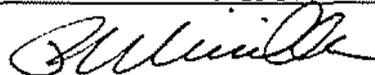


AGENDA ITEM NO. 1:30pm #3
COUNCIL MEETING 09/12/13
APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER



September 12, 2013

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department



SUBJECT: APPROVE A COOPERATIVE AGREEMENT WITH THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY (CHSRA) FOR CONSTRUCTION OF A NEW OVERPASS OVER THE HIGH-SPEED RAIL (HSR) ALIGNMENT AND THE UNION PACIFIC RAILROAD TRACKS AT VETERANS BOULEVARD (COUNCIL DISTRICT 2)

RECOMMENDATIONS

It is recommended that the Council take the following actions:

1. Approve the attached Cooperative Agreement with the California High-Speed Rail Authority in substantially the form attached and presented.
2. Authorize the Public Works Director or his designee to sign the agreement on behalf of the City of Fresno.

EXECUTIVE SUMMARY

The California High Speed Rail Authority (CHSRA) Project is proposing to mitigate the closing of the existing Union Pacific Railroad (UPRR) at-grade crossing at Carnegie Avenue by constructing a portion of the Veterans Boulevard Project. The construction work associated with this consists of extending Bullard Avenue to the future Veterans Boulevard intersection, two lanes of Veterans Boulevard, a bridge structure over the existing UPRR and future High Speed Rail (HSR) tracks, and a roadway connection from Veterans Boulevard to existing Golden State Boulevard.

This Agreement outlines the terms and conditions of cooperation between the City of Fresno and the California High-Speed Rail Authority to complete Plans, Specifications and Estimate (PS&E), Right-of-Way (R/W) and construction for a new overpass over the HSR alignment and UPRR corridor for Veterans Boulevard in the City of Fresno. The Agreement limits the work to performing PS&E, R/W and Construction activities for the grade separation and roadway improvements along Golden State Boulevard from approximately one mile south of Herndon Avenue to approximately

REPORT TO THE CITY COUNCIL

Approve a Cooperative Agreement for Construction of a New Overpass over the High-Speed Rail Alignment at Veterans Boulevard

September 12, 2013

Page 2

one mile north of Barstow Avenue. This Project will be implemented as a traditional design-bid-build project. (See the attached map of the project limits). The PS&E portion of the grade separation and additional road work construction is anticipated to take approximately 12 months with construction completed by the end of 2016. The final design and bid documents will be complete by December 2014 allowing the overpass project to proceed into construction.

BACKGROUND

Construction of Veterans Boulevard, originally known as the Herndon-Grantland Diagonal, has long been a goal of the City of Fresno, as illustrated in the 1984 General Plan and 2025 General Plan. In FY 2006, the City undertook the preparation of a Project Study Report using approximately \$500,000 in local funds, to take the first step in the Caltrans process toward the ultimate development of the interchange. In November 2006, the 20-year extension of Measure C was passed by the voters of Fresno County. The adopted Measure C Expenditure Plan, which accompanied the ballot measure, included Veterans Boulevard as a Tier 1 Regional Project to be funded with a combination of Regional Measure C, State Transportation Improvement Program, Federal Transportation Funds and Regional Transportation Mitigation Fee.

On December 11, 2011, the Council approved an amendment to the Cooperative Agreement with the Fresno County Transportation Authority (FCTA) for the Veterans Boulevard/State Route 99 Interchange and Grade Separation, Urban Project N-1. The amendment provided authorization from FCTA for \$8.8 million for the PS&E or final design phase of the project. In June 2013, Caltrans certified and approved the final Environmental Impact Report (EIR). The Project Report for the Veterans Boulevard project from Shaw Avenue to Herndon Avenue, including a new freeway interchange at State Route 99 and an overpass at the Union Pacific Railroad, was also signed and approved by Caltrans in July 2013. The FCTA and Fresno Council of Governments (COG) have also approved a total of \$15.8 million in right-of-way acquisition funds for the project and appraisals are now underway by the City.

The EIR for the California High-Speed Rail Project's Merced to Fresno segment included the selection of an at-grade alignment just west of the Union Pacific Railroad tracks through much of northwest Fresno including the area near Shaw Avenue, Carnegie Avenue and the Veterans Boulevard alignment. At locations such as Shaw Avenue, the CHSRA project proposes to construct a grade separation to carry Shaw Avenue over the UPRR and HSR tracks. This is also the case at other locations further south on the HSR corridor such as McKinley Avenue (overpass), Olive Avenue (overpass), Tulare Street (underpass), Ventura Avenue (underpass) and Church Avenue (overpass). Carnegie Avenue is a short street segment between Golden State Boulevard and Bullard Avenue which was deemed to be infeasible for a grade separation at that location, due to the close proximity of Golden State and Bullard Avenues. The high volume of traffic utilizing Carnegie Avenue made it also infeasible to close the crossing and re-route as far as Herndon and Shaw Avenues. The City Administration, City staff and CHSRA representatives developed a solution which is set forth in the EIR for the Merced to Fresno segment, of mitigating the Carnegie Avenue at-grade railroad crossing closure through constructing Veterans Boulevard between Golden State Boulevard and Bullard Avenue, including the Bullard Avenue extension from Carnegie to Bullard Avenues.

REPORT TO THE CITY COUNCIL

Approve a Cooperative Agreement for Construction of a New Overpass over the High-Speed Rail Alignment at Veterans Boulevard

September 12, 2013

Page 2

City staff and CHSRA representatives have agreed it makes much more sense for the City to construct the Veterans Boulevard overpass and Bullard Avenue extension given that it is part of the larger City project and will ensure compatibility with subsequent phases of Veterans Boulevard. The City is also currently under contract with Mark Thomas and Company for the design work. The agreement allows for the City to construct the facility with the CHSRA to pay 100% of all construction costs including City bidding costs, construction management, inspection and testing.

The Draft Cooperative Agreement has been extensively reviewed by the City Attorney's Office. The recommended action authorizes the Public Works Director or his designee to execute the agreement, subject to approval as to form by the City Attorney's Office.

FISCAL IMPACT

The project located in Council District 2 will not impact the General Fund. All construction phase costs for the new Veterans Boulevard overpass and Bullard Avenue extension will be 100% funded by the California High-Speed Rail Authority project. The agreement specifies the Authority will fund \$25 million for the Veterans Boulevard construction project.

This page intentionally left blank.

**EXHIBIT A
 SCOPE OF WORK**

1. This Agreement is between the California High-Speed Rail Authority (CHSRA) and City of Fresno (CITY).

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

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

California High Speed Rail Authority	City of Fresno
Section/Unit: Central Valley	Section-Unit:
Contract Manager: Diana Gomez, Regional Dir.	Contract Manager: Scott Mozier, City Engineer
Address: 770 L Street, Suite 800 Sacramento, CA 95814	Address: 2600 Fresno St., 4 th Floor Fresno, CA. 93721-3623
Phone No.: 559 801-1164	Phone No.: 559-621-8811
Fax No.: N/A	Fax No.: 559-488-1045
Email: dgomez@hsr.ca.gov	Email: scott.mozier@fresno.gov

3. **Scope of Work**

A. This Agreement outlines the terms and conditions of cooperation between PARTIES to complete Plans, Specifications and Estimate (PS&E), Right of Way (R/W) and Construction for a new overpass over the High Speed Rail alignment for Veterans Boulevard (Veterans Blvd), in the City of Fresno.

B. PARTIES are negotiating a Cooperative Agreement that will define how PARTIES would cooperate for delivery of the High Speed Train System within the CITY.

C. For the purpose of this Agreement, performing PS&E, R/W and Construction activities for the roadway improvements along Golden State Blvd from approximately 1 mile south of Herndon Avenue to approximately 1 mile north of Barstow Avenue in the City of Fresno, as shown on Attachment 1 -- vicinity map, will be referred to as PROJECT. All responsibilities assigned in this Agreement to the PROJECT are referred to as OBLIGATIONS. All scope activities (i.e. physical alterations and construction) contemplated by this Agreement to complete the PROJECT is referred to as WORK.

D. This PROJECT will be implemented as a Design-Bid-Build project.

The major elements of the scope activities and WORK to be completed on the PROJECT, (Attachment 1), which includes but is not limited to:

- Construction of Veterans Blvd overpass

EXHIBIT A SCOPE OF WORK

- Connection of Veterans Blvd to Golden State Blvd
 - Connection of West Bullard Avenue to Veterans Blvd
 - Closure of Carnegie Avenue
 - Landscape / erosion control and replacement planting
- E. In this Agreement capitalized words represent defined terms and acronyms. The Definitions Section of this Agreement contains a complete definition for each capitalized term.

4. Responsibilities

- CHSRA is a FUNDING PARTNER for the PROJECT
- CITY is a FUNDING PARTNER for the PROJECT
- FHWA is NEPA lead for the PROJECT
- FRA is a NEPA Cooperating Agency for the PROJECT
- CHSRA is a CEQA responsible agency for the PROJECT
- CITY and Caltrans are CEQA leads for the PROJECT
- CITY is IMPLEMENTING AGENCY for PS&E, R/W and CONSTRUCTION
- CHSRA is independently responsible for CHSRA facilities located within the PROJECT area

5. General Scope

- A. PARTIES will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; and FRA, FHWA, and CITY OF FRESNO STANDARDS. For any WORK specific to the operating right of way of CHSRA, PARTIES will perform all OBLIGATIONS in accordance with CHSRA Design Manual.
- B. CITY has completed and Caltrans has approved the Project Report for PROJECT.
- C. CHSRA will provide design specifications and guidelines for facilities and structures that will become CHSRA right of way. CITY will comply with these specifications and guidelines for all WORK related to such facilities and structures within the project area.
- D. CHSRA shall provide preliminary design plans and related preliminary utility plans, base mapping, surveys, traffic handling and related documents for the PROJECT in its possession within 30 days after execution of this Agreement.

EXHIBIT A SCOPE OF WORK

- E. Each PARTY will determine and ensure that all of its personnel participating in fulfilling its OBLIGATIONS are appropriately qualified and, where necessary, licensed to perform the tasks assigned to them.
- F. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources while performing WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of the discovery. WORK may only resume after a qualified professional as determined by CHSRA has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
- G. If HM-1 or HM-2 is found while performing WORK, CITY will immediately notify CHSRA.
- H. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT area. CITY will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
- I. If HM-2 is found within the PROJECT area, CITY being responsible for the advertisement, award, and administration of the PROJECT construction contract will perform the HM MANAGEMENT ACTIVITIES related to HM-2.
- J. CITY acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CITY policy on such acquisition.
- K. HM-1 or HM-2 within the HSR alignment is a CHSRA responsibility unless caused by prior CITY operations.
- L. PARTIES will comply with all of the commitments and conditions set forth in environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTY's responsibilities in this Agreement.
- M. CITY will designate Scott Mozier as project manager to manage the project and serve as a primary point of contact for CHSRA. The CITY project manager shall maintain PROJECT MANAGEMENT PLANS necessary to control the WORK related to the PROJECT.
- N. CHSRA will designate Diana Gomez as project manager to manage the project and serve as a primary point of contact for CHSRA issues related to the project.
- O. CITY will furnish CHSRA with written monthly progress reports during the implementation of OBLIGATIONS in any given PROJECT COMPONENT.
- P. If CITY anticipates that funding for WORK will be insufficient to complete WORK, CITY will promptly notify CHSRA. CITY has no obligation to perform WORK if funds to perform WORK are unavailable.

EXHIBIT A SCOPE OF WORK

Q. Each PARTY accepts responsibility to complete the activities that it selected on the SCOPE and RESPONSIBILITY SUMMARY (Attachment 3).

6. Environmental Permits, Approvals and Agreements

- A. CITY will prepare the environmental documentation for PROJECT.
- B. CITY shall secure all environmental permits required for PROJECT to comply with all applicable laws and regulations.
- C. CITY shall fulfill all environmental commitments and mitigation required for PROJECT.
- D. CHSRA must review and approve any environmental mitigation proposed within any CHSRA right of way.

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

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

8. Right of Way (R/W)

EXHIBIT A SCOPE OF WORK

A. CITY agrees to exercise its power of eminent domain to acquire all properties necessary to complete the PROJECT, in accordance with California Code of Civil Procedure §1240.320(a), to fulfill its right of way acquisition responsibilities pursuant to Attachment 3.

B. CITY will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with PROJECT related WORK or that violate CITY encroachment policy. Utility relocations will be accomplished in accordance with CITY policies and all requirements imposed by FRA and FHWA on utility relocations to be reimbursed with federal funds, including 23 CFR 645. Whenever practical, all longitudinal utilities should be relocated outside of the ultimate CHSRA right of way. Utilities that are to remain or are to be placed within the ultimate CHSRA right of way must also comply with the CHSRA Design Manual. Location and occupancy rights of utilities that permanently remain in the CHSRA right of way will be documented by CITY in a form consistent with CHSRA policy.

C. CITY'S responsibility for CROSS BORDER UTILITIES in accordance with Section 8.B of this Exhibit A shall extend to the tie-in location determined by coordination among CITY, CHSRA and CHSRA's CP 1 CONTRACTOR, regardless of whether the tie-in location is located within, on or outside the boundaries of PROJECT area. All relocations of CROSS BORDER UTILITIES within the PROJECT area assigned to CITY will be completed in accordance with CITY policies, including issuance by CITY of notices to relocate.

D. All real property to be conveyed from CITY to CHSRA shall be conveyed by Transfer of Jurisdiction in recordable form acceptable to CHSRA, subject to no liens or encumbrances other than those reasonably acceptable to CHSRA. All right of way conveyances shall be submitted to the Council of the City of Fresno and are subject to Council approval.

9. Coordination

A. CITY shall coordinate all of its WORK on the PROJECT with CHSRA. CHSRA and CITY shall develop a process for all PARTIES to provide regular updates on PROJECT including progress reports as provided in Section 5.O. of this Exhibit A.

B. During WORK, representatives of all PARTIES will cooperate and consult with each other and the CP 1 CONTRACTOR to assure that all WORK is accomplished according to Section 5.A of this Exhibit A.

C. City shall work diligently to complete all WORK on the PROJECT as soon as is practicable and as may be agreed to in a subsequent writing by the PARTIES, to ensure that CHSRA may proceed with the CP 1 Project as needed. In the event that CITY does not complete all of its WORK on the PROJECT by a date certain, if such a date is set, the CITY shall at a minimum ensure that CHSRA CP1 CONTRACTOR is able to work unimpeded on the CP 1 Project in the relinquished portion of Golden State Blvd (within the proposed CHSRA Corridor), including closing Carnegie Avenue, or providing a temporary connection. In the event of any delay, CITY shall coordinate with CHSRA.

EXHIBIT A SCOPE OF WORK

D. CITY shall conform the horizontal and vertical alignments of the portion of PROJECT within and adjacent to CHSRA right-of-way, to the alignments established by CHSRA.

E. If necessary, CITY shall work in good faith to coordinate with any utility companies performing relocation work associated with the CHSRA alignment to the north and south of the PROJECT area.

F. CHSRA and CITY will develop a public information process for dissemination of PROJECT information to the public. In addition to regular updates, this process will also include provisions for time sensitive or emergency notifications. CITY shall coordinate with CHSRA prior to disseminating information regarding the PROJECT, consistent with the process to be developed as a requirement of this section.

G. CITY shall coordinate with CHSRA on an overall traffic management plan for the PROJECT.

H. CITY shall comply with the terms and conditions regarding WORK on or adjacent to existing Union Pacific Railroad property, as contained in the "Engineering, Construction, and Maintenance Agreement Related to the California High-Speed Rail Authority Merced to Fresno Segment" (Attachment 6).

10. Construction

A. CITY will obtain all required construction permits including, but not limited to, a California Public Utilities Commission grade separation permit, a CHSRA grade separation permit, and a UPRR Construction and Maintenance Agreement (UPRR C&MA). CITY and CHSRA will cooperate and coordinate for all required permits. The UPRR C&MA may be a three way agreement between City, CHSRA, and UPRR.

B. CITY will advertise, open bids, award, and approve the construction contract for WORK on the PROJECT in accordance with the Fresno Municipal Code, California Public Contract Code and the California Labor Code.

C. CITY need not advertise or award the construction contract until CHSRA verifies full funding of CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL. If funding delays construction schedule, City is relieved from said schedule. CHSRA will verify full funding by issuance of a Notice to Proceed to the City.

D. By accepting responsibility to advertise and award the construction contract, CITY also accepts responsibility to administer the construction contract for WORK on the PROJECT.

E. If the lowest responsive and responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, all PARTIES must be involved in

EXHIBIT A SCOPE OF WORK

determining how to proceed. If PARTIES do not agree in writing on a course of action within 15 working days of bid opening, CITY shall have final/sole rejection/approval of the construction contract.

F. CITY will require the CITY CONSTRUCTION CONTRACTOR to furnish payment and performance bonds naming CITY as obligee and to carry liability insurance in accordance with CITY specifications. CHSRA shall be included as an additional obligee on any payment and performance bonds and as an additional insured under the insurance policies. The forms and amounts of all bonds and policies shall be approved by CITY.

G. As IMPLEMENTING AGENCY for the construction PROJECT COMPONENT, CITY is responsible for maintenance within the PROJECT area as part of the construction contract until the completion, inspection and acceptance of WORK by both CITY and CHSRA. The City may assign this work to the CITY CONSTRUCTION CONTRACTOR.

H. PARTIES will execute a separate maintenance agreement to define the maintenance responsibilities for any joint use facilities and appurtenances located in either of the PARTIES' rights of way. Said agreement will cover any joint use facilities within the PROJECT area, but may also cover other joint use facilities along the CHSRA alignment. (An example of a joint use facility would be a CITY bridge over the CHSRA alignment where one PARTY may be responsible for the superstructure and the other may be responsible for the deck and related appurtenances.) The maintenance agreement shall be executed prior to OBLIGATION COMPLETION. Execution of a maintenance agreement is a condition precedent to the fulfillment of the PARTIES OBLIGATIONS.

I. Upon WORK completion and acceptance of WORK within the ultimate CHSRA right of way, subject to the approval of CITY and CHSRA, CHSRA will operate and maintain all PROJECT facilities at its own cost until a maintenance agreement is executed or an existing agreement, if any, is amended to incorporate the maintenance of these new PROJECT facilities.

J. Upon satisfactory completion of all WORK under this Agreement, as determined by CITY and CHSRA, actual ownership and title to materials, equipment, and appurtenances installed within CITY right-of way will be vested in CITY, and actual ownership and title to materials, equipment, and appurtenances installed within CHSRA right of way will be vested in the CHSRA, except the City's Intelligent Traffic System (ITS). No further agreement will be necessary to transfer ownership or control as herein before stated, provided that if either PARTY requests documentation of transfer, the other PARTY will provide mutually agreeable documentation to evidence said transfer.

K. For any WORK within the ultimate CHSRA right of way, CITY will require the CITY CONSTRUCTION CONTRACTOR to warrant its work and to obtain from its subcontractors, manufacturers and suppliers all warranties that are included in CHSRA's CP 1 contract which is available on the CHSRA website. All warranties described in the preceding sentence shall

EXHIBIT A SCOPE OF WORK

run directly to, and be enforceable by, CITY. Upon request by CHSRA, CITY will assign such warranties to CHSRA or CHSRA's assignee.

11. Schedule

A. Project Approval and Environmental Documentation for PROJECT has been completed by CITY and Caltrans.

B. The estimated date for completion of the Veterans Blvd OC, its connections to Golden State Blvd and Bullard Avenue, and the closure of Carnegie Avenue is [REDACTED].

C. The estimated date for Contract Acceptance is [REDACTED].

D. The estimated date for OBLIGATION COMPLETION is [REDACTED].

12. Definitions:

CITY OF FRESNO PUBLIC WORKS STANDARDS AND SPECIFICATIONS– CITY specifications, standard plans, policies and procedures.

CITY OF FRESNO DESIGN GUIDELINES FOR HIGH-SPEED RAIL– The June 15, 2012 guidance document that contains recommendations for additional design requirements to be considered by CHSRA, including Addendum December 2012 and final version as adopted Spring 2013.

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

CITY CONSTRUCTION CONTRACTOR-City Forces or the construction contractor hired by the City for this PROJECT.

CONTRACT ACCEPTANCE – The date CITY accepts the completed construction project.

CONSTRUCTION SUPPORT – See PROJECT COMPONENT.

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

CP 1 PROJECT -

FHWA – Federal Highway Administration

EXHIBIT A SCOPE OF WORK

FRA – Federal Railroad Administration

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

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

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

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

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

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

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

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

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

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

OBLIGATIONS – All responsibilities included in this Agreement.

PARTY – Any individual signatory PARTY to this Agreement.

PARTIES – The term that collectively references all of the signatory agencies to this Agreement. This term only describes the relationship between these agencies to work together

EXHIBIT A SCOPE OF WORK

to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTY's individual actions legally bind the other PARTIES.

PROJECT – Construction of Veteran's Blvd overpass, connection of Veterans Blvd to Golden State Blvd and Bullard Avenue, and closure of Carnegie Avenue in the City of Fresno.

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

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

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

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

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

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

CONSTRUCTION CAPITAL – The funds for the construction contract.

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

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

WORK – All scope activities included in this Agreement.

STATE – The State of California and includes CHSRA.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing

A. CHSRA shall reimburse and/or compensate CITY for actual allowable costs incurred in accordance with the rate schedule set forth in Section 4 of this Exhibit B for services satisfactorily rendered and approved by CHSRA, upon receipt and approval of invoices for such services by CHSRA. Incomplete or disputed invoices shall be returned to CITY, unpaid, for correction and/or resolution.

B. Invoices shall include the Agreement Number and invoice number and shall be submitted in duplicate, not more frequently than monthly in arrears, to:

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

C. Invoices shall be submitted showing each billable hour increment, identified staff by name, classification and a description of the task and itemized Travel Expense Claim (TEC). The appropriate number of billable hours will be identified by the Contract Manager.

D. CHSRA shall make payment on approved invoices within 45 calendar days of receipt of such invoice by CHSRA.

2. Budget Contingency Clause

A. If funding for the PROJECT is reduced or eliminated for any fiscal year by the Budget Act, CHSRA shall remain obligated for funding the PROJECT to completion, as provided in Sections 6 and 8.B. of this Exhibit B. In such event, CHSRA shall immediately notify CITY of the change in funding allocations and work with CITY to ensure seamless PROJECT completion.

B. It is the intent of this Section 2 that funding disruptions will not negatively impact City's ability to deliver critical services to residents.

C. This Agreement is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Agreement. Funding for this Agreement may be subject to the approval of the FRA and to any additional restrictions, limitations, or conditions imposed by FRA, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement. If Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

3. Disputed Invoices

A. In the event an invoice is disputed by CHSRA, the invoice shall be returned to the City's Contract Manager identified in Exhibit A, Section 2.

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

4. Rates

A. Rates for services to be rendered are provided on Attachment 5 to Exhibit F of this Agreement.

B. Attachment 5 is subject to revisions each fiscal year based upon changes in employee compensation, Payroll Reserve Assessment Rates, and the Indirect Cost Rate. CITY shall provide CHSRA with a current rate schedule at the beginning of each CITY fiscal year. The CITY's fiscal year begins on July 1 of each calendar year.

C. If CITY has not entered into an Agreement with a Federal Agency (and therefore is not bound by that Federal Agency's negotiated rates), the basis for determining overhead and indirect costs shall be based upon State Administrative Manual (SAM) Section 8752.

5. Payment

A. Costs incurred pursuant to this Agreement shall be computed in accordance with SAM Sections 8752 and 8752.1.

B. The method of payment for this Agreement shall be based on actual costs as set forth herein. Actual costs shall not exceed the current rates for classifications set forth in Attachment 5 to Exhibit F or CITY's Detailed Budget without prior written agreement between CITY and CHSRA. CITY shall also be reimbursed for direct costs, other than salary costs, including, but are not limited to, costs associated with experts, consultants, surveyors, appraisers, title reports, escrow and accountants.

C. Transportation and subsistence costs shall not exceed rates authorized to be paid to non-represented state employees under current State Department of Personnel Administration rules.

6. Cost Limitation

A. The total CHSRA funding obligation under this Agreement shall not exceed \$25,000,000.

**EXHIBIT B
 BUDGET DETAIL AND PAYMENT PROVISIONS**

B. It is understood and agreed that the total CHSRA funding obligation is an upper limit and that CHSRA will pay for only those services actually rendered as authorized by CHSRA.

7. Cost Principles

A. CITY agrees to comply with Federal procedures in accordance with Title 2 of the Code of Federal Regulations (CFR) Part 225, entitled Cost Principles for State, Local, and Indian Tribal Governments.

B. CITY agrees to comply with Federal procedures in accordance with Title 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR 18).

C. Any costs for which payment has been made to CITY that are determined by subsequent audit to be unallowable under the 2 CFR 225 or 49 CFR 18 is subject to repayment by CITY.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

8. Costs

A. All WORK necessary for OBLIGATION COMPLETION of PROJECT is an OBLIGATION cost (See Article 9).

B. Funding responsibilities are identified as follows:

PROJECT ELEMENT	CITY	CHSRA
PA&ED	100%	
PS&E	100%	
R/W SUPPORT	100%	
R/W CAPITAL	100%	
Utility Identification and Relocation	100%	
HM – 1 & HM – 2 Mitigation	100%	
CONSTRUCTION CAPITAL		100%
CONSTRUCTION SUPPORT		100%
Environmental Commitments & Mitigation		100%

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

Environmental Compliance During Construction		100%
Construction Claims		100%

C. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS cost. Cost sharing of these items is dependent on the nature of the award, judgment, or settlement. PARTIES shall develop cost sharing arrangements that are consistent with the other terms and conditions of this Agreement.

D. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS cost. CITY shall not be responsible for defending any environmental documents which it has not prepared. Furthermore, CITY shall not be responsible for defending CHSRA's use of environmental documents prepared by CITY. In the event of a challenge to CHSRA's use of any CITY environmental document, CHSRA shall indemnify CITY of all liability.

E. The cost of all CITY furnished materials (CFM) is a CONSTRUCTION CAPITAL cost. CITY will invoice CHSRA for the actual cost of any CFM as a CONSTRUCTION CAPITAL cost.

F. After PARTIES agree that all WORK is complete, CITY shall submit a final accounting for all OBLIGATIONS costs. Based on the final accounting, PARTIES will refund or invoice as necessary in order to satisfy the financial commitments of this Agreement.

9. Detailed Budget

See Exhibit F, Attachment 4.

EXHIBIT C
GENERAL TERMS AND CONDITIONS (GTC 610)

GTC-610.

- 1. Approval:** This Agreement is of no force or effect until signed by both PARTIES and approved by the Department of General Services, if required. The PARTIES may not commence performance until such approval has been obtained.
- 2. Amendment:** All amendments to this Agreement must be in writing, signed by the PARTIES, and approved, as required, to be valid.
- 3. Assignment:** This Agreement is not assignable, either in whole or in part, without the written consent of the non-assigning PARTY, which consent shall be in the form of a formal written amendment.
- 4. Audit:** The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.
- 5. Independent Contractor:** CITY, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the STATE.
- 6. Recycling Certification:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
- 7. Non-Discrimination Clause:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing

**EXHIBIT C
GENERAL TERMS AND CONDITIONS (GTC 610)**

Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

9. Timeliness: Time is of the essence in this Agreement.

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

11. Governing Law: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

12. Venue: Venue for any civil action arising from a dispute under this Agreement shall be proper in the Superior Court of Fresno County.

13. Antitrust Claims: The Contractor by signing this Agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

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

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

B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act

EXHIBIT C
GENERAL TERMS AND CONDITIONS (GTC 610)

(15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (Cal. Gov. Code, § 4552.)

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

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

14. Child Support Compliance Act: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

A. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

B. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

16. Priority Hiring Considerations: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions

**EXHIBIT C
GENERAL TERMS AND CONDITIONS (GTC 610)**

funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code Section 10353.

17. Small Business Participation and DVBE Participation Reporting Requirements:

A. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

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

18. Loss Leader:

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

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. Termination

A. Unless otherwise provided herein, this Agreement shall terminate upon the successful fulfillment by both PARTIES of their respective OBLIGATIONS.

B. Prior to the termination of this Agreement, the PARTIES must execute a mutually agreed upon maintenance agreement as provided in Exhibit A, Section H.

2. Contracting

CITY may employ consultants, experts, surveyors, appraisers, title companies, escrow companies, and accountants to perform services as determined by CITY.

A. Any contract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement that are applicable to contractors.

B. The CITY may make a substitution of contractors as necessary. In addition to any other subcontracting requirement specified in this Agreement, CITY shall ensure that contractor requirements in State Contract Manual (SCM) Section 3.06 have been met. -Any revisions to SCM Section 3.06 made during the term of this Agreement shall be made a part of this Agreement and incorporated herein by reference. Failure to comply with these requirements may result in the termination of this Agreement.

C.

3. Retention of Records/Audits

A. For the purpose of determining compliance with Government Code Section 8546.7, CITY, contractors and CHSRA shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All PARTIES shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. CHSRA, the State Auditor, FRA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CITY that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

4. Disputes

A. In the event of a dispute under this Agreement, the PARTIES shall make good faith efforts to first resolve disputes informally at the staff and management level before proceeding to more formal dispute resolution remedies. CHSRA and CITY agree to continue to perform their obligations under this Agreement, pending the resolution of the dispute.

5. Federal Lobbying Activities Certification

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

A. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of CITY, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal Agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal Agreement, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, CITY shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

C. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

D. CITY agrees that by signing this document, it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

6. Federal Funding Requirements

During the performance of this Agreement, CITY, for itself, its assignees and successors in interest agrees as follows:

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

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

B. Federal Standards: The CITY 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 CITY's technical specifications and requirements.

C. Compliance with regulations: The CITY shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of CITY - Title 49 Code of Federal Regulations Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. Nondiscrimination: The CITY, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CITY shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

of materials and leases of equipment. The CITY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations (Title 49, C.F.R.), including employment practices when the Agreement covers a program whose goal is employment.

E. Access Requirements for Individuals with Disabilities: The CITY agrees to comply with, and assure that any Subcontractor under this Contract complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable federal regulations, including any amendments thereto.

F. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CITY of the CITY's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

G. Site Visits: The CITY agrees that FRA, through its authorized representatives, has the right to make site visits to review Project accomplishments and for other reasons. If any site visit is made by FRA on the premises of the CITY or any of its subcontractors under this Contract, the CITY shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the CITY or subcontractor.

H. Safety Oversight: To the extent applicable, the CITY 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.

I. Debarment and Suspension: This Agreement is a covered transaction for purposes of 2 C.F.R. 1200. As such, the CITY is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the CITY must verify that the Subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" at <http://epls.gov/>. The CITY shall obtain appropriate certifications from each such Subcontractor and provide such certifications to CHSRA.

J. Information and Reports: The CITY shall provide all information and reports required by the Regulations (49 C.F.R., Part 21), or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the CHSRA or any duly authorized representative of the Federal Government to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to CHSRA, or any duly authorized Federal Agency as appropriate, and shall set forth what efforts it has made to obtain the information.

K. Sanctions for Noncompliance: In the event of the CITY's noncompliance with the nondiscrimination provisions of this Agreement, CHSRA shall impose such Agreement sanctions as it or any Federal funding agency may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CITY under the Agreement until the CITY complies, and/or
2. Cancellation, termination or suspension of the Agreement, in whole or in part.

L. Incorporation of Provisions: The CITY shall include the provisions of Articles (A) through (K) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

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

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

7. Environmental Protection:

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

A. **Clean Air:** The CITY agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The CITY agrees to report each violation to CHSRA, and understands and agrees that CHSRA shall, in turn, report each violation as required to assure notification to the Federal Railroad Administration (FRA) and the appropriate Environmental Protection Agency Regional Office.

B. **Clean Water:** The CITY agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CITY agrees to report each violation to CHSRA, and understands and agrees that CHSRA shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.

C. **Energy Conservation:** The CITY agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6421 et seq.).

D. **Agreement Not To Use Violating Facilities:** The CITY agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). The CITY shall promptly notify CHSRA if the CITY any Subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Contract is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the CITY's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.

E. **Environmental Protection:** The CITY shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. and the California Environmental Quality Act, California Public Resources Code, Sections 21000 et seq.

F. **Incorporation of Provisions:** The CITY shall include the provisions of Articles (A) through (F) in every subcontract hereunder exceeding \$50,000.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

8. Rebates, Kickbacks and Other Unlawful Consideration:

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

9. Indemnification and Hold Harmless Requirement

A. Neither CHSRA nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under, or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify, and save harmless CHSRA and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury or damage occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement.

B. Neither CITY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CHSRA under, or in connection with any work, authority, or jurisdiction delegated to CHSRA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CHSRA shall fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury or damages occurring by reason of anything done or omitted to be done by CHSRA under or in connection with any work, authority, or jurisdiction delegated to CHSRA under this Agreement.

C. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release any PARTY from its obligation to indemnify as to any claims or cause of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred subsequent to the effective date of this Agreement and prior to the effective date of termination or completion.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

10. Confidentiality and Information

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

11. State-Owned Data - Integrity and Security

A. CITY shall comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:

1. Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect CHSRA data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space. Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.

2. Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.

3. Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.

4. Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.

5. Notify the Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.

6. Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

present a threat to the security of State-owned data and of specific means of protecting that State-owned data.

B. CITY shall use the State-owned data only for State purposes under this Agreement.

C. CITY shall not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) section 5335.1)

12. Fly America

The CITY agrees to comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. 301-10, which provide that recipients and sub-recipients of federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the CITY shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier, and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CITY agrees to include the requirements of this section in all Subcontracts that may involve international air transportation.

13. Cargo Preference

The CITY agrees to the following:

A. To use privately owned United States-flag commercial vessels to ship at least 50 percent 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 the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish within 20 Working Days following the date of loading for shipments originating within the United States, or within 30 Working Days following the date of loading for shipments 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 the first bullet of this clause above. This bill-of-lading shall be furnished to CHSRA (through the CITY in the case of a subcontractor's bill-of-

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

loading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the Project.

C. To include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

14. Seismic Safety

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

15. Property, Equipment And Supplies

A. CITY agrees that Project property, equipment, and supplies shall be used for the Project activity for the duration of its useful life, as determined by FRA. Should the CITY unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the CITY agrees that FRA may require the CITY to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The CITY further agrees to notify CHSRA when any Project property or equipment is withdrawn from use in the Project activity.

B. CITY 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.

C. CITY 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. The CITY 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.

E. CITY agrees that FRA may:

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

1. Require the CITY to transfer title to any property, equipment, or supplies financed with FRA assistance, as permitted by 49 C.F.R. §§ 19.30 through 19.37 inclusive.

2. Direct the disposition of property or equipment financed with FRA assistance as set forth by 49 C.F.R. §§ 19.30 through 19.37 inclusive.

F. 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 planned withdrawal, misuse or casualty loss, the CITY agrees to notify CHSRA immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 19.30 through 19.37 inclusive.

G. Unless expressly authorized in writing by CHSRA, the CITY 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 Authority or FRA interest in any Property or equipment; or

2. Obligating itself in any manner to any third party with respect to Project property or equipment.

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

16. Flood Hazards

CITY agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012(a) with respect to any construction or acquisition Project.

17. General Federal Labor Requirements

This PROJECT is also subject to U.S. Department of Labor, Contract Compliance Provisions as set forth in 41 C.F.R. Part 60 and Exec. Order No. 11246, unless otherwise noted. The CITY shall comply with the Contract Compliance provisions set forth in the Technical Assistance Guide for Federal Construction Contractors and for a Mega Project.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

18. Recycled Products

The CITY agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

19. Additional Conditions

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

20. Small Business Utilization Goals

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

EXHIBIT E
AMERICAN RECOVERY AND REINVESTMENT ACT TERMS

1. ARRA Funded Project: Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

2. Enforceability: CITY agrees that if CITY or one of its subcontractors fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and Federal laws.

3. Prohibition on Use of ARRA Funds: CITY agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

4. Required Use of American Iron, Steel and Other Manufactured Goods (Buy America): CITY agrees that in accordance with the Passenger Rail Investment and Improvement Act (PRIIA) of 2008, Pub. L. 110-432, section 24405(a), which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the US Secretary of Transportation. For more information on FRA's Buy America requirements and processes please see FRA's Answers to Frequently Ask Questions (FAQ) available at, <http://www.fra.dot.gov/Page/P0391>.

5. Wage Rate Requirements: Payment of prevailing wages on the PROJECT is required by 49 U.S.C. 24405(c)(2) and ARRA section 1606. For PROJECT COMPONENTS uses or would use rights-of-way owned by a railroad, the City shall comply with the Provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For PROJECT COMPONENTS that do not use or would not use rights-of-way owned by a railroad, the CITY will comply with the provisions of 40 U.S.C 3141 et seq.

6. Inspection Of Records: In accordance with ARRA Sections 902, 1514 and 1515, CITY agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of CITY or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the

EXHIBIT E
AMERICAN RECOVERY AND REINVESTMENT ACT TERMS

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

7. Whistleblower Protection: CITY agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. CITY agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

8. False Claims Act: CITY agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

9. Reporting Requirements: Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, CITY agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

A. The total amount of ARRA funds received by CITY during the Reporting Period;

B. The amount of ARRA funds that were expended or obligated during the Reporting Period;

C. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

1. The name of the project or activity;

2. A description of the project or activity;

3. An evaluation of the completion status of the project or activity;

and

EXHIBIT E
AMERICAN RECOVERY AND REINVESTMENT ACT TERMS

4. An estimate of the number of jobs created and /or retained by the project or activity;

D. For any contracts equal to or greater than \$25,000:

1. The name of the entity receiving the contract;
2. The amount of the contract;
3. The transaction type;
4. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
5. The Program source;
6. An award title descriptive of the purpose of each funding action;
7. The location of the entity receiving the contract;
8. The primary location of the contract, including the city, state, congressional district and country;

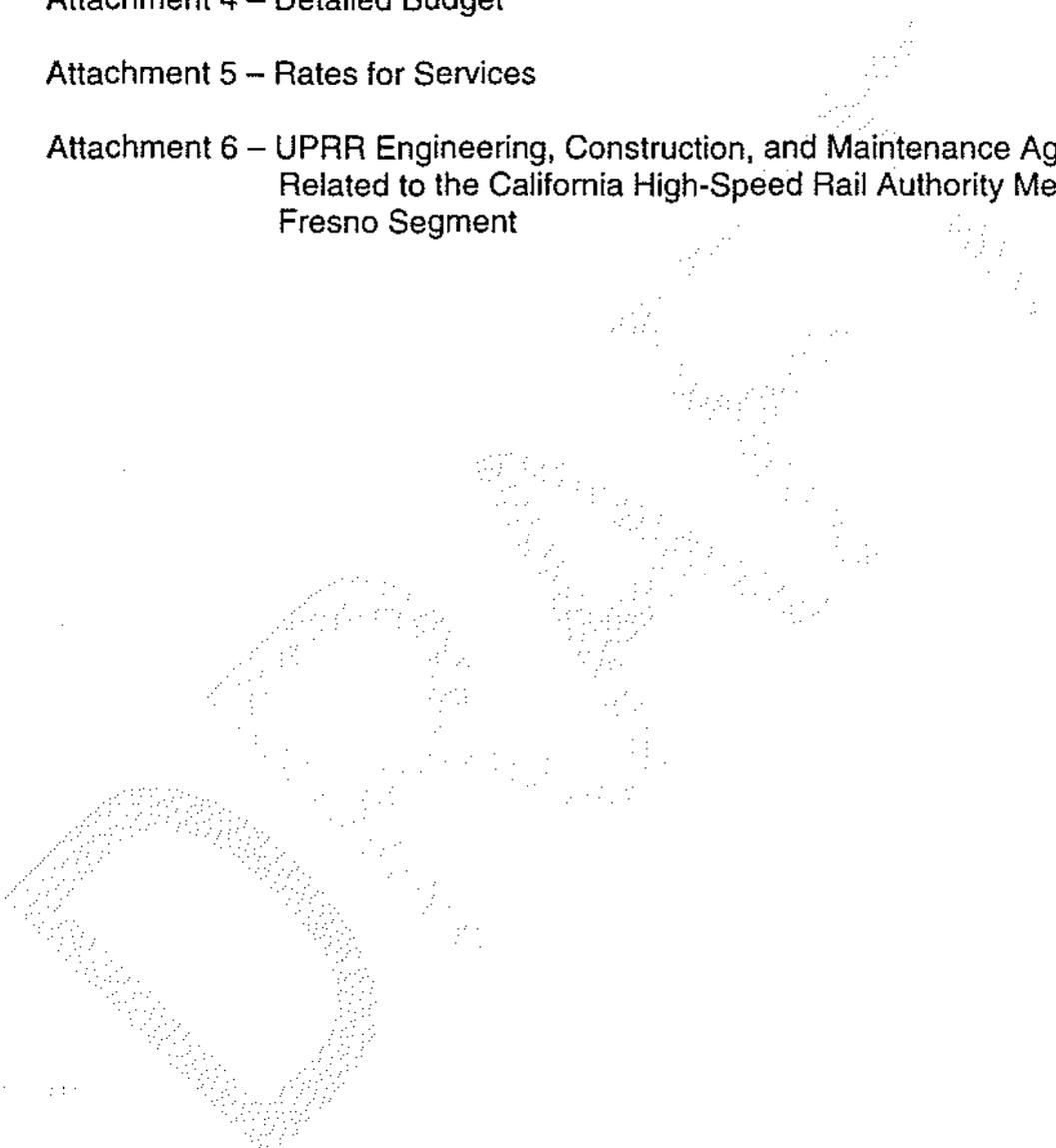
Any other information reasonably requested by the State of California or required by state or federal law or regulation.

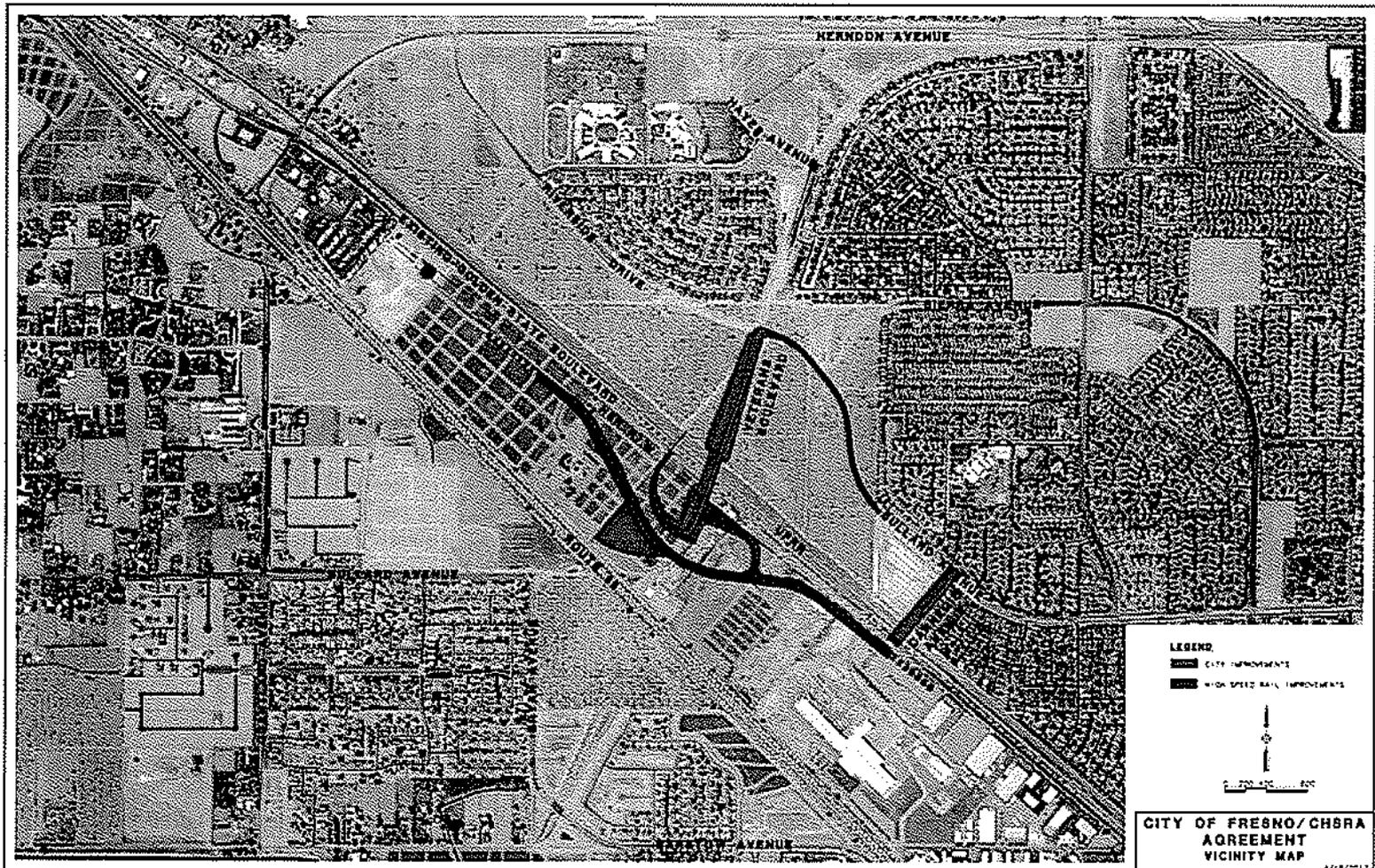
Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov.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

This page intentionally left blank.

EXHIBIT F

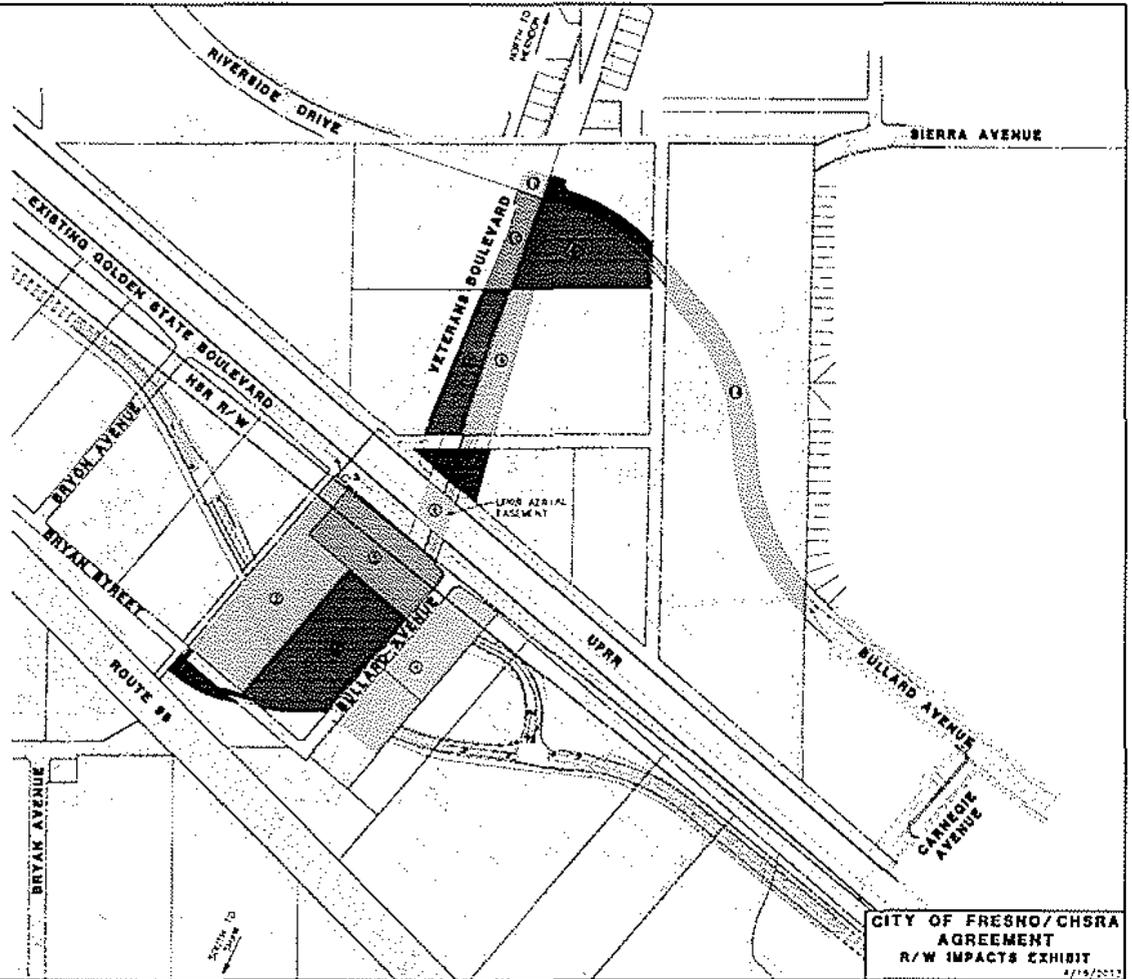
- Attachment 1 – Project Map & Listing of Major Scope Elements**
- Attachment 2 – Limits of CITY and CHSRA Environmental Document coverage**
- Attachment 3 – Scope & Responsibility Summary (WBS)**
- Attachment 4 – Detailed Budget**
- Attachment 5 – Rates for Services**
- Attachment 6 – UPRR Engineering, Construction, and Maintenance Agreement
Related to the California High-Speed Rail Authority Merced to
Fresno Segment**







HSR RIGHT OF WAY		
PARCEL	APN NUMBER	APPROX AREA (SF)
①	524-080-73	19265
②	524-080-71	243680
③	524-080-14	213820
④	524-080-25	66718
⑤	524-080-46	149390
⑥	524-080-01	23160
⑦	524-080-09	39650
⑧	524-080-97	80880
⑨	524-080-96	75810
⑩	524-080-91	44332
⑪	524-080-80	161910
⑫	524-080-05	11050
⑬	524-080-83	32580
⑭	524-130-28	172510
TOTAL AREA =		1343125



CITY OF FRESNO/CHSRA
 AGREEMENT
 R/W IMPACTS EXHIBIT
 4/19/2013

ATTACHMENT 3 SCOPE & RESPONSIBILITIES SUMMARY (WBS)

This attachment identifies the scope and responsibilities associated with each of the main project stakeholders. The lists below are intended to concisely define the roles and responsibilities of the various stakeholders in order to complete Plans, Specifications and Estimate (PS&E), Right of Way (RW) and Construction for a new overpass over the High Speed Rail alignment for Veterans Boulevard in the City of Fresno, although this is not all-inclusive of the tasks that are to be performed.

PROJECT SCOPE

The High Speed Rail (HSR) Project is proposing to mitigate the closing of the existing UPRR at-grade crossing at Carnegie Ave by constructing a portion of the Veterans Blvd Project. The construction work associated with this consists of extending Bullard Ave to the future Veterans Blvd intersection, two lanes of Veterans Blvd, a bridge structure over the existing UPRR and future HSR tracks, and a temporary jug handle ramp to connect Veterans Blvd to existing Golden State Blvd.

The major project elements are as follows:

- Construction of Veterans Blvd structure over HSR and UPRR tracks
- Temporary connection of Veterans Blvd to Golden State Blvd
- Connection of West Bullard Avenue to Veterans Blvd
- Closure of Carnegie Avenue
- Landscape / erosion control and replacement planting.

IDENTIFYING THE STAKEHOLDERS

CITY – City of Fresno

CHSRA – California High Speed Rail Authority

CALTRANS – California Department of Transportation

FHWA – Federal Highway Administration

FRA – Federal Railroad Administration

A/E CONSULTANT – City of Fresno procured design consultant

CONSTRUCTION CONSULTANT – City of Fresno to procure construction engineering consultant

**ATTACHMENT 3
SCOPE & RESPONSIBILITIES SUMMARY (WBS)**

ROLES AND RESPONSIBILITIES

CITY

- CITY shall furnish the Project Report for PROJECT.
- CITY shall furnish complete PROJECT plans to AUTHORITY for comments at 30 percent design, 60 percent design and 90 percent design.
- CITY shall furnish the PS&E for PROJECT.
- CITY shall furnish the environmental documentation for PROJECT.
- CITY shall secure all environmental permits required for PROJECT to comply with all applicable laws and regulations.
- CITY shall fulfill all environmental commitments and mitigation required for PROJECT.
- CITY shall acquire the necessary R/W for PROJECT.
- CITY shall relinquish future proposed R/W for the High Speed Rail project to CHSRA.
- CITY will furnish CHSRA with written monthly progress reports provided by the contractor during construction.
- CITY will obtain all required construction permits including but not limited to a California Public Utilities Commission grade separation permit, a CHSRA grade separation permit, and a UPRR Construction and Maintenance agreement.
- CALTRANS and CITY are CEQA leads for PROJECT.

CHSRA

- CHSRA will provide design specifications and guidelines for facilities and structures that will become CHSRA right of way.
- CHSRA shall provide preliminary design plans and related preliminary utility plans, base mapping, surveys, traffic handling and related project documents, for PROJECT in its possession within 30 days after execution of this agreement.
- CHSRA must review and approve any environmental mitigation proposed within any CHSRA right of way.
- CHSRA shall provide funding of up to \$25,000,000 for PROJECT completion.

CALTRANS

- CALTRANS will be a key stakeholder in the approval of the PROJECT.
- CALTRANS and CITY are CEQA leads for PROJECT.

FHWA

- FHWA is NEPA lead for PROJECT.

**ATTACHMENT 3
SCOPE & RESPONSIBILITIES SUMMARY (WBS)**

FRA

- FRA is a NEPA Cooperating Agency for PROJECT.
- FRA is the lead Funding Agency for PROJECT.

A/E CONSULTANT

- A/E CONSULTANT shall provide project support to CITY.
- A/E CONSULTANT shall prepare PS&E package on behalf of CITY.
- A/E CONSULTANT shall prepare environmental documentation on behalf of the CITY.
-

CONSTRUCTION CONSULTANT

- CONSTRUCTION CONSULTANT shall provide construction support for the CITY to verify compliance with Public Works Standards.

This page intentionally left blank.

**ATTACHMENT 4
DETAILED BUDGET**

DETAILED BUDGET FOR VETERANS BOULEVARD-HIGH SPEED RAIL GRADE SEPERATION

A. CITY OF FRESNO SALARIES

Project Management.....	\$88,400
Construction Management.....	\$32,800
City Attorney Charges.....	\$11,300
Purchasing Charges.....	\$32,800
<i>Total Salaries</i>	<i>\$165,300</i>

B. CITY OF FRESNO FRINGE

<i>Total Fringe</i>	<i>\$33,900</i>
---------------------------	-----------------

C. CITY OF FRESNO OVERHEAD

<i>Total Overhead</i>	<i>\$93,100</i>
-----------------------------	-----------------

D. OUTSIDE CONSULTING

Design Consultant.....	\$499,800
Construction Inspection Consultant.....	\$1,600,000
<i>Total Outside Consulting</i>	<i>\$2,099,800</i>

E. SPECIALIZED SERVICES

<i>Total Special Services</i>	<i>\$25,800</i>
-------------------------------------	-----------------

F. LAND ACQUISITION

<i>Total Land Acquisition</i>	<i>\$7,734,600</i>
-------------------------------------	--------------------

G. CONTRACT CONSTURCTION

Grade Separation Construction.....	\$20,210,000
Utility Construction.....	\$2,010,000
<i>Total Construction</i>	<i>\$22,220,000</i>

H. PERMITS & FEES

UPRR Permit.....	\$150,000
Miscellaneous.....	\$50,000
<i>Total Permits & Fees</i>	<i>\$200,000</i>

TOTAL PROJECT	\$32,572,500
----------------------------	---------------------

**ATTACHMENT 4
DETAILED BUDGET**

PROJECT FUNDING RESPONSIBILITIES

CITY OF FRESNO FUNDED ACTIVITIES.....\$8,439,700

- City of Fresno Project Management Salaries & Fringe
- Legal Expenses during Design and Right-of-Way
- Design Consultant
- Land Acquisition
- Indirect Costs (Overhead)

CALIFORNIA HIGH SPEED RAIL AUTHORITY.....\$24,132,800
REIMBURSABLE ACTIVITIES

- Purchasing Charges (Advertise & Award of Contract)
- City of Fresno Construction Management Salaries & Fringe
- Construction Inspection Consultant
- Specialized Services (Testing Lab)
- Contract Construction (Grade Separation and Utility Construction)
- Permits & Fees

**ATTACHMENT 5
RATES OF SERVICES**

This attachment identifies the rates of services provided by the City of Fresno for the completion of the project. Each classification is broken down by category to align with Attachment 4 - Detailed Budget. **Note: The actual hourly wage rate may not match the Highest Hourly Wage Rate For Position. Also, City Attorney's Office and Purchasing Division expenditures are based on an hourly rate for services rendered.**

<u>POSITION</u>	<u>HIGHEST HOURLY WAGE RATE FOR POSITION</u>	<u>HIGHEST HOURLY WAGE RATE FOR POSITION PLUS BENEFITS & OVERHEAD</u>
PROJECT MANAGEMENT		
Senior Engineering Technician.....	\$28.68	\$81.02
Engineer II.....	\$33.38	\$92.66
Supervising Engineering Technician.....	\$38.76	\$105.71
Professional Engineer.....	\$40.68	\$111.72
Chief Engineering Technician.....	\$44.04	\$120.05
Public Works Manager.....	\$50.97	\$137.47
Assistant Director of Public Works.....	\$74.62	\$196.25
Senior Account Clerk.....	\$19.19	\$47.01
Accounting Technician.....	\$21.09	\$50.76
Senior Accountant-Auditor.....	\$30.80	\$70.80
Management Analyst III.....	\$50.97	\$111.26
CONSTRUCTION MANAGEMENT		
Engineering Technician.....	\$24.78	\$71.72
Survey Party Technician.....	\$24.66	\$49.17
Survey Party Chief.....	\$30.74	\$59.46
Chief Surveyor.....	\$38.13	\$71.80

**ATTACHMENT 5
RATES OF SERVICES**

Engineering Inspector.....	\$30.55.....	\$58.40
Senior Engineering Inspector.....	\$34.22.....	\$66.00
Chief Engineering Inspector.....	\$37.58.....	\$71.66
Chief Engineering Technician.....	\$44.04.....	\$120.05
Public Works Manager.....	\$50.97.....	\$94.63
Contract Compliance Officer.....	\$29.05.....	\$57.27
Executive Assistant to Dept Director.....	\$29.61.....	\$56.54
Senior Secretary.....	\$21.44.....	\$43.75

CITY ATTORNEY CHARGES

Deputy City Attorney II.....	\$110.00
Deputy City Attorney III.....	\$117.00
Senior Deputy City Attorney.....	\$123.00
Assistant City Attorney.....	\$142.00
City Attorney.....	\$155.00

PURCHASING CHARGES

Senior Secretary.....	\$145.00
Staff Assistant.....	\$145.00
Buyer.....	\$145.00
Senior Buyer.....	\$145.00
Purchasing Manager.....	\$145.00

**Engineering, Construction, and Maintenance
Agreement
Related to the
California High-Speed Rail Authority Project
Merced to Bakersfield Segment**

TABLE OF CONTENTS

Section 1. Incorporation of Recitals.....4

Section 2. Defined Terms.4

Section 3. Design and Construction..... 6

Section 4. Procurement. 13

Section 5. Wage and Labor Terms..... 13

Section 6. Payment of Costs. 14

Section 7. Maintenance. 16

Section 8. Reciprocal Access and Notice Rights..... 17

Section 9. Flagging. 18

Section 10. Compliance with Law..... 19

Section 11. Ownership of Improvements.....21

Section 12. Public Records Act.21

Section 13. No Rights to Goods or Services.21

Section 14. Additional Understandings.21

Section 15. Coordination Committee.22

Section 16. Indemnity and Insurance.....22

Section 17. Confidentiality.23

Section 18. Force Majeure.....23

Section 19. Dispute Resolution Process.....24

Section 20. Termination.....25

Section 21. Remedies.25

Section 22. Notice of Litigation.....26

Section 23. Miscellaneous..... 26

Engineering, Construction, and Maintenance Agreement
Related to the
California High-Speed Rail Authority Project
Merced to Bakersfield Segment

This Engineering, Construction and Maintenance Agreement Related to the California High-Speed Rail Authority Project – Merced to Fresno Segment is entered this ___ day of ____, 2013 by and between Union Pacific Railroad Company (“UPRR”) and the California High-Speed Rail Authority (“CHSRA”) with respect to the following recitals:

RECITALS

A. UPRR owns, operates, maintains, and dispatches a significant network of critical freight rail routes in California that also host both intercity and commuter passenger rail service. UPRR plays a vital role for both the national and the state economies by maintaining and expanding its ability to move freight by rail; to serve the state’s ports and other shippers; and to relieve the state’s crowded highway network by facilitating the transportation of goods by rail rather than truck, thus reducing traffic congestion, air-pollutant emissions, greenhouse gas emissions and energy consumption. UPRR operates on its own right of way and under agreement on rights of way owned by other entities.

B. CHSRA is a state entity composed of nine members appointed by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. Under its organizing statutes, CHSRA directs the development and implementation of intercity high-speed rail service that is fully integrated with the state’s existing rail and bus network, consisting of interlinked conventional and high-speed rail lines and associated feeder buses. The intercity network in turn will be fully coordinated and connected with commuter rail lines and urban rail transit lines developed by local agencies.

C. In 2008, the Legislature and the people of California approved Proposition 1A, a \$9.95 billion bond measure to initiate the construction of a high-speed train system that connects San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state’s major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. \$9 billion of the Proposition 1A bond proceeds must be used for planning, engineering, and capital costs for the high-speed rail system. \$950,000,000 of the Proposition 1A bond proceeds must be allocated to eligible recipients for capital improvements to intercity and commuter rail lines and urban systems that provide connectivity to the high-speed train system and its facilities, or that are part of the construction of the high-speed train system, or provide capacity enhancements and

safety improvements. The federal government awarded \$3.8 billion in grants under several federal grant cooperative agreements for the California High-Speed Train System. Proposition 1A bond proceeds will be used as federal grant matching funds.

D. The CHSRA Revised 2012 Business Plan ("**Business Plan**") proposes a route for the CHSRA system that will cross above or below or run adjacent to UPRR's right of way in some locations, including between Merced and Bakersfield by way of Fresno.

E. UPRR and CHSRA executed a Public Project Reimbursement Agreement for Union Pacific Railroad's Review of the California High-Speed Rail Authority Project Design dated April 20, 2012 ("**PE Agreement**").

F. UPRR, CHSRA, and certain regional commuter rail operators executed a Memorandum of Understanding and Implementing Agreement Related to Implementation of High-Speed Rail in California dated July 11, 2012 (the "**MOU**").

G. CHSRA and UPRR now wish to enter this agreement to describe further terms related to engineering, construction and maintenance of CHSRA's Project to be built between Merced and Bakersfield.

AGREEMENT

Now, therefore, the parties agree as follows:

Section 1. Incorporation of Recitals.

The recitals set forth above are hereby incorporated into the terms of this agreement.

Section 2. Defined Terms.

2.1. "**Access Plan**" has the meaning set forth in Section 3.13.

2.2. "**Accessing Party**" has the meaning set forth in Section 8.1.

2.3. "**AREMA**" means the American Railway Engineering and Maintenance-of-Way Association.

2.4. "**Barrier**" means a trench, berm, or wall designed to prevent locomotives, railcars, and other on-track equipment from entering neighboring property in the event of a derailment.

2.5. "**Base Line Design Report**" has the meaning set forth in Section 3.1(i).

2.6. "**Business Plan**" has the meaning set forth in Recital D.

2.7. "**Change in Law**" means any change in law or regulatory requirements (other than any change in tax law that is applicable to UPRR generally without taking into

account UPRR's obligations under this agreement or UPRR's participation in the Project) on or after July 11, 2012 that affects UPRR or the Project.

- 2.8. **“CHSRA”** means the California High-Speed Rail Authority.
- 2.9. **“CHSRA Project Coordinator”** has the meaning set forth in Section 3.1(c).
- 2.10. **“Confidential Information”** has the meaning set forth in Section 19.
- 2.11. **“Construction Schedule”** has the meaning set forth in Section 3.3(a).
- 2.12. **“Coordination Committee”** has the meaning set forth in Section 17.
- 2.13. **“Costs”** has the meaning set forth in Section 6.2(b).
- 2.14. **“Dispute”** has the meaning set forth in Section 21.1.
- 2.15. **“Final Plans”** has the meaning set forth in Section 3.1(j).
- 2.16. **“Force Majeure Event”** has the meaning set forth in Section 20.
- 2.17. **“Indemnity and Insurance Agreement”** has the meaning set forth in Section 18.
- 2.18. **“MOU”** has the meaning set forth in Recital E.
- 2.19. **“Mutual Interest Improvements”** means any structure or facility, whether permanent or temporary, that will be modified or constructed as part of the Project (1) on UPRR property or (2) within 102 feet of UPRR property.
- 2.20. **“OCIP”** means Owner-Controlled Insurance Plan.
- 2.21. **“PE Agreement”** has the meaning set forth in Recital E.
- 2.22. **“Preliminary Engineering Documents”** has the meaning set forth in Section 3.1(h).
- 2.23. **“Project”** means that part of the CHSRA system to be constructed between a proposed CHSRA station in downtown Merced in the north and Bakersfield in the south, as more fully described in the Business Plan.
- 2.24. **“Providing Party”** has the meaning set forth in Section 19.
- 2.25. **“Receiving Party”** has the meaning set forth in Section 19.
- 2.26. **“Services”** means all construction of Mutual Interest Improvements conducted by UPRR or UPRR contractors.

2.27. “UPRR” means Union Pacific Railroad Company.

2.28. “UPRR Project Coordinator” has the meaning set forth in Section 3.1(b).

Section 3. Design and Construction.

3.1. Planning and Design.

(a) The terms of the PE Agreement, as amended from time to time, will continue to govern UPRR’s review of the design and construction plans for those portions of the California high-speed rail system that are not within the boundaries of the Project. Any work that UPRR began under the terms of the PE Agreement in relation to the Project will continue under the terms of this agreement effective beginning on the date of this agreement. In the event of a conflict between the terms of the PE Agreement and the terms of this agreement with respect to the Project, the terms of this agreement will govern.

(b) UPRR will designate an individual to serve as the day-to-day coordinator for design and construction and other activities contemplated by this agreement (the “**UPRR Project Coordinator**”). Unless otherwise expressly provided herein or expressly directed by the UPRR Project Coordinator, the UPRR Project Coordinator will be the first point of contact for CHSRA with respect to any issue or question arising under this agreement. CHSRA will reimburse UPRR for all actual costs associated with the UPRR Project Coordinator’s work related to the Project, including wages, standard additives, travel, relocation if applicable, and the pro rata cost of office space.

(c) CHSRA will designate an individual to serve as the day-to-day coordinator for design and construction and other activities contemplated by this agreement (the “**CHSRA Project Coordinator**”). Unless otherwise expressly provided herein or expressly directed by the CHSRA Project Coordinator, the CHSRA Project Coordinator will be the first point of contact for UPRR with respect to any issue or question arising under this agreement. CHSRA will be solely responsible for all costs associated with the CHSRA Project Coordinator’s work

(d) CHSRA will design and construct (except as otherwise expressly provided herein), and obtain all required permits or other governmental approvals required for, all Mutual Interest Improvements. All Mutual Interest Improvements will be planned, designed, and constructed at CHSRA’s sole cost and expense. CHSRA intends to use a design/build contract for the Project.

(e) Mutual Interest Improvements must be designed and constructed in accordance with all applicable laws, rules, regulations, AREMA standards, and UPRR standards and specifications. A copy of UPRR’s standards and specifications is attached hereto as Exhibit 2. As between AREMA standards and UPRR standards, the higher standard will apply. UPRR will give CHSRA copies of changes to UPRR standards and specifications. All Mutual Interest Improvements will comply with the

most current UPRR standards and specifications provided to CHSRA; provided that CHSRA will not be obligated to modify the Final Plans to conform to changed UPRR standards and specifications provided to CHSRA after approval of the Final Plans unless CHSRA does not begin construction of the affected Mutual Interest Improvements within six months after UPRR approves the Final Plans.

(f) All Mutual Interest Improvements must (i) clear-span UPRR's right of way; (ii) be designed and placed in a manner that allows CHSRA to inspect and maintain the Mutual Interest Improvements without entering UPRR's property; and (iii) be constructed a sufficient distance away from UPRR's property to permit UPRR's full utilization of its property for railroad purposes. All requests for a variation from these requirements must be in writing from the CHSRA Project Coordinator. All permission granting a variance must be in writing and will apply only to the specific location in question.

(g) The parties have established a clearance standard of a minimum of 102 feet between the nearest UPRR property line and the centerline of the nearest CHSRA track. CHSRA may not perform any construction work within 102 feet of any UPRR property until after UPRR approves CHSRA's Final Plans for the improvements to which the work will be related. At any location where the centerline of the closest CHSRA track will be 102 feet or closer to UPRR's property, CHSRA must design, construct, and maintain Barriers between the CHSRA tracks and UPRR's property. Barriers must be designed and constructed in a manner that allows CHSRA to inspect and maintain the Barriers without entering UPRR's property. **CHSRA will install, maintain and pay for any future Barriers and safety systems that are required by law for the CHSRA's Project because of its physical proximity to the UPRR. For technological improvements and changes in Best Practices, that both parties agree would enhance the Mutual Interest improvements, the parties agree to work together to develop new safety mitigation measures to be implemented based on a mutually agreed cost sharing arrangement.**

(h) CHSRA will provide UPRR with a copy of the preliminary engineering documents for the Project (the "**Preliminary Engineering Documents**"). UPRR will provide CHSRA with approval of, or written review comments on, the Preliminary Engineering Documents within forty-five (45) days of receipt, including any time before execution of this agreement or within five (5) days of execution if more than forty-five (45) days pass between such receipt and execution. If UPRR does not approve the Preliminary Engineering Documents, UPRR and CHSRA will meet within forty-five (45) days to discuss and resolve any review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval within forty-five (45) days of the completion of such discussions. UPRR will not unreasonably withhold or condition its approval. UPRR will confirm its approval by stamping each page of the Preliminary Engineering Documents that it approves. CHSRA may not rely on portions of the Preliminary Engineering Documents that have not been stamped with UPRR's approval.

(i) CHSRA will provide UPRR with a base line design report for all Mutual Interest Improvements (the “**Base Line Design Report**”). UPRR will review the Base Line Design Report and provide CHSRA with approval of, or written review comments on, the Base Line Design Report within forty-five (45) days of receipt. If UPRR provides written review comments, UPRR and CHSRA will meet within forty-five (45) days to discuss and resolve any review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval within forty-five (45) days of the completion of such discussions. UPRR will not unreasonably withhold or condition its approval. UPRR will confirm its approval by stamping each page of the Base Line Design Report that it approves. CHSRA may not rely on portions of the Base Line Design Report that have not been stamped with UPRR's approval.

(j) CHSRA will provide UPRR with CHSRA's final design plans (the “**Final Plans**”). UPRR will provide CHSRA with approval of, or written review comments on, the Final Plans within forty-five (45) days of receipt. If UPRR does not approve the Final Plans, UPRR and CHSRA will meet within forty-five (45) days to discuss and resolve any review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval within forty-five (45) days of the completion of such discussions. UPRR will not unreasonably withhold or condition its approval. After approval of the Final Plans, no change will be made in the design of a corresponding Mutual Interest Improvement unless approved in writing by UPRR, which approval will not be unreasonably withheld, conditioned, or delayed. UPRR will confirm its approval by stamping each page of the Final Plans that it approves. CHSRA may not rely on portions of the Final Plans that have not been stamped with UPRR's approval.

(k) To assist in expediting UPRR approval of the Final Plans, CHSRA will provide UPRR with CHSRA's 60% and 90% design plans. UPRR and CHSRA will meet promptly, and no later than thirty (30) days after UPRR receipt, to discuss the review of such 60% and 90% design plans if either party reasonably believes that doing so will expedite approval of the Final Plans.

(l) Except as may be otherwise agreed, CHSRA will not commence construction of Mutual Interest Improvements before UPRR approves the Final Plans. CHSRA may seek such exceptions when it reasonably believes that commencement of construction of a Mutual Interest Improvement before UPRR's approval of the Final Plans would not have an adverse impact on safe or efficient operations. UPRR will consider any such requests in good faith but will have sole discretion in its own judgment whether to grant an exception. CHSRA must make all requests for an exception in writing addressed to the UPRR Project Coordinator. An exception will be valid only if approved in writing by the UPRR Project Coordinator.

(m) UPRR will use reasonable efforts to make resources available to ensure timely completion of its work related to design review. As part of this effort, UPRR may hire or assign a member of its engineering staff to be dedicated to design and construction issues related to the CHSRA system. CHSRA will reimburse UPRR for all

actual costs associated with this person's employment, including wages, standard additives, travel, relocation, and the pro rata cost of office space.

3.2. Permits.

CHSRA is solely responsible, at no cost to UPRR, for obtaining all permits or other governmental approvals required for the construction of the Project, including the Barriers and other safety or mitigation features and all other Mutual Interest Improvements.

3.3. Construction Schedule.

(a) CHSRA will develop a construction schedule for the Mutual Interest Improvements, using critical path method (the "**Construction Schedule**"). The Construction Schedule will, to the extent reasonably possible, limit the time during which UPRR operates over temporary trackage. At no time will UPRR be prevented from operating over main line trackage (except with respect to permanent main line trackage when corresponding temporary main line trackage is available.)

(b) CHSRA will furnish to UPRR, and update on a weekly basis, a detailed Construction Schedule (typically 3-week look ahead) showing both sequence and location of construction work to assist both parties in the effective scheduling of resources necessary to accomplish the work.

3.4. Construction.

(a) UPRR or its contractor will construct those portions of the Mutual Interest Improvements listed on Exhibit 2. CHSRA will construct all other Mutual Interest Improvements. All work done on UPRR's property will be consistent with UPRR's labor agreements, as required by 49 U.S.C. 24405 or otherwise. UPRR will use reasonable efforts to make resources available to ensure timely completion of construction work to be conducted by UPRR forces or a UPRR contractor. CHSRA will have the right to inspect Mutual Interest Improvements constructed by UPRR.

(b) CHSRA will construct Mutual Interest Improvements in accordance with UPRR-approved Final Plans, as required by Section 3.1(j), at times and in a manner as to not unreasonably interfere with, delay, or endanger freight and passenger rail operations. CHSRA and UPRR will consult with each other to coordinate scheduling of construction work that could affect freight rail operations. The parties will identify opportunities for exclusive windows of access to railroad right-of-way for purpose of construction, and at other times, non-exclusive access with Form B flagging.

(c) CHSRA must select experienced contractors that have bonding and insurance coverage consistent with reasonable and customary standards in the railroad industry; CHSRA will select contractors with Class 1 railroad construction experience, such as those listed on Exhibit 2. CHSRA and its contractors must execute a right of entry agreement with UPRR (and, where applicable, with the San Joaquin Valley

Railroad) before entering property owned or controlled by UPRR. UPRR's current form Right of Entry Agreement is attached as Exhibit 3.

(d) CHSRA will be responsible to UPRR (including its affiliated railroad companies) for all damages for unscheduled delays which may be sustained by UPRR, its employees, tenants, or freight in its care in the event such delays are caused by any breach of this agreement by CHSRA or any negligent act or omission of CHSRA or its contractors, agents, or employees.

3.5. Inspection of Mutual Interest Improvements. UPRR will use reasonable efforts to make resources available to ensure timely completion of construction work related to Mutual Interest Improvements. UPRR will have the right to monitor construction of Mutual Interest Improvements and may hire a firm to observe such construction on its behalf. The construction observers will not direct or control construction activities. CHSRA will respond in writing with a proposed course of action within ten (10) days of receiving a written complaint or concern from a construction observer that a Mutual Interest Improvement is being constructed in a manner that is inconsistent with the Final Plans, provided that such complaint or concern is presented to CHSRA within a reasonable time after discovery. CHSRA will reimburse UPRR for the actual costs (including standard additives) of using construction observers.

3.6. Change Orders. CHSRA will notify and obtain UPRR's advance written consent to change orders that CHSRA believes are material to the design and construction of the Mutual Interest Improvements. Within five (5) days of receipt of a change order review request from CHSRA, UPRR will provide approval or written review comments on the change order. If UPRR provides written review comments, UPRR and CHSRA will meet promptly to discuss the review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval of the change order, which approval shall not be unreasonably withheld, conditioned, or delayed.

3.7. Methods and Procedures. CHSRA will provide copies of the methods and procedures of constructing Mutual Interest Improvements to UPRR for review. If UPRR has any comments or concerns regarding such methods and procedures, the Coordination Committee will endeavor in good faith to make any changes necessary to rectify UPRR's comments or concerns within thirty (30) days. CHSRA will also submit to UPRR for approval, prior to construction, plans and calculations certified by a licensed professional engineer of the State of California for falsework or shoring that provides lateral or subjacent support for UPRR property or facilities. Within forty-five (45) days of receipt of CHSRA's contractors' proposed methods and procedures and falsework/shoring plans and calculations, UPRR will provide approval or written review comments on such methods, procedures, plans, and calculations. If UPRR provides written review comments, UPRR and CHSRA will meet to discuss the review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval of such methods, procedures, plans, and calculations, which approval shall not be unreasonably withheld, conditioned or delayed. No Mutual Interest Improvements may be commenced until UPRR has approved such methods, procedures, plans, and

calculations. CHSRA will at all times keep covered all pits or openings within twenty-five (25) feet of or under UPRR trackage, except during the time required for actual operations in making such pits or openings and performing work in them.

3.8. Right to Stop Work.

(a) If (i) CHSRA's contractors prosecute construction of Mutual Interest Improvements (A) in material non-compliance with the Final Plans or otherwise in material non-compliance with the requirements of this agreement; or (B) in a manner that UPRR reasonably deems to be potentially hazardous to UPRR property or facilities or the safe and efficient movement of its trains, locomotives, or railcars; or (ii) the insurance required to be maintained by CHSRA (under its OCIP or otherwise) is canceled during the course of construction of the Project, CHSRA or its contractors, as applicable, will upon notice received from UPRR, stop construction of the Mutual Interest Improvements until the acts or omissions of CHSRA or its contractors have been fully rectified to UPRR's reasonable satisfaction or, as the case may be, evidence of required insurance coverage has been delivered to and accepted by UPRR.

(b) UPRR has the right to request that any employee, contractor, or subcontractor of CHSRA be removed from the Project site and denied further work on the Project for incompetence, neglect of duty, unsafe conduct, or misconduct if, in UPRR's reasonable judgment, the incompetence, neglect of duty, unsafe conduct, or misconduct may materially impair the safety of UPRR's operations, facilities, or property. If CHSRA or its contractors elect not to honor such a request for removal from the Project, UPRR may stop construction of the Mutual Interest Improvements until the matter has been fully rectified to UPRR's reasonable satisfaction.

3.9. Clearances. CHSRA will comply with the clearance requirements contained in the approved Base Line Design Report and Final Plans.

3.10. As-Built CAD Drawings. After the Project construction is completed, CHSRA will furnish to UPRR, in a format acceptable to UPRR, one (1) set of as-built plans, at no cost to UPRR, prepared in U.S. Customary Units, and one (1) set of computer compact discs, containing as-built CAD drawings of the Mutual Interest Improvements, identifying the software used to prepare the CAD drawings. The as-built plans must (i) depict all information in UPRR engineering stationing and mile post pluses; (ii) include plan and profile, structural drawings and specifications, and drainage plans; and (iii) show all Mutual Interest Improvements.

3.11. Relocation of Existing Utilities. As between CHSRA and UPRR, it is CHSRA's responsibility, at CHSRA's sole cost, to design and coordinate the protection, modification, and relocation, as necessary, of all existing utilities that are affected by the Project, both on and off UPRR property, including but not limited to fiber optic lines and pipelines, whether buried or not, subject to UPRR's review and approval. CHSRA will prepare any and all notices and other transmittals to utility companies that are required in connection with such work.

3.12. Drainage. CHSRA's Final Plans must provide for sufficient drainage to protect UPRR's property and facilities. CHSRA, at its sole cost and expense, will maintain all joint drainage facilities, if any.

3.13. No Interference With Adjacent Operations. CHSRA will develop a plan for UPRR's continued access to and use of UPRR property or facilities adjacent to the Mutual Interest Improvements (the "**Access Plan**"). UPRR will provide CHSRA with approval of, or written review comments on, the Access Plan within thirty (30) days of its receipt. If UPRR provides written review comments, UPRR and CHSRA will meet to discuss and resolve any review comments and endeavor in good faith to make any changes necessary in the Access Plan to secure UPRR's approval, which UPRR will not unreasonably withhold, condition, or delay.

3.14. Redeployment of UPRR Forces.

(a) CHSRA acknowledges that delays in the Project that prevent work on the Mutual Interest Improvements may require UPRR to send its labor forces to other job sites temporarily and, in that event, CHSRA will extend the projected completion date for such Mutual Interest Improvements as necessary to allow for reasonable demobilization/mobilization periods; provided, however, that UPRR will, unless not reasonably practicable due to an unforeseen emergency: (i) notify and consult with CHSRA to discuss alternative solutions prior to sending its labor forces to other job sites; and (ii) reassign demobilized forces back to the Project as soon as reasonably practicable.

(b) CHSRA acknowledges that, in the event of a Force Majeure Event causing an unforeseen railroad emergency on the UPRR railroad system, UPRR will have the right to reallocate those of its labor forces assigned to work on the Mutual Interest Improvements to be constructed by UPRR forces if UPRR believes in good faith that such reallocation is necessary to provide for the immediate restoration of the railroad operations of UPRR or its affiliates or to protect persons or property on or near any property owned by UPRR or any related railroad. UPRR will reassign such labor forces to again work on such Mutual Interest Improvements when, in its sole opinion, such emergency condition no longer exists. UPRR will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces.

3.15. Completion and Acceptance.

(a) UPRR and CHSRA will each issue a notice of substantial completion to each other within thirty (30) days of substantially completing its respective work on the Mutual Interest Improvements. Substantial completion will occur when the Mutual Interest Improvements are able to be placed in service in accordance with applicable laws and regulations, subject only to minor punch list items that do not materially affect the utility of the Project or UPRR's use of its property and facilities. Upon receipt of both parties' notices of completion, the parties will conduct a joint inspection of the Mutual Interest Improvements at a mutually agreeable time. All punch list action items needing

correction, repair, or replacement must be completed within sixty (60) days of the date of the joint inspection or upon such other schedule as agreed in writing among the parties at the time of inspection.

(b) The parties will each issue a certificate of final acceptance of UPRR's and CHSRA's work:

(i) within thirty (30) days after the joint inspection, or;

(ii) if necessary corrective punch list action items are noted during the joint inspection, final acceptance will be issued within thirty (30) days after corrections are completed to both parties' reasonable satisfaction.

(c) The Mutual Interest Improvements will be deemed completed and the responsibilities for operation and maintenance of the various components of the Mutual Interest Improvements will be allocated as described herein upon the issuance of certificates of final acceptance by the parties.

3.16. Disclaimer of Liability or Warranty. Notwithstanding UPRR's review and approval rights or the final acceptance procedures or any other provisions of this agreement, UPRR will not be liable for the structural design of the Mutual Interest Improvements or any deficiencies thereto and makes no warranties of any kind, express or implied, including, without limitation, the warranty of fitness for a particular purpose or the accuracy or completeness of any information it provides to CHSRA. By using a construction observer, UPRR assumes no responsibility or liability for the quality of materials or workmanship, for conformity of the Mutual Interest Improvements to the Final Plans, or for the acts or omissions of CHSRA, CHSRA's contractors, or anyone retained by or acting on behalf of CHSRA or its contractors.

Section 4. Procurement.

CHSRA acknowledges that this agreement is not a "fixed price" construction agreement and that CHSRA will reimburse UPRR for eligible project costs as provided in this agreement. Subject to the foregoing, to the extent reasonably practicable, contracts that UPRR awards for the Project will be awarded as fixed price contracts through the use of competitive procedures. Materials that UPRR procures and contracts that UPRR awards for the Project will be conducted in accordance with the then-current procurement practices of UPRR, which practices the parties agree will be deemed to comply with the procurement standards of 49 CFR Part 18 and with the procurement standards of the State of California.

Section 5. Wage and Labor Terms.

5.1. State and Local Wage Laws. UPRR is governed by the Federal Railway Labor Act with respect to the wages paid to its employees and will not be subject to state or local minimum wage or prevailing wage laws or regulations.

5.2. Collective Bargaining Agreements. All collective bargaining agreements with employees of UPRR (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroads on the Project.

5.3. Davis-Bacon Act. UPRR wages are established through collective bargaining agreements negotiated under the Railway Labor Act and as such are deemed to comply with Davis Bacon Act requirements. UPRR will require contractors working on Mutual Interest Improvements to pay their employees according to prevailing wage rates, as set forth in Exhibit 7.

Section 6. Payment of Costs.

6.1. Project Benefits. The parties agree that a basic premise underlying this agreement is that construction of the Project is for CHSRA's sole benefit, with no ascertainable benefit to UPRR, and that UPRR will not be required to contribute to the cost of the Project.

6.2. Reimbursement to UPRR by CHSRA.

(a) CHSRA will reimburse UPRR for all Costs (as defined below) related to UPRR's performance of the Services. If UPRR is required to pay or collect any federal, state, local, sales and use, value-added, goods and services, or any other similar taxes or duties imposed as a result of this agreement, including, but not limited to, taxes or duties imposed on the Services or on tangible/intangible property consumed in, or acquired for, the provision of the Services, then such taxes or duties will be invoiced to and paid by CHSRA pursuant to the terms herein; provided, however, that CHSRA will not be required to pay any taxes based on UPRR's net income.

(b) For purposes of this agreement, "Costs" means all costs and expenses incurred by UPRR or a UPRR contractor in the performance of any of the Services, and all costs and expenses of labor, travel, lodging, meals, supplies, and materials incurred for or in connection with UPRR's provision of the Services, including, without limitation, delivery charges and UPRR's additives (includes direct and indirect labor additives and overhead) as set forth in Exhibit 4. Notwithstanding the foregoing, additives are subject to periodic adjustments by UPRR in its sole discretion, consistent with its federally audited labor additive rates for all direct and indirect overhead labor costs. For purposes of this agreement, actual costs for materials provided by UPRR will be UPRR's then-current unit charge-out price at the time of installation plus applicable additives.

(c) Notwithstanding any additional requirements of this agreement, invoices will also contain the CHSRA's contract number, the date of the invoice, and the applicable billing period. Backup documentation will reflect the names of staff who performed Services, the number of hours worked, and the cost. UPRR may also invoice CHSRA upon receipt and approval of material purchases. UPRR will

electronically submit all invoices, including revisions of prior period invoices, not more frequently than once per month in arrears to CHSRA as follows:

California High Speed Rail Authority
Financial Operations Section
770 L Street, Suite 800
Sacramento, CA 95814
[ADD EMAIL ADDRESS]

(d) Invoice payments are due within thirty (30) days from the date of each invoice. CHSRA will effect payment to UPRR by check via U.S. mail or by Automatic Clearing House. UPRR has previously completed a Vendor/Payment Setup Form for this purpose. CHSRA will take all reasonable steps to ensure that UPRR's invoices are promptly paid in compliance with the requirements of the California Prompt Payment Act, Government Code §927 et seq. In the event of a breach of this requirement, UPRR may suspend its performance of its obligations under this agreement until payments are current.

6.3. Emergency Work. CHSRA agrees to reimburse UPRR for work on UPRR's facilities and property of an emergency nature caused by any act or omission of CHSRA or its contractors in connection with the Project that UPRR reasonably deems necessary for the immediate restoration of railroad operations or for the protection of persons on property owned, controlled, or leased by UPRR in or about the vicinity of the construction area. Such work may be performed by UPRR without the prior approval of CHSRA.

6.4. Disputes / Final Invoice. If CHSRA disputes a bill, CHSRA will, within fifteen (15) days from the date of the invoice, notify the railroad of the disputed amount and request supporting documentation to verify the accuracy of the invoice and pay UPRR any undisputed amount within thirty (30) days from the date of the invoice. CHSRA will thereafter pay UPRR any remaining portions of the invoice within thirty (30) days of receipt of documentation adequate to justify the disputed expenditures. UPRR will submit its final billing to CHSRA within 180 days after the railroads issue a certificate of completion of the Project. The parties will not use offset accounting practices for billing and payments.

6.5. Salvage. In its sole discretion, UPRR may retain ownership of any materials removed from UPRR property during construction of the Project, in which case CHSRA (having paid the entire cost of the modification that generated the salvage materials) shall receive a credit or payment for the net liquidation value of the materials. The net liquidation value will be the salvage value of removed materials reduced by the estimated cost of removal from the project site to the closest UPRR storage location.

6.6. Financial Services. The parties will use the services of an independent professional with construction management experience to manage the Project funding, including receiving, reviewing, and forwarding invoices; tracking payment of state and

federal funds; and keeping records of funding transactions. The service provider will also be responsible for reporting compliance with federal requirements. UPRR will select the service provider, subject to the written approval of CHSRA. CHSRA will be solely responsible for paying such costs.

6.7. Audit. Any Project costs for which UPRR has received payment or credit that are determined by subsequent audit to be unallowable, are subject to repayment by UPRR to CHSRA.

Section 7. Maintenance.

7.1. General Maintenance and Replacement Obligations. Except as may otherwise be provided in this agreement, the parties will maintain, repair, and replace (as necessary) their respective properties and facilities in accordance with all applicable laws, rules, and regulations, and in a condition reasonably suitable for the parties' intended use.

7.2. Maintenance of Grade-Separated Crossings.

(a) Wherever the Project will include construction of a street or rail grade separation above or below UPRR's property, maintenance of the grade-separated facilities will be allocated as follows:

- (i) Where CHSRA tracks cross above UPRR property, CHSRA will be solely responsible for the inspection, maintenance, and renewal of the grade-separated structure and associated CHSRA facilities. UPRR will be solely responsible for inspection, maintenance, and renewal of UPRR's track and associated UPRR facilities.
- (ii) Where CHSRA tracks cross below UPRR property, CHSRA will be solely responsible for the inspection, maintenance, and renewal of the grade-separated structure and all associated facilities. UPRR will be solely responsible for inspection, maintenance, and renewal of UPRR's track and associated UPRR facilities from the ballast up.
- (iii) Where a street crosses above or below UPRR on a structure built in relation to the Project, all responsibilities for the inspection, maintenance, and renewal of the structure will be allocated between CHSRA and the road authority.

(b) CHSRA will have sole responsibility for graffiti abatement on Mutual Interest Improvements and any grade-separated structures that are built above or below UPRR's property in relation to the Project.

Section 8. Reciprocal Access and Notice Rights.

8.1. Except for emergencies, which will be treated in accordance with Section 8.2, and in compliance with all applicable rules and regulations of the FRA, CHSRA and UPRR (and their contractors, invitees, and licensees) (each an “**Accessing Party**”) will be governed by the terms and procedures set forth in this Section in the performance of the construction, repair, maintenance or operations of their facilities:

(a) Entry by the Accessing Party on the other party's property will be only by the Accessing Party's personnel trained in the other party's safety practices. When employees, vendors, or contractors of CHSRA enter upon UPRR's property or perform any work, including work on overhead catenary, within twenty-five (25) feet of any active freight trackage, they must comply with the then-current safety requirements of UPRR as found at www.Contractorientation.com and www.eRailsafe.com and follow all instructions given by the construction manager or UPRR representatives. Upon notice to CHSRA that UPRR will be entering CHSRA's property, CHSRA will take any steps necessary to protect safety with respect to CHSRA's catenary, including, if necessary, de-energizing the catenary.

(b) When either party is working wholly upon its own property and at such locations where a Barrier separates the facilities of each party from one another, no advanced notice need be given, provided such work does not involve equipment or material having the potential to extend over, under, around or through the Barrier and does not foul or interfere with the operations, trackage, or facilities of the other party.

(c) When either party desires to access on any portion of the other party's property and all personnel, materials and equipment will, at all times, be at least 25 feet from the nearest track, the Accessing Party will give the other party at least seven (7) days' prior telephonic notice, receipt of which will be acknowledged by the receiving party, of any entry on the other party's property in the Corridor, and Accessing Party will not enter upon the other party's property until a valid work permit is issued by the other party. The parties will work through the Coordination Committee to develop a process for shorter notice.

(d) Any entry by an Accessing Party on any portion of the other party's property to perform any work at, above, or below grade during which any person, material, or equipment that will be within twenty-five (25) feet of any track, or will be near enough to any track that an equipment extension (such as, but not limited to, a crane boom) may reach to within twenty-five (25) feet of any track will require the Accessing Party to provide the other party with at least seven (7) days prior telephonic notice, and no entry upon the other party's property will be made until the Accessing Party has made arrangements for flagging protection and any additional safety measures required by the other party. The parties will work through the Coordination Committee to develop a process for shorter notice.

8.2. Emergency Access.

In the event of an emergency of any kind, the Accessing Party may enter upon the other party's property (i) to warn the other party's trains by any reasonable means, including, without limitation, use of flaggers or placement of torpedoes upon the other party's tracks, or (ii) in the event of a wreck or derailment of the Accessing Party's train or equipment, to clear the train, equipment or other debris from the other party's property. The Accessing Party will provide immediate notice of such events to the other party's dispatcher in accordance with UPRR's Communications and Safety Protocols.

Section 9. Flagging.

9.1. CHSRA will pay UPRR's actual costs for any flagging or other special protective or safety measures that UPRR performs in relation to CHSRA's activities under this agreement. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, railroad retirement and unemployment compensation, supplemental pension, employee liability, and property damage and administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays, and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between UPRR and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, CHSRA will pay on the basis of the new rates and charges.

9.2. Reimbursement to UPRR for flagging will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other UPRR work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other UPRR work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which UPRR is required to pay the flagman and which could not reasonably be avoided by UPRR by assignment of such flagman to other work, even though UPRR may not be working during such time.

9.3. During construction of the Project, when it becomes necessary for UPRR to assign an employee to a flagging position on a long-term basis in compliance with union collective bargaining agreements, CHSRA must provide UPRR a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, CHSRA will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must

then be given to UPRR if flagging services are needed again after such five day cessation notice has been given to UPRR.

9.4. Based on current information, CHSRA believes there may be a need for up to 10 full time flaggers for a period of 12-15 months starting as early as the spring of 2014 plus additional flaggers on an as needed basis at various locations and times during the course of design and construction. A more precise determination of dates, quantities, and durations will be established after award of the design build contract. UPRR agrees to use commercially reasonable efforts to provide the level of flagger support required for the Project.

9.5 By executing this agreement, CHSRA authorizes UPRR to open a work order for flagging services in the amount of one million dollars (\$1,000,000) to support CHSRA's immediate work activities. Opening this work order will be an initial accounting step taken for the convenience of the parties and will not be used to limit the amount of flagging that UPRR provides or the flagging Costs for which CHSRA may be liable.

Section 10. Record Keeping and Audits.

10.1. UPRR will maintain for a period not less than three (3) years from the date of payment of the final invoice under this agreement and will require its contractors and subcontractors to maintain for a period not less than three (3) years from the date of payment of the final invoice under any contracts and subcontracts, each of the following:

- (a) Adequate books, records, and supporting documents to verify the amounts and uses of all disbursements of funds in conjunction with the Project;
- (b) Records sufficient to identify the application of funding, together with supporting documentation, including, without limitation, paid invoices; and
- (c) All other records necessary to disclose the amount and disposition of funding hereunder, including the following: (i) the nature of such expenditures; (ii) the total cost of each undertaking for which funds were disbursed hereunder; (iii) the amount, if any, of funds supplied by other sources for the construction of the Project; and (iv) any other books, records, and documents reasonably necessary to maintain a complete verification of UPRR's obligations under this agreement.

10.2. If any litigation or claim involving this agreement has been filed before the expiration of the 3 year period commencing with the date of payment of the final invoice under this agreement or any audit permitted hereunder has commenced before the expiration of such 3 year period, UPRR will maintain all records (1) in the case of any litigation or claim, until completion of the action and resolution of all issues which arise from it, or until the end of such 3 year period, whichever is later; and (2) in the case of any audit, until completion of the audit or until the end of such 3 year period, whichever is later.

10.3. Pursuant to Section 902 of the ARRA, all UPRR and CHSRA records pertaining to this agreement will be available for review and audit by CHSRA, DOT, the U.S. Comptroller General, or their authorized representatives during normal business hours and upon at least seven (7) days advance written notice. Upon reasonable notice, CHSRA, DOT, the U.S. Comptroller General, or their authorized representatives likewise will have authority to interview any officer or employee of UPRR or any of its contractors or subcontractors regarding transactions related to federal funding for the Project. UPRR will reasonably cooperate with any audit conducted by CHSRA, DOT, the U.S. Comptroller General, or their authorized representatives and will provide full access to all relevant materials. Nothing herein is meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise provided by law, including, without limitation, protection provided by attorney-client privilege or the attorney work-product doctrine.

Section 11. ARRA Reporting.

CHSRA agrees that it is responsible for performing and completing all ARRA reporting requirements for the Project. CHSRA acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of CHSRA and not of UPRR, and (ii) CHSRA will not delegate any ARRA reporting responsibilities to UPRR. UPRR will provide to CHSRA its standard and customary billing and supporting documentation for expenses incurred by UPRR on the Project; provided, that UPRR will, upon request by CHSRA, provide to CHSRA any additional information reasonably accessible or available to UPRR that is needed for CHSRA to perform and complete the ARRA reporting requirements. CHSRA will furnish to UPRR a list, at least forty five (45) days prior to the date CHSRA requires such information, setting forth the specific information that CHSRA requests that UPRR provides in order for CHSRA to meet its reporting requirements.

Section 12. Compliance with Law.

12.1. Laws Applicable to the Project. CHSRA and UPRR will comply with all applicable state and federal laws and regulations that apply to work done on the Project. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UPRR because of its status as common carrier regulated by the federal government.

12.2. Compliance with CPUC and FRA Regulations. CHSRA is solely responsible for ensuring that the design, placement, operation, and maintenance of all features constructed as part of the Project comply with rules and regulations promulgated by the California Public Utilities Commission, the Federal Railroad Administration ("FRA"), and any other governmental agency having jurisdiction. CHSRA will indemnify and defend UPRR for any fines, costs (including attorney and consultant fees and costs,) and other losses associated with compliance with these requirements that UPRR incurs as a result of CHSRA's construction, operation, or maintenance of the Project.

12.3 UPRR agrees to comply with the flowdown requirements related to federal funding for the Project set forth in Exhibit 6. UPRR will include these same flowdown provisions in each of its lower-tier subcontracts.

Section 13. Ownership of Improvements.

13.1. Except as may be provided with respect to easements granted pursuant to Section 13.2, the Mutual Interest Improvements will be owned by the party upon whose property they are located. Neither party will have a right of ownership in improvements owned by the other. Neither party may create any lien or encumbrance in or against any improvements owned by the other. UPRR will use the property, equipment, and supplies acquired with public funds for construction of the Project for the duration of their useful life.

13.2. All real estate transactions between the parties, if any, will be memorialized through separate agreements. The execution and performance of this agreement will not serve to give CHSRA any rights to property owned or controlled by UPRR or give UPRR any rights to property owned or controlled by CHSRA.

Section 14. Public Records Act.

CHSRA is subject to the California Public Records Act. UPRR acknowledges that all information that it submits to CHSRA will become agency records and thus may be subject to public release through individual PRA requests. UPRR acknowledges that CHSRA may make information related to the expenditure of public funds on this Project available on official government websites. CHSRA will promptly send UPRR written notice of any PRA requests that CHSRA receives for information related to the Project or this agreement.

Section 15. No Rights to Goods or Services.

The parties intend for the Project to both benefit the public and to become a permanent part of CHSRA and UPRR's working capital. CHSRA will not receive and will not be entitled to any specific goods or services from UPRR or its affiliates in return for any payments by CHSRA to UPRR in connection with this agreement.

Section 16. Additional Understandings.

16.1. The development and implementation of high-speed passenger service and completion of the Project is dependent upon events and circumstances outside of the control of the parties (including the procurement of certain approvals from FRA or other regulatory authorities), and therefore, neither party can or will covenant or commit to a date certain by which the final development and implementation of high-speed rail service or completion of the Project must occur.

16.2. Except as otherwise agreed by UPRR and CHSRA, in no event will UPRR be required to expend any of its own funds in constructing the improvements contemplated

by this agreement unless prompt reimbursement of such funds is assured to UPRR in a manner reasonably acceptable to UPRR. In no event will UPRR have any obligation with respect to any required repayment of all or any portion of the proceeds of federal funds used to pay for the design or construction of the Project.

16.3. Title to all materials installed on UPRR property will be vested in UPRR notwithstanding that the cost of such materials and the labor and equipment to install them have been paid for, or reimbursed by, CHSRA.

16.4. CHSRA will be responsible for the cost of all materials purchased or for which a commitment or obligation to purchase has been made and all delivery, handling, transportation or storage costs with respect to such materials.

16.5. Any estimated costs, if any, are approximations and remain subject to change.

16.6. In no event will CHSRA, the FRA, or any other party acquire any ownership interest in, or be granted a lien upon, any route, rights of way, or trackage of UPRR, or any other asset owned or controlled by UPRR in connection with the activities contemplated by this agreement.

Section 17. Coordination Committee.

The parties will establish a design and construction coordination committee (the “**Coordination Committee**”) consisting of at least two representatives of CHSRA and two representatives of UPRR, including the CHSRA Project Coordinator, the UPRR Project Coordinator, and the UPRR Vice President – Engineering or his or her designee. The Coordination Committee will be a forum for the parties to share information and discuss matters submitted by one party to another party for review or approval, design and construction progress and challenges, and possible resolutions of any issues with respect to this agreement, including without limitation, expedition of review and approval of design and construction plans and requested exceptions thereto, flagging costs and scheduling, payment issues, permits, the Access Plan and rights-of-entry, change orders, utility relocations, and pending or threatened work stoppages. The Coordination Committee will meet (in person or telephonically) throughout construction of the Project. The meetings will be held once per month and also as necessary to address issues between the parties that require prompt resolution. The Coordination Committee will dissolve upon issuance of certificates of final acceptance pursuant to Section 3.15.

Section 18. Indemnity and Insurance.

The terms of the Insurance and Indemnity Agreement Between Union Pacific Railroad and the California High-Speed Rail Authority Related to High-Speed Rail Development in California (“**Indemnity and Insurance Agreement**”) dated _____, 2013 will apply to all activities performed by the parties in relation to or under the terms of this agreement. A copy of the Indemnity and Insurance Agreement is attached to this agreement as Exhibit 5.

Section 19. Confidentiality.

For the purposes of this Section 19, “**Confidential Information**” means any information delivered to either party (the “**Receiving Party**”) by or on behalf of the other party (the “**Providing Party**”) in connection with the transactions contemplated by or otherwise pursuant to this agreement that is proprietary, privileged, or confidential in nature and that was clearly marked or labeled or otherwise adequately identified when received by the Receiving Party as being proprietary, privileged, or confidential information of the Providing Party, provided that such term does not include information that (a) was publicly known or otherwise known to the Receiving Party prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by the Receiving Party or any person acting on the Receiving Party’s behalf, or (c) constitutes financial statements that are otherwise publicly available. The Receiving Party will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by the Receiving Party in good faith to protect confidential information of third parties delivered to it, provided that the Receiving Party may deliver or disclose Confidential Information to (a) its directors, officers, employees, agents, attorneys, and affiliates (to the extent such disclosure reasonably relates to the administration of the transactions contemplated by this agreement), (b) its financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section, (c) any federal or state regulatory authority having jurisdiction over the Receiving Party, and (d) any other person to which such delivery or disclosure may be necessary or appropriate (i) to effect compliance with any law, rule, regulation or order applicable to the Receiving Party, (ii) in response to a subpoena or other legal process, (iii) in connection with any litigation to which the Receiving Party is a party, or (iv) to the extent the Receiving Party may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under this Agreement.

Section 20. Force Majeure.

Each party will be temporarily excused from the performance of any of its obligations under this Agreement, except obligations involving indemnification, maintenance of insurance, and the payment of money to the other party, during the time when such nonperformance is caused by a Force Majeure Event. For purposes of this agreement, a “**Force Majeure Event**” means government regulation or order; acts of terrorism; riots; insurrection or war; picket lines, strikes, or lockouts by third parties providing labor, material, or services under contract to a party; delays caused by the other party to this agreement; derailments; wrecks or freight embargoes; inability to procure critical materials; unforeseen catastrophic railroad emergencies anywhere within the UPRR system; and earthquake, flood, cloudburst, tornado, or other phenomena of nature beyond the power of a party reasonably to foresee or to make preparation in defense against, but not including rain, windstorm, or other natural phenomena of normal intensity based on U.S. Weather Bureau reports for the particular locality and for the particular season of the year in which the work is being performed. In all cases, the party asserting a Force Majeure Event as the basis for temporary

excuse from performance must, as soon as practicable after learning of the conditions related to the Force Majeure Event, provide written notice of the Force Majeure Event to the other party. The notice must explain the nature of the Force Majeure Event, what obligations in this agreement it affects, the date the Force Majeure Event arose, and an estimate of how long the Force Majeure Event will interfere with the noticing party's ability to perform all of its obligations. The party claiming an excuse from performance under this agreement must promptly resume full performance of its obligations upon recovery from or cessation of the Force Majeure Event.

Section 21. Dispute Resolution Process.

21.1. In the event a claim, dispute, or controversy arises between CHSRA and UPRR concerning the interpretation, application, or implementation of this agreement (“**Dispute**”) that is not resolved by the Coordinating Committee, either party may initiate formal dispute resolution by transmitting written notice describing the nature of the Dispute in accordance with Section 21.2 below. Within three (3) days of receipt of such notice, the parties will initiate prompt, diligent, and good-faith negotiations to resolve such Dispute.

21.2. In the event the parties are unable to resolve the Dispute within thirty (30) days from the initiation of negotiation pursuant to Section 21.1, the parties will mediate such dispute. The mediation will be conducted in Sacramento, California, in accordance with such procedures, and on such time schedules as the parties will mutually agree. The mediator will be selected by mutual agreement of the parties, but in the absence of such agreement each party will select a temporary mediator and those mediators will jointly select the permanent mediator. Each party will bear its own costs and expenses, but the mediator's fees and costs will be borne equally by the parties. Each party will participate in such mediation in good faith, but in the event mediation is unsuccessful, the parties will authorize the mediator to issue a non-binding advisory opinion. In issuing such opinion, the mediator may take such additional evidence, and permit the parties to submit oral and/or written argument, as he or she deems reasonably necessary under the circumstances. Upon receipt of the mediator's non-binding advisory opinion, the parties are free to resume negotiations or pursue any legal remedies that may be available. The parties do not waive any legal rights by participating in mediation. All causes of action and time periods for presenting a government claim will be tolled during the formal dispute resolution process, beginning on the date of the notice described in Section 21.1 and ending on the date when the mediator issues his or her non-binding advisory opinion.

21.3. During the pendency of dispute resolution proceedings in accordance with this Section 21, the business and the operations to be conducted under this agreement, to the extent that they are the subject of such Dispute, will continue to be transacted in the manner and form existing prior to the arising of such Dispute.

Section 22. Termination.

22.1. Parties' Right to Terminate on Mutual Consent. This agreement or the Project may be terminated at any time by mutual written consent of the parties.

22.2. CHSRA's Right to Terminate for Cause. CHSRA may terminate this agreement, upon thirty (30) days' written notice to UPRR or at such later date as CHSRA may establish in such written notice, in the event that UPRR fails to perform in any material respect any of its obligations set forth in this agreement and such failure continues unremedied for sixty (60) days after receipt by UPRR of CHSRA's written notice.

22.3. UPRR's Right to Terminate for Cause. UPRR may terminate this agreement, upon thirty (30) days' written notice to CHSRA, in the event that any of the following will occur:

(a) CHSRA will fail to (1) pay any cost described herein within the time period provided therefor; or (2) perform or observe any other of the covenants or agreements to be observed or performed by CHSRA under this agreement and such failure continues unremedied for thirty (30) days after notice from UPRR to CHSRA specifying the failure and demanding the same to be remedied;

(b) There is a material Change in Law that has an adverse effect on UPRR because of the Project and such adverse effect has not been mitigated to the reasonable satisfaction of UPRR within 90 days through an amendment to this agreement or a change order;

(c) There will be any taxing or governmental authority decision, determination, guidance, or other authority regarding or applicable to the federal income tax consequences of the Project, the Plan or transactions contemplated by this agreement that is adverse to UP; or

(d) There is a non de minimis change to the plans for the Project (including, without limitation, any changes in alignment, station or platform design, proximity to UPRR tracks or property, or grade separations above or below UPRR rights of way) (1) that has not been approved by UPRR and CHSRA in writing, and (2) for which CHSRA has not expressly assumed the cost of implementing.

Section 23. Remedies.

23.1. In the event of any termination pursuant to Section 22, UPRR, in addition to any other remedy available to it at law or in equity, will be entitled to payment by CHSRA of any costs that UPRR has incurred under the terms of this agreement and for which UPRR has not yet been reimbursed.

23.2. In the event of termination pursuant to Section 22.2, CHSRA will have any remedy available to it at law or in equity, subject to UPRR's right of ownership set forth

in Section 13; provided, however, that in no event will UPRR be liable for consequential, special, incidental (e.g., loss of profits,) or punitive damages.

23.3. In the event of any termination of this agreement:

(a) Each party's obligations hereunder will be limited to those obligations accrued up to the date of termination; provided, however, that CHSRA will also be responsible for all costs incurred by UPRR associated with de-mobilization as a result of any such termination (except in the case of a termination pursuant to Section 22.2.)

(b) Except as stated above, each party will be released from any future obligations hereunder; provided that the parties acknowledge and agree that any accrued payment, reimbursement, or indemnification obligation of CHSRA under this agreement will survive the termination of this agreement, including any materials and services purchased or for which a commitment or obligation to purchase has been made.

Section 24. Notice of Litigation.

Each party will promptly furnish the other party written notice of any claim or litigation naming the notifying party as a defendant directly affecting or relating to the Project or this agreement.

Section 25. Miscellaneous.

25.1. Governing Law. Except on subjects preempted by federal law, this agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UPRR because of its status as a common carrier regulated by the federal government. Venue for any lawsuit arising between the parties in relation to this agreement will be in the Superior Court of Sacramento County, California or the District Court of the Eastern District of California in Sacramento, California. The parties hereby waive any defenses based upon venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit filed in accordance with this Section.

25.2. Attorneys' Fees. In the event of any litigation involving the parties to enforce any provision of this agreement, to enforce any remedy available upon default under this agreement, or to seek a declaration of the rights of any party under this agreement, the prevailing party will be entitled to recover from the other parties to the litigation such attorneys' fees and costs (including the costs of experts and consultants) as may be reasonably incurred. The provisions of this Section will survive the entry of any judgment, and will not merge, or be deemed to have merged, into any judgment.

25.3. Severability. If any provision of this agreement, or the application of a provision to any person, place, or circumstance, is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, such provision will be enforced to the

maximum extent possible so as to effect the intent of the parties; or, if incapable of such enforcement or unable to achieve the intent of the parties, will be deemed to be deleted from this agreement, and the remainder of this agreement and such provisions as applied to other persons, places, and circumstances will remain in full force and effect. In such an event, the parties agree to negotiate an amendment to replace or modify any invalid or illegal or unenforceable provision and related provisions with valid, legal, and enforceable provisions that most closely and reasonably approximate the intent and economic effect of the invalid, illegal, or unenforceable provision.

25.4. Interpretation. The section and paragraph headings in this agreement are for convenience only and will not be used for any purpose in the interpretation of this agreement. When the context requires, the plural will include the singular and the singular the plural, and a gender will include the other gender.

25.5. Calculation of Deadlines. All references herein to “days” with respect to any deadline will mean calendar days, except that if a deadline falls on a Saturday, Sunday or California “State Holiday,” the deadline will be postponed to the next day that is not a Saturday, Sunday or California “State Holiday.”

25.6. Amendments. This agreement may only be modified or changed by written amendment signed by authorized representatives of the parties.

25.7. Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein will have the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither party has any right or power to obligate or bind the other party in any manner whatsoever.

25.8. Assignment. Except as provided in this Section, this agreement and any rights and obligations created by it may not be assigned in whole or in part by any party without the prior written consent of the other parties. The agreement may be assigned by a party without the prior written consents of the other parties only (a) as a result of a merger or corporate reorganization, consolidation, change or control, or sale of substantially all of its assets; (b) to an affiliate of the assigning party, where the term “affiliate” means a corporation, partnership, or other entity controlled, controlling, or under common control with the assigning party; or (c) with respect to any public entity, the transfer of the responsibilities, duties, authority, rights, and obligations of such public entity to another public entity to which such responsibilities, duties, authority, rights, and obligations have been transferred by operation of law. In the event of an assignment, this agreement will be binding upon and inure to the benefit of each of the transferees, successors, and assigns.

25.9. Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this agreement must be set forth in writing and duly executed by or on

behalf of the party to be bound by it. No waiver by any party of any breach will be deemed a waiver of any other or subsequent breach.

25.10. Notices. Any communication, notice, or demand of any kind whatsoever which any party may be required or may desire to give to or serve upon another must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

UPRR: Union Pacific Railroad Company
 Attn: Executive Vice President Operations
 1400 Douglas Street, Stop 1120
 Omaha, Nebraska 68179
 Telephone: (402) 544-5000

With a copy to:

David M. Pickett
Law Department
Union Pacific Railroad Company
10031 Foothills Blvd.
Roseville, CA 95747
Telephone: (916) 789-6400

CHSRA: California High Speed Rail Authority
 770 L Street, Suite 800
 Sacramento, CA 95814
 Telephone: (916) 324-1541

With a copy to;

Thomas Fellenz
Chief Counsel
California High Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814
Telephone: (916) 322-1237

Any party may change its address for notice by written notice given to the other parties in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service, or three days after being placed in the U.S. Mail, if mailed.

25.11. No Third-Party Beneficiaries. This agreement is for the exclusive benefit of the parties to it and not for the benefit of any third party.

25.12. Other Agreements. Except to the extent specifically described in this agreement, execution of this agreement will not alter or affect the terms of any other agreements or MOUs that may exist between the parties.

25.13. Authority and Binding Effect. Each individual executing this agreement affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this agreement and bind the party on whose behalf he or she is executing the agreement.

25.14. Counterparts. This agreement may be signed in counterparts, each of which will be deemed an original but all of which will together constitute one and the same instrument.

[Signature Page Follows]

The parties have executed this agreement effective as of the date first written above.

UNION PACIFIC RAILROAD COMPANY

**CALIFORNIA HIGH-SPEED RAIL
AUTHORITY**

By: _____
Cameron A. Scott
Vice President Network Planning
and Operations
Union Pacific Railroad Company

By: _____
Jeff Morales
Executive Director
California High-Speed Rail Authority

Approved as to form:

Approved as to form:

By: _____
Gayla L. Thal
Senior Vice-President Law and
General Counsel
Union Pacific Railroad Company

By: _____
Thomas Fellenz
Chief Counsel
CHSRA

List of Exhibits

Exhibit 1	Project Map
Exhibit 2	Mutual Interest Improvements on UPRR Property to be Constructed by UPRR; UPRR Standards and Specifications; Contractors
Exhibit 3	UPRR Form Right-of-Entry Agreement
Exhibit 4	Reimbursement to UPRR by CHSRA
Exhibit 5	Indemnity and Insurance Agreement
Exhibit 6	Federal Requirements
Exhibit 7	Prevailing Wage Rates

Exhibit 1

Project Map

Exhibit 2

Mutual Interest Improvements on UPRR Property to be Constructed by UPRR

1. Those portions of the shoofly inside of the foul-point, excluding all grading up to sub-ballast.
2. Railroad signal system structures or facilities.
3. Trackage to be restored after removal of the shoofly. (CHSRA will remove the shoofly and restore the grade.)

UPRR Standards and Specifications

1. BNSF Railway - Union Pacific Railroad Guidelines for Railroad Grade Separation Projects (January 24, 2007).
2. Union Pacific General Conditions and Specifications (May 14, 2012).
3. Guidelines for Temporary Shoring (October 25, 2004).
4. Union Pacific Bridge Standards Precast/Prestressed Concrete Beam Bridge 30" Double Cell Box Beam; 14", 16", 18" and 20" Slab Beam Spans (April 17, 2007).
5. Union Pacific Bridge Standards W36 & W40 Beam Span, 31' to 69' Lengths (February 13, 2006).

Contractors

- 1.
- 2.
- 3.
- 4.
- 5.

Exhibit 3

UPRR Form Right-of-Entry Agreement

Exhibit 4

Reimbursement to UPRR by CHSRA

Exhibit 5

Indemnity and Insurance Agreement

Exhibit 6

Federal Requirements

This page intentionally left blank.