agreement consistent with the requirements of OMB Circular A-87.

SWCAP:

The California Department of Finance is designing and maintaining statewide systems required for administering Federal funding received under ARRA and is assessing the CHSRA's share of those SWCAP expenditures.

Under the SWCAP, as authorized by OMB Circular A-87, the California Department of Finance has assessed CHSRA for a proportional share of the State's overall costs of designing and maintaining statewide systems required for administering Federal funding received under the American Recovery and Reinvestment Act of 2009 (ARRA). The Department of Health and Human Services (HHS) has reviewed and approved a supplemental SWCAP for California's ARRA funding. In approving the State's ARRA Supplemental SWCAP Addendum, HHS concurs that the methodology, activities, and projected expenditures have been deemed consistent with the requirements of OMB Circular A-87 and associated Guidance on developing SWCAPs for Recovery Act Projects. CHSRA's share of SWCAP is derived as a percentage of CHSRA's total statewide ARRA allocation. FRA will determine which costs are reimbursable and appropriate under the SWCAP.

- **Deliverable:** Documentation showing CHSRA's portion of the SWCAP for FRA review and approval. This documentation will include at a minimum all documentation submitted to HHS pursuant to the requirements of OMB Circular A-87 for approval of the SWCAP.

Subtask Structure for Task 4: Project Administration and Statewide Cost Allocation Plan (SWCAP):

Task 4 is broken down into the subtasks that correlate to the most recent WBS provided to FRA under Task 5. These subtasks are included as line items to the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the appropriate subtask and will provide a brief narrative describing what activities in this Task 4 were completed.

Task 5: Program, Project, and FCS Construction Management

CHSRA will provide the appropriate program, project, and FCS construction management activities, oversight, and reporting of all other Tasks in this Agreement. These activities will include but are not limited to coordination with appropriate local, regional, State, and Federal agencies, all railroad owners and operators within the FCS area whose infrastructure might be affected by the FCS, and outreach to local communities affected by the Project. CHSRA is responsible for ensuring sufficient public communication and outreach to citizens, communities and stakeholders during all aspects and phases of the Project.

Program Management activities may include program and project management and controls, engineering due diligence reviews, FCS commercial and procurement support, legal support, program wide planning, implementation planning, planning for system electrification and testing and commissioning as necessary to provide project definition for Task 1, FCS design/build support (as applicable), network integration and system assurance. Specific FCS construction management activities may include contract administration, submittal review, quality assurance oversight inspection for work in place and materials, management of claims and change orders, and review and approval of progress payment requests and final acceptance of the work.

CHSRA will provide FRA with the following Deliverables through the end of the Period of Performance of this Agreement:

- **Deliverable: Work Breakdown Structure (WBS) and Budget Detail.** CHSRA will prepare a detailed WBS and budget subtasks for FRA review and comment.
- **Deliverable: Annual Work Plan (AWP).** CHSRA will prepare for FRA's review and comment a detailed staffing plan and cost estimate for the Project. The AWP outlines the work necessary to establish and manage project control systems to maintain, manage, and monitor project schedule, budget, documentation, procurement, and tracking of deliverables so that implementation of the Project stays on schedule and within budget.
- **Deliverable: Program Management Plan (PMP) Updates.** CHSRA will update the Phase 1 Program Management Plan (PMP) and produce a Project-specific PMP addressing the management requirements of this Project and submit it to FRA for review and approval. CHSRA will update both documents annually.
- **Deliverable: FCS Financial Plan.** Prior to the release of each of the Requests for Proposals (RFPs) for the design and/or construction contracts in the FCS, CHSRA will

provide for FRA review and approval a Financial Plan for the FCS (FCS Financial Plan) that demonstrates CHSRA has secured firm commitments of all funding (other than that provided through this Agreement) required to complete construction of the FCS. The financial plan will provide (in year-of-expenditure dollars) finalized annual projections for the sources and uses of all funds, during the development and construction phases of the FCS and a detailed assessment of financial risks facing the FCS during both the construction (including risks such as capital cost overruns, revenue shortfalls, and maintenance cost overruns), along with proposed actions for mitigating or accommodating such risks (including assessment of additional funding sources available to compensate for potential capital financing shortfalls). The FCS Financial Plan will discuss and incorporate the Interim Use Reserve. CHSRA will provide FRA with updates to the FCS Financial Plan, on at least an annual basis, or where there are material changes to the previous FRA-approved plan.

- **Deliverable: Phase I Program Financial Plan.** CHSRA will develop the information and analysis to support a financial plan that covers the entire Phase 1 Program (including the FCS). This information may be used to inform the other deliverables under this Task 5 (e.g. FCS Financial Plan) and to inform CHSRA's Business Plan.
- **Deliverable: Design/Build Program Plan.** CHSRA will provide FRA with a Design/Build Program Plan that identifies: (1) the suitability of the Project as a design/build candidate, (2) the performance metrics to be used to assess successful Project completion, (3) the composition of the design/build Project team, (4) Project scope, (5) the decision factors to be used for the selection from among the design/build proposals, and (6) the methods for contract administration for review and approval.
- **Deliverable: RFPs/Notice(s) to Proceed (NTP) for FCS Design and/or Construction Services.** CHSRA will provide a copy of the proposed terms and conditions of the RFPs related to proposed contracts for FCS design and/or construction services to FRA for the opportunity to review and provide written approval prior to formally soliciting such proposals. FRA may request to review documents submitted during the procurement process and may also participate in the technical review of those documents including any ATCs. CHSRA will request in writing FRA's written approval to issue NTP for any contract for design and/or construction service. The Parties will work closely to complete such reviews in sufficient time to avoid impacting the Project schedule.

Service Development Updates. CHSRA will refine and update the Phase 1 Service Development Plan to plan for an integrated passenger rail network as the HST System is built out and integrated into the statewide rail network (Network Integration), maximizing benefits to the user at each major milestone of the development of the system. CHSRA will coordinate service development planning efforts, ridership and revenue forecast updates, business planning and financial planning with other Statewide planning efforts to develop a Network Integration Strategic Service Plan (SSP) and an initial operating segment SDP, in conjunction with other State and State-designated Stakeholder Agencies. These efforts will be planned and developed jointly by the CHSRA, the CalSTA and Caltrans in consultation with FRA and the stakeholder agencies.

- **Deliverable: Network Integration Strategic Service Plan.** CHSRA will prepare, jointly with CalSTA, and Caltrans in consultation with FRA and the stakeholder agencies, a Network Integration Strategic Service Plan (SSP). The scope for this effort will include defining the roles and responsibilities for stakeholder agencies

with potentially shared responsibility for completion of technical studies. CHSRA will provide the Network Integration SSP to FRA.

- **Deliverable: Updated Service Development Plan.** CHSRA will prepare an initial operating segment SDP that reflects Network Integration and is consistent with FRA SDP guidance. The Service Development Plan shall be developed and updated for the purpose of informing design and construction determinations and decision making and shall be limited in scope to such purpose and provide to FRA the relevant information based on mutual agreement with FRA that may include Operations (Service Goals, Operations Analysis, including railroad operation simulation and equipment, operations planning, and crew scheduling analysis); Fleet Management Plan (this includes a determination of the number of trainsets required for the HSIPR Corridor); Capital Needs (Phase 1 Investments and Cost Estimate); and Operating and Financial Results (Methods, Assumptions, and Outputs for Travel Demand Forecasts; Expected Revenue; and all Operating Expenses). CHSRA will submit the SDP to FRA for review and approval and provide FRA with bi-annually updates beginning in 2016 as the HST system continues to develop.
- **Deliverable: Infrastructure Maintenance Plan.** The CHSRA will submit a maintenance-of-way (MOW) plan to FRA for review and comment. The MOW Plan will generally describe how the maintenance of the FCS track infrastructure, once completed, will be maintained addressing inspection and maintenance activities and frequency intervals (time or mileage as appropriate) typical for high-speed rail infrastructure.
- **Deliverable: Rolling Stock Maintenance Plan for the FCS.** The CHSRA will develop and submit to FRA for review and comment a rolling stock inspection and maintenance plan that includes maintenance activities, and frequency intervals (time or mileage as appropriate) typical for high-speed rail rolling stock for purposes of determining rolling stock facility requirements as necessary to inform the environmental reviews in Task 1 including types of facilities, activities at each of the facilities including major equipment, required frequency of inspection and maintenance, approximate location for each of the facility types, approximate size of each facility type, and rolling stock dwell time at each location. CHSRA will update the Rolling Stock Maintenance Plan if and as necessary to ensure the project description supporting Task 1 is current for each EIS.

Subtask Structure for Task 5: Program, Project, and FCS Construction Management:

Task 5 is broken down into the subtasks that correlate to the most current WBS provided to FRA under Task 5. These subtasks are included as line items in the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the appropriate subtask and will provide a brief narrative describing what activities in this Task 5 were completed.

Task 6: Real Property Acquisition and Environmental Mitigation

CHSRA will obtain and manage the necessary property rights required to complete Task 8 in compliance with all relevant State and Federal relocation assistance requirements including the Uniform Act. CHSRA will provide that it has the staff and consultant resources to appraise and acquire required properties; coordinate other real property issues regarding utilities relocations and railroad and other public agency agreements; and provide relocation

assistance and property management. CHSRA will also fully implement the MMEPs developed in Task 1 related to the FCS.

CHSRA will complete the following activities and provide FRA with all required deliverables:

Preliminary ROW Activities Necessary to Support Task 8:

CHSRA will conduct preliminary ROW activities necessary to support Task 8 including work performed in preparation for procurement. This includes all ROW activities not covered in Task 3 up to, but not including, the first written offer to purchase. Eligible activities may include:

- ROW Acquisition Planning
- ROW Negotiation for Early Acquisitions
- ROW Appraisals and associated support services
- ROW Management
- Design Engineering Coordination
- ROW Engineering including mapping and legal descriptions
- Environmental Site Assessments (ESA) “Phase I”
- Utility Relocation Assistance

ROW Services & Relocation:

CHSRA will conduct ROW services and relocations carried out by onsite real property specialty consultants. Eligible activities may include:

- Parcel identification
- Survey and mapping
- Appraisals
- Offers of just compensation
- Negotiations
- Property acquisition
- Relocation entitlement
- Relocation services

ROW Acquisition:

CHSRA will obtain all real property interests necessary to construct the FCS consistent with the Uniform Act, its implementing regulations at 49 CFR part 24, and the applicable sections of the CHSRA ROW Procedures Manual.

Environmental Mitigation:

CHSRA will fully implement the FRA-approved MMEP and any conditions of Federal and state environmental approvals and permits required for construction of the FCS. The CHSRA understands that FRA may withhold payment if FRA determines that the CHSRA (or its contractors) has failed to comply with the FRA-approved MMEP or the conditions of any Federal or state environmental permit.

- ***Deliverable:*** A mutually agreed upon environmental compliance database (to which FRA will have review access) for the purpose of tracking and demonstrating compliance with the FRA-approved MMEP and the conditions of all Federal

environmental permits for FRA acceptance. CHSRA will maintain an updated database and work with FRA and Federal permitting agencies to develop standardized reports to be generated electronically as required for compliance monitoring.

Subtask Structure for Task 6: Real Property Acquisition:

Task 6 is broken down into the subtasks that correlate to the most recent WBS provided to FRA under Task 5. These subtasks are included as line items to the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the appropriate subtask and will provide a brief narrative describing what activities in this Task 6 were completed.

Task 7: Early Work Program

Activities in this Task 7 are redistributed among the other Tasks in this Agreement.

Task 8: Final Design and Construction Contract Work for FCS

CHSRA may structure the final design and construction of the FCS by construction package. For each construction package, CHSRA will provide FRA with design packages documentation listed below if such documentation is required by the underlying contract included in this Task 8, in digital format if feasible, for acceptance at the following stages of design:

- **Deliverable:** Type Selection Report;
- **Deliverable:** 60% Design;
- **Deliverable:** 90% Design;
- **Deliverable:** Ready for Construction Design; and
- **Deliverable:** Detailed construction schedule.

During final design and construction of the FCS, CHSRA will coordinate closely with FRA to ensure the work is progressing on time and on budget. As part of this coordination, CHSRA will provide FRA with routine Project updates and notify FRA where CHSRA or its contractor(s) is proposing a change from FRA's Task 1 environmental approvals or the FRA's Task 2 preliminary engineering acceptance that requires an environmental reexamination, design variance, or exceeds budgeted contingencies. FRA will also have an opportunity to review and comment on any change orders proposed during the construction process that require consideration by the change control committee.

CHSRA will complete the following final design and construction activities to deliver the FCS:

Final Design and Construction: SR-99

Final design and construction for highway relocations (State Route-99) as well as interface reviews and civil infrastructure. This work will be completed by Caltrans working as a contractor to CHSRA.

Final Design and Construction: Civil Infrastructure Construction Package 1

Final design and construction of civil and structural infrastructure from approximately Avenue 19 in Madera County to approximately East American Avenue in Fresno County.

Final Design and Construction: Civil Infrastructure Construction Package 2-3

Final design and construction of civil and structural infrastructure between approximately East American Avenue in Fresno County to approximately one mile north of the Tulare-Kern County line.

Final Design and Construction: Civil Infrastructure Construction Package 4

Final design and construction of civil and structural infrastructure from one mile north of the Tulare-Kern County Line southward to North of Bakersfield, currently near Poplar Ave.

FCS Track work Components of Construction Package 5 (which CHSRA may rename during the procurement process)

Final design and construction of track work for the civil and structural infrastructure constructed in Construction Packages 1 through 4. CHSRA may choose to add elements to Construction Package 5 for the benefit of procurement and construction efficiencies or to incentivize private sector participation and the geographic limits of Construction Package 5 may extend beyond the FCS, however, this Agreement only funds the track work in the FCS.

May 2011 ARRA Funding used for Final Design and Construction Work

In May 2011, FRA allocated \$86,380,000 to CHSRA to fund final design and construction work on the FCS. These funds will be used for eligible activities in the Construction Packages described in this Task 8. However, CHSRA has committed to providing a contribution of not less than 20.000% (not less than \$21,595,000) and will use the Funding Contribution Plan to ensure it provides that contributory match percentage by the end of this Agreement's period of performance.

Subtask Structure for Task 8: Final Design and Construction Work

Task 8 is broken down into subtasks that correlate to the most recent WBS submitted to FRA under Task 5. These subtasks are included as line items in the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the appropriate subtask and will provide a brief narrative describing what activities in this Task 10 were completed.

Task 9: Interim Use Project Reserve

CHSRA and FRA have established an Interim Use Project Reserve as described in Task 3. CHSRA may only use the Interim Reserve Funds upon written approval from FRA.

Subtask Structure for Task 9: Project Reserves

Task 9 is broken down into the subtasks that correlate to the most current WBS provided to FRA in Task 5. These subtasks are included as line items in the Approved Project Budget. CHSRA will organize each invoice submitted to FRA according to the

appropriate subtask and will provide a brief narrative describing what activities in this Task 9 were completed.

Task 10: Unallocated Contingency

CHSRA will allocate a portion of the Project budget as unallocated contingency consistent with the CHSRA Contingency Management Plan submitted to FRA for review and comment. CHSRA will update the Contingency Management Plan quarterly.

PROJECT SCHEDULE

CHSRA will complete all Tasks in this Agreement according to the following schedule and the detailed schedule which is on file with FRA. The detailed Project Schedule is the CHSRA’s master schedule for the Tasks in this Agreement and is independent of the various FCS Design-Build contractors’ detailed project schedules. The detailed Project Schedule will be organized in the format of the WBS reviewed by FRA in Task 5 and be consistent with the phases of Project development. This schedule will indicate a detailed breakdown of Project activities within the WBS, the duration of each activity, the earliest date each activity could commence, predecessor and successor activities, and clearly indicate schedule float. CHSRA will provide FRA with quarterly updates to the detailed Project schedule for review and comment.

Table 1: Schedule

	Start	Finish
Task 1: Environmental Review	3-1-2010	12-31-2017
Task 2: Preliminary Engineering (PE)	3-1-2010	12-31-2017
Task 3: Other Related Work	3-1-2010	12-31-2018
Task 4: Project Administration & SWCAP	3-1-2010	12-31-2017
Task 5: Program, Project, FCS CN Management	7-1-2012	12-31-2022
Task 6: Real Property Acquisition	7-1-2011	3-31-2018
Task 7: Early Works (N/A)		
Task 8: Final Design and Construction Contract Work (CP1-CP5)	4-1-2012	12-31-2022
Task 9: Project Reserve	(Throughout)	12-31-2022
Task 10: Unallocated Contingency	(Throughout)	12-31-2022

PROJECT ADMINISTRATION

CHSRA will provide Project receipts and documents as required by FRA. CHSRA will obtain documentation of materials, payrolls and work performed, invoices and receipts, etc., during the Program from contractors and consultants as conditions of payment. These will be submitted or made available to FRA as required.

PROJECT BUDGET

Under this Agreement and excluding the May 2011 ARRA award for construction work, FRA will contribute an estimated 49.8182% of the amount shown in Attachment 1, Section 5(a) but not more than \$2,466,176,231. For the May 2011 construction contract work FRA will contribute an estimated 80.0000% of the \$107,975,000, but not more than \$86,380,000. CHSRA is required to provide all additional funding necessary to complete the Project which, at a minimum and excluding the May 2011 ARRA award for construction work, will be not less than 50.1818% of the amount shown in Attachment 1, Section 5(a) which is estimated to be not less than \$2,484,176,231. For the May 2011 ARRA award for construction work CHSRA will provide not less than 20.0000% of the total amount of \$107,975,000, which is estimated to be not less than \$21,595,000.

Table 2 below shows the summary Approved Project Budget broken out by Task and the Federal funding provided under this Agreement, the Grantee required matching cash contribution, and any additional non-Federal contribution anticipated to be necessary to complete the Project in accordance with Attachment 1, Section 5(i).

Quarterly, CHSRA will provide FRA with a detailed Project Budget organized by Task and Subtask for FRA review.⁹ Any cumulative changes to the Approved detailed Project Budget that exceed the cumulative 10% threshold at the subtask level as described in Attachment 2, Section 4 of this Agreement, must be provided to FRA (accompanied by a detailed explanation) for approval before CHSRA is authorized to make the change. For purposes of Attachment 2, Section 4 the term “line item” is defined as subtasks.

Table 2: Budget

Task Description	Total Grant Budget	Federal Grant Budget	State Grant Budget	Local (other) Grant Budget	Additional State Budget
Task 1: Environmental Review	\$ 240,977,483	\$ 180,141,593	\$ 60,835,890	\$ -	\$ -
Task 2: Preliminary Engineering (PE)	\$ 221,522,559	\$ 164,870,650	\$ 56,651,909	\$ -	\$ -
Task 3: Other Related Work	\$ 160,704,437	\$ 92,854,178	\$ 15,750,259	\$ 52,100,000	\$ -
Task 4: Project Administration and Statewide Cost Allocation Plan (SWCAP)	\$ 795,522	\$ 795,522	\$ -	\$ -	\$ -
Task 5: Program, Project and FCS Construction Management	\$ 362,774,537	\$ 177,459,725	\$ 185,314,812	\$ -	\$ -
Task 6: Real Property Acquisition and Environmental Mitigation	\$ 790,544,073	\$ 410,424,643	\$ 380,119,430	\$ -	\$ -
Task 7: Early Work	\$ -	\$ -	\$ -	\$ -	\$ -
Task 8: Final Design and Construction Contract Work for FCS	\$ 3,227,152,459	\$ 1,472,153,528	\$ 1,754,998,931	\$ -	\$ 208,399,844
Task 9: Interim Use Project Reserve	\$ 53,856,392	\$ 53,856,392	\$ -	\$ -	\$ -
Task 10: Unallocated Contingency	\$ -	\$ -	\$ -	\$ -	\$ -
Total	\$ 5,058,327,462	\$ 2,552,556,231	\$ 2,453,671,231	\$ 52,100,000	\$ 208,399,844

⁹ For Tasks 1 and 2, those subtasks should be broken down and tracked by Project Section.

The Parties acknowledge their mutual benefit in efficiently spending the Federal and state funds to complete the Project and that there is an opportunity for substantial cost saving in Task 8 if the CHSRA is allowed to accelerate the expenditure of ARRA funds. CHSRA's expenditures will be consistent with a Funding Contribution Plan, which CHSRA will update quarterly and provide to FRA for review and approval. The Parties further acknowledge it is important for the Funding Contribution Plan to appropriately allocate risk between the parties to this Agreement. In order to realize such savings and appropriately allocate risk, FRA agrees to provide CHSRA with payment consistent with the Funding Contribution Plan even where such payment may temporarily exceed FRA's contributory matching fund percentage. The CHSRA's contribution on a monthly basis will be consistent with the Funding Contribution Plan.

CHSRA remains responsible for ensuring that the matching contribution at Project completion is not less than 50.1818% for all activities excluding the May 2011 ARRA funds award of \$86.380,000, which carry with them a 20.000% state contributory match. CHSRA will immediately provide FRA with written notice if at any time there is a material adverse change in pending litigation, including the timeline for resolution, or any other circumstances that might prevent CHSRA from securing and delivering the required matching contribution. Upon receiving such written notice, FRA may require that this Agreement be amended to reflect such change or take any other action permitted under this Agreement, including but not limited, to exercise of rights, including termination, pursuant to Attachment 2, Section 23.

FRA at its sole discretion may require CHSRA to use the reimbursable payment method for any future payment requests and may also require that CHSRA commit its contributory match concurrent with each payment request consistent with the funding contribution proportions required under Attachment 1, Subsections 5(c), 5(e) and 5(f).

PROJECT DELIVERABLES

CHSRA will provide FRA with all deliverables described in this Agreement on or before the Delivery Date identified in the Deliverable Table incorporated herein as Exhibit A. CHSRA will revise the Deliverable Table quarterly and provided to FRA for approval.

PROJECT COORDINATION

CHSRA will perform all Tasks including necessary coordination with all involved Federal and State agencies, local governments, and all railroad owners and operators and stakeholders using processes already in place. CHSRA's coordination process is based on ongoing practice, executed Memoranda of Understanding and other Agreements, and public involvement processes developed for the Task 1.

PROJECT MANAGEMENT

CHSRA's staff organization currently consists of personnel responsible for management and execution of executive, financial, engineering, construction, real estate, environmental, human resources, IT, financial, external affairs, legal, and administrative functions. Consultants provide support in various areas, as needed.

CHSRA will engage contractors through the competitive bidding process established by the State of California for all construction activities and in compliance with Federal regulations. CHSRA will provide oversight for all contracted services.

CHSRA will satisfy the requirements of this Agreement including providing all of the deliverables in a timely manner for FRA's review, acceptance, or approval. Failure to satisfy the deliverables within the prescribed timeframes may result in FRA withholding grant payments or any other action consistent with the terms of the Cooperative Agreement and Federal law. FRA normally requires a minimum of 30 calendar days for review and approvals.

Nothing herein is intended to, or will be construed to or will operate to, preclude or to limit CHSRA from negotiating such changes in its contracts with its consultants as it finds are necessary and appropriate to secure the performance of the work described herein in an adequate and timely manner, provided, however, that CHSRA will provide FRA timely written notice of all such contractual changes relevant to the work to be performed under this SOW.

Substantial Federal Involvement

Because FRA's awards of HSIPR funds to CHSRA were made as cooperative agreements, FRA has substantial involvement after award in CHSRA's completion of the Tasks listed in this Attachment 3, which means that technical, administrative or programmatic staff will assist, guide, coordinate, or otherwise participate in project activities. As defined in the 2007 NEPA/CEQA MOU between FRA and CHSRA, the purpose of the joint environmental documentation, as may be required by evolving law, is to ensure that the appropriate environmental and related analyses of the proposed HST system are conducted in compliance with the applicable requirements of both state and federal law and completed in a timely, coordinated and effective manner. The MOU explains the parties agree to confer to ensure compliance with such law is coordinated to the greatest extent possible.

In addition, CHSRA's Change Control Process (aka, Change Management Process), which documents the scope, schedule, cost, quality, risks and configuration impacts to the Approved FCS Project provides a formal and methodical process to review and analyze changes to ensure that the final delivered FCS meets associated requirements.

Consistent with the cooperative agreement's substantial federal involvement clause, CHSRA's Program Management Plan change control process, the MOU among FRA and CHSRA for co-leadership of the environmental processes, and FRA's authority as the Federal agency responsible for NEPA compliance, CHSRA must work closely with FRA on major project decisions such as the assessment of alternatives and selection of the preferred alignment, among other Project process milestones.

PERFORMANCE OBJECTIVES AND DELIVERABLES

CHSRA will achieve the following performance objectives to be authorized for funding of Project components and for the Project to be considered complete.

Overall Postaward Prerequisites

1. Prior to commencing any activities described in Tasks 6-8, CHSRA will provide to FRA an updated Program Management Plan, including an updated cost estimate appropriate to the level of project development. This submittal must be approved by FRA in writing.
2. Prior to award of Design/Build contract work funded by this Agreement, CHSRA will complete PE and environmental documentation for the Project as defined in Tasks 1 and 2.
3. CHSRA will execute any required stakeholder agreements with infrastructure owners and operators (principally BNSF and Union Pacific Railroad) and other stakeholders as appropriate and submit copies to FRA for review.

G. Attachment 3A is deleted in its entirety.

H. Exhibits 1, 2, and 3 of Attachment 3 are deleted in their entirety.

I. The following Exhibit A is added to Attachment 3:

EXHIBIT A: DELIVERABLE SCHEDULE

DELIVERABLE¹	DELIVERY DATE² (calendar year)
¹ Where this Table shows a Delivery Date before April 20, 2016 it means that CHSRA has submitted the required deliverable to FRA and FRA has taken the appropriate action.	
Task 1: Environmental Review	
Notice of Intent	
San Francisco – San Jose	1 st Qtr 2009
San Jose – Merced	1 st Qtr 2009
Merced – Fresno	4 th Qtr 2009
Fresno – Bakersfield	4 th Qtr 2009
Bakersfield – Palmdale	3 rd Qtr 2009
Palmdale – Burbank	3 rd Qtr 2014
Burbank – Los Angeles	3 rd Qtr 2014
Los Angeles – Anaheim	1 st Qtr 2007
Scoping Report	
San Francisco – San Jose	3 rd Qtr 2009
San Jose – Merced	3 rd Qtr 2009

DELIVERABLE¹	DELIVERY DATE² (calendar year)
Merced – Fresno	1 st Qtr 2010
Fresno – Bakersfield	4 th Qtr 2009
Bakersfield – Palmdale	4 th Qtr 2009
Palmdale – Burbank	4 th Qtr 2014
Burbank – Los Angeles	4 th Qtr 2014
Los Angeles – Anaheim	3 rd Qtr 2009
Agency Coordination Plan	
San Francisco – San Jose	4 th Qtr 2009
San Jose – Merced	3 rd Qtr 2009
Merced – Fresno	4 th Qtr 2009
Fresno – Bakersfield	4 th Qtr 2009
Bakersfield – Palmdale	4 th Qtr 2009
Palmdale – Burbank	1 st Qtr 2010
Burbank – Los Angeles	1 st Qtr 2010
Los Angeles – Anaheim	4 th Qtr 2009
Purpose and Need Statement	
San Francisco – San Jose	1 st Qtr 2016
San Jose – Merced	4 th Qtr 2011
Merced – Fresno	1 st Qtr 2011
Fresno – Bakersfield	1 st Qtr 2011
Bakersfield – Palmdale	3 rd Qtr 2012
Palmdale – Burbank	3 rd Qtr 2012
Burbank – Los Angeles	3 rd Qtr 2012
Los Angeles – Anaheim	3 rd Qtr 2012
Alternative Analysis Report(s)	
San Francisco – San Jose	2 nd Qtr 2013
San Jose – Merced	3 rd Qtr 2014
Merced – Fresno	3 rd Qtr 2010
Fresno – Bakersfield	4 th Qtr 2011
Bakersfield – Palmdale	2 nd Qtr 2016
Palmdale – Burbank	2 nd Qtr 2015
Burbank – Los Angeles	2 nd Qtr 2016
Los Angeles – Anaheim	2 nd Qtr 2016
Administrative Draft EIR/EIS	
San Francisco – San Jose	3 rd Qtr 2016
San Jose – Merced	4 th Qtr 2016
Merced – Fresno	3 rd Qtr 2011

DELIVERABLE ¹	DELIVERY DATE ² (calendar year)
Fresno – Bakersfield	3 rd Qtr 2011
Bakersfield – Palmdale	1 st Qtr 2017
Palmdale – Burbank	1 st Qtr 2017
Burbank – Los Angeles	1 st Qtr 2017
Los Angeles – Anaheim	1 st Qtr 2017
<i>Supplemental Documents</i>	
Bakersfield F Street	2 nd Qtr 2016
Central Valley Wye	3 rd Qtr 2016
Draft EIR/EIS	
San Francisco – San Jose	1 st Qtr 2017
San Jose – Merced	4 th Qtr 2016
Merced – Fresno	4 th Qtr 2011
Fresno – Bakersfield	4 th Qtr 2012
Bakersfield – Palmdale	1 st Qtr 2017
Palmdale – Burbank	1 st Qtr 2017
Burbank – Los Angeles	2 nd Qtr 2017
Los Angeles – Anaheim	2 nd Qtr 2017
<i>Supplemental Documents</i>	
Bakersfield F Street	3 rd Qtr 2016
Central Valley Wye	4 th Qtr 2016
Administrative Final EIR/EIS	
San Francisco – San Jose	3 rd Qtr 2017
San Jose – Merced	3 rd Qtr 2017
Merced – Fresno	1 st Qtr 2012
Fresno – Bakersfield	1 st Qtr 2014
Bakersfield – Palmdale	4 th Qtr 2017
Palmdale – Burbank	4 th Qtr 2017
Burbank – Los Angeles	3 rd Qtr 2017
Los Angeles – Anaheim	3 rd Qtr 2017
<i>Supplemental Documents</i>	
Bakersfield F Street	4 th Qtr 2016
Central Valley Wye	3 rd Qtr 2017
Final EIR/EIS	
San Francisco – San Jose	4 th Qtr 2017
San Jose – Merced	4 th Qtr 2017
Merced – Fresno	2 nd Qtr 2012
Fresno – Bakersfield	2 nd Qtr 2014

DELIVERABLE¹	DELIVERY DATE² (calendar year)
Bakersfield – Palmdale	4 th Qtr 2017
Palmdale – Burbank	4 th Qtr 2017
Burbank – Los Angeles	4 th Qtr 2017
Los Angeles – Anaheim	4 th Qtr 2017
<i>Supplemental Documents</i>	
Bakersfield F Street	1 st Qtr 2017
Central Valley Wye	4 th Qtr 2017
Draft Agency Decision Documents	
San Francisco – San Jose	4 th Qtr 2017
San Jose – Merced	4 th Qtr 2017
Merced – Fresno	3 rd Qtr 2012
Fresno – Bakersfield	2 nd Qtr 2014
Bakersfield – Palmdale	4 th Qtr 2017
Palmdale – Burbank	4 th Qtr 2017
Burbank – Los Angeles	4 th Qtr 2017
Los Angeles – Anaheim	4 th Qtr 2017
<i>Supplemental Documents</i>	
Bakersfield F Street	1 st Qtr 2017
Central Valley Wye	4 th Qtr 2017
MMEP	
San Francisco – San Jose	4 th Qtr 2017
San Jose – Merced	4 th Qtr 2017
Merced – Fresno	3 rd Qtr 2012
Fresno – Bakersfield	2 nd Qtr 2014
Bakersfield – Palmdale	4 th Qtr 2017
Palmdale – Burbank	4 th Qtr 2017
Burbank – Los Angeles	4 th Qtr 2017
Los Angeles – Anaheim	4 th Qtr 2017
<i>Supplemental Documents</i>	
Bakersfield F Street	1 st Qtr 2017
Central Valley Wye	4 th Qtr 2017
Additional Environmental Reviews	As Required
Description of outside positions and statewide agency agreements with environmental resource agencies as required to support the environmental permitting	As Required

DELIVERABLE¹	DELIVERY DATE² (calendar year)
Task 2: Preliminary Engineering (PE)	
PE to Support Task 1 Environmental Reviews ²	
San Francisco – San Jose	2 nd Qtr 2017
San Jose – Merced	2 nd Qtr 2017
Merced – Fresno	2 nd Qtr 2011
Fresno – Bakersfield	4 th Qtr 2014
Bakersfield – Palmdale	4 th Qtr 2016
Palmdale – Burbank	1 st Qtr 2017
Burbank – Los Angeles	2 nd Qtr 2016
Los Angeles – Anaheim	2 nd Qtr 2016
<i>Supplemental Documents</i>	
Bakersfield F Street	2 nd Qtr 2016
Central Valley Wye	3 rd Qtr 2015
CHSTP Design Manual	4 th Qtr 2016
CONOPS for the FCS and any other operating segments	1 st Qtr 2012 3 rd Qtr 2016 (update)
Rolling Stock Performance Specifications	1 st Qtr 2015 3 rd Qtr 2016 (final)
Systems Safety and Security Management Plan (SSMP)	2 nd Qtr 2014 3 rd Qtr 2016
Task 3: Other Related Work Needed Prior to Start of Construction	
Station Area plans	2 nd Qtr 2017
CHSRA ROW Procedures Manual	2 nd Qtr 2017
ROW Acquisition Plan for the FCS	Quarterly
Relocation Assistance Plan	(included in each project section FEIS)
San Francisco – San Jose	4 th Qtr 2017
San Jose – Merced	4 th Qtr 2017
Merced – Fresno	2 nd Qtr 2012
Fresno – Bakersfield	2 nd Qtr 2014
Bakersfield – Palmdale	4 th Qtr 2017
Palmdale – Burbank	4 th Qtr 2017
Burbank – Los Angeles	4 th Qtr 2017
Los Angeles – Anaheim	4 th Qtr 2017
FCS Contingency Plan	4 th Qtr 2016
Ridership forecasting analysis	2 nd Qtr 2016 (update)
PE to Support Procurement	
Merced – Fresno	2 nd Qtr 2012

DELIVERABLE¹	DELIVERY DATE² (calendar year)
Fresno – Bakersfield	4 th Qtr 2014
Detailed construction cost estimate, construction sequence, and schedule	For each Construction Package in Task 8: <ul style="list-style-type: none"> • Prior to bid (complete for CP1 to CP4) • Upon contract initiation (complete for CP1 to CP4) • Upon any contract change
Small Business Development Program Plan	4 th Qtr 2012
Availability and Disparity Study Scope of Work and Final Report	2 nd Qtr 2014
Task 4: Project Administration and Statewide Cost Allocation Plan (SWCAP)	
Documentation showing CHSRA’s portion of the SWCAP	2 nd Qtr 2014 4 th Qtr 2016 (if necessary)
Task 5: Program, Project, and FCS Construction Management	
Work Breakdown Structure	2 nd Qtr 2016
Annual Work Plan (AWP)	3 rd Qtr (Annually)
Program Management Plan (PMP) Updates	3 rd Qtr (Annually)
Central Valley Project Financial Plan	3 rd Qtr (Annually)
Phase I Program Financial Plan	2 nd Qtr 2016
Design/Build Program Plan	4 th Qtr 2015
RFPs/ Notice(s) to Proceed (NTP) for Design and/or Construction Services	
CP 1	RFP: 1 st Qtr 2012 NTP: 4 th Qtr 2013
CP 2-3	RFP: 2 nd Qtr 2014 NTP: 3 rd Qtr 2015
CP 4	RFP: 2 nd Qtr 2015 NTP: 2 nd Qtr 2016
CP 5	RFP: 4 th Qtr 2016 NTP: 4 th Qtr 2017
Network Integration Strategic Service Plan	3 rd Qtr 2016
Updated Service Development Plan	2 nd Qtr 2017
Infrastructure Maintenance Plan	2 nd Qtr 2011; Update 2 nd Qtr 2017
Rolling Stock Maintenance Plan	2 nd Qtr 2011; Update 2 nd Qtr 2017
Task 6: Real Property Acquisition and Environmental Mitigation	
Environmental compliance database and electronic reporting	Quarterly
Task 7: Early Work Program	
N/A	N/A

DELIVERABLE¹	DELIVERY DATE² (calendar year)
Task 8: Final Design and Construction Contract Work	
Construction Package 1	
Detailed baseline construction schedule (and updates) for each of the construction packages	2 nd Qtr 2014
Type Selection Reports	3 rd Qtr 2015
60% Design	2 nd Qtr 2016
90% Design	3 rd Qtr 2016
Ready for Construction Design	4 th Qtr 2016
Construction Package 2–3	
Detailed baseline construction schedule (and updates) for each of the construction packages	2 nd Qtr 2016
Type Selection Reports	TBD
60% Design	TBD
90% Design	TBD
Ready for Construction Design	TBD
Construction Package 4	
Detailed baseline construction schedule (and updates) for each of the construction packages	3 rd Qtr 2016
Type Selection Reports	TBD
60% Design	TBD
90% Design	TBD
Ready for Construction Design	TBD
Construction Package 5	
Detailed baseline construction schedule (and updates) for each of the construction packages	TBD
Track/Systems Selection Report	TBD
60% Design	TBD
90% Design	TBD
Ready for Construction Design	TBD
Task 10: Unallocated Contingency	
Contingency Management Plan	Quarterly