California High-Speed Rail Authority

RFP No.: HSR13-57

Request for Proposals for Design-Build Services for Construction Package 2-3

Book I, Part B.1 - Special Provisions

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1.0 Contract Type and Project

The Contract is a firm fixed price contract.

"Project" means CP 2-3 of the CHSRP, as described in the Scope of Work.

2.0 Notice to Proceed and Escalation

If the Authority issues NTP within 270 days after the Proposal Deadline, the Contract shall remain in full force and effect without escalation or any other modification to the terms and conditions hereof. If the Authority issues NTP after 270 days after the Proposal Deadline due to no fault, negligence, act or failure to act of any Contractor-Related Entity, the Contract shall remain in full force and effect, without any modification to the terms and conditions hereof, provided that the Contract Price may be subject to an adjustment using the following formula:

{[(Final Component Value CCI San Francisco/Base Component Value CCI San Francisco) + (Final Component Value CCI Los Angeles/Base Component Value CCI Los Angeles)]/2} × Contract Price = Adjusted Contract Price

Where:

a. **Base Component Value CCI San Francisco -** the latest current CCI values published by Engineering News Record as of 270 days after the Proposal Deadline for San Francisco, California;

b. **Base Component Value CCI Los Angeles -** the latest current CCI values published by Engineering News Record as of 270 days after the Proposal Deadline for Los Angeles, California;

c. **Final Component Value CCI San Francisco -** the latest current CCI values published by Engineering News Record as of the date of issue of NTP for San Francisco, California; and

d. **Final Component Value CCI Los Angeles -** the latest current CCI values published by Engineering News Record as of the date of issue of NTP for Los Angeles, California.

If NTP has not been issued within 360 days after the Proposal Deadline due to no fault, negligence, act or failure to act of any Contractor-Related Entity, the Contractor may seek to negotiate a Change Order including an extension in time for issuance of NTP and an increase in the Contract Price mutually acceptable to the Contractor and the Authority. If the Contractor does not wish to seek a Change Order as provided above or if the Authority fails to issue a Change Order acceptable to the Contractor, then the Contractor's sole remedy shall be to terminate the Contract, and such termination shall be deemed to be a termination for convenience under the "Termination for Convenience" clause (Section 40.0) of the General Provisions.

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Any price increase under this "Notice to Proceed and Escalation" clause shall be amortized proportionally over all Work remaining to be performed, and shall be evidenced by a Change Order.

3.0 Completion Deadlines

The "Substantial Completion Deadline" is defined as 980 Working Days after NTP; as such deadline may be extended in accordance with the Contract Documents. The Contractor shall achieve Substantial Completion on or before the Substantial Completion Deadline.

The "Final Acceptance Deadline" is defined as 1025 Working Days after NTP as such deadline may be extended in accordance with the Contract Documents. The Contractor shall achieve Final Acceptance on or before the Final Acceptance Deadline.

4.0 General Office Requirements for Facilities Provided by the Contractor

The Contractor shall provide field offices in good repair and in a clean and sanitary condition, at least of the same quality as the facilities that the Contractor provides its counterpart project management, design and field staff. These facilities shall be available for occupancy as specified. The Contractor shall secure sites, obtain all site permits, install, set up, and provide utility services, and maintain the facilities as part of the Work. The offices shall have at least two exits from each building/trailer. Entrance to offices shall be secured with a door lock plus a dead bolt lock. All interior spaces shall have overhead lighting meeting OSHA and code requirements for office space. Each office space shall have at least two duplex receptacles. Minimum circuit capacity shall be 20 amps. Each office space shall be wired for phone and computer Local Area Network. The office space shall include separate restrooms for male and female. In the event that office spaces or appurtenant facilities are destroyed or damaged during the Contract period, except by fault of the Authority or its personnel, the Contractor shall, at its expense, repair or replace those items, which the Contractor provided, to their original condition within 10 days. For the facilities it provides, the Contractor shall have the following responsibilities:

a. Be responsible for installing, maintaining and paying all utilities;

b. Provide daily janitorial service (except weekends and Authority Designated Holidays) and maintain trash containers and trash pickup service;

c. Be responsible for maintenance of the exterior area of office spaces including access to parking areas;

d. Include desks, chairs, filing cabinets, bookcases and telephones in all offices;

e. Provide copying, computer, printing, and facsimile equipment and services, including paper, supplies, and maintenance;

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f. Be responsible for disposal or removal of all Contractor-provided facilities and any site restoration Work required;

g. Provide ventilation and air conditioning/cooling systems capable of maintaining temperature between 70 and 75 degrees Fahrenheit in all spaces throughout the year;

h. Provide facilities that meet local code requirements for office space;

i. Provide telephone service with outside lines for each office space in the field office facility, including all local and long distance charges after installation. At least one additional line will be dedicated for facsimile service and one additional line will be dedicated to high speed data service. The phone system shall be capable of providing voicemail service to each extension; and

j. Provide and maintain all Authority offices for at least 30 Days after Final Acceptance or until such facilities are no longer needed, whichever is earlier, unless otherwise agreed by the Authority in writing. Ownership of the field office, equipment and telephone shall remain with the Contractor and shall be removed from the Site when instructed by the Authority.

4.1 Field Office for Authority's Field Staff

The Contractor shall provide a field office for the Authority's field staff co-located with the Contractor's management personnel. No later than 15 Days after NTP, the Contractor shall provide office space not less than the size indicated below:

Table 1: Office Space Requirements

Item	No. Required	Requirement
Private Office	3	Min 150 square feet each, enclosed with lockable door
Staff Cubicles	55	Min 80 square feet each
Conference room	2	Min 500 square feet each, enclosed, with lockable door. Shared conference room at any satellite or design offices.
Visitor cubicles	5	Min 60 square feet each
Storage/filing space	1	300 square feet, enclosed, with lockable door
Restrooms	5	Male and female
Paved parking	60	Inclusive of 5 visitor spaces
Break room	1	Min 150 square feet, 8 feet of counter space with sink
Server room space	1	Sufficient to support the Authority's computer requirements

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The Contractor shall provide a well-graded site for the office with access road and parking area. The parking area shall be reasonably level. The parking area, including visitor parking, shall have an all-weather surface.

If the Contractor has a separate design office, the Contractor will make available at that location five typical staff cubicles for the Authority staff. If the Contractor elects to set up remote field offices along the alignment during construction at each location, the Contractor will provide three typical staff cubicles for the Authority staff and provide access to necessary copying, printing and telephone equipment and services for Authority use.

The Contractor shall equip the field office with the following:

a. Security – Either a 24-hour security service or silent watchmen-type security system;

b. Lighting – The Contractor shall install sufficient exterior security lighting that is automatically activated at low light levels to maintain two footcandles of lighting in the office site area, including parking;

c. Conference rooms with a large table and 20 chairs for each conference room; and

d. Individual two drawer office file cabinets and 30 total commercial grade 5-drawer vertical lockable file cabinets (20 letter and 10 legal size) for project files. All file cabinets shall be lockable.

e. Two Konica Minolta Bizhub C554 Copier/Scanner or equal and one Xerox Phaser 7800DN Color Laser Printer or equal.

The Contractor acknowledges that the Authority is subject to certain requirements to maintain a drug-free workplace pursuant to 49 C.F.R. Part 32 and the California Drug-Free Workplace Act of 1990. With respect to all work spaces shared by the Contractor and Authority, the Contractor's drug-free workplace program required under the California Drug-Free Workplace Act of 1990 shall include requirements that are consistent with the U.S. Department of Transportation's "Governmentwide Requirements for Drug-Free Workplace" under 49 C.F.R. Part 32, as included in the Community Benefits Agreement, except as otherwise approved in writing by the Authority.

4.2 Connectivity

The Contractor shall make necessary arrangements for allowing access to the Authority-provided server, printers and other hardware either through "hardwiring" or remote access. The Contractor shall also make arrangements for all of the Authority's computers to be linked directly to the Authority's network through a T1 internet connection.

4.3 Backup of Electronic Files and Protection of Hardcopy Files

The Contractor shall provide a secure, fireproof location in which to store electronic and hardcopy backup files.

4.4 Site Identification Signing

The Contractor shall provide site identification signing at all project offices and all sites of Work.

4.5 Communication

The Contractor shall establish and maintain telephone and radio communications, as appropriate, to control the Work and maintain communications with the Authority, Third Parties, Railroads and local and regional emergency response agencies or entities. The Contractor shall not use police or other emergency services' radio frequencies.

The Contractor shall provide daily courier service between the Contractor's main Project office, satellite offices and the Authority's and any Authority field office on the Project at 10:00 a.m. and 3:00 p.m. each Working Day or as mutually agreed by the Contractor and the Authority.

5.0 Liquidated Damages

In the event that the Contractor fails to achieve Substantial Completion by the Substantial Completion Deadline, the Contractor agrees to pay the Authority Liquidated Damages for each day (or any part thereof) of delay in the amount of $106,000 per day.

Liquidated Damages will be subject to a cap of 10 percent of the Contract Price as set forth in Attachment B of the Signature Document.

6.0 Environment

6.1 Governmental Approvals

6.1.1 Responsibility for Obtaining Governmental Approvals

The Authority and the Contractor are obligated to obtain and provide the Governmental Approvals assigned to them in Table 2 below at the times required by Table 2 below. To the extent the Authority fails to provide any Authority-Provided Governmental Approval by the applicable deadline set forth in Table 2 below, and the delay in or failure to provide the Governmental Approval has not been caused or contributed to by the fault, negligence, act or failure to act of any Contractor-Related Entity, then the Contractor may request a time extension (excluding delay damages) in accordance with the "Changes" clause (Section 17.0) of the General Provisions if, and only if, the delay in provision of the Authority-Provided Governmental Approval has the effect of increasing the time of performance of the Work. Except for such time extension and as set forth in Section 17.2 of the General Provisions, in no event shall Contractor be entitled to any other relief pursuant to the "Changes" clause (Section 17.0) of the General Provisions in order to comply with the Environmental Requirements.

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With the exception of the Section 402 Post-Development (Operations Phase) NPDES MS4 Stormwater Discharge Permit, the Authority will, on or before 180 days after issuance of the last Authority-Provided Governmental Approval, begin to implement all off-site mitigation measures and conditions required by the Authority-Provided Governmental Approvals related to short-term and long-term habitat acquisition, preservation, creation, restoration, or enhancement as necessary to allow impacts to resources subject to such Authority-Provided Governmental Approvals to proceed in compliance with applicable Laws.

Table 2: CP 2-3 Governmental Approvals[1]

Permitting Agency	Approval/Permit Needed	Timing	Party to Obtain Governmental Approval
USFWS	Section 7 Biological Opinion	Required for ROD	Authority
CA SHPO	Section 106 Memorandum of Agreement	Required for ROD	Authority
FRA	Air Quality General Conformity Determination	Required for ROD	Authority
FRA	Section 4(f)/Section 6(f) Determination	Required for ROD	Authority
SJVAPCD	Indirect Source Review	Obtain before ROD	Authority
SWRCB	Section 401 – State Water Quality Certification	Later of ROD + 12 months or NTP + 6 months	Authority
SWRCB	Section 402 – Construction Phase NPDES Stormwater Discharge Permit (Construction General Permit)	Prior to ground disturbance per Construction General Permit	Contractor
SWRCB	Section 402 – Post Development (Operations Phase) NPDES MS4 Stormwater Discharge Permit	Prior to connection of constructed storm drain improvements and Final Acceptance	Authority
USACE	Section 404 Clean Water Act[2]	180 days after Contractor provides Section 408 Permit[3]	Authority
USACE CVFPB	Preliminary Section 408 Determination	Required for ROD	Authority

[1] Additional details regarding the Governmental Approvals, including the Authority Provided Approvals, are set forth in the Environmental Compliance Manual.

[2] While the Authority is preparing an application for an individual Section 404 Permit for CP 2-3, USACE in its discretion may issue an individual Section 404 Permit or one or more Nationwide Permits or a combination thereof.

[3] USACE may require full compliance with, and issuance of a Rivers and Harbors Act Section 408 Permit to Contractor before issuance of the 404 Permit.

Permitting Agency	Approval/Permit Needed	Timing	Party to Obtain Governmental Approval
USACE CVFPB	Final Section 408 Determination and Final permit[4]	Obtain after NTP	Contractor
USACE	Section 404 Clean Water Act Permit - Preconstruction Notification of issued Individual Permit	Obtain after USACE issuance of any Nationwide Section 404 Clean Water Act Permit	Contractor
CDFW	Section 1602 Master Streambed Alteration Agreement	Later of ROD+12 months or NTP+6 months	Authority
CDFW	Section 1602 Streambed Alteration Agreement Sub-notifications	Obtain after issuance of Section 1602 Master Streambed Alteration Agreement	Contractor
CDFW	Section 2081 Incidental Take Permit	ROD+12 months	Authority
CVFPB	Encroachment Permits (CA Title 23; USACE Section 208.10; and Local Maintaining Agency Endorsement)	Obtain After NTP	Contractor
Local Agency Floodplain Administrators	National Flood Insurance Program Compliance	Obtain After NTP	Contractor
FEMA	Condition Letter of Map Revision/ Letter of Map Revision	Obtain After NTP	Contractor
Caltrans	ROW Encroachment Permits	Obtain After NTP	Contractor

6.1.2 Contractor's Responsibility for Final Authority-Provided Governmental Approvals and Supplemental or Amended Governmental Approvals

It is anticipated that at the time of Contract award, applications for Authority-Provided Governmental Approvals shall have been filed, but that final Authority-Provided Governmental Approvals may not have been issued by the applicable Governmental Persons. The Contractor acknowledges and agrees that the Authority-Provided Governmental Approvals as issued by the Governmental Persons may differ from any applications or draft Authority-Provided Governmental Approvals and that the final Authority-Provided Governmental Approvals shall govern, and Contractor shall be responsible and obligated for the performance of the Work in compliance with all Governmental Approvals when and as they are issued. The Contractor shall cooperate with the Authority in obtaining all final Authority-Provided Governmental Approvals necessary to perform the Work, including, without limitation, advancing or providing additional design information necessary to obtain issuance of a CWA section 408 permit (which may, in

[4] USACE may, in its discretion, require as a prerequisite to issuance of Section 404 Permit.

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USACE's discretion, be a condition precedent for issuance of a CWA section 404 permit), and shall submit such elements of the design necessary to obtain such Authority-Provided Governmental Approvals not later than 120 days prior to the due date for provision of any Authority-Provided Governmental Approval. The cost of, and time frames required for, such cooperation shall be a part of the Contract Price and the Contractor's schedule for the Work.

6.2 Biological and Cultural Resources

The Contractor shall complete all work related to biological and cultural resources as described in the Environmental Compliance Manual.

7.0 Insurance

Without limiting the Contractor's indemnification of the Indemnified Persons, and prior to commencement of Work, the Contractor shall obtain, at its own expense, and continuously maintain in full force and effect, the insurance coverages specified in this "Insurance" clause. The insurance provided hereunder shall be available for the benefit of the Contractor, the Authority and any Indemnified Persons as specified herein with respect to covered claims, but shall not be interpreted to relieve Contractor of any obligations hereunder. All limits of insurance set forth below are in U.S. dollars. Each policy of insurance of the type and amounts described below shall in a form satisfactory to the Authority. Unless otherwise specified in the Contract, all insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class XIV or better and with companies or through sources approved by the Authority. Unless otherwise indicated below, the policies shall be kept in force throughout the term of this Contract including the warranty period. The Contractor may use any combination of corporate insurance policies, project-specific policies, or a CCIP provided that the selected policies comply with all of the requirements in this "Insurance" clause. In the event that an insurer providing any of the insurance policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Person, including the State Department of Insurance, the Contractor shall exercise best efforts to promptly, and at its sole cost and expense, secure alternative coverage in compliance with the insurance requirements contained in this "Insurance" clause so as to avoid any lapse in insurance coverage.

7.1 Minimum Insurance Requirements

7.1.1 Workers' Compensation and Employer's Liability

The Contractor and its Subcontractors shall provide Workers' Compensation insurance as required under California statute including coverage for Employer's Liability in an amount not less than $1,000,000 each accident for bodily injury, for bodily injury by disease and policy limit for bodily injury by disease. Employer's liability primary insurance shall be scheduled under any excess or umbrella liability policy provided to comply with these specifications.

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The workers' compensation policies shall provide the following:

a. A waiver of subrogation in favor of the Authority and the Indemnified Persons;

b. A provision extending coverage to all states operations;

c. A voluntary compensation endorsement;

d. An alternative employer endorsement;

e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;

f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and

g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

7.1.2 Commercial General Liability

The Contractor and its Subcontractors shall provide CGL coverage, on a primary basis, for bodily injury, property damage, personal injury and advertising injury liability specifically and exclusively for the Project, Project ROW and Site, or shall obtain a separate project-specific general aggregate limit under Contractor's corporate program of insurance. Coverage shall be written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by ISO form CG 00 01 12 04.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There shall be no "contractors' limitation" endorsements as that term is defined as of the date of this agreement in the Glossary of Insurance and Risk Management Terms published by the International Risk Management Institute (http://www.irmi.com/online/insurance-glossary/default.aspx) that have not been reviewed and approved by the Authority or its designated representatives. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Any additional insured coverage provided under this policy shall include coverage for loss caused by acts or omissions of those acting on behalf of Contractor.

The commercial general liability insurance coverage shall have limits of not less than $2,000,000 per occurrence, $4,000,000 general aggregate and $4,000,000 products/completed operations aggregate and shall be scheduled under the umbrella/excess policy described below. Completed operations coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute either through continuous maintenance of completed operations coverage in the Contractor's corporate insurance program, including an endorsement providing completed operations coverage for additional insureds, or by purchase of extended completed operations coverage for a project-specific policy. If project-specific coverage through statutory exposure is not commercially available, completed operations coverage shall extend for at least ten years from project completion. If a project-specific policy is provided, the Contractor shall be the named insured and the Authority

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and each of the Indemnified Persons shall also be a named insured as to any loss or liability arising out of or in any way related to the Project, Project ROW or Site. If the Contractor's corporate program is used with a project-specific general aggregate limit, the Authority and each of the Indemnified Persons shall be a named insured under that policy.

7.1.3 Automobile Liability Insurance

The Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain a business auto liability policy or policies. Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance, or use of all vehicles connected with performance of the Work, including loading and unloading. Contractor auto liability policies shall cover "any auto" (symbol 1) or shall be specifically endorsed to include liability coverage on an excess basis for vehicles owned or operated by Contractor's subcontractors. Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO Form CA 00 01. The minimum combined single limit for primary coverage is $1,000,000 per accident, however coverage must be scheduled under excess or umbrella insurance as described in the next paragraph. Policies shall contain an endorsement affording coverage within 50 feet of a railroad using ISO Form CA 20 70 or equivalent. Policies shall include as an insured anyone liable for the conduct of an insured as defined in the policy, or shall add as insureds, the Authority and the Indemnified Persons. For any contractor of any tier, including the Contractor, who will be involved in any way with the transportation of Hazardous Materials using its own vehicles, pollution liability coverage at least as broad as that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided and the automobile liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) with a sublimit of no less than $1,000,000.

7.1.4 Excess/Umbrella Liability Insurance

The Contractor shall obtain and maintain excess/umbrella liability insurance with annual limits not less than $200,000,000, which will provide excess limits for the primary general liability, auto liability and employers' liability insurance required coverage set forth in this "Insurance" clause. The policy or policies shall include the Authority and the Indemnified Persons as named insureds with respect to liability arising out of the Project or out of any acts, errors or omissions of any Contractor-Related Entity. Coverage shall be extended to all insureds for completed operations. The Contractor may use its corporate insurance program or a combination of corporate insurance and stand-alone policies to meet this requirement provided that the general aggregate limits available for the Project are not subject to erosion by losses on other projects not related to the Project. Such policy or policies shall include the following terms and conditions:

i. Policies shall contain a drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted or for occurrences covered by an umbrella policy but not covered in the underlying insurance;

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ii. Policies shall be "follow form" and shall provide coverage at least as broad as found in the underlying primary policies; and

iii. There shall be no "contractors' limitation" endorsements as described in Section 7.1.2 that have not been reviewed and approved by the Authority or its designated representatives.

7.1.5 Professional Liability Insurance

During all phases of the Project, the Contractor shall obtain and maintain or cause others, as appropriate, to obtain and maintain professional liability insurance, including design build contractor's professional liability and liability for design professional services covering professional services performed in connection with this Agreement, with limits not less than $10,000,000 per claim and in the aggregate.

No self-insured retention for the Contractor or lead design entity shall exceed $500,000 without prior written approval from the Authority, or its authorized representatives, in its good faith discretion. Coverage shall apply specifically to professional activities performed under the Contract Documents. The policy(ies) shall have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which the RFP was issued.

The Contractor agrees to maintain or to require its design professionals to maintain, as appropriate, this required coverage for a period of no less than three years after Substantial Completion or to purchase an extended reporting period for no less than three years after Substantial Completion. If the Contractor is working with a separate lead design entity, Contractor shall require the lead design entity to agree to maintain this coverage for a period of no less than three years after Substantial Completion or to purchase an extended reporting period for no less than three years after Substantial Completion.

7.1.6 Environmental Liability

The Contractor shall obtain and maintain CPL insurance with a total limit of liability of no less than $10,000,000 per loss and $10,000,000 in the aggregate per policy period dedicated to this Project. Contractor may use a corporate CPL program, provided that coverage extends for a minimum 10-year period as described in the next paragraph and provided that a separate limit is available exclusively to the Project.

The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. The CPL shall provide for a minimum 10-year coverage period, including the construction period and an extended reporting period. If an occurrence-based form is not available, coverage may be provided under a claims-made form provided that the 10 year-coverage and claim reporting period is provided either through an extended reporting period, or through continuous maintenance of coverage with no advancement of a retroactive date that is no later than commencement of the Work.

The CPL policy shall include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other

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contamination to the extent required by environmental laws caused by pollution conditions resulting from covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by construction operations. The policy shall have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos.

Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials and for testing, monitoring, measuring operations or laboratory analysis.

The Authority and each of the Indemnified Persons shall be named insureds. The policy shall not contain any provision or exclusion (including any so-called ""insured versus insured" exclusion or ""cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

7.1.7 Property Insurance (Course of Construction)

The Contractor shall, upon commencement of construction and with approval of the Authority, obtain and maintain a policy of builder's risk insurance for the Project as specified below. The policy may be provided through a Contractor corporate master program policy or through a stand-alone policy as long as all of the requirements of this section are met. Coverage shall apply to those portions of the Project comprising high value assets subject to loss from a single occurrence. Examples of such assets include materials, temporary buildings, falsework, bridges, connectors, off ramps, and other structures or items. The Contractor may elect to cover all property at a lower blended rate if such a strategy would result in lower premium, or result in broader coverage at a lower or equivalent premium.

Coverage for each asset should be applicable only for the period of construction of the specific asset and should end when the asset is put to its intended use or as otherwise approved and accepted by the Authority, which end of coverage must be approved by the Authority prior to termination thereof. The Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to the Authority.

The named insureds shall be the Contractor, all Subcontractors (excluding those solely responsible for design Work) of any tier, suppliers, the Authority and the Indemnified Persons. Coverage extended to the Authority and the Indemnified Persons shall not be limited by use of the phrase "as their interests may appear."

7.1.7.1 Minimum Scope

Coverage shall be provided on a builder's risk insurance policy on an "all risk" basis. Such coverage may be provided under a master builder's risk program or may be provided under a

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project-specific policy, whichever provides the broadest coverage. Such insurance shall be on a replacement cost basis using a completed value form reasonably acceptable to the Authority to ensure adequacy of terms and sub-limits.

The policy shall cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Project ROW, in storage or in the course of transit to the Project ROW and all improvements that are within the Project ROW. The policy shall not cover tools or equipment used by any contractor to perform their work. Such tools and equipment are the sole responsibility of the contractor who owns or uses such tools.

The builder's risk policy must include coverage for:

a. Any ensuing loss from faulty workmanship or nonconforming work;

b. Machinery accidents and operational testing, if applicable;

c. Removal of debris, with a sub-limit of 25 percent of the loss or a sublimit of no less than $20,000,000, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;

d. Transit, including ocean marine coverage (unless insured by the Supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;

e. Sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site;

f. Collapse;

g. Terrorism;

h. Earthquake;

i. Flood;

j. Plans, blueprints and specifications; and

k. Demolition and increased cost of construction as required by law or ordinance with a sub-limit of no less than $20,000,000.

There shall be no coinsurance penalty provision in any such policy. Deductibles or self-insured retentions for all risk coverage and flood shall be no greater than $500,000 unless otherwise approved by the Authority. Deductibles for earthquake shall be no greater than 5percent of the total value insured at the time of loss. All deductibles or self-insured retentions shall be the responsibility of the Contractor.

The policy shall provide a "severability of interests provision," or "multiple insured's clause" or similar wording that the policy shall apply to each insured as if a separate policy had been issued to each insured except as to limits.

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7.1.7.2 Minimum Limits

Coverage shall be the broadest coverage commercially available for "all risks" of direct physical loss or damage. The policy shall provide coverage per occurrence up to the full replacement cost or a $100,000,000 loss limit, provided however, that the policy may include appropriate sub-limits for earthquake, earth movement, tsunami and flood but in no event less than $50,000,000 aggregate each for earthquake and flood. If PML limit option is used, then the study supporting the PML must be provided to the Authority, and the PML may be used as an alternative only if it is approved, in writing, by the Authority. At its option, the Authority may provide a PML obtained at Authority expense. If the Authority accepts the PML so obtained, the Authority may authorize the Contractor to obtain coverage with a loss limit less than full replacement cost. Any additional insurance premium for higher limits required by the Authority shall be paid for by the Authority through a change order. Any reduction in insurance premium shall be credited to the Authority through a deductive change order.

7.1.8 Railroad Protective Liability

The Contractor shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any Work is being performed within 50 feet of any railroad ROW. Coverage shall be written on ISO occurrence form CG 00 35 (or substitute form providing equivalent coverage) on behalf of any railroad as a Named Insured, with a limit of not less than $25,000,000 per occurrence and an aggregate of $25,000,000.

7.1.9 Aircraft Liability

If applicable, the Contractor shall provide, or cause to be maintained, Aircraft Liability insurance with a limit of not less than $10,000,000 per occurrence in all cases where any aircraft is used on the Project that is owned, leased or chartered by any Contractor-Related Entity or its subcontractors of any tier, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project or on any property owned, rented or leased by the Authority or the Indemnified Persons shall be subject to review and written acceptance by the Authority prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable in lieu of the coverage listed above, but must be provided prior to use of the aircraft. Such non-owned aircraft liability insurance shall include the Authority and the Indemnified Persons as insureds.

7.1.10 Watercraft Liability

The Contractor shall provide, or cause to be provided, liability insurance covering the ownership, use, maintenance, loading or unloading of watercraft related to the performance of the Work or any other operations contemplated under the Contract. Policies shall provide a limit of not less than $10,000,000 per occurrence or higher limits as may be required by the Authority, in all cases where any watercraft is used on the Project that is owned, leased, hired, or chartered by any Contractor-Related Entity. Coverage may be provided through any combination of commercial general liability, marine general liability, or protection and indemnity

insurance provided that all watercraft operation is covered, regardless of watercraft size. Such coverage may be arranged in any combination of primary and excess policies, all of which shall include the Authority and the Indemnified Persons as insureds and shall explicitly waive subrogation against the Authority and the Indemnified Persons.

7.2 General Insurance Requirements

7.2.1 Premiums, Deductibles and Self-Insured Retentions

The Contractor shall be responsible for payment of premiums for all insurance required under this "Insurance" clause. The Authority and the Indemnified Persons have no obligation to pay any premium. The Contractor further agrees that for each claim, suit or action made against any insured, the Contractor shall be solely responsible for all deductibles or self-insured retentions. Any deductible or self-insured retention maintained by the Contractor over $500,000 must be declared and approved by the Authority except for earthquakes as provided in Section 7.1.7. At the option of the Authority, the insurer shall either reduce or eliminate such deductible or self-insured retention with respect to the Authority, and the Indemnified Persons; or the Authority in its good faith discretion, may require posting of collateral by the Contractor guaranteeing payment of losses and related investigations, claims administration and defense expenses.

7.2.2 Subcontractor Insurance Requirements

The Contractor shall cause each Subcontractor to provide and maintain such insurance that complies with the requirements of the Contractor in circumstances where the Subcontractor is not covered by the Contractor's insurance. The Contractor shall require general liability, auto liability and workers' compensation/employer's liability insurance of Subcontractors. Other coverages identified in this "Insurance" clause shall be required of Subcontractors if the Work involves the specific exposure, including environmental and professional liability. Limits of insurance required of Subcontractors shall be at the Contractor's discretion, but shall be consistent with custom and practice for such requirements in the area where the Work is to be performed. In most cases, limit requirements for Subcontractors shall be less than the full limits required of the Contractor in this "Insurance" clause. The Contractor shall cause each such Subcontractor to include the Authority and the Indemnified Persons as additional insureds under such Subcontractors' liability insurance policies obtained, except for any professional liability insurance. The Contractor shall require each such Subcontractor to require that its workers' compensation insurers agree to waive any subrogation rights the insurers may have against the Authority and the Indemnified Persons. If requested by the Authority, the Contractor shall promptly provide certificates of insurance or copies of policies, as requested, evidencing coverage for each Subcontractor. The Authority shall have the right to contact the Subcontractors directly in order to verify the above coverage. For CSB, as defined by the State of California, required limits for commercial general liability and auto liability shall be $1,000,000 each. For Subcontractors other than CSB, required limits for auto liability shall be no less than $1,000,000 each. Limits shall be $1,000,000 for CSB conducting Work that involves a specific exposure, such as professional liability and/or environmental liability.

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7.2.3 Additional Coverage Requirements

Except for professional liability, all liability, all insurance policies required to be provided by the Contractor and its Subcontractors hereunder shall contain or shall be endorsed to comply with the following provisions:

a. For claims covered by the insurance specified herein, all insurance coverage shall be primary insurance, except for coverage by its nature cannot be written as primary, and non-contributory with respect to insurance or self-insurance maintained by the Authority, the Indemnified Persons, and their respective members, directors, officers, employees, agents and consultants. Any insurance or self-insurance beyond that specified in the Contract that is maintained by the Authority and the Indemnified Persons, or their members, directors, officers, employees, agents and consultants shall be in excess of, and shall not contribute with, the insurance required herein;

b. Any failure on the part of the Contractor and its Subcontractors to comply with reporting provisions or other conditions of the policies required herein, any breach of warranty, any action or inaction of the Contractor and its Subcontractors shall not affect coverage provided to the Authority and the Indemnified Persons and their respective members, directors, officers, employees, agents and consultants;

c. All insurance to be provided herein shall include a "separation of insureds" clause and shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. No policy shall contain any provision or exclusion (including a "cross-liability" or similar exclusion) that in effect would prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim that would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy. The requirements of this subsection do not apply to claims by the Contractor against any of its Subcontractors or suppliers or to claims between subcontractors and/or suppliers;

d. Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days (ten days for non-payment of premium) prior written notice, has been given to the Authority. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice;

e. Endorsements adding additional insureds to required policies shall provide the broadest coverage available, but in no event less coverage than the Insurance Services Office form CG 20 10 and the CG 20 37 with no limitations or exclusions with respect to "products/completed operations" coverage for insureds; and

f. Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability or as otherwise specified in this “Insurance” clause) and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time except as specified for pollution liability policies.

7.2.4 Waivers by the Parties

The Contractor and the Authority each waives all rights of subrogation against each other and the Indemnified Persons, against each of their agents and employees and their respective members, directors, officers, employees, agents and consultants for any claims arising out of the performance of Work under this Project to the extent covered by insurance obtained pursuant to this "Insurance" clause, except such rights as they may have to the proceeds of such insurance. The Contractor shall require any Contractor-Related Entity to provide similar waivers in writing each in favor of the Authority and the Indemnified Persons. The waivers required in this subsection do not apply to claims between Subcontractors and/or subconsultants of the Contractor or those claims asserted by the Contractor against any Subcontractors and/or suppliers.

7.2.5 Changes in Requirements

The Authority shall notify the Contractor in writing of any changes in the requirements applicable to insurance to be provided by the Contractor. Any additional cost from such change shall be paid by the Authority and any reduction in cost shall entitle the Authority to an equitable adjustment to reduce the Contract Price pursuant to a Change Order.

7.2.6 No Recourse

All costs for insurance shall be considered incidental to and included in compensation allowed hereunder and no additional payment will be made by the Authority.

7.2.7 Enforcement of Contract Provisions (Non Estoppel)

The Contractor acknowledges and agrees that any actual or alleged failure on the part of the Authority to inform the Contractor of non-compliance with any requirement imposes no additional obligations on the Authority nor does it waive any rights hereunder.

7.2.8 Support of Indemnifications

The insurance coverage provided hereunder by the Contractor shall support but is not intended to limit the Contractor's indemnification obligations under the Contract Documents.

7.2.9 Commercial Unavailability of Required Coverage

If, through no fault of the Contractor, any of the coverage required in this "Insurance" clause (or any of the required terms of such coverage, including policy limits) become unavailable or are available only with commercially unreasonable premiums, the Authority will consider in good faith alternative insurance packages and programs proposed by the Contractor, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. The Contractor must demonstrate to the Authority's satisfaction that it has used diligent efforts in the global insurance markets to place the required insurance coverages, and shall advise the Authority of the specific results of those efforts. The Contractor shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage

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and the requirement to provide acceptable alternatives. The Authority shall be entitled to a reduction in the Contract Price if the Authority, in its sole discretion, agrees to accept alternative policies providing less than equivalent coverage.

7.2.10 Insurance Proceeds and Prosecution of Claims

Under certain circumstances, insurance policies required hereunder are intended to provide compensation to the Contractor for costs incurred by the Contractor. The Contractor shall be responsible for processing all such claims and shall not be entitled to receive a Change Order for any costs, which it could have recovered from the insurer. The Contractor agrees to report timely to the insurer(s) any and all matters, which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims, whether for defense or indemnity or both. The Authority shall have the right, but not the obligation, to submit the Authority's claims and tenders of defense and indemnity under applicable insurance policies. Unless otherwise directed by the Authority in writing with respect to the Authority's insurance claims, the Contractor shall be responsible for reporting and processing all potential claims by the Authority or Contractor or tenders for defense and indemnity under the appropriate insurance policies. The Contractor agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by the Contractor or the Authority and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. The Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments. The Contractor shall immediately notify the Authority, and thereafter keep the Authority fully informed, of any incident, potential claim, claim or other matter of which Contractor becomes aware that involves or could conceivably involve an Indemnified Party as a defendant. The Contractor will cooperate with the Authority, and shall require its liability insurers to agree in writing to work with the Authority to assure compliance with all regarding timely response to claims. The Authority agrees to promptly notify the Contractor of the Authority's incidents, potential claims against the Authority, and matters of which the Authority is aware which may give rise to an Authority insurance claim or to a right of defense and indemnification under this "Insurance" clause. Delivery of any such notice will constitute a tender of the Authority's defense of the claim to the Contractor and the insurer under any applicable insurance policies, subject to the Authority's rights to control its own defense to the extent provided in this "Insurance" clause or by applicable Laws. The Authority shall cooperate with the Contractor as necessary for the Contractor to fulfill its duties hereunder, including providing the Contractor a copy of all written materials the Authority receives asserting a claim against the Authority that is subject to defense by an insurer under an insurance policy or by the Contractor under this "Insurance" clause. If, in any instance, the Contractor has breached its obligations respecting insurance coverage set forth in the Contract Documents or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining damages resulting from the breach or inability to enforce or collect, on or determining reductions in compensation due from the Authority to Contractor, Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Contractor performed such obligations

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or not committed such failure. Nothing in this "Insurance" clause or elsewhere in the Contract shall be construed to treat the Contractor as electing to self-insure where the Contractor is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the insurance policy is written meets the rating qualifications set forth in this "Insurance" clause.

7.2.11 Commencement of Work

The Contractor shall not commence Work under this Contract until it has obtained the insurance required under this "Insurance" clause, except for builder's risk insurance as provided for in Section 7.1.7, and has furnished to the Authority evidence of insurance providing the required coverage as required hereunder, nor shall the Contractor allow any subcontractor to commence Work under any subcontract until the insurance required of the subcontractor has been obtained, evidenced and approved by the Contractor.

7.2.12 Disclaimer

The Contractor and each subcontractor shall have the responsibility to make sure their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. Nothing in the Contract shall be construed as limiting in any way the extent to which the Contractor may be held responsible for any claims resulting from its performance of the work hereunder. The Contractor's obligations to procure insurance are separate and independent of its contractual defense and indemnity obligations. The coverage limits set forth in this "Insurance" clause are minimum requirements and the Authority does not represent that the minimum coverage and limits required hereunder will necessarily be adequate to protect the Contractor.

7.2.13 Non-Limitation of Insurance Requirements

The insurance coverage provided and limits required hereunder are minimum requirements and are not intended to limit the Contractor's indemnification obligations nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this "Insurance" clause are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. With the exception of any insurance required by a railroad, liability coverage will not be limited to the specific location designated as the Site except that if the Contractor arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to the Authority approval and use of the broadest available site-specific endorsements. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

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7.2.14 Evidence of Insurance

Concurrently with the Contractor's execution hereof or on such later date on which coverage is to be provided hereunder, the Contractor shall deliver to the Authority a copy of each policy required to be provided by Contractor under this "Insurance" clause, including any corporate policies used to satisfy the terms of this "Insurance" clause. If any required policy is not available at the time of Contract execution, the Contractor may submit a detailed binder for each required coverage, and/or a copy of the insurer's quote for each required coverage. The evidence provided must be adequate to allow the Authority to determine if all insurance requirements have been met. The Contractor shall deliver newly issued policies to the Authority within 10 days of receipt. This requirement does not apply to professional liability policies or worker's compensation policies, for each of which a certificate of insurance is acceptable. The Authority shall have no duty to pay or perform under the Contract until such evidence of insurance, in compliance with all requirements of this "Insurance" clause has been provided. The Contractor shall promptly deliver to the Authority evidence of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such evidence shall be delivered to the Authority not less than 15 days prior to the expiration date of any policy, or such shorter period as approved in advance by the Authority.

8.0 Payments

8.1 Mobilization

A Payment Breakdown may include mobilization as set forth in this "Mobilization" clause.

Mobilization payment shall not exceed a fixed total of three percent of the Contract Price and may be invoiced in three installments, as follows:

a. One half percent (0.5%) of the Contract Price at earlier of NTP + 30 days or limited NTP + 30 days;

b. One half percent (0.5%) of the Contract Price when 2.5 percent of the construction value of the Contract Price is earned; and

c. Two percent (2.0%) of the Contract Price when five percent of the construction value of the Contract Price is earned.

8.2 Unincorporated Materials

A schedule activity may include delivery and storage of permanent materials fabricated but not incorporated into the Work as follows (and only as follows):

a. The materials must be stored at a secured facility acceptable to and accessible by the Authority. The facility must be reviewed and accepted by the Authority prior to payment and

the Authority may require additional guarantees to ensure the security and access to the materials.

b. The materials shall have been designated or fabricated specifically for the Project.

c. The materials shall consist of one of the following (and nothing else):

   i. Prestressing steel in sealed containers;

   ii. Prestressing ducts and anchorages;

   iii. Bearings;

   iv. Prefabricated joint seals;

   v. Bar reinforcing steel;

   vi. Structural steel (major structures);

   vii. Precast concrete sections, including bridge girders;

   viii. Culvert sections;

   ix. Pipe (greater than four inches in diameter); and

   x. Light standards.

d. As materials are being fabricated and stored, the cost for the schedule activity will be updated and incorporated into the monthly Progress Report and invoice.

e. As the material is incorporated into the Work, the cost will be removed from the schedule activity. A backup spreadsheet to summarize the to-date unincorporated materials will be included with each monthly invoice.

f. All unincorporated material costs will have invoices to support each monthly Progress Report and invoice.

9.0 Hazardous Materials

If the total quantity of either Class I or Class II Hazardous Waste is greater than or less than the estimated quantity set forth in the Signature Document by more than 25 percent, then either Party may seek an equitable adjustment in accordance with the “Changes” clause (Section 17.0) of the General Provisions.

10.0 Right-of-Way

10.1 Additional ATC Right-of-Way

If an approved ATC incorporated in the Contract requires additional permanent and/or temporary ROW not identified on the ROW Acquisition Plan, the Authority shall acquire such additional ROW within 24 months after the Contractor has submitted to the Authority a written request for such additional ROW. The request shall include an appraisal map that meets

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Authority standards, title report, and any additional completed environmental approval documentation from the Contractor, along with a justification for its need, and shall include drawings depicting proposed geometric designs, construction limits and cross-sections. If the Authority fails to provide access to any such additional ROW within 24 months after receipt of the Contractor's complete request for such additional ROW, then the Contractor may seek an equitable adjustment in accordance with the "Changes" clause (Section 17.0) of the General Provisions. However, Contractor shall not be entitled to an increase in Contract Price or extension of any Completion Deadline as a result of Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional ROW.

Contractor shall be solely responsible for all costs associated with the acquisition of any such ATC ROW, including purchase price, the Authority's administrative costs, staff time, consultant fees and any other ancillary services. The Authority may deduct all such costs from any payments otherwise owing to the Contractor, or the Authority may elect to invoice the Contractor for such costs and the Contractor shall pay such costs within 30 days after receiving an invoice therefor.

10.2 Issuance of NTP

The total number of days between the Proposal Deadline and NTP shall be added to all ROW proposed access dates indicated in the ROW Acquisition Plan. For example, if NTP is issued 102 days after the Proposal Deadline, then ROW access dates will have 102 days added to them. Proposed ROW access dates in the ROW Acquisition Plan represent the latest date and the actual access date will be based on the actual acquisition date at which time the area will be delivered to the Contractor.

11.0 Ground Assumptions for Procurement

The GAP is a Contract Document only to the extent it sets geotechnical parameters for Kings County for use in preparing the Proposal and as set forth in this clause. To the extent the cost of, or the time required for, performance of the Work, materially increases based on the approved GBR-C as compared to the GAP, the Contractor shall be entitled to an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions. To the extent the cost of, or time required for, performance of the Work, materially decreases based on the approved GBR-C as compared to the GAP, the Authority shall be entitled to an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

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