California High-Speed Rail Authority

RFP No.: HSR13-57

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

Book I, Part B.2 - General Provisions

RFP No. 13-57 – Addendum No. 3 – 07/31/2014

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Part B. General Provisions

1.0 Terminology

1.1 Acronyms

Table 1: List of Acronyms

Acronym	Acronym Definition
ATC	Alternative Technical Concept
ARRA	American Recovery and Reinvestment Act
ANSI	American National Standards Institute
APP	Approved
ASQ	American Society for Quality
AWC	Approved with Comments
CADD	Computer Aided Design and Drafting
Caltrans	California Department of Transportation
CCI	Construction Cost Index
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
C.F.R.	Code of Federal Regulations
CGL	Commercial General Liability
CHSRP	California High-Speed Rail Program
CMS	Contract Management System
CP 2-3	Construction Package 2-3
CPL	Contractor Pollution Liability
CPUC	California Public Utilities Commission
CSB	Certified Small Business
CVFPB	Central Valley Flood Protection Board
CWA	Clean Water Act
CWMP	Construction Waste Management Plan
DBE	Disadvantaged Business Enterprise
DRB	Disputes Resolution Board
DVBE	Disabled Veteran Business Enterprise
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EPD	Escrowed Proposal Document
EPLS	Excluded Parties Listing System
FAR	Federal Acquisition Regulation
FRA	Federal Railroad Administration
GAP	Ground Assumptions for Procurement
GBR-B	Geotechnical Baseline Report for Bidding
GBR-C	Geotechnical Baseline Report for Construction
GHG	Greenhouse Gas

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Acronym	Acronym Definition
HSR	High-Speed Rail
ICT	Interface Coordination Team
IMP	Interface Management Plan
ISO	International Organization for Standardization
JHA	Job Hazard Analysis
LAN	Local Area Network
MB	Microbusiness
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
NPDES	National Pollution Discharge Elimination System
NOD	Notice of Determination
NTHI	National Targeted Hiring Initiative
NTP	Notice to Proceed
OCS	Overhead Contact System
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PDF	Portable Document Format
PE4E	Preliminary Engineering for Environmental
PE4P	Preliminary Engineering for Procurement
PI	Public Involvement
PIP	Public Involvement Program
PML	Probable Maximum Loss
QA	Quality Assurance
QC	Quality Control
QM	Quality Manager
QMS	Quality Management System
RCRA	Resource Conservation and Recovery Act
RFC	Ready for Construction
RFP	Request for Proposal
RM	Requirements Management
ROD	Record of Decision
ROW	Right of Way, Right-of-Way
RWC	Rejected with Comments
SB	Small Business
SBC	Small Business Concern
SBPP	Small Business Performance Plan
SHPO	State Historic Preservation Officer
SNOC	Statement of No Objection with Comments
SONO	Statement of No Objection
SOO	Statement of Objection
SOOC	Statement of Objection with Comments
SOW	Scope of Work
SMP	Sustainability Management Plan
SJVAPCD	San Joaquin Valley Air Pollution Control District
SSCP	Safety and Security Certification Plan

Acronym	Acronym Definition
SSHASP	Site-Specific Health and Safety Plan
SSI	Sensitive Security Information
SSMP	Safety and Security Management Plan
SSSP	Site-Specific Security Plan
SWRCB	State Water Resources Control Board
TCE	Temporary Construction Easements
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USCIS	United States Citizenship and Immigration Service
USDOI	United States Department of the Interior
U.S. DOL	United States Department of Labor
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
V&V	Verification and Validation
VECP	Value Engineering Change Proposal
VERA	Voluntary Emissions Reduction Agreement
VV&SC	Verification, Validation and Self-Certification

1.2 Definitions

As used throughout this Contract, the following listed capitalized terms (and any non-capitalized terms also listed) shall have the meaning set forth below:

Affiliate –

a. Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with:

   i. The Contractor or

   ii. Any of its members, partners or shareholders holding a 10 percent or greater interest in the Contractor.

b. Any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by:

   i. The Contractor;

   ii. Any of the Contractor's members, partners or 10 percent or greater shareholders; or

   iii. Any Affiliate of the Contractor under part (a) of this definition; and

   iv. Subcontractor affiliates determined using the definition in "a" and "b" above, but substituting the term "Subcontractor" for "Contractor."

c. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

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In the context of impartiality of DRB members, the term "Affiliate" shall also mean local agencies that are represented on the Authority's board.

Alternative Technical Concept – The concept(s), if any, identified as an Alternative Technical Concept in Attachment C to the Signature Document.

Authority – California High-Speed Rail Authority.

Authority-Directed Change – Any change in the Work (including changes in the standards applicable to the Work) that the Authority has directed the Contractor to perform as described in the "Authority-Directed Changes" clause (Section 17.1.1).

Authority Designated Holiday –

a. New Year's Day (January 1);
b. Martin Luther King, Jr., Day (third Monday in January);
c. Presidents' Day (third Monday in February);
d. Memorial Day (last Monday in May);
e. Independence Day (July 4);
f. Labor Day (first Monday in September);
g. Thanksgiving Day (fourth Thursday in November);
h. The day after Thanksgiving (fourth Friday in November); and
i. Christmas Day (December 25).

If January 1st, July 4th, or December 25th falls on a Sunday, the Monday following is a holiday. If January 1st, July 4th or December 25th falls on a Saturday, the preceding Friday is a holiday

Authority-Provided Governmental Approvals – The Governmental Approvals listed in Table 2 of the Special Provisions for which the Authority is the responsible party for obtaining.

Authority Representative – The Authority's Authorized Representative as designated in Attachment D of the Signature Document.

Baseline Schedule – The meaning set forth in the Cost and Scheduling Controls Program located in Book IV.

Betterment – With respect to a given Third Party Facility, the meaning (if any) set forth in the applicable Cooperative Agreement.

In all other cases, the term "Betterment" shall mean any upgrading of a Relocated Third Party Facility that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Third Party, including an increase in the capacity, capability, level of service, efficiency, duration or function of the Relocated Facility over that which was provided by

the existing Facility; provided, however, that the following are not considered Betterments in such cases:

a. Any upgrading necessary for safe and effective construction of the Project;

b. Replacement devices or materials that meet equivalent standards although they are not identical;

c. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;

d. Any upgrading required by applicable Laws (excluding any Laws that fall within the definition of Third Party Standards for such Third Party);

e. Replacement devices or materials that are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or

f. Any upgrading required by the applicable Third Party Standards in effect as of the date of execution of the applicable Task Order or Utility Agreement.

California High-Speed Rail Program – Any construction project undertaken by the Authority.

CEQA/NEPA Re-Examination Process – The Authority's process for reviewing and analyzing any Variation to determine, in the Authority's sole discretion whether the Variation is within the scope of the Final Environmental Documents, and whether the Variation will require any additional review or documentation to ensure compliance with CEQA and NEPA.

Change Notice – A written notice of circumstances allowing equitable adjustment in accordance with the "Delivery of Notice" clause (Section 17.3).

Change Order – A written amendment to the terms and conditions of the Contract Documents in accordance with the "Changes" clause (Section 17.0).

Change Order Proposal – A written proposal prepared and submitted by the Contractor requesting an equitable adjustment in the Contract Price or Completion Deadline in accordance with the "Changes" clause (Section 17.0).

Change Order Request – A written notification provided by the Contractor, as required by the "Changes" clause (Section 17.0).

Class I Hazardous Waste – Soil that is contaminated by Hazardous Material which, under Section 66261.3 of Title 22 California Code of Regulations is required to be managed pursuant to Chapter 11 of Division 4.5 of Title 22 and disposed of in accordance with Title 23 Chapter 15 Division 3 California Code of Regulations, and which will be disposed of in the disposal facility closest to the location where the contaminated soil is discovered that accepts such contaminated soil.

Class II Hazardous Waste – Soil that is contaminated by Hazardous Material which, under Section 66261.3 of Title 22 California Code of Regulations is required to be managed according to Chapter 11 of Division 4.5 of Title 22, and qualifies for a variance under Section 66260.210 of

Title 22 or the Department of Toxic Substance Control has approved an application to classify and manage the waste as non-hazardous pursuant to Section 66260.200(f) of Title 22, that must be disposed in accordance with Title 23 Chapter 15 Division 3 California Code of Regulations at the disposal facility closest to the location where the contaminated soil is discovered that accepts such contaminated soil.

Completion Deadline – Either the Substantial Completion Deadline or the Final Acceptance Deadline, as the case may be.

Conduit – Any conduit, casing, sleeve, hanger, attachment or blockout for installation or protection of Utilities attached to or installed through structures, or installed under rail or roadway crossings, and any associated pull-ropes for Utility cables.

Contract – Collectively, the Contract Documents which establish the respective rights and obligations of the Authority and the Contractor with respect to the Project, including the performance of the Work, the furnishing of labor and materials, and the basis of payment.

Contract Documents – The meaning set forth in the "Order of Precedence and Contract Documents" clause (Section 2.0) as provided to the Contractor via the Authority's website.

Contract Price – The amount shown as the Contract Price in the Signature Document, subject to adjustment as set forth in the Contract Documents.

Contractor – The Person that enters into the Contract with the Authority, as identified in the Signature Document.

Contractor Environmental Submittals – All analyses, plans, documents, maps, GIS layers, compliance personnel resumes, survey and monitoring plans, reports and data, conditions assessments, compliance reports, resource avoidance, minimization, conservation and mitigation programs and plans, and all other environmental information and materials of every kind and nature, and all amendments and updates thereto, that must be prepared to the Contractor pursuant to the Environmental Requirements, including, without limitation, the Environmental Compliance Plan, the Regulated Resources Map, the Environmental Constrained Footprint, and the Required Surveys GIS Data Layer.

Contractor Officer in Charge – The person who is responsible for the overall performance of the job and liaison with the Authority.

Contractor-Related Entity – The Contractor; if the Contractor is a joint venture, partnership or limited liability company, any joint venture member, partner or member of the Contractor; Subcontractors; their employees, agents and officers; and all other Persons for whom the Contractor may be legally or contractually responsible.

Cooperative Agreement – Any of the following documents (including unless otherwise specified, any modifications and amendments thereto executed after the Proposal Deadline):

a. The agreements between the Authority and Third Parties (draft or executed) and identified as Cooperative Agreements; and

b. Unless otherwise specified in the Contract Documents, any other agreement between the Authority and a Third Party that addresses Relocations for the Project and/or the CHSRP (or other portions thereof) in a general manner.

Cost Liability – The obligation to bear the cost of all or part of a Relocation (as between the Authority and the Utility Owner), whether arising out of common or statutory law or contract, as established in accordance with Section 49.3.2.6. When established by contract, this cost allocation may constitute a final resolution of the issue or an agreement to allocate the cost liability provisionally (a "status quo" agreement), subject to later determination by negotiation, litigation, or arbitration. For purposes of the Contract Documents, both types of contractual allocations shall be treated in the same manner.

Critical Path – The meaning set forth in the Cost and Scheduling Controls Program located in Book IV.

Cross-Border Utility – A Utility that crosses the Project limits.

Design Variance – An exception from the minimum Design Criteria or minimum design standard.

Differing Site Conditions – The meaning set forth in the "Differing Site Conditions" clause (Section 22.0).

Disputes Resolution Board – The board described in the "Dispute Resolution" clause (Section 51.0).

Environmental Compliance Manager – The individual identified as the "Environmental Compliance Manager" in Attachment C to the Signature Document.

Environmental Compliance Plan – The plan prepared and updated by the Contractor set forth in the "Environmental Requirements" clause (Section 42.0) and in accordance with the Environmental Compliance Manual, to help assist Contractor in performing, and to help the Authority assure Contractor's compliance with, all Environmental Requirements, including without limitation, those associated with the Final Environmental Documents, the Regulated Resources, and the Governmental Approvals.

Environmental Compliance Report – A report prepared and updated by Contractor as set forth in the "Environmental Requirements" clause (Section 42.0) and in accordance with the Environmental Compliance Manual, that demonstrates compliance of the Contractor's deliverables referenced in the Environmental Compliance Manual specifically, and the Project and the Work generally, with the Environmental Requirements.

Environmental Compliance Team – The group of individuals described as the "Environmental Compliance Team" in the Environmental Compliance Manual.

Environmental Constrained Footprint – The map and corresponding GIS layer prepared and updated by the Contractor as set forth in the "Environmental Requirements" clause (section

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42.0) and in accordance with the Environmental Compliance Manual reflecting the physical subarea within the Environmental Footprint that may, in compliance with the additional constraints imposed on the Environmental Footprint in connection with the Regulated Resources, the Governmental Approvals, and/or applicable environmental Laws, be legally subjected to direct or indirect impacts in connection with the Project; and any Regulated Resources within the Environmental Footprint that must be protected from Project impacts and/or preserved or conserved to comply with Environmental Requirements.

Environmental Footprint – The map and corresponding GIS layer included in the Final Environmental Documents, prepared and updated by the Contractor as set forth in the "Environmental Requirements" clause (Section 42.0) and in accordance with the Environmental Compliance Manual reflecting the physical area in which direct or indirect Project impacts to environmental resources (including, without limitation, the Regulated Resources and other biological, water and wetland, air, and cultural resources) are expected to occur as analyzed and approved in the Final Environmental Documents.

Environmental Materials – The Environmental Compliance Manual, final Environmental Footprint, draft Regulated Resources Map, draft Environmental Constrained Footprint, draft application materials for Authority-Provided Governmental Approvals, and any other draft or conceptual plans, maps, GIS layers, documents, materials or information provided by the Authority to assist Contractor in performing and to better assure Contractor compliance with the Environmental Requirements.

Environmental Re-Examination Process(es) – Collectively, the CEQA/NEPA Re-Examination Process and the Governmental Approvals Re-Examination Process.

Environmental Requirements – All terms, conditions and requirements of the Contract Documents related to implementation of, and compliance with all applicable environmental Laws, the Final Environmental Documents, and the Governmental Approvals, Supplemental or Amended Governmental Approvals, any subsequent or supplemental CEQA or NEPA documents, and any other regulatory protections for the Regulated Resources. This includes all terms, conditions, requirements, and minimization measures, avoidance, mitigation measures, project design features, and conservation and mitigation plans specified therein.

Environmental Update Memo – A memorandum issued by the Authority that identifies and serves as the mechanism for incorporating into the Contract Documents as binding Environmental Requirements any new, additional, modified or amended environmental terms, conditions, or requirements, or avoidance, minimization, conservation or mitigation plans, measures or project design features, resulting from (by way of example only) issuance of any applicable new or changed environmental Laws, additional CEQA/NEPA documentation, Supplemental or Amended Governmental Approvals, Final Environmental Documents, Governmental Approvals, Environmental Compliance Manual provisions; and/or other protections for the Regulated Resources.

Escrowed Proposal Documents – The meaning set forth in the "Escrowed Proposal Documents" clause (Section 25.0).

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Final Acceptance – The meaning set forth in the "Final Acceptance" clause (Section 7.14.2).

Final Acceptance Deadline – The meaning set forth in the Special Provisions.

Final Environmental Documents – The Final EIR/EIS for the Fresno to Bakersfield Section and the Authority's and FRA's related approval documents for the Fresno to Bakersfield Section, including Authority resolutions of approval; Authority Certifications; CEQA Findings of Fact; CEQA Statement of Overriding Considerations; Mitigation Monitoring and Enforcement Plan; FRA's ROD or other findings, determinations, documents and decisions that were approved as part of the Authority's and FRA's Project approval and CEQA/NEPA process.

Fresno to Bakersfield Final EIR/EIS or Final EIR/EIS – The California High-Speed Train Project Final Environmental Impact Report/Environmental Impact Statement for the Fresno to Bakersfield Section.

Force Majeure – The meaning set forth in the "Force Majeure" clause (Section 7.15).

Geotechnical Baseline Report for Bid – The meaning set forth in Section 1.0 of the Scope of Work.

Geotechnical Baseline Report for Construction – The meaning set forth in Section 4.9.3 of the Scope of Work.

Governmental Approval – Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration, or ruling, together with any required CEQA/NEPA documentation, required by, and approved at the discretion of, or with any Governmental Person in order to design and construct the Project, or operate the Project until Final Acceptance, including, without limitation, all terms, conditions, requirements, and avoidance, minimization, conservation and mitigation plans, and mitigation measures and project design features related to such Governmental Approvals.

Governmental Approvals Re-Examination Process - The Authority's process for reviewing and analyzing environmental data and information regarding any Variation to determine, in the Authority's sole discretion whether the Variation would have regulatory permitting consequences, including new or more severe impacts to jurisdictional resources subject to environmental permitting, such as waters of the U.S., waters of the state, habitats of sensitive species, discharges to receiving waters, and all other Regulated Resources related to necessary Environmental Requirements.

Governmental Person – Any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

Guarantor – The guarantor of each Guaranty.

Guaranty – Each executed guaranty (if any) attached to the Signature Document.

Hazardous Materials - Any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the following laws, all as amended (hereinafter the following cited California state statutes are collectively referred to as the "State Toxic Substances Laws"):

a. CERCLA, 42 U.S.C. Section 9601, et seq.;

b. Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.;

c. RCRA, 42 U.S.C. Section 6901 et seq.;

d. Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.;

e. Clean Water Act, 33 U.S.C. Sections 1251 et seq.;

f. California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.;

g. California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.;

h. California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.;

i. Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.;

j. Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory);

k. California Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seq.; or

l. Any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;

m. Any substance, product, waste, or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court;

n. Petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles;

o. Asbestos or asbestos-containing materials in structures and/or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).

Incidental Utility Work – All of the following work, that is necessary for construction of the Project, including any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, obtaining and complying with required Governmental Approvals and preparing as-built surveys:

a. Service Line Relocations;

b. Utility Appurtenance Adjustments;

c. Purchases and installations of Conduits;

d. Protections in Place of all Utilities;

e. Street and parkway modification and restoration made necessary by Utility Relocations, including resurfacing and restriping of streets (including sidewalks), landscape restoration, and relocation of street lights and traffic signals;

f. Potholing, electronic detection, and/or surveying to determine Utility locations; and

g. Abandonment of Utilities, including removal and disposal of abandoned Utilities.

Indemnified Persons – The meaning set forth in the "Indemnification and Infringement" clause (Section 28.0).

Integrated Safety Management – The Authority's web-based database management system to record safety-related items such as incidents of injury or property damage, near-miss incidents, incident investigations, audits, observations, safety meetings, and training.

Interim Schedule – The meaning set forth in the Cost and Scheduling Controls Program.

Key Personnel – Those positions identified in Attachment C of the Signature Document as "Key Personnel."

Law(s) – All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site or any Work. The term "Laws" does not include Governmental Approvals.

Liquidated Damages – The damages payable by the Contractor to the Authority as specified in the Special Provisions.

Non-Conforming Work – Work that does not conform to the requirements of the Contract Documents, Laws, Final Environmental Documents, Governmental Approvals, subsequent or supplemental CEQA/NEPA documentation, or Supplemental or Amended Governmental Approvals.

Non-Technical Contract Requirements – The meaning set forth in the VV&SC Procedures located in Book IV.

Non-Technical Contract Submittal – The meaning set forth in the VV&SC Procedures located in Book IV.

Notice of Determination – A concise notice to be filed by a California public agency after it approves or determines to carry out a project that is subject to the requirements of CEQA.

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Notice to Proceed – One or more written directives from the Authority to the Contractor authorizing the Contractor to begin prosecution of the Work or a portion of the Work as specified therein, as may be further described in the Special Provisions.

Party – The Contractor or the Authority, as the context may require, and "Parties" means the Contractor and Authority, collectively.

Payment Breakdown – The meaning set forth in the Cost and Scheduling Controls Program located in Book IV.

Person – Any individual, corporation, company, joint venture, partnership, trust, unincorporated organization or Governmental Person, or the Authority.

Preliminary Design – PE4E and PE4P furnished by the Authority and located in the Reference Materials.

Preliminary Engineering Documents – The Authority furnished preliminary engineering documents, as described in Section 2.0 of the Scope of Work, set forth in the Reference Materials.

Progress Report – The meaning set forth in the Cost and Scheduling Controls Program located in Book IV.

Project – The meaning provided in Special Provisions, Section 1.0.

Proposal – The proposal submitted by the Contractor in response to the RFP, including any revisions thereto. If the RFP requested submittal of best and final offers, the term "Proposal" means the best and final offer submitted by the Contractor, including any revisions thereto.

Proposal Deadline – The date on which the Proposals were due as set forth in the Instructions to Proposers of the RFP. If best and final offers were requested, the term "Proposal Deadline" means the date on which best and final offers were due as set forth in the Instructions to Proposers of the RFP.

Proposed Schedule – The meaning set forth in the Cost and Scheduling Controls Program.

Protection in Place or Protect in Place – Any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would not be considered Protection in Place and would instead be a Temporary Relocation. The term Protection in Place includes both temporary measures and permanent installations meeting the foregoing definition.

Public Facility – A facility, other than a Utility, that is owned or operated by a Governmental Person.

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Public Facility Owner – The owner or operator of a Public Facility.

Public Facility Work – All Work with respect to Public Facilities described in Section 49.0, including:

a. Contractor's reimbursement of Public Facility Owners for Relocation work they perform;

b. Any Betterments added to the scope of the Public Facility Work; and

c. Contractor's duties with respect to Public Facilities.

Public Records Act – The California Public Records Act, Government Code Section 6250 *et seq*.

Quality Assurance – All the planned and systematic activities implemented within the quality system that can be demonstrated to provide confidence that the project, products or services will fulfill requirements for quality. Moreover, QA emphasizes actions at a management level that directly improve the chances that QC actions will result in a product or service that meets requirements. QA includes ensuring the project requirements are developed to meet the needs of all relevant internal and external agencies, planning the processes needed to assure quality of the project, ensuring that equipment and staffing is capable of performing tasks related to project quality, ensuring that contractors are capable of meeting and carrying out quality requirements, and documenting the quality efforts.

Quality Control – Techniques that are used to assure that a product or service meets requirements and that the work meets the product or service goals. QC is the act of taking measurements, testing, and inspecting a process or product to assure that it meets specification. Products may be design drawings/calculations or specifications, manufactured equipment, or constructed items. QC also refers to the process of witnessing or attesting to, and documenting such actions.

Quality Management System – A formalized system that documents the structure, responsibilities, and procedures required to achieve effective quality management.

Quality Manager – Key Personnel position responsible for ensuring compliance with the quality requirements of the Contract and the oversight of the Quality Program and QMS.

Quality Milestone – The meaning set forth in the Cost and Scheduling Controls Program.

Quality Program – The coordinated execution of applicable quality plans and activities for a project.

Railroad Agreements – Any agreement between the Authority and another railroad related to the design and construction of Authority facilities and/or work on railroad facilities in conjunction with the Project.

Ready for Construction Submittals – Documents prepared by the Contractor that describe certain portions or elements of the Work in sufficient detail to proceed with construction of that

specific portion or element, including a clear description of the scope and limits of the Work designated ready for construction.

Reasonable Accuracy – An underground Utility identified in the Utility Information shall be deemed indicated with "Reasonable Accuracy" unless information about such Utility provided in the Utility Information meets any one or more of the following conditions:

a. The Utility Information shows the Utility as being located outside the Project limits, when in fact the Utility is inside said Project limits, or vice versa; or

b. If a nominal diameter for the Utility is indicated in the Utility Information, the Utility has an actual nominal diameter (excluding casings and any other appurtenances) greater than 12 inches, and its indicated nominal diameter is either greater than or less than the actual diameter by an amount equal to 25 percent or more of the actual diameter; or

c. The Utility Information shows the Utility as abandoned (i.e., nonexistent except "on paper" or existent but no longer active) when in fact the Utility exists and is active, or the Utility Information shows the Utility as active when in fact the Utility is abandoned.

Except as provided in the three bulleted subparagraphs above, any inaccuracies in the Utility Information (e.g., as to type of material or vertical location) shall have no impact on "Reasonable Accuracy" and shall not result in a determination that a Utility was not identified with Reasonable Accuracy. If there is any inconsistency between any two or more components of the Utility Information, only the most accurate information shall be relevant for purposes of this definition.

Record of Decision – A concise public record issued by FRA pursuant to NEPA containing, inter alia, a statement of the decision, identification of all alternatives considered, identification of environmentally preferable alternative, a public statement as to whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted (and if not, why they were not), and a summary of monitoring and enforcement, also known as the Mitigation, Monitoring and Enforcement Plan, where applicable for any mitigation (see 40 C.F.R. Section 1505.2).

Reference Materials – The documents and materials provided with and identified in the RFP as Reference Materials are not Contract Documents. Moreover, the Reference Materials, including the Preliminary Design and Preliminary Engineering Documents contained therein, are not Contract Documents.

Regulated Resources – All environmental resources, including, without limitation, all biological, water-related, habitat-related, flood protection, and cultural resources, that are subject to protection pursuant to applicable Laws, and are located within the Environmental Footprint for the Project.

Regulated Resources Map – A map and GIS layer to be prepared and updated by Contractor as set forth in the "Environmental Requirements" clause (Section 42.0) and in accordance with the Environmental Compliance Manual, reflecting all Regulated Resources.

Relocate – Action to undertake a Relocation.

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Relocation – Each alteration, removal, relocation, replacement, reconstruction, construction, support, including provision of temporary facilities as necessary, of any and all existing Third Party Facilities that is necessary in order to accommodate or permit construction, operation, maintenance or use of the Project, and/or of future CHSRP facilities to be designed and constructed by others as described in the Scope of Work. By way of example only, replacing an existing at-grade road with a road located on a bridge structure is a Relocation. Notwithstanding the foregoing, the term "Relocation" shall not include any of the actions described in this paragraph with respect to any Third Party Facilities which are not located within the Project limits.

Relocation Work – The Utility Work and Public Facility Work as well as the work by Third Parties and/or their contractors associated with Relocation of Utilities and/or Public Facilities, including design, construction, installation, manufacture, supply, testing, inspection, and any other work associated with the Project and required by the Third Party Agreements.

Request for Proposal – The meaning set forth in the Signature Document.

Required Surveys GIS Data Layer – One or more map(s) and GIS layer(s) reflecting all survey and monitoring data collected prior to and during construction activities pursuant to requirements of the Final Environmental Documents, the Governmental Approvals, and any subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals.

Retainage – The meaning set forth in the "Retainage" clause (Section 30.3).

Sensitive Security Information – Information about security, operations, facilities or other assets or capital projects whose disclosure would be detrimental to the security of railroad employees or customers.

Service Line (also referred to as a lateral or service lateral) – is defined as:

a. Any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system; and

b. Any cable or Conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Person's lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

Site – Those areas designated by the Authority in the ROW Acquisition Plan for performance of Work and such additional areas as may, from time to time, be designated in writing by the Authority for the Contractor's use in performance of the Work. For purposes of insurance with respect to the construction Work (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, and payment for use of equipment, the term "Site" shall also include:

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a. The field office sites;

b. Any property used for bonded storage of material for the Project approved by the Authority;

c. Staging areas dedicated to the Project; and

d. Areas where activities incidental to the Project are being performed by the Contractor or Subcontractors, but excluding any permanent locations of the Contractor or such Subcontractors.

Small Business Concern – For the purpose of this Project and in order to be as inclusive as possible to SBs, the Authority recognizes a certified SBC to include the following:

a. **Disadvantaged Business Enterprise –** A for-profit SBC that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged. In the case of a corporation, 51 percent of the stock is owned by one or more such individuals; and, whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and have been certified as a Disadvantaged in accordance with Title VI. The Authority recognizes DBE certifications issued by the CUCP. Refer to the Authority's Small and DBE Program for the Roster of Certifying Agencies.

b. **Disabled Veteran Business Enterprise –** A for-profit SBC that is at least 51 percent owned by a veteran of the United States Military who has at least a 10 percent service-connected disability. To qualify as a DVBE, the business must have received the appropriate certification issued by the California Department of General Services;

c. **Microbusiness –** A for-profit SBC with gross annual receipts of less than $3,500,000; or, if the SB is a manufacturer, with 25 or fewer employees. The Authority recognizes MB certifications issued by the California Department of General Services; and

d. **Small Business –** A for profit SB that meets the requirements and eligibility criteria set forth by the U.S. SB Administration and California Department of General Services for certification as a SB. For 100 percent State-funded contracts, a SB is independently owned and operated, with its principal office located in California, and with owners living in California, has grossed 14 million dollars or less over the previous three tax years, and is not dominant in its field of operations. This certification is issued by the California Department of General Services. The SB participation under a strictly state-funded contract will be counted toward the Authority's overall SB utilization goal.

State – The State of California.

Subcontractor – Any Person with whom the Contractor has entered into a subcontract for any part of the Work, or with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.

Substantial Completion – The meaning set forth in the "Substantial Completion" clause (Section 7.14.1).

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Substantial Completion Deadline – The meaning set forth in the "Completion Deadlines" clause (Section 3.0) of the Special Provisions.

Supplemental or Amended Governmental Approval – Any new, additional, or amended Governmental Approvals, determined (pursuant to the Governmental Approvals Re-examination Process or otherwise) to be required after issuance of Governmental Approvals for design, construction or implementation of the Project in compliance with applicable Laws.

Task Order – An agreement, as the same may be amended from time to time, among the Authority, the Contractor, and a Third Party, authorizing and providing for the performance of specific work and/or services and/or the purchase of materials and equipment. A document is a "Task Order" if it meets the definition set forth herein, without regard to the name by which the document designates itself, and without regard to whether it is issued pursuant to the provisions of an applicable Cooperative Agreement.

Technical Contract Requirements – The meaning set forth in the VV&SC Procedures located in Book IV.

Technical Contract Submittal – The meaning set forth in the VV&SC Procedures located in Book IV.

Temporary Relocation – is defined as the following:

a. Any interim relocation of a Utility (i.e., the installation, removal and disposal of the interim facility) pending installation of the permanent facility in the same or a new location; and

b. Any removal and reinstallation of a Utility in the same location with or without an interim relocation.

Third Party – Any Utility Owner or Public Facility Owner; provided, however, that in the Contract Documents other than the General Provisions and Special Provisions, "Third Party" may sometimes mean and include third parties in addition to Utility Owners or Public Facility Owners (such as railroads and other third parties), depending on the context.

Third Party Agreement – Any Cooperative Agreement, Task Order, or Utility Agreement, as the context may require, and as the same may be modified or amended from time to time.

Third Party Conflict Matrix – A form that lists Third Party Facilities affected or potentially affected by the Project.

Third Party Facility – Any Utility or Public Facility.

Third Party Facility Work – Public Facility Work and/or Utility Work, as the context may require.

Third Party Project – The design and construction of a Third Party Facility at the request of a Third Party, not included in the initial scope of the Work other than as part of a Relocation or to provide service to the Project.

Third Party Standards – All standard specifications, standards of practice, and construction methods that apply to Third Party Facilities pursuant to any one or more of the following:

a. Any Third Party Agreement(s) applicable to such work;

b. Standard specifications, standards of practice and construction methods that the Third Party customarily applies to Third Party Facilities constructed by the Third Party (or for the Third Party by its contractors) at its own expense and that are comparable to the Third Party Facilities being constructed for the Project;

c. For any Third Party that is also a Governmental Person, its Third Party Standards shall include all requirements that are imposed by Laws and regulations issued by such Third Party;

d. Design and construction requirements included in the Contract Documents for a particular Third Party Facility; and/or

e. Those processes, procedures, policies, and practices that are industry-standard in the location that the work is being performed for each particular type of Third Party Facility and those (if any) that are specified for the particular Third Party in the Contract Documents.

Third Party Standards may or may not all be incorporated into document issued by the Third Party. In case of any inconsistency between or among any of the applicable standards described in this definition, the most stringent standard shall prevail.

Time and Materials Change Order – The meaning set forth in the "Time and Materials Change Orders" clause (Section 17.9).

Total Float – The meaning set forth in the Cost and Scheduling Controls Program located in Book IV.

United States Small Business Administration – is a United States government agency that provides support to entrepreneurs and small businesses.

Utility – Privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities, and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water, or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines, and drainage basins for storm water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation, and/or protection of facilities to accommodate the Project, the term "Utility" or "utility" specifically excludes:

a. Traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities; and

b. Cellular telecommunications towers and related facilities.

All electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities. If the context so requires, the term "Utility" or "utility" shall also mean "Utility Owner."

Utility Agreement – An agreement, as the same may be amended from time to time, between the Authority and a Third Party, authorizing and providing for the performance of specific work and/or services and/or the purchase of materials and equipment. A document is a "Utility Agreement" if it meets the definition set forth herein, without regard to the name by which the document designates itself, and without regard to whether it is issued pursuant to the provisions of an applicable Cooperative Agreement.

Utility Appurtenance Adjustment – The adjustment of Utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of Work in the vicinity.

Utility Easement – A permanent replacement easement and/or other interest in real property located outside of the Project ROW that is necessary for the Relocation of a Utility.

Utility Information – Utility Information – The information concerning the location, nature, and other characteristics of existing Utilities provided in the Third Party Conflict Matrix, including without limitation, any such information incorporated into the Third Party Conflict Matrix by reference. The definition of Utility Information does not include any information regarding name of Utility Owner or Public Facility Owner, disposition of the Third Party Facility, Relocation, schedule, or cost.

Utility Owner – The owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, municipalities, and other Governmental Persons); provided, however, that in a situation involving use of a pole or other supporting structure (collectively, "support") for more than one Utility (joint use), if the applicable Cooperative Agreement makes the owner of the support responsible to the Authority for Relocation of all Utilities jointly using that support regardless of the Utility's ownership, then for purposes of this Contract the owner of the support will be treated as the Utility Owner with respect to all Utilities jointly using that support.

Utility Work – All Work with respect to Utilities described in Section 49.0, including the following:

a. Contractor's reimbursement of Utility Owners for Relocation work they perform;

b. Any Betterments added to the scope of the Utility Work; and

c. Any Work to be performed by the Contractor pursuant to Section 49.0 with regard to real property rights and interests.

Value Engineering Change Proposal – The meaning set forth in the "Value Engineering" clause (Section 24.0).

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Variation – Refinements, changes, or modifications to, the project (or elements thereof) approved in the Final Environmental Documents or Governmental Approvals. Variations may include, but are not limited to, proposed changes in alignment, right-of-way, size or type of structure, mitigation measures, construction methods, construction staging, detours, or road closures or any other project element or change that does not comply with the Environmental Footprint or the Environmental Constrained Footprint.

Work – All services, labor, materials, and other efforts to be provided and performed by the Contractor including the following general categories:

a. Scheduling;

b. Utility relocation;

c. Demolition;

d. Permitting;

e. Survey;

f. Geotechnical;

g. Design;

h. Environmental mitigation;

i. Construction;

j. QC and QA for design and construction;

k. Community relations;

l. Quality inspection and testing;

m. Construction safety and security program;

n. Systems testing;

o. Preparation of CADD As-Builts; and

p. Coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities.

Including other efforts necessary or appropriate to complete the design and construction of the Project, and to ensure the Project's ultimate readiness for passenger rail operations, except for those efforts which the Contract specifies will be performed by the Authority or other Persons.

Working Day – Each weekday that is not an "Authority Designated Holiday".

2.0 Order of Precedence and Contract Documents

The Contract Documents are comprised of the following in order of precedence:

1. Book I – Contract Requirements
2. Book II – Environmental and Third Party Agreements

3. Book III – Design Criteria and Directive Drawings
4. Book IV – Supplemental Contract Requirements
5. Proposal, including the Proposal Commitments identified in Attachment C to the Signature Document (provided that if the Authority determines, in its sole discretion, that the Proposal contains a provision that is more restrictive/beneficial to the Authority than is specified elsewhere in the Contract Documents, that Proposal provision shall take precedence).

Approved Alternative Technical Concepts, amendments, supplements, and Change Orders will have the priority just above the document that is being amended.

Each of the Contract Documents is an essential part of the agreement between the Parties, and the requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete agreement. Additional details contained in a lower priority Contract Document will control except to the extent they irreconcilably conflict with the requirements of the higher level Contract Document. In the event of any conflict among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed above.

Notwithstanding the foregoing, if a Contract Document contains differing provisions on the same subject matter than another Contract Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless the Authority in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other Party of the conflict. The Authority shall issue a written determination with respect to which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

The Contractor shall not take advantage of any apparent error, omission, inconsistency, inaccuracy, deficiency, or other defect in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Authority in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the Authority of all errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects that it may discover in the Contract Documents, and shall obtain specific instructions in writing from the Authority before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve the Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a

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Change Order hereunder except as specifically allowed under the "Changes" clause (Section 17.0).

3.0 Notice to Proceed and Prerequisites for Start of Construction

3.1 Notice to Proceed

Contractor shall begin performance of the Work as directed in each NTP issued to Contractor by the Authority. At the Authority's option, prior to issuance of a full NTP for all Work, the Authority may issue one or more interim NTPs directing the Contractor to perform certain Work described therein according to mutually agreed upon terms and compensation. Unless otherwise stated, any deadline in the Contract Documents with reference to the NTP shall refer to the first NTP if more than one NTP is issued.

The Contractor shall not proceed with any Work required under this Contract without an NTP from the Authority for such Work. Any Work performed or expenses incurred by the Contractor prior to the Contractor's receipt of NTP for such Work shall be entirely at the Contractor's risk.

3.2 Prerequisites for Start of Construction

The Contractor shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed:

a. The Authority has issued NTP;

b. All Governmental Approvals and Final Environmental Documents necessary for construction of such portion of the Project have been obtained and fully and finally approved, the Contractor has furnished to the Authority fully executed copies of such Governmental Approvals and Final Environmental Documents, and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed;

c. All insurance policies, Contractor Controlled Insurance Program or Owner Controlled Insurance Program enrollments (if any) and payment and performance bonds required to be delivered to the Authority hereunder have been submitted to the Authority as applicable and remain in full force and effect;

d. All necessary rights of access for such portion of the Project have been obtained;

e. Ready for Construction Submittals have been issued for that portion of the Work and approved by the Authority;

f. The Contractor has submitted to the Authority and the Authority has approved a GBR-C;

g. The Contractor has certified that the Work will comply with the Environmental Requirements, as required by the "Environmental Requirements" clause (Section 42.0) and the "Environmental Requirements" clause (Section 4.15.6) of the Scope of Work; and

Any additional conditions for construction set forth in the Contract Documents have been fully satisfied.

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4.0 Key Personnel, Subcontractors, and Outside Associates or Consultants

4.1 Key Personnel

The Signature Document identifies the Key Personnel. The Authority shall have the right to review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. The Contractor shall notify the Authority in writing of any proposed changes in any Key Personnel, and shall include a resume of the proposed new Key Personnel. The Contractor shall not change any Key Personnel without the prior written approval of the Authority. The Authority in its sole discretion shall have the right to request that any Key Personnel be removed from the Project without recourse by the Contractor. Upon such request, the person or persons named in the request shall be immediately removed from the Project and shall not return without the written agreement of the Authority.

4.2 Superintendence by Contractor

At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall directly superintend the Work or assign and have on the Site a competent superintendent who is satisfactory to the Authority and has authority to act for the Contractor.

4.3 Subcontractors

In addition to any other requirements under this Contract for the submission of any subcontract agreement, the Contractor shall provide to the Authority one copy of all executed subcontracts associated with this Contract, including any changes or modifications to subcontracts, within three days of their execution.

No Subcontractor shall be permitted to perform work associated with the subcontract until the Subcontractor (or the Contractor on the Subcontractor's behalf) complies with the insurance requirements specified elsewhere in this Contract, and has furnished satisfactory evidence of insurance to the Authority.

Pursuant to Section 6109 of the Public Contract Code, no Subcontractor shall perform Work if that Subcontractor is ineligible to perform work on public works projects pursuant to Section 1777.1 or 1777.7 of the Labor Code.

4.3.1 Subletting and Subcontracting Fair Practices Act

Except in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 *et seq.*, the Contractor shall not have the right to make any substitution of identified Subcontractors (whether identified in the Proposal or at a later date) with a price in excess of one-half of 1 percent of the difference between:

a. The Total Contract Price; and

b. The amount bid for design services.

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4.3.2 Compliance with Authority Subcontracting Policy

The Contractor shall, prior to soliciting any bids for performance of work or labor or rendering of services in or about the construction of the Project or for special fabrication and installation of a portion of the Work, submit to the Authority for its review and approval (which approval will not be unreasonably withheld) a procedure for the conduct of the bidding and approval process applicable to all subcontracts (or combination of subcontracts with a single Subcontractor) with a price in excess of one-half of 1 percent of the difference between the following:

a. The Contract Price; and

b. The amount bid for design services.

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

Except with Subcontractors listed in the Proposal or Subcontractors selected in accordance with the foregoing procedure, the Contractor shall not enter into any subcontracts (or combinations of subcontracts with a single Subcontractor) with a total price in excess of one-half of 1 percent of the difference between the following:

i. The Contract Price; and

ii. The amount bid for design services.

4.3.3 Requirements

Each subcontract shall provide that the Authority is a third party beneficiary of the subcontract and shall have the right to enforce all of the terms of the subcontract for its own benefit and all guarantees and warranties express or implied, shall inure to the benefit of the Authority, and its respective successors and assigns.

The Contractor shall ensure that each subcontract (at all tiers) contains those terms that are specifically required by the Contract Documents to be included therein as well as such additional terms and conditions as are sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents. The Contractor shall ensure that all subcontracts (at all tiers, including subcontracts with suppliers) shall include an agreement by the Subcontractor to participate in any dispute review proceeding pursuant to the "Dispute Resolution" clause (Section 51.0), if such participation is requested by the Authority.

The Contractor shall be fully responsible to the Authority for all acts and omissions of all Contractor-Related Entities. The Contractor shall also be responsible for coordinating the Work performed by Subcontractors. When a portion of the subcontracted Work is not performed in accordance with the Contract Documents, or if a Subcontractor commits or omits any act that would constitute a breach of the Contract, or if the Authority makes reasonable objection to the use or continued use of such Subcontractor, the Subcontractor shall be replaced at the request

of the Authority and shall not again be employed on the Project. The Contractor shall not be entitled to any increase in the Contract Price and/or time extension as a result of such removal and/or replacement.

4.4 Removal of Contractor Personnel

The Authority may require, in writing, that the Contractor remove or terminate any Contractor, Subcontractor, consultant or supplier personnel that the Authority deems objectionable. If the Authority requires removal or termination without cause, the Contractor shall be entitled to an equitable adjustment in accordance with the terms and conditions of the "Changes" clause (Section 17.0). The Authority shall be deemed to have removed or terminated a person for cause if the Authority determines, in its sole discretion that such Person is not performing the Work safely, properly and/or skillfully, or is disruptive, intemperate, or disorderly. In such cases, the Contractor is not entitled to a Contract Price or schedule adjustment.

5.0 Not Used

6.0 Compliance with Law

The Contractor shall comply with all Laws. To the extent there is a change in one or more applicable Laws after the date 30 days prior to the Proposal Deadline and such change has the effect of increasing the cost or time of performance of the Work then the Contractor shall be entitled to an equitable adjustment in accordance with the "Changes" clause (Section 17.0). The Contractor shall not be entitled to an equitable adjustment under this Contract as a result of any change in Law that was passed or adopted but not yet effective as of 30 days prior to the Proposal Deadline; any change in Law relating to taxes; or any change in Law that does not require a material modification in the Work or does not require the Contractor to obtain any subsequent or supplemental CEQA/NEPA documentation or Supplemental and/or Amended Governmental Approvals (unless the Project or the Contractor is specifically targeted by the change in Law).

Before complying with a change in Law that would require a change in Project design or construction, the Contractor shall promptly provide notice of such change in Law to the Authority and receive direction from the Authority to comply with the change in Law. The Authority shall be entitled to an equitable adjustment to decrease the Contract Price for any change in Law that reduces the cost of the Work. Nothing in the Contract Documents shall be construed to permit work not conforming to applicable Laws. Whenever the Contract Documents require higher standards than the minimum required by applicable Laws, the Contract Documents shall take priority.

If the Contractor observes that portions of the Contract Documents are at variance with applicable Laws, the Contractor shall promptly notify the Authority in writing. If the Contractor performs Work contrary to applicable Laws, the Contractor shall assume full responsibility for the Work and shall bear the associated costs.

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The Contractor is subject to Laws pertaining to off-site work such as utility connections, fire protection systems and encroachment upon federal, State, private, city, county, or railroad property.

6.1 Registration of Designers

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the Work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the State of California in the particular professional field involved.

6.2 Design According to Regulatory and Statutory Requirements

In addition to complying with the design requirements, the Contractor warrants that its design and specifications shall comply with all applicable Laws. In case of differing requirements, the more stringent requirements shall apply. The Contractor shall fully indemnify, defend and hold harmless the Indemnified Persons from claims and costs arising out of errors and omissions relating to such Laws.

6.3 California Professional Engineers Act

The Contractor shall specifically be responsible for providing licensed professional engineering services necessary to meet the requirements of the Professional Engineers Act (Business and Professions Code Sections 6700-6799).

The Authority does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Contract, the Contractor acknowledges that the Authority has no such intent. The Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firms or individuals will perform the design services required by the Contract Documents. Any references in the Contract Documents to the Contractor's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Contractor shall "furnish" the design for the Project. The terms and provisions of this clause shall control and supersede every other provision of all Contract Documents.

6.4 Assignment of Causes of Action

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

> (b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at

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> the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

6.5 Child and Family Support Obligations

The Contractor acknowledges the policy of the State set forth in Public Contract Code Section 7110(a), Public Contract Code Section 7110(a) provides:

> It is the policy of this state that anyone who enters into a contract with a state agency shall recognize 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.

The Contractor acknowledges that, to the best of its knowledge, it 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 Employment Development Department.

6.6 Notification of Third Party Claims

Each Party shall provide timely notification to the other Party of the receipt of any third party claim relating to the Contract.

6.7 Notice of Labor Disputes

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Authority. The Contractor agrees to insert this paragraph in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

6.8 Surface Mining and Reclamation Act

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

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

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

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

7.0 Performance of the Work

The Contractor shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering principles and construction and manufacturing practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, suitable for its intended purpose (as set forth in the California Streets and Highways Code, Chapter 20, Article 2, Section 2704.09 except with design speeds of up to 250 mph), free from defects and in accordance with the terms and conditions set forth in the Contract Documents. Except for materials, services and efforts otherwise specifically excluded from the Contractor's scope of work in the Contract Documents, all materials, services, and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the Substantial Completion Deadline and Final Acceptance Deadline (respectively) shall be the Contractor's sole responsibility; and, subject to the terms of the "Changes" clause (Section 17.0), the cost of all such materials, services, and efforts is included in the Contract Price.

The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Authority. Nor does the Authority assume responsibility for any understanding reached or representation made concerning conditions, which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

7.1 Not Used

7.2 Site Investigation and Conditions Affecting the Work

The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the (a) constraints on design, engineering and construction imposed by applicable Laws, the Governmental Approvals, and Final Environmental Documents, and (b) nature and location of the Work and that it has investigated and satisfied itself as to the general and local conditions, which can affect the Work or its cost, including but not limited to conditions bearing upon transportation, disposal, handling, and storage of materials; the availability of labor, water, electric power, and roads; uncertainties of weather, flooding patterns and water drainage, or similar physical conditions at the Site; the conformation and conditions of the ground; and the character of equipment and facilities needed preliminarily to and during Work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, access to the Site and territory surrounding the Site and examination of reasonably available records with respect to the Site, including all exploratory work done by the Authority, as well as from the drawings and specifications made a part of this Contract.

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Any failure of the Contractor to take the actions described and acknowledged in this Section 7.0 will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to perform the Work successfully without additional expense to the Authority.

7.3 Responsibility of the Contractor for Design

The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this Contract, regardless of the fact that certain conceptual design work occurred and was provided to the Contractor prior to the date of execution of the Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services, and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

The Authority's review of, acceptance of, or payment for, services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The Contractor shall be and remain liable to the Authority in accordance with applicable Law for all damages to the Authority caused by the Contractor's negligent performance of any of these services furnished under this Contract. The rights and remedies of the Authority provided for under this Contract are in addition to any other rights and remedies provided by Law.

The Contractor specifically acknowledges and agrees that:

a. The Preliminary Design and Directive Drawings are preliminary and conceptual in nature and have not been signed or sealed;

b. The Contractor is not entitled to rely on the Reference Materials, except to the extent that the Contract Documents expressly allow the Contractor to rely on the Utility Information provided in, or incorporated by reference into the Third Party Conflict Matrix;

c. The Contractor is responsible for correcting any errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects in the Preliminary Design through the design and/or construction process without any increase in the Contract Price or extension of a Completion Deadline if the Contractor elects to use the Preliminary Design;

d. The Contractor is responsible for correcting any errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects in the Directive Drawings through the design and/or construction process without any increase in the Contract Price or extension of a Completion Deadline; provided, however, that the Contractor shall be entitled to an equitable adjustment in accordance with the "Changes" clause (Section 17.0) to the extent the Authority determines that a material change in the Directive Drawings is necessary in order to meet the other requirements of the Contract as a result of an error, omission, inconsistency, inaccuracy, deficiency, or other defect in the Directive Drawings; and

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e. The Contractor's warranties and indemnities hereunder cover errors, omissions, inconsistencies, and other defects in the Project, even though they may be related to errors, omissions, inconsistencies, and other defects in the Environmental Materials, Preliminary Design or Directive Drawings.

The Contractor understands and agrees that the Authority shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost, or cause of action whatsoever suffered by any Contractor-Related Entity by reason of any use of any information contained in the Design Criteria, Directive Drawings, Environmental Materials, other Contract Documents, or Reference Materials or any action or forbearance in reliance thereon, except to the extent that the Authority has specifically agreed herein that the Contractor shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter. The Contractor further acknowledges and agrees that if and to the extent the Contractor or anyone on the Contractor's behalf uses any of said information in any way, such use is made on the basis that the Contractor, not the Authority, is responsible for said information and that the Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses, and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at the Contractor's own risk.

The Contractor will design and construct the Project in conformity with the Design Criteria (subject to any variances requested by the Contractor and approved by the Authority), the Environmental Requirements and the Directive Drawings. All railroad, utility, and third party standards shall be met and incorporated into the designs, drawings, and specifications.

7.3.1 Drawings and Other Data

All designs, drawings, specifications, notes, and other works developed in the performance of this Contract shall become the sole property of the Authority and may be used on any other Authority design or construction project without additional compensation to the Contractor. Use by the Authority of the design documents on other projects does not confer any liability on the Contractor. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three years after Final Acceptance, agrees to furnish all retained works on the request of the Authority. Unless otherwise provided in this Contract, the Contractor shall have the right to retain copies of all works beyond such period.

7.3.2 Title to Submittals

All information, drawings, or other submittals required to be furnished by the Contractor to the Authority under this Contract shall become the sole property of the Authority upon preparation thereof. All other documents prepared or obtained by the Contractor in connection with the performance of its obligations under the Contract shall become the property of the Authority upon the Contractor's preparation or receipt thereof.

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7.3.3 Specifications and Drawings

The Contractor shall keep on the Site a copy of the drawings and specifications and shall at all times give the Authority access thereto.

The organization of the specifications into divisions, sections, and articles, and the arrangement and titles of Project drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

7.4 Notice and Approval of Restricted Designs

In the performance of this Contract, the Contractor shall make, to the extent practicable, maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Authority, the Contractor shall not furnish, in the performance of the Work, a design or specification that requires the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. As to any such design or specification, the Contractor shall report to the Authority giving the reason or reasons why it is considered necessary to so restrict the design or specification.

7.5 Coordination with Other Contracts

The Authority and third parties such as Utility Owners, railroads, cities, counties, and other Governmental Persons may award contracts for work at or near the Site. The Contractor shall fully cooperate with the other contractors and with employees of the Authority, and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the said other contract work, heeding any direction that may be provided by the Authority. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor. If the Contractor asserts that any of the Authority's other contractors have interfered with the Work, then the Contractor's sole remedy shall be to seek recourse against such other contractors.

7.6 Coordination with Railroads and California Public Utilities Commission

The Contractor shall comply with all railroad requirements when working within or adjacent to railroad ROW.

The Contractor shall obtain railroad approval of any design and construction activities that are within railroads ROW or impacting railroad operational activities.

The Contractor shall obtain a CPUC Order authorizing construction of new and modifications to existing highway to rail and rail to rail crossings. CPUC requires railroad approval of grade separation before it issues its Order.

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7.7 Final Environmental Documents and Governmental Approvals

For any Variation determined to be necessary and appropriate by the Authority using the Environmental Re-Examination Process(es), and without any increase in the Contract Price or any extension of the Completion Deadlines, the Contractor shall:

a. Secure and pay for, as part of the Contract Price, all required Governmental Approvals (except for Authority-Provided Governmental Approvals), including those set forth in Table 2 of the Special Provisions and any additional Supplemental or Amended Governmental Approvals required for any Variation, as determined to be necessary and appropriate by the Authority using the Environmental Re-Examination Process(es); and

b. Pay for and provide all supporting technical and environmental information, drawings, plans, analyses, materials and documentation determined to be necessary by the Authority in connection with any additional CEQA/NEPA review and documentation. After the Final Environmental Documents have been approved by the decision-makers, additional conditions, mitigation measures or project design elements may be required by Law as a result of the issuance or amendment of Governmental Approvals. It is also possible that Supplemental or Amended Governmental Approvals may be required by Law for the Project, which may impose additional conditions or required mitigation, avoidance and minimization measures not previously identified. Nothing contained in the Contract Documents is intended to modify, limit, or otherwise constrain any Governmental Person with respect to issuance of the Authority-Provided Governmental Approvals.

The Contractor shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals and Environmental Requirements, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person, without any increase in the Contract Price or extension of a Completion Deadline. The Contractor is also subject to the limitations and constraints of the Environmental Requirements pertaining to off-site Work such as utility connections, fire protection systems and encroachment upon federal, State, private, city, county, or railroad property. If the Contractor observes that portions of the Contract Documents are at variance with the Environmental Requirements, the Contractor shall promptly notify the Authority in writing. If the Contractor performs Work contrary to the Environmental Requirements, the Contractor shall assume full responsibility for the Work and shall bear all associated costs.

In the event that the Contractor seeks any Project changes permitted by the Contract (including, without limitation, any changes related to ATCs, Betterments, VECPs, or Project design changes described in the "Facilities of Others" clause (Section 49.0) that may result in a Variation, then the Contractor shall coordinate and cooperate, and require the Subcontractors to coordinate and cooperate, with the Authority to implement the Environmental Re-Examination Process(es) and to obtain any Supplemental or Amended Governmental Approvals determined to be necessary by the Authority in its sole discretion. Further, the Contractor shall bear responsibility for any Work associated with implementing the Environmental Re-Examination Process(es), for obtaining any Supplemental or Amended Governmental Approvals determined

to be appropriate by the Authority, and for providing all supporting technical and environmental information, drawings, plans, analyses, materials and documentation necessary to assist the Authority in connection with any additional CEQA/NEPA review and documentation, without any increase in Contract Price or extension of a Completion Deadline, except to the extent permitted in the "Changes" clause (Section 17.0).

The Authority's approval of any Variation shall be subject, in the Authority's discretion, to review and analysis by the Authority pursuant to the Environmental Re-Examination Process(es). For each Variation, Contractor shall prepare the information, documentation, materials and reports necessary for the Authority to review and analyze the Variation to determine whether the Project, as modified by the Variation:

1. Complies with CEQA/NEPA and if any additional CEQA/NEPA review and documentation is required for compliance with those Laws, or
2. Complies with Governmental Approval(s) and if any Supplemental or Amended Governmental Approval(s) are required for compliance with applicable Environmental Laws.

Contractor shall comply with the Environmental Compliance Manual and any additional instructions of the Authority in preparing the information, documentation, materials and reports necessary for the Authority to conduct the Environmental Re-Examination Process(es).

7.8 Warranty

The warranties set forth below commence upon Substantial Completion and continue for a period of two years from Final Acceptance.

In addition to any other warranties in this Contract, the Contractor warrants that:

a. The Work conforms to the requirements of the Contract Documents;

b. All design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State, shall be suitable for its intended purpose (as set forth in the California Streets and Highways Code, Chapter 20, Article 2, Section 2704.09 except with design speeds of up to 250 mph) and shall be free of errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects;

c. The construction Work furnished pursuant to the Contract Documents was performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State;

d. Materials and equipment furnished under the Contract Documents are of good quality and, except if otherwise expressly set forth in the Contract Documents, when installed, are new; and

e. The Project is fit for the purposes intended (as set forth in the California Streets and Highways Code, Chapter 20, Article 2, Section 2704.09 except with design speeds of up to 250 mph).

Notwithstanding the foregoing, if the warranty term is governed by a Railroad Agreement, Cooperative Agreement or Task Order, the warranty for such element shall remain in effect for such term as required under the applicable Railroad Agreement, Cooperative Agreement and/or Task Order. If the warranty term is not governed by a Railroad Agreement, Cooperative Agreement or Task Order, the warranty for such element shall commence upon completion of such element and continue for a period of one year thereafter.

The warranty on any repair, rework, or replacement resulting from a warranty claim under this clause shall extend beyond the original warranty period if necessary to provide at least a one year warranty period from the date of acceptance of the repairs, rework, or replacement.

Upon Final Acceptance, the Contractor will have the right to replace the performance bond required hereunder with a replacement bond in the amount of 10 percent of the Contract Price in a form satisfactory to the Authority in its sole discretion guaranteeing due and punctual performance of the Contractor's obligations under the Contract that survive Final Acceptance, or with such other security as is approved by the Authority in its sole discretion.

7.8.1 Subcontractor Warranties

The Contractor shall obtain from all Subcontractors, manufacturers, and suppliers warranties that would be given in normal commercial practice; require all such warranties to be executed, in writing, for the benefit of the Authority or the Authority's assignee. The Contractor shall enforce all warranties for the benefit of the Authority or the Authority's assignee, if directed by the Authority or the Authority's assignee. In no case whatsoever shall other warranties decrease the warranty provisions specified in the Contract. All such warranties from Subcontractors, manufacturers and suppliers shall be written so as to survive all inspections and tests by the Authority and the Contractor; and run directly to and be enforceable by the Contractor and/or the Authority, any assignee by the Authority, and their respective successors and assigns.

The Contractor hereby assigns to the Authority all of the Contractor's rights and interest in all warranties that are received by the Contractor from any of its Subcontractors, manufacturers, and suppliers. All such warranties shall survive final completion, acceptance, final payment, and termination of the Contract if the stated warranty period extends beyond the final completion, acceptance, final payment, and termination of the Contract.

7.8.2 Remedy

The Contractor shall remedy, at its own expense, any failure to conform to the warranty requirements set forth in Section 7.8

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If the Contractor fails to remedy any such failure within a reasonable time after receipt of notice (or immediately in the case of an emergency), the Authority shall have the right in its sole discretion to replace, remove, or otherwise remedy the failure at the Contractor's expense.

7.8.3 Authority Notification to Contractor

The Authority shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure to conform to the warranty requirements set forth in Section 7.8.

7.8.4 No Limitation of Liability

The foregoing warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law, and shall not limit the Contractor's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including design defects, latent construction defects, strict liability, negligence and/or fraud.

7.8.5 Assignment of Warranty

The Contractor's warranties, including all warranties from Subcontractors, manufacturers, and suppliers that have been assigned to the Contractor, shall be immediately assignable by the Authority to any Person, in the Authority's sole discretion, immediately upon providing written notice to the Contractor.

7.8.6 Warranty Service

When the Contractor requests Substantial Completion approval, the Contractor shall submit to the Authority a comprehensive warranty service plan subject to a SONO. The plan shall describe how any constructed or purchased Project elements shall be serviced after Final Acceptance. The plan shall include inspection frequencies; warranty service activities; required inventory of parts/supplies for warranty service, including part numbers and manufacturer's service manuals; reporting and documentation requirements for warranty service; repair practices and timings; and safety and security addressing, at a minimum, the safety and security procedures that are unique to the facilities constructed. Examples of safety and security procedures include:

a. Fall protection programs for overhead structures;

b. Confined space programs for drainage systems; and

c. A security program that includes monitoring and inspection of established protection measures with uniform security personnel including fencing, access control, locks, alarms, intrusion detection, and lighting and security requirements that may be applicable.

7.8.7 Risk of Loss and Protection of Existing Site

At all times prior to Final Acceptance, the Contractor shall maintain, rebuild, repair, restore, or replace all Work (including design documents, construction documents, materials, equipment, supplies and maintenance equipment, which are purchased for permanent installation in, or for use during construction of the Project and regardless of whether the Authority has title thereto),

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that is injured or damaged. The Contractor shall also have full responsibility for rebuilding, repairing, and restoring all other property at the Site whether owned by the Contractor, the Authority, or any other Person. Where necessary to protect the Work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the Project and erect those temporary structures that are necessary to protect the Work or materials from damage. Any suspension of the Work, regardless of cause, shall not relieve the Contractor of the responsibility for the Work and materials as herein specified.

The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Site, which are not to be removed.

The Contractor shall protect from damage all existing improvements and utilities including improvements and utilities at or near the Site; and improvements and utilities on adjacent property of a third party.

The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. At completion of the Work, the Contractor shall restore the site to the condition required by the Final Environmental Documents. If the Contractor fails or refuses to repair the damage promptly, the Authority may have the necessary work performed and charge the cost to the Contractor.

7.8.8 Operations and Storage Areas

The Contractor shall confine all operations (including storage of materials) on Authority premises to areas authorized or approved by the Authority. The Contractor shall hold and save the Indemnified Persons, free and harmless from liability of any nature occasioned by the Contractor's performance. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Authority and shall be built with labor and materials furnished by the Contractor without expense to the Authority. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon Substantial Completion. With the written consent of the Authority, the buildings and utilities may be abandoned and need not be removed. The Contractor shall, under regulations prescribed by the Authority, use only established roadways or use temporary roadways constructed by the Contractor when and as authorized by the Authority.

7.9 Office Space Requirements

The Contractor shall provide and pay for all office and other building space, facilities, and equipment necessary to construct the Project and meet the requirements of the Contract and of this section. In making arrangements for its staff and for accommodating the Authority’s staff, the Contractor shall provide for locating the Contractor’s staff and the Authority’s staff in the same building or in close proximity to one another; and providing facilities for visiting Authority staff to be present in the local offices whenever they are required.

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7.9.1 Joint Inventory and Inspection of Facilities

Prior to accepting or using any facility or item provided by the Contractor, the Authority in conjunction with the Contractor, will conduct a condition survey and inventory of all such items, and the Authority and Contractor will note the condition of each item. The Authority and Contractor will provide written receipts for all facilities and items found to meet Contract requirements. The written receipt will note the condition of all items. The Authority will not be obligated to accept any facility or item that the Authority reasonably considers as not meeting the requirements of the Contract.

7.9.2 Facilities and Space Requirements

For office space, including any office trailers, the Contractor shall be responsible for providing all utilities connections and supply, including domestic water, electricity, telephone, gas (natural gas or liquefied petroleum gas) and sewerage.

The Contractor shall be responsible for paying all costs for providing and supplying such utilities until at least 30 days after Final Acceptance or after the Authority determines that facilities are no longer needed by the Authority, whichever occurs first.

7.10 Duty to Inform

If, at any time during the performance of the Contract, the Contractor becomes aware of an actual or potential problem, fault, or defect in the Project, or any non-conformance with any Contract Document or Law, the Contractor shall give immediate written notice thereof to the Authority.

7.11 Project Meetings and Progress Reporting

The Contractor shall schedule regular meetings to review formal reporting, which shall include meetings covering the general areas of overall Project progress, technical reviews and workshops, and environmental compliance and handover. Additionally, the Contractor shall:

a. Unless otherwise specified in the Contract, prepare the reports substantively as follows:

> "The Contactor is on schedule or in compliance with [report subject matter] except: [list exceptions, reasons why and resolution]."

b. Proactively identify and report meeting deficiencies to become more efficient in Project information sharing;

c. Work with the Authority to identify ways of sharing information via workshops and meetings, working to reduce or merge formal meetings where possible more efficiently;

d. Coordinate with appropriate parties, prepare materials, record and distribute meeting minutes and action items, and record action completion at follow-up meetings. All relevant materials shall be entered, uploaded and distributed via the Authority's CMS web portal or equivalent on conclusion of the meeting. This pertains only to meetings that are with parties external to the Contractor's own forces; and

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e. Enter, upload and maintain the Authority required data logs with accurate, verified, and timely information via the Authority's CMS web portal or equivalent. The Contractor shall proactively work with the Authority to avoid duplication of Project data in multiple logs.

The meeting schedule shall be agreed to by both parties in the Partnering Workshop.

7.12 Default

7.12.1 Breach of Contract

The Contractor shall be in breach under the Contract upon the occurrence of any one or more of the following:

a. The Contractor fails or refuses to commence the Work within the time required by this Contract;

b. The Contractor fails or refuses to prosecute the Work or any separable part with the diligence that will ensure its completion within the time specified in this Contract, including any extension(s);

c. The Contractor fails or refuses to provide sufficient resources to complete the Work in an acceptable manner and without delay, or absent a valid dispute, pay its Subcontractors when due in accordance with its agreements with the Subcontractors and applicable Law;

d. The Contractor fails or refuses to complete the Work within the time specified in this Contract;

e. The Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under the "Successors and Assigns" clause (Section 61.8);

f. The Contractor or any Guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

g. Insolvency, receivership, reorganization, or bankruptcy proceedings have been commenced by or against the Contractor or any Guarantor and not dismissed within 60 days;

h. The Contractor fails to provide and maintain the performance and payment bonds, any Guaranty or the insurance as required hereunder;

i. Any material representation or warranty made by the Contractor or any Guarantor in the Contract Documents or in any certificate, schedule, instrument, or other document delivered pursuant to the Contract Documents is false or materially misleading when made;

j. The Contractor violates any Law in performance of the Work;

k. Any Guarantor revokes or attempts to revoke its obligations under its Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect; or

l. The Contractor breaches any other agreement, representation, or warranty contained in the Contract Documents, or the Contractor fails to perform any other obligation under the Contract Documents.

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7.12.2 Cure Periods

There will be no cure period with respect to the following breaches:

a. Any material representation or warranty made by the Contractor or any Guarantor in the Contract Documents or in any certificate, schedule, instrument, or other document delivered pursuant to the Contract Documents is false or materially misleading when made; and

b. Any Guarantor revokes or attempts to revoke its obligations under its Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect.

Failure on the part of the Contractor to maintain the insurance as required hereunder shall constitute a material breach of the Contract, upon which the Authority may, after giving five Working Days-notice to the Contractor to correct the breach, if not timely cured by the Contractor, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Authority on demand, or at the sole discretion of the Authority, offset against funds due the Contractor from the Authority.

The Authority shall provide the Contractor and its surety under the performance bond hereunder 30 days written notice and opportunity to cure any other breach before declaring an event of default. If a breach is curable, but by its nature cannot be cured within 30 days, as reasonably determined by the Authority, the Authority agrees not to declare an event of default provided that the Contractor commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion. However, in no event will such cure period exceed 90 days in total.

7.12.3 Remedies

If any breach described in Section 7.12.1 is not subject to cure or is not cured within the period specified in Section 7.12.2, the Authority may declare that an event of default has occurred and notify the Contractor and its sureties thereof. Upon the occurrence of an event of default hereunder, the Authority may, by written notice to the Contractor terminate the right to proceed with the Work (or the separable part of the Work); and the Authority may take over the Work and complete it by contract or otherwise.

Subject to the “Consequential Damages; Limitation of Contractor's Liability” clause (Section 33.0), the Contractor and its sureties shall be liable for any damage to the Authority resulting from events of default, whether or not the Contractor’s right to proceed with the Work is terminated. This liability includes any increased costs incurred by the Authority in completing the Work.

Contractor acknowledges that the Authority has a paramount public interest in providing and maintaining safe public use of access to the Project. Notwithstanding anything in the Contract Documents to the contrary, in the event of the existence of a condition on or affecting the Project that the Authority believes poses an immediate and imminent danger to public health or safety, the Authority may, without notice and without awaiting lapse of the period to cure any default, rectify the dangerous condition at the Contractor’s cost. So long as the Authority

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undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the Authority to any liability to the Contractor and shall not entitle the Contractor to any other remedy. The Authority's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for the convenience of the Authority.

7.12.4 No Limitation of Rights and Remedies

The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract or the performance bond hereunder. Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

7.12.5 Termination Due to Non-Appropriation

The Authority is not bound by the terms hereof or obligated to make any payment hereunder for Work performed in any fiscal year for which funds have not been appropriated for the Contract. The Contractor is not obligated to perform Work, and correspondingly, is not entitled to any compensation for Work performed, in any fiscal year for which funds have not been appropriated for the Contract.

In the event that non-appropriation of funds results in stoppage of Work, the Contractor agrees to resume performance of the Work without any modification to the terms and conditions hereof, provided that an appropriation therefor is approved within 120 days after the start of the fiscal year in question. Any such work stoppage shall be considered a suspension for convenience under Section 39.2. If funds are not appropriated before expiration of such 120-day period, the Contract shall be deemed to have been terminated for convenience under the "Termination for Convenience" clause (Section 40.0).

Notwithstanding anything to the contrary contained in this Section 7.12.5, if the Contract is terminated due to non-appropriation of funds, the Contractor shall be entitled to compensation only for Work performed in the fiscal year in which funds were appropriated.

7.13 Use and Possession Prior to Completion

The Authority shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, the Authority shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that the Authority intends to take possession of or use. However, failure of the Authority to list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. The Authority's possession or use shall not be deemed an acceptance of any Work under the Contract. While the Authority has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from the Authority's possession or use, notwithstanding the terms

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of the Contract terms relating to the "Risk of Loss and Protection of Existing Site" clause (Section 7.8.7).

7.14 Authority Acceptance

7.14.1 Substantial Completion

The Contractor shall deliver an application for Substantial Completion to the Authority when all of the following have occurred:

a. The Contractor has completed all Work (except for punch list items, final cleanup, and other items included in the requirements for Final Acceptance);

b. All necessary work by Third Parties has been completed, and the Contractor has obtained all design and construction approvals by Third Parties that are required under the relevant Third Party Agreements or by Law;

c. The Contractor has demonstrated that the Work complies with the Environmental Requirements, including without limitation, those of the Final Environmental Documents, the Governmental approvals, any additional CEQA/NEPA requirements and/or Supplemental or Amended Governmental Approvals, and all applicable Laws, as provided for in the "Environmental Requirements" clause (Section 42.0) and the "Environmental Requirements" clause (Section 4.15.6) of the Scope of Work.

d. The Contractor has satisfied all conditions to acceptance by Third Parties and railroads;

e. There is no existing default of Authority's obligations under any Third Party Agreement or Railroad Agreement that are the Contractor's responsibility pursuant to the Contract Documents, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or an event of default under any Included Third Party Agreement or any Railroad Agreement;

f. The Contractor has delivered to the Authority the close-out report as provided in the "Reporting" clause (Section 44.4);

g. The Contractor has delivered to the Authority the warranty service plan required in the "Warranty" clause (Section 7.8);

h. The Contractor has ensured that all Work has been performed in accordance with the requirements of the Contract Documents;

i. The Contractor has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person; and

j. Any special tools purchased by the Contractor as provided in the Contract Documents shall have been delivered to the Authority and all replacement spare parts shall have been purchased and delivered to the Authority free and clear of liens.

Upon receipt of the Contractor's application for Substantial Completion, the Authority shall conduct such inspections, surveys and/or testing as the Authority deems desirable. If such inspections, surveys, and/or tests disclose that any Work does not meet the requirements of the

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Contract Documents, the Authority will promptly advise the Contractor as to any errors, omissions, deviations, defects, or deficiencies in the Work necessary to be corrected as a condition to Substantial Completion and as to any errors, omissions, deviations, defects, or deficiencies which may be corrected as punch list items. Upon correction of the errors, omissions, deviations, defects, or deficiencies identified as a prerequisite to Substantial Completion, the Contractor shall provide written notification to the Authority and the Authority shall conduct another round of inspections, surveys, and/or tests. This procedure shall be repeated until the Authority finds that all prerequisites to Substantial Completion have been met.

Substantial Completion of the Project shall be deemed to have occurred when the Authority determines that all errors, omissions, deviations, defects, and deficiencies identified as prerequisites to Substantial Completion have been corrected; and the Authority and Contractor have agreed upon a punch list for the Project.

The Authority will issue a Certificate of Substantial Completion to the Contractor at such time as the Authority determines that Substantial Completion has occurred. Substantial Completion shall be deemed to have occurred as of the date of the Certificate of Substantial Completion.

7.14.2 Final Acceptance

On or before the Final Acceptance Deadline, the Contractor shall perform all Work, if any, which was waived for purposes of Substantial Completion and shall satisfy all of its other obligations under the Contract Documents, including ensuring that the Project has been completed and all Project components have been properly inspected and tested. Final Acceptance shall be deemed to have occurred when all of the following have occurred:

a. All requirements for Substantial Completion have been fully satisfied;

b. All punch list items shall have been completed to the satisfaction of the Authority;

c. The Contractor has delivered to the Authority a certification representing that there are no outstanding claims of the Contractor or claims, liens, or stop notices of any Subcontractor or laborer with respect to the Work, other than any previously submitted unresolved claims of the Contractor and any claims, liens, or stop notices of a Subcontractor or laborer being contested by the Contractor (in which event the certification shall include a list of all such matters with such detail as is requested by the Authority and, with respect to all Subcontractor and laborer claims, liens and stop notices, shall include a representation by the Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings, which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term “claim” shall include all matters of fact which may give rise to a claim;

d. The Authority has received and accepted all design documents, record documents, as-built schedule, surveys, test data, training, operations, maintenance documents and manuals, and other deliverables required under the Contract Documents;

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e. All of the Contractor's obligations under the Contract Documents (other than obligations which, by their nature are required to be performed after Final Acceptance) have been satisfied in full or waived in writing by the Authority; and

f. The Contractor has delivered to the Authority a Notice of Completion for the Project in recordable form and meeting all statutory requirements.

The Authority will issue a Certificate of Final Acceptance to the Contractor at such time as the Authority determines that Final Acceptance has occurred. Final Acceptance shall be deemed to have occurred as of the date of the Certificate of Final Acceptance.

Final Acceptance will not prevent the Authority from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall Final Acceptance prevent the Authority from recovering from the Contractor, its surety(s), or other provider of performance security or any combination of the foregoing, overpayment or other costs sustained for failure of the Contractor to fulfill the obligations under the Contract Documents. The occurrence of Final Acceptance shall not relieve the Contractor from any of its continuing obligations hereunder.

7.14.3 Passage of Title

The Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the Authority for the operation, maintenance, or repair thereof, free and clear of all liens. Title to all of such materials, equipment, tools, and supplies which, have been delivered to the Site shall pass to the Authority, free and clear of all liens, upon the sooner of (a) incorporation into the Project or (b) the date of payment by the Authority to the Contractor for invoiced amounts pertaining thereto.

Notwithstanding any such passage of title, the Contractor shall retain sole care, custody, and control of such materials, equipment, tools, and supplies and shall exercise due care with respect thereto, as part of the Work until the Final Acceptance date or until the Contractor is removed from the Project.

7.15 Force Majeure

To the extent Force Majeure has the effect of increasing the costs directly attributable to changes in the Work or increases the time of performance of the Work, the Contractor shall be entitled to an equitable adjustment in accordance with the “Changes” clause (Section 17.0). “Force Majeure” is defined as any of the following events, provided it is beyond the control and not due to an act or omission of any Contractor-Related Entity or the Authority that could not have been avoided by due diligence or use of reasonable efforts by the Contractor:

a. Earthquake exceeding 3.5 on the Richter scale;

b. Tidal wave;

c. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;

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d. Discovery at, near, or on the Site of any Regulated Resource, provided that the existence of such resource was not disclosed in the Contract Documents, or otherwise contemplated by the Final Environmental Documents or Governmental Approvals;

e. Lawsuit seeking to restrain, enjoin, challenge, or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; and

f. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Contractor-Related Entity.

The term "Force Majeure" excludes fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm, or action of the elements or other acts of God; explosion or malicious or other acts intended to cause loss or damage or other similar occurrence, except as provided in Section 7.15(c) of the definition of Force Majeure above; strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence (unless all participants in such occurrence are not a Contractor-Related Entity); and all other matters not caused by or beyond the control of the Authority or a Contractor-Related Entity and not listed in the definition of Force Majeure above.

7.16 Alternative Technical Concepts

Notwithstanding any efforts required to be performed by others, including the Authority, the Contractor shall be solely responsible for all costs and actions required to implement ATCs without the right of an equitable adjustment, including obtaining any required Governmental Approvals and/or Supplemental Governmental Approvals, other third party approvals, additional costs for acquiring real property and additional Utility Work. Implementation of any ATC determined to constitute a Variation shall be subject to the Authority's approval to implementation, which shall only be issued, if at all, in compliance with CEQA/NEPA, as applicable, after completion of the Environmental Re-Examination Process(es).

Notwithstanding anything herein to the contrary if the Contractor fails to implement an ATC for any reason, including but not limited to the Contractor's failure to obtain the approvals required to implement the ATC or Contractor's inability to comply with required Governmental Approvals, Supplemental or Amended Governmental Approvals or any other third party approvals, the ATC will not be in effect and the Contractor shall comply with the requirements of the Contract Documents excluding the ATC without any right to an equitable adjustment.

The Contractor shall reimburse the Authority for any costs the Authority incurs as a result of the implementation of an ATC, including but not limited to, costs associated with the acquisition of additional real property, the performance of additional Utility Work required to implement the ATC, the Environmental Re-Examination Process(es) and additional CEQA/NEPA approvals, as applicable, and any Governmental Approvals and/or Supplemental or Amended Governmental Approvals. All reimbursement amounts required pursuant to this Section 7.16 shall be due to the Authority within 45 days after the Contractor's invoice therefor, or at the Authority's election the

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Authority may deduct such amounts from the next payment (or payments, as applicable) due to the Contractor.

8.0 Submittal Requirements

8.1 General Requirements

Submittals shall not include changes to the Work. The Authority's review, responses, and/or comments are not an authorization for changes in the Work. All requested changes in the Contract Price or schedule shall be submitted in accordance with the "Changes" clause (Section 17.0). The Contractor shall enter and upload all submittals, correspondence, meeting minutes and transmittals to the Authority's CMS web portal or equivalent.

For additional requirements regarding Technical and Non-Technical Contract Submittals, see the VV&SC Procedures, Scope of Work and the Cost and Scheduling Controls Program.

The Contractor's QM shall perform an independent review of each and every Contract submittal and shall certify in writing that the submittal is complete and in full compliance with the Contract requirements. Failure to provide the required certification will cause the Submittal to be rejected. This requirement is independent of and in addition to the VV&SC process.

For those submittals requiring Authority approval, the Authority will review and issue a response for each submittal with a disposition of "Approved (APP)," "Approved with Comments (AWC)," or "Rejected with Comments (RWC)."

Unless otherwise indicated, all submittals requiring approval shall be responded to within 30 days. If any Contract submittal receives an AWC disposition, the Contractor shall address those comments and notify the Authority how it addressed those comments in writing within 14 days after receipt of the Authority's response, but is not required to resubmit the underlying documents.

If any Contract submittal receives a response of RWC the Contractor shall address those comments and resubmit the entire submittal within 14 days of receipt of the Authority's response.

For each submittal that is subject to a SONO, the Authority will issue a response for each submittal with a disposition of SONO, "SONO with Comments (SNOC)," or "Statement of Objection with Comments (SOOC)."

This review and SONO process does not represent a hold point and the Contractor may proceed at its own risk. Unless otherwise indicated, there is no response timeline for the Authority associated with the SONO review process.

If any Contract submittal receives a disposition of SNOC, the Contractor shall address those comments and notify the Authority in writing with how it addressed those comments within 14 days after receipt of the Authority's response, but is not required to resubmit the underlying documents.

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If any Contract submittal receives a response of SOOC the Contractor shall address those comments and resubmit the entire submittal within 14 days of receipt of the Authority's response.

Construction Phase submittals are those submittals that are required by the Construction Specifications and do not require submittal to the Authority unless otherwise stated in the Contract. The Contractor shall provide access to the Authority for the review and audit of these submittals. The Contractor shall provide copies of these submittals to the Authority upon request.

Supplemental supporting information to any submittal under review may be requested by the Authority. The Contractor shall supply such information in the form and within the timeframe requested by the Authority. The Contractor shall not be entitled to any increase in Contract Price or extension of time for producing said supporting information and such additional time as required by the Authority to complete the review process.

The Authority may require the Contractor to resubmit any submittal where information submitted is considered, by the Authority in its sole discretion, insufficient to conduct a proper review or actions arising from the review require significant revisions.

The time and cost impacts of resubmissions or revisions arising from the reviews and caused by a noncompliant or incomplete submittal, including the time taken for the Authority to review the revisions, shall be at the Contractor's sole expense.

8.2 Specific Requirements

The following table contains additional submittal requirements. Submittals shall be in a format compatible with PDF, Microsoft Word, and Microstation, as applicable.

Table 2: Document Submittals Types and Quantities

Submittal Types[1]	Submit 3 DVDs of each electronic submittal			
	Hard copies	PDF	Microsoft Word[2]	CADD (DGN)[3, 5]
Drawings (1 full/5 half size)	3	✓		✓
Specifications	3	✓	✓	
Reports	3	✓		
Calculations	3	✓		
Other Documents	3	✓	✓	
Construction-Phase Submittals (if required)				
Shop drawings:	3[4]			
• Manufacturer standard schematic drawings;	3			
• Contractor's or manufacturer's engineer calculations;	3			
• Manufacturer's standard data, including installation and application instructions;	3			

Submittal Types[1]	Submit 3 DVDs of each electronic submittal			
	Hard copies	PDF	Microsoft Word[2]	CADD (DGN)[3, 5]
• Inspection reports, test reports, and certificates of compliance; and	3			
• Samples (3 each).	N/A			

1. Specifications Ready-for-Construction and As-Built submittals shall be signed and sealed. Drawings Ready-for-Construction and As-Built submittals shall be signed and sealed in accordance with the Plans Preparation Manual.
2. Submit Microsoft Word files for Ready-for-Construction and As-Built submittals only.
3. Submit CADD files in accordance with CADD Manual and Plans Preparation Manual.
4. Submit full-size prints on bond paper of shop drawings.
5. Submit GIS files in accordance with the CADD Manual.

9.0 Interest of Public Officials

No Authority board member, officer, employee, or agent shall have any direct or indirect interest in this Contract or its proceeds during or within one year after that person's tenure with the Authority. In addition, no Contractor-Related Entity shall enter into any contract involving services or property with a person or business prohibited by Government Code Sections 1090 *et seq.* and 87100 *et seq.*, from transacting such business. Unless an explicit statement to the contrary accompanied the Contractor's Proposal, the Contractor affirms that no board member, officer, or employee of the Authority has any interest (whether contractual, non-contractual, financial, or otherwise) in this transaction or in the business of Contractor. If any such interest becomes known to the Contractor at any time, the Contractor shall submit a full and complete written disclosure of such information to the Authority, even if such interest would not be considered a conflict under Government Code sections 1090 *et seq.* and 87100 *et seq.*

Neither the Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official, or employee of the Authority any gifts, entertainment, payments, loans or gratuities. The Authority may, by written notice to the Contractor, terminate the Contractor's right to proceed under the Contract if it is found that gratuities (in the form of gifts, entertainment, or otherwise) were offered or given by the Contractor, or any agent of the Contractor, to any board member, officer, agent, and/or employee of the Authority.

Employment by the Contractor of personnel on the payroll of the Authority is not permitted in the performance of the Contract, even though such employment may be outside the Authority employee's regular working hours or on Saturdays, Sundays, holidays or vacation time, Furthermore, employment by Contractor of personnel who have been on the Authority's payroll within one year prior to the date of Contract award, where such employment is caused by and/or dependent upon Contractor securing the Contract or a related contract with the Authority is also prohibited.

The Contractor shall include the language of this provision in Subcontracts for any first tier Subcontractor whose contract exceeds $100,000.

The rights and remedies of the Authority specified in this "Interest of Public Officials" clause are not exclusive and are in addition to any other rights and remedies allowed by Law.

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10.0 Not Used

11.0 Not Used

12.0 Bonding and Guaranty

The Contractor shall provide security as described in this clause. Notwithstanding any other provision of the Contract Documents, performance by a surety or Guarantor of any of the obligations of the Contractor shall not relieve the Contractor of any of its obligations hereunder.

12.1 Performance and Payment Bonds

The Contractor shall provide to the Authority and maintain at all times during the term of the Contract a Performance Bond in the amount of 50 percent of the Contract Price and a Payment Bond in the amount of 100 percent of the Contract Price. Each bond required hereunder shall be provided by a surety that is registered with the California State Insurance Commissioner; appears on the current Authorized Insurance List in the State of California published by the Office of the Insurance Commissioner; and has an A.M. Best's Rating Service classification of "A-XIV" or better, or is otherwise approved by the Authority, in its sole discretion.

The Authority may require any sureties to appear and qualify themselves at any time. If the Authority determines, in its sole discretion, that a surety is not qualified, the Authority may, upon written demand, require the Contractor to furnish a replacement bond or bonds, at no additional cost, from a qualified surety acceptable to the Authority. Until the replacement bond or bonds are furnished, payments on the Contract shall stop.

12.2 Additional Bond Security

If any surety upon any bond furnished with this Contract (a) becomes unacceptable to the Authority or (b) fails to furnish reports on its financial condition as required by the Authority, then, upon notification by the Authority, Contractor shall promptly furnish additional payment and performance bonds from a surety acceptable to the Authority in amounts necessary to comply with this Contract in order to protect the Authority and persons supplying labor and materials to the Project.

12.3 Guaranty

The Contractor has provided the Authority with a Guaranty (if required) to assure performance of the Contractor's obligations hereunder and shall be maintained in full force and effect throughout the duration of the Contract (including the warranty period).

A copy of each executed Guaranty (if required) is attached to the Signature Document.

13.0 Records Management and Document Control

The Contractor shall implement a records management program that follows the principles of ISO 15489 and complies with the industry best records-keeping practices and processes and is

compliant with Federal, State, and local regulatory retention and other requirements. The Contractor shall describe its records management practices and procedures, including its retention policies within its Quality Plan; and provide an outline of its disaster recovery/business continuity plans for its deliverables.

The Contractor shall provide that all electronic deliverables comply with the following:

a. PDF submittals in a searchable format via Optical Character Recognition.

b. PDF file submittals be accompanied by its source file, i.e., Microsoft Word, Microsoft Excel, AutoCAD, Microstation, etc., where applicable.

c. All electronic submittals shall be accessible, retrievable, and readable.

d. All electronic submittals and Requests for Information (RFIs) shall be entered and uploaded to the Authority's CMS web portal or equivalent.

e. Submittal to the Authority does not constitute an acceptance.

When a hard copy is requested, it shall be provided on acid-free paper, properly bound when applicable and the corresponding electronic submittal entered and uploaded to the Authority's CMS web portal or equivalent. .

All submittals, including reference documents, shall be in the English language. Prior to submission, storage of deliverables and submissions shall be kept in temperatures that do not enhance spoliation.

13.1 Policy and Implementation

The Contractor shall provide that all records related to the Work are stored and accessible throughout their lifecycle in accordance with the requirements of the Authority and its funding partners. The Contractor shall ensure that the proper collection, storage, access, retrieval, and eventual archival/disposition of all Project records through their lifecycle are compliant with all applicable Law.

13.2 Retention of Records

The Contractor shall handover to the Authority a certified complete set of records, worksheets, calculations, and other documentation related to the Work at Final Acceptance. This record set shall include a set of electronic documentation in a machine-readable format, including the source files, for uploading to the Authority's servers. Logistic details will be provided at a later date. Both sets shall be certified as complete. After the records have been reviewed and checked by the Authority, the Authority shall assume responsibility for their retention.

The retention of the records relating to the Contractor's business is the responsibility of the Contractor.

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13.3 Audit and Inspection Rights

The Contractor and its Subcontractors at all tiers shall grant to the Authority, FRA, and any other parties designated by the Authority, audit and inspection rights of any and all Project related documents, in any form, including without limitation, financial records, technical documents, and GIS and CADD data, including the Environmental Requirements. The Contractor and its Subcontractors shall also allow the Authority and any designated representative access to any and all Project related documents and the right to copy documents, books, and records as such Persons may request in connection with the issuance of Change Orders, the resolution of disputes, and other matters without limitation as such Persons reasonably deem necessary for purposes of verifying compliance with the Contract and Laws.

Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates the Contractor has been over or under paid on a previous progress report/payment, that difference shall be corrected with the next progress reports/payments.

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, the Authority and its representatives have the right to examine all books, records, documents, EPDs, and other data of the Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

All claims filed against the Authority shall be subject to audit at any time following the filing of the claim. No notice is required before commencing any audit before 60 days after Final Acceptance. Thereafter, the Authority shall provide 20-day notice to the Contractor, any Subcontractors, or their respective agents before commencing with an audit. The Contractor, Subcontractors, or their agents shall provide adequate facilities, acceptable to the Authority, for the audit during normal business hours. The Contractor, Subcontractors, and their agents shall cooperate with the auditors.

Full compliance by the Contractor with the provisions of this “Records Management and Document Control” clause is a contractual condition precedent to the Contractor’s right to seek relief under the "Dispute Resolution" clause (Section 51.0). The Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this “Records Management and Document Control” clause. This provision is in addition to the requirements set forth in Section 46.8, “Access to Records” and in Section 48.5, “Access and Inspection of Records”.

The Contractor shall insert in all Subcontracts a requirement that the Subcontractor shall permit audits and inspection in accordance with this "Records Management and Document Control" clause, and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

The Contractor and Subcontractors may request that such Persons execute a reasonable non-disclosure agreement prior to conducting an audit of any documents, books, or records reasonably determined by the Contractor or Subcontractors to be confidential or proprietary.

13.4 Public Records Act

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials in the Authority's possession, including materials submitted by the Contractor, are subject to the provisions of the Public Records Act. The Contractor shall be solely responsible for all determinations made by it, under the Public Records Act, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential" as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning the Public Records Act and its application to the Contractor.

If any of the materials submitted by the Contractor to the Authority are clearly and prominently labeled "Trade Secret" or "Confidential" by the Contractor, the Authority will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. However, under no circumstances will the Authority be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, by court order, or occurs through inadvertence, mistake, or negligence on the part of the Authority; with the exception of any disclosure of trade secrets or proprietary information in violation of the confidentiality agreement as described in the "Availability for Review" clause (Section 25.1).

In the event of litigation concerning the disclosure of any material submitted by the Contractor to the Authority, the Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court. The Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

14.0 Patents and Copyrights

14.1 Patent Rights

a. If any invention, improvement, or discovery of the Contractor or any of its Subcontractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify the Authority immediately and provide a detailed report. The rights and responsibilities of the Contractor, Subcontractor, FRA, and the Authority with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

b. If the Contractor secures a patent with respect to any invention, improvement, or discovery of the Contractor or any of its Subcontractors conceived or first actually reduced to practice in the course of or under this Project, the Contractor agrees to grant the Authority and FRA a royalty-free, non-exclusive, and irrevocable license to use and authorize others to use the patented device or process for State and federal government purposes.

c. The Contractor agrees to include the requirements of the "Patent Rights" section of this Contract in its Subcontracts, including all third party contracts for planning, research, development, or demonstration under this Project.

14.2 Rights in Data and Copyright

a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

b. The following restrictions apply to all subject data first produced in the performance of this Contract:

    1. All subject data, including designs, drawings, specifications, notes, and other works developed in the performance of this Contract shall become the sole property of the Authority and may be used on any other Authority design or construction project without additional compensation to the Contractor.

    2. The Authority and FRA reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for State and federal government purposes, any rights of copyright to which the Contractor, Subcontractor, or any other third party contractor purchases ownership with State or federal assistance.

    3. Except for its own internal use, the Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Authority, until such time as the Authority may have either released or approved the release of such data to the public.

c. The Contractor agrees to include the requirements of this section in its Subcontracts under the Project

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15.0 Not Used

16.0 Authority's Right to Carry Out the Work

The Authority, in its sole discretion and without waiving any other rights, may elect to correct Non-Conforming Work and charge the Contractor for the cost of such corrections if the Contractor fails or refuses to do the following:

a. Correct any Non-Conforming Work within seven days of receipt of written notice thereof from the Authority; or

b. If such Non-Conforming Work cannot be corrected within seven days, to provide the Authority with a schedule for correcting any such Non-Conforming Work acceptable to the Authority within the seven-day period; to commence such corrective Work within the seven-day period; and to thereafter diligently prosecute such correction in accordance with such approved schedule to completion.

Nothing in this clause shall relieve the Contractor of its obligation to perform the remainder of the Work in accordance with the Contract.

17.0 Changes

The Contractor waives the right to make any claim for a time extension or for an increase in the Contract Price, except as permitted in this “Changes” clause.

17.1 Authority Changes

17.1.1 Authority-Directed Changes

The Authority may, at any time, without notice to the sureties hereunder or any Guarantor, by written order designated or indicated to be a directive letter under this “Authority-Directed Changes” clause or by a Time and Materials Change Order under the “Time and Materials Change Orders” clause (Section 17.9), require performance of the Work or make changes in the Work within the general scope of the Contract, including in the Scope of the Work to be performed; in the specifications including performance specifications, drawings, and designs; in the means, methods, sequences, techniques, or manner of performance of the Work; in the facilities, equipment, materials, services, or site to be furnished by the Contractor or the Authority; and directing acceleration in the performance of the Work.

The Contractor shall proceed immediately with the Work as directed in the directive letter, pending the execution of a formal Change Order (or, if the directive letter states that the Work is within the original scope of the Work, the Contractor shall proceed with the Work as directed, but shall have the right pursuant to the “Dispute Resolution” clause (Section 51.0) to request that the Authority issue a Change Order with respect to the directive letter); or the Time and Materials Change Order.

The Contractor shall maintain and, upon request, deliver to the Authority, contemporaneous records, meeting the requirements of the "Time and Materials Change Orders" clause

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(Section 17.9), for all work performed that the Contractor believes constitutes extra work, until all disputes regarding entitlement or cost of such work are resolved.

Receipt of a directive letter or Time and Materials Change Order from the Authority is a condition precedent to the Contractor's right to claim that an Authority-Directed Change has occurred. (Provided that, no directive letter shall be required for alleged Authority-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence, or comparable tortious conduct by the Authority.) The fact that a directive letter was issued by the Authority shall not be considered evidence that in fact an Authority-Directed Change occurred. The determination whether an Authority-Directed Change in fact occurred shall be based on an analysis of the original Contract Documents requirements and any effect of the directive letter on those requirements.

To the extent the Contractor performs any changed or extra work without receiving a directive letter (Provided that, no directive letter shall be required for alleged Authority-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence, or comparable tortious conduct by the Authority) or Change Order, including a Time and Materials Change Order, executed by the Authority, the Contractor shall be deemed to have performed such work voluntarily. The Contractor shall not be entitled to a Change Order in connection therewith and, at its sole cost, may be required to remove or otherwise undo such work.

17.1.2 Authority Right to Request Price Deduction

The Authority shall be entitled to a Change Order decreasing the Contract Price (a) for any circumstance that decreases the cost of the Work, to the extent the General Provisions or Special Provisions expressly state that such circumstance entitles the Authority to an equitable adjustment; or (b) whenever an Authority-Directed Change results in decreases to the cost of the Work.

17.2 Contractor Right to Request Time Extension and Price Increase

Upon the Contactor's fulfillment of all applicable requirements of the Contract Documents and subject to the limitations contained therein, the Contractor shall be entitled to a Change Order for a circumstance that increases the Contract Price or extends a Completion Deadline, but only to the extent the Special Provisions expressly state that such circumstance entitles the Contractor to an equitable adjustment and for the following circumstances (and for no other circumstances):

1. Any material change in the Directive Drawings is necessary to meet the requirements of the other Contract requirements as a result of an error, omission, inconsistency, inaccuracy, deficiency, or other defect in the Directive Drawings, to the extent provided in the "Responsibility of the Contractor for Design" clause (Section 7.3);
2. The Authority requires removal or termination of certain personnel without cause, to the extent provided in the "Removal of Contractor Personnel" clause (Section 4.4);

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3. A change in one or more applicable Laws after the date 30 days prior to the Proposal Deadline, to the extent provided in the "

Compliance with Law" clause (Section 5.0);

4. A suspension, termination, interruption, or non-renewal of any Authority-Provided Governmental Approval (except for modifications to such approvals or any new such approvals required to allow the Contractor's design concepts);
5. If prior possession or use by the Authority delays the progress of the Work or causes additional expense to the Contractor, to the extent provided in the "Use and Possession Prior to Completion" clause (Section 7.13);
6. Force Majeure, to the extent provided in the "Force Majeure" clause (Section 7.15);
7. Differing Site Conditions, to the extent provided in the "Differing Site Conditions" clause (Section 22.0);
8. The approved GBR-C materially increases the Contractor's cost of, or the time required for, performing the Work, as compared to the GBR-B, to the extent provided in the "Geotechnical Baseline Report for Construction" clause (Section 22.2);
9. The Authority's viewing of the location, to the extent provided in the "Notification to the Authority" clause (Section 34.1), exceeds three Working Days;
10. A suspension for convenience, to the extent provided in the "Suspension for Convenience" clause (Section 39.2);
11. The Contractor encounters Hazardous Materials that have the effect of increasing the cost or time of performance of the Work, to the extent provided in the "Hazardous Materials" clause (Section 43.0);
12. Additional costs and delays associated with Relocations and Facilities owned by Third Parties, to the extent provided in the "Change Orders" clause (Section 49.4.1);
13. Delays directly attributable to a delay by a railroad in performing its obligations under a Railroad Agreement, to the extent provided in the "Railroad-Caused Delays" clause (Section 49.7.5);
14. The cost of the Partnering Workshop to the extent provided in the "Partnering Cost Allocation" clause (Section 50.3);
15. The cost of the DRB to the extent provided in the "Compensation" clause (Section 51.6.5);
16. The Authority fails to provide access to the real property identified in the ROW Acquisition Plan on or before the deadline for such access set forth therein, to the extent provided in the "General" clause (Section 59.1);
17. The Authority fails to provide access to any additional real property within 24 months of receipt of a complete request from the Contractor for such additional real property, to the extent provided in the "Identification of Additional ROW" clause (Section 59.4.3);

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18. Any amendment to the Contract resulting from a Contract provision being declared illegal, invalid, or unenforceable, to the extent provided in the "Severability" clause (Section 61.16); and
19. Failure of the Authority to provide responses to proposed schedules, design submittals, or other submittals and matters for which response by the Authority is required within the time periods indicated in the Contract Documents.

The Contractor shall bear full responsibility for the costs and delays of all other circumstances.

17.3 Delivery of Notice

As a condition precedent to the Contractor's right to a Change Order, the Contractor shall provide written notice to the Authority that includes the date; the circumstances allowing an equitable adjustment; the applicable provision of the Contract Documents expressly contemplating that an equitable adjustment is allowed for such circumstance; and a statement providing that the Contractor regards the circumstance as allowing a Change Order.

Each such notice shall be delivered as promptly as possible after the occurrence of such circumstance.

Except as provided in Section 17.1.1 or Section 17.1.2, no circumstance, order, statement, or conduct of the Authority shall be treated as a change, modification, amendment, or entitle the Contractor to an equitable adjustment.

Furthermore, if any such notice concerns any condition or material described in Section 34.0, the Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the Authority is not afforded the opportunity to inspect such material or condition before it is disturbed.

The Contractor's failure to provide such notice within 21 days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given circumstance shall preclude the Contractor from any relief whatsoever. Such notice shall be deemed delivered only if it fully conforms to the requirements of this "Changes" clause and the Contract Documents.

The written notification under the "Procedure for Discovery of Certain Site Conditions" clause (Section 34.0) may also serve as a notice under this "Delivery of Notice" clause provided that it also meets the requirements under this "Delivery of Notice" clause.

17.4 Proposal for Adjustment

As a condition precedent to the Contractor's right to a Change Order, the Contractor shall submit to the Authority a Change Order Proposal under this clause within 42 days after the furnishing of a written notice under the "Delivery of Notice" clause (Section 17.3) or receipt of an Authority-Directed Change under the "Authority-Directed Changes" clause (Section 17.1.1).

The Change Order and Change Order Proposal shall be prepared in form acceptable to the Authority and meet all applicable requirements of the Contract Documents. Each Change Order

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Proposal shall contain a sworn certification in form acceptable to the Authority by Contractor (and each Subcontractor, for any Subcontractor involved in the Work or event contemplated by the Change Order) that (a) the Change Order is made in good faith and in accordance with the terms of the Contract; and (b) the amount of time and/or compensation requested accurately reflects the appropriate adjustments and includes the following:

i. All known and anticipated impacts that may be incurred as a result of the event giving rise to such proposed change;

ii. A preliminary assessment by the Environmental Compliance Manager regarding whether the Change Order complies with all Environmental Requirements, including without limitation, the Final Environmental Documents and Governmental Approvals, whether the Changer Order will result in any Variation, or whether the Change Order will require any additional CEQA/NEPA review or documentation and/or Supplemental or Amended Governmental Approvals pursuant to the Environmental Re-Examination Process(es); and

iii. A statement that the Contractor (and each Subcontractor, as applicable) has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

Each Change Order Proposal involving Subcontractor Work shall include a sworn certification in form acceptable to the Authority stating that the Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Change Order Proposal involving Subcontractor Work shall be considered incomplete if it is not accompanied by such certification.

The Change Order Proposal shall comply with the requirements of the "Equitable Adjustments" clause (Section 23.0). The Change Order Proposal shall include sufficient backup documentation and must outline any cost and time impact to the Contract performance as the result of the change specified in the Change Order. If no reasonable Change Order Proposal is submitted by the Contractor, within the specified time, the Contractor shall be deemed to have withdrawn its request for a Change Order under the "Delivery of Notice" clause (Section 17.3).

Each Change Order Proposal provided under this clause shall meet all requirements set forth in this clause, provided that if any such requirements cannot be met due to the nature of the occurrence, the Contractor shall provide a partially complete Change Order Proposal that shall comply with all requirements capable of being met; include a list of requirements that are not fulfilled together with an explanation reasonably satisfactory to the Authority stating why such requirements cannot be met; provide such information regarding projected impact on the Critical Path affecting a Completion Deadline as is requested by the Authority; and in all events, include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Contractor shall furnish, when requested by the Authority, such further information and details as may be required to determine the facts or contentions involved. The Contractor

agrees that it shall give the Authority access to any and all of the Contractor's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the Authority can investigate the basis for such proposed Change Order. The Contractor shall provide the Authority with a monthly update to all outstanding incomplete Change Order Proposals, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the Authority, time expenditures to date and time anticipated for completion of the Activities for which the time extension is claimed. Failure to provide the above monthly information as required shall prevent the Contractor from being compensated for that month for any Change Order Proposal amounts that otherwise may be owed or become owed.

No Change Order Proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

17.5 Importance of Timely Notice

The Contractor acknowledges and agrees that, due to the limited availability of funds for the Project and the importance of schedule, timely delivery of notification of requests for Change Orders and updates thereto are of vital importance to the Authority. The Authority is relying on the Contractor to evaluate, promptly upon the occurrence of any circumstance, whether the circumstance will affect schedule or costs and, if so, whether the Contractor believes a time extension and/or price increase is required hereunder. If an event or situation occurs that may affect the Contract Price or a Completion Deadline, the Authority will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within the Authority's funding and time restraints.

17.6 Waiver

THE CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION, OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH THE CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY CHANGE ORDER REQUEST, AND AGREES THAT THE CONTRACTOR SHALL NOT BE ENTITLED TO ANY COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

17.7 Disputes

The failure of the Authority and the Contractor to agree to any Change Order hereunder shall be a dispute to be resolved pursuant to the "Dispute Resolution" clause (Section 51.0). The Contractor's claim and any award by the resolver of the dispute shall be limited to the incremental costs incurred by the Contractor with respect to the disputed matter (crediting the

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Authority for any corresponding reduction in the Contractor's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

17.8 Release of Claims

All Change Orders executed under this Contract shall contain the following "Release of Claims" language:

> Except as modified by this Change Order, all terms and conditions of the Contract, as previously modified, remain unchanged and in full force and effect. The parties agree that this Change Order is a final and equitable adjustment of the Contract time and Contract amount and constitutes a mutual accord and satisfaction of all claims, current or future, of whatever nature caused by or arising out of the facts and circumstances surrounding this Change Order including, but not limited to, direct, indirect, and consequential costs; additional time for performance; and the impact of the modifications specified in this Change Order, alone or taken with other changes, on the unchanged Work.

17.9 Time and Materials Change Orders

The Authority may unilaterally, and in its sole discretion, issue a Change Order that is based on time and material costs, as described in this Section 17.9 (Time and Materials Change Orders) whenever the Authority determines such a Change Order is advisable. The Time and Materials Change Order shall instruct Contractor to perform the Work, by expressly indicating the intention to treat the items as changes in the Work. The Time and Materials Change Order shall set forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, the Authority shall issue a modified Change Order setting forth the final adjustment to the Contract Price.

The following costs and mark-ups (and no others) shall be used for calculating the change in the Contract Price. No direct compensation will be allowed for other miscellaneous costs for which no specific allowance is provided in this Section 17.9.

17.9.1 Determination of Costs

Compensation for Time and Materials Change Orders shall be in accordance with this Section 17.9 and the "Equitable Adjustments" clause (Section 23.0), provided that Section 23.1 shall not apply. The markups specified in this Section 17.9 include compensation for all delay costs, overhead costs, and profit associated with the Time and Materials Change Order. Payment under this section for owner-operated labor and equipment is made at the market-priced invoice submitted by the Contractor.

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17.9.1.1 Non-Construction Labor Costs

The cost of labor for non-construction-related Work (including designers), whether provided by the Contractor or a Subcontractor, will equal the sum of the following, and shall constitute full compensation for the cost of non-construction labor costs:

a. Actual unburdened wages (i.e., the base wage paid to the employee exclusive of any fringe benefits); plus

b. Unless already included in the wage rates paid, the actual Authority approved labor-related costs incurred by reason of subsistence and travel allowances; and

c. A labor surcharge of 140 percent of actual unburdened wages, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance and bond premiums, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the worker, as well as overhead and profit.

17.9.1.2 Construction Labor Costs

The cost of labor for direct performance of construction Work will equal the sum of the following, plus a 35 percent markup, which shall constitute full compensation for construction labor costs:

a. Contractor payment to the worker for basic hourly wage, health and welfare, pension, vacation training and other State of California and federal recognized fringe benefit payments; and

b. The labor surcharge percentage listed for the following items in the current Caltrans publication that lists labor surcharge and equipment rental rates for workers' compensation insurance, social security, Medicare, Federal unemployment insurance, State of California unemployment insurance, State of California training taxes, subsistence and travel allowances paid to workers, and contractor payment to supervisors, if authorized.

The 35 percent markup consists of payment for all overhead costs related to labor, but not designated as costs of labor used in the direct performance of the work, including home office overhead, field office overhead, bond costs, profit, labor liability insurance, and other fixed or administrative costs that are not costs of labor used in the direct performance the work

17.9.1.3 Materials

The cost of materials is based on the material purchase price, including delivery charges, except a 15 percent markup is added and supplier discounts are subtracted whether the Contractor/Subcontractor used them or not.

If the Authority determines, in its reasonable discretion, that the material purchase prices are excessive and/or the Contractor or any Subcontractor, as applicable, has not furnished satisfactory evidence of the cost of materials from the actual supplier thereof within 60 days after the date of delivery of the material, then the cost of such materials shall be deemed to be the lowest wholesale price at which such materials were available in local or similar markets, in

the quantities needed and delivered to the Site during the time the Contractor performed the Work.

If the Contractor or Subcontractor, procured the materials from a source it wholly or partially owns, the cost shall be based on the lower of the price paid by the purchaser for similar materials from that source on contract items; and the lowest wholesale price at which such materials were available in local or similar markets, in the quantities needed and delivered to the Site during the time the Contractor performed the Work.

17.9.1.4 Equipment Rental

17.9.1.4.1 General

The amount paid by the Authority for equipment rental costs is full compensation for:

a. Rental equipment costs, including moving rental equipment to and from the Site using its own power;

b. Transport equipment costs for rental equipment that cannot be transported economically using its own power (no payment is made during transport for the transported equipment); and

c. A 15 percent markup.

If the Contractor wants to return the equipment to a location other than its original location, the payment to move the equipment must not exceed the cost of returning the equipment to its original location. If the Contractor uses the equipment for work not covered by the Time and Materials Change Order, then the transportation cost for the equipment is not covered by the Time and Materials Change Order.

Before moving or loading the equipment, the Contractor must obtain authorization for the equipment rental's original location.

The Authority shall determine the rental costs using rates listed in the current Caltrans publication that lists labor surcharge and equipment rental rates by classifying equipment using manufacturer's ratings and manufacturer-approved changes; and by utilizing equipment currently used during the work performed under the Time and Materials Change Order; provided that regardless of equipment ownership, the Authority may use the rental document rates or minimum rental cost terms if the equipment is rented from a business the Contractor does not own; and the hourly rate specified in the current Caltrans publication that lists labor surcharge and equipment rental rates is $10.00 per hour or less.

For equipment not listed in the current Caltrans publication that lists labor surcharge and equipment rental rates, rental costs shall be determined using rates established by the Authority. The Contractor may submit cost information that helps the Authority establish the rental rate; but the Authority may use the rental document rates or minimum rental cost terms if the equipment is rented from a business the Contractor does not own; and the Authority establishes a rate of $10.00 per hour or less.

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Rental rates for transport equipment shall not exceed the hourly rates charged by established haulers.

Equipment rental rates include the cost of fuel, oil, lubrication, supplies, small tools that are not consumed by use, necessary attachments, repairs and maintenance, depreciation, storage, insurance and incidentals.

The Authority pays for small tools consumed by use. The Authority determines payment for small tools consumed by use based on Contractor-submitted invoices.

The Authority may authorize rates in excess of those in the current Caltrans publication that lists labor surcharge and equipment rental rates if the Contractor submits a request to use rented equipment; equipment is not available from the Contractor's normal sources or from one of the Subcontractors; rented equipment is from an independent rental company; the proposed equipment rental rate is reasonable; and the Authority authorizes the equipment source and the rental rate before the Contractor uses the equipment

The Authority pays for fuel consumed during the operation of rented equipment not included in the invoiced rental rates.

17.9.1.4.2 Equipment on the Site

For equipment on the Site at the time required to perform work paid under the Time and Materials Change Order, the time paid is the time required to:

a. Move the equipment to the location of work paid for under the Time and Materials Change Order plus an equal amount of time to move the equipment to another location on the Site when the work is completed;

b. Load and unload equipment; and

c. Operate the equipment to perform work paid under the Time and Materials Change Order.

Hourly rates are paid in one-half hour increments or daily rates are paid in one-half day increments.

17.9.1.4.3 Equipment Not on the Site Required for Original-Contract Work

For equipment not on the Site at the time required to perform work paid for under the Time and Materials Change Order and required for Work under the Contract prior to the Change Order, the time paid is the time the equipment is operated to perform work paid for under the Change Order and the time to move the equipment to a location on the Site when the work paid under the Change Order is completed.

The minimum total time paid is one day if daily rates are paid; or eight hours if hourly rates are paid.

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If daily rates are recorded, equipment idled is paid as one-half day; equipment operated four hours or less is paid as one-half day; and equipment operated four hours or more is paid as one day.

If the minimum total time exceeds eight hours and if hourly rates are listed, the Authority rounds up hours operated to the nearest one-half hour increment and pays based on the hours shown on the following table. The table does not apply when equipment is not operated due to breakdowns, in which case rental hours are the hours the equipment was operated.

Table 3: Equipment Rental Hours

Hours Operated	Hours Paid
0.0	4.00
0.5	4.25
1.0	4.50
1.5	4.75
2.0	5.00
2.5	5.25
3.0	5.50
3.5	5.75
4.0	6.00
4.5	6.25
5.0	6.50
5.5	6.75
6.0	7.00
6.5	7.25
7.0	7.50
7.5	7.75
≥8.0	Hours Used

17.9.1.4.4 Equipment Not on the Site Not Required for Original-Contract Work

For equipment not on the Site at the time required to perform work paid for under the Time and Materials Change Order and required for Work under the Contract prior to the Change Order, the time paid is the time:

a. To move the equipment to the location of work paid under the Change Order plus an equal amount of time to return the equipment to its source when the work paid by the Change Order is completed;

b. To load and unload equipment; and

c. To operate the equipment to perform work paid for under the Change Order.

17.9.1.4.5 Non-Owner-Operated Dump Truck Rental

The Contractor shall submit the rental rate for non-owner-operated dump truck rentals. The Authority determines the payment rate. Payment for non-owner-operated dump truck rentals is

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for the cost of renting a dump truck, including its driver. For purpose of markup payment only, the non-owner-operated dump truck is rental equipment and the owner is a Subcontractor.

17.9.1.5 Permit Fees

Contractor will be reimbursed for the cost of any additional permit fees payable as the result of the change in the Work. Back-up documentation supporting each cost item for this category shall be provided by the Contractor and approved by the Authority prior to any payment authorization being granted.

17.9.1.6 Credit Items

Where the Contractor's or any Subcontractor's portion of a change involves credit items, or the proposed change is a net deductive change, the Contractor shall include all of Contractor's and Subcontractor's overhead and profits in computing the value of the credit.

17.9.1.7 Work by Subcontractors

If a Subcontractor performs work under a Time and Materials Change Order, there shall be an additional five percent markup to the total cost of the work performed by the Subcontractor, including the markups specified in this Section 17.9.1, regardless of the number of lower-tier Subcontractors involved, as reimbursement for additional administrative costs.

17.9.2 Time and Materials Records

17.9.2.1 Collection and Maintenance of Data

Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and the costs of other operations.

Contractor shall contemporaneously collect, record in writing, segregate, and preserve the following:

a. All data necessary to determine the costs described in this Section 17.9 with respect to all Work which is the subject of a Time and Materials Change Order, specifically including costs associated with design Work as well as Relocations, but specifically excluding all negotiated Change Orders;

b. All data necessary to show the actual impact (if any) of the change on the Critical Path with respect to all Work which is the subject of a Time and Materials Change Order, if the impact on the Current Baseline Schedule is in dispute; and

c. All data to determine the costs of disputed work when directed by the Authority.

Such data shall be provided to the Authority, and its authorized representatives as directed by the Authority, on forms approved by the Authority. The cost of furnishing such reports is included in the Contractor's predetermined overhead and profit mark-ups.

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17.9.2.2 Daily Reports

Contractor shall furnish daily reports, on forms approved by the Authority, of Time and Materials Change Order Work. The cost of furnishing such reports shall be included in the Contractor's overhead and fee percentages. The reports shall include:

a. Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman;

b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;

c. Quantities of materials, prices and extensions;

d. Transportation costs of materials, machinery, and equipment;

e. Invoices for materials used and for transportation charges; and

f. Location and summary of work completed.

The reports shall also state the total costs to date for the Time and Materials Change Order Work.

17.9.2.3 Reports as Basis for Payment

All Time and Materials Change Order reports shall be signed by Contractor's Project Manager. Authority will compare its records with Contractor's reports, make the necessary adjustments, and compile the costs of Time and Materials Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. Contractor's (and each Subcontractor's) cost records pertaining to Work paid for on a time and materials basis shall be open, during all regular business hours, to inspection or audit by representatives of the Authority during the life of the Contract and for a period of not less than seven years after Final Acceptance. The Contractor (and each Subcontractor) shall retain such records for no less than seven years after Final Acceptance. If an audit is to be commenced more than 60 Days after Final Acceptance, Contractor will be given a 20-day notice of the time when such audit is to begin.

18.0 Change Order Accounting

In the event an equitable adjustment under the "Changes" clause (Section 17.0) as supplemented by the "Equitable Adjustments" clause (Section 23.0) cannot be agreed to in a timely manner, the Authority may issue a directive letter under Section 17.1 and require Change Order accounting. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregated direct costs (less allocable credits) of work, both changed and not changed, which are allocable to the change. The Contractor shall maintain such accounts until the Parties agree to an equitable adjustment for the changes ordered by the Authority or the matter is conclusively disposed of in accordance with the "Dispute Resolution" clause (Section 51.0). If a Time and

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Materials Change Order is issued by the Authority, Change Order accounting shall include maintenance of Time and Materials Records as described in Section 17.9.2.

19.0 Pricing of Adjustments

All amounts payable by the Authority under the Contract, including costs claimed by the Contractor pursuant to the "Changes" clause (Section 17.0), are subject to OMB Circular A-87 and all exclusions and other restrictions set forth in the FAR.

For any Contract modification of more than $500,000, if the Contractor is not granted an exemption from the requirement to submit cost or pricing data, the Contractor shall submit cost or pricing data and supporting documents in a form prescribed by the Authority and a certificate as required in the "Certificate of Cost and Pricing Data" clause (Section 20.0), unless the price of the modification is based on adequate price competition; based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or set by Law.

Before awarding any subcontract expected to exceed $500,000 when entered into, or pricing any subcontract change order involving a pricing adjustment expected to exceed $500,000, the Contractor shall require the Subcontractor to submit cost or pricing data (actually or by specific identification in writing) and a certificate as required in the "Certificate of Cost and Pricing Data" clause (Section 20.0), unless the price of the subcontract or modification thereto is based on adequate price competition; based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or set by Law.

The Contractor shall insert the substance of this clause in each subcontract that exceeds $500,000 when entered into.

20.0 Certificate of Cost and Pricing Data

The certificate required under this clause shall be a "Certificate of Current Cost or Pricing Data" substantially as set forth in FAR 15.406.2 and acceptable to the Authority. Any documentation to support the price negotiated must be attached to the certificate when it is submitted to the Authority. If a certificate is required and the information is subsequently found to have been inaccurate, incomplete, or more than 90 days old as of the date stated in the certificate, the Authority is entitled to an adjustment of the Contract Price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

21.0 Not Used

22.0 Differing Site Conditions

22.1 Geotechnical Baseline Report for Bid

The GBR-B is a Contract Document only to the extent it sets geotechnical parameters for use in preparing the Proposal and as set forth in the "Geotechnical Baseline Report for C" clause (Section 22.2).

22.2 Geotechnical Baseline Report for Construction

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 GBR-B, the Contractor shall be entitled to an equitable adjustment in accordance with the "Changes" clause (Section 17.0). To the extent the cost of, or the time required for, performance of the Work, materially decreases based on the approved GBR-C as compared to the GBR-B, the Authority shall be entitled to an equitable adjustment in accordance with the "Changes" clause (Section 17.0).

22.3 Differing Site Conditions

The Contractor shall promptly, and before the conditions are disturbed, give written notice to the Authority of any of the following "Differing Site Conditions":

a. Subsurface or latent physical conditions encountered that differ materially from those indicated for such locations in the GBR-C; or

b. Unknown physical conditions at the Site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract, defined above as "Differing Site Conditions."

Notwithstanding the above, the following conditions shall be excluded from the definition of Differing Site Conditions:

i. Conditions that the Contractor had, or should have had, actual or constructive knowledge as of the Proposal Deadline;

ii. Utility facilities, Hazardous Materials, non-contaminated, water and any conditions that constitute or are caused by Force Majeure;

iii. Conditions that could have been discovered by reasonable Site investigation or review of other available information prior to the date of the GBR-C; and

iv. Variations in soil moisture content from that represented in reports, borings, or tests included in the Contract.

To the extent Differing Site Conditions materially differ and result in an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work, the Contractor

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or the Authority shall be entitled to an equitable adjustment in accordance with the “Changes” clause (Section 17.0).

Except to the extent that the time prescribed for giving written notice is extended by the Authority in the Authority’s sole discretion, no request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed unless the Contractor has given the required written notice.

No request by the Contractor for an equitable adjustment to the Contract for Differing Site Conditions shall be allowed if made prior to the date of the GBR-C or after Final Acceptance.

23.0 Equitable Adjustments

This Section 23.0 supplements the provisions of the “Changes” clause (Section 17.0).

The Change Order Proposal shall include a narrative justification therefor, specifically referring to the applicable provisions of the General Provisions and Special Provisions that permit a Change Order to be issued and describing the data that establishes the necessary amount of such proposed change.

Change Order Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Authority.

For Change Order Proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract. The itemized breakdown shall include, at a minimum, the items specified in Section 23.1.

Change Order Proposals shall not include any cost for insurance provided by the Authority.

If the Contractor claims that a circumstance affects the Critical Path, the Contractor shall submit with the Change Order Proposal its request for a time extension (if any), which shall include sufficient information and dates as well as a time impact analysis as specified in the Cost and Scheduling Controls Program, to demonstrate whether and to what extent the change will delay the Contract in its entirety.

The Contractor shall provide all such other documentation as may be required by the Authority.

In considering a Change Order Proposal, the Authority shall check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment. After receipt of a Change Order Proposal, the Authority shall act thereon. If the necessity to proceed with a change does not allow time to properly check a Change Order Proposal, the change cannot be reasonably estimated, or in the event of a failure to reach an agreement on a Change Order Proposal, the Authority may order the Contractor to proceed based on a price to be determined at the earliest practicable date. If appropriate, the Contractor may be required to proceed in accordance with the General Provision entitled "Change Order Accounting"

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(Section 18.0). If a mutually acceptable agreement cannot be reached, the Authority may unilaterally and in its sole discretion, direct the Contractor to proceed using a Time and Materials Change Order.

23.1 Overhead and Profit

Profit and overhead will be paid at 10 percent of the direct allocable, allowable, and reasonable costs. Moreover, if the Work is subcontracted, five percent of the direct costs, regardless of the number of lower-tier Subcontractors involved in any and all changed Work, for a total maximum markup of 15 percent profit and overhead. This amount shall fully compensate the Contractor (and any Subcontractors) for administration, general superintendence, overhead, profit and all other expenses not otherwise directly recoverable with respect to a Change Order.

The foregoing 10 percent markup is allocated to the entity (Contractor or any Subcontractor) that actually performs the Work; in the case of Work that is subcontracted, the foregoing 5 percent markup is allocated to the Contractor, regardless of the number of lower-tier Subcontractors involved.

23.2 Limitation on Price Increases

Any increase in the Contract Price allowed hereunder shall exclude the following:

a. Costs caused by breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity;

b. Costs that could reasonably have been avoided by the Contractor, including by re-sequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment); and

c. Costs for any rejected Work that failed to meet the requirements of the Contract Documents and any necessary remedial Work.

23.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it:

a. Did not impact the Critical Path affecting a Completion Deadline;

b. Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity;

c. Could reasonably have been avoided by the Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves an Authority caused delay, the Authority shall have agreed, if requested to do so, to reimburse the Contractor for its costs incurred, if any, in re-sequencing, reallocating, or redeploying its forces); or

d. Was concurrent with any other delay for which the Contractor is not entitled to an extension.

The Contractor shall be required to demonstrate, to the Authority's satisfaction, that the change in the Work or other event or situation that is the subject of a Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable delay of the Work and has impacted the Critical Path activity affecting a Completion Deadline.

23.4 Limitation on Delay and Disruption Damages

Delay damages shall be compensable hereunder only in the case of delays to the extent that they entitle the Contractor to an extension of a Completion Deadline and result from a written order designated to be a directive letter under the "Authority-Directed Changes" clause (Section 17.1.1); a suspension for convenience under the "Suspension for Convenience" clause (Section 39.2); failure of the Authority to provide access to the real property identified in the ROW Acquisition Plan on or before the deadline for such access set forth therein, subject to the requirements of the "Right-of-Way" clause (Section 59.0); or failure of the Authority to provide responses to proposed schedules, design submittals, or other submittals and matters for which response by the Authority is required within the time periods indicated in the Contract Documents (and no other delays).

Delay damages are limited to additional field office and jobsite overhead costs incurred by the Contractor directly attributable to the delay of a Completion Deadline. Home office overhead is excluded from delay damages and not compensable under the Contract. Before the Contractor may obtain any increase in the Contract Price to compensate for any delay damages, the Contractor shall have demonstrated to the Authority's satisfaction that:

a. The Project schedule, in fact, sets forth a reasonable method for completion of the Work;

b. The change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable delay of the Work and impact the Critical Path affecting a Completion Deadline;

c. The delay damage was not due to any breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by the Contractor, including by re-sequencing, reallocating, or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment);

d. The delay for which compensation is sought is not concurrent with any other delay for which the Contractor is not entitled to delay damages; and

e. The Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the Authority.

Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable under the Contract. Disruption damages include costs of rearranging the Contractor's Work plan not associated with an extension of a Completion Deadline and loss of efficiency, momentum, or productivity.

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Notwithstanding the above, the Contractor shall be entitled to compensation for idle time of equipment as set forth in the "Facilities of Others" clause (Section 49.0).

24.0 Value Engineering

The Authority is committed to cost-effective implementation of the Project and encourages the Contractor to submit VECPs if, during the course of the Project, it determines that an alternative not previously considered in its response to the RFP offers added value to the Authority at a reduced total cost.

24.1 Description of the Value Engineering Change Proposal

A VECP is a proposal to change the Contract requirements to reduce the cost of the Project without impairing essential functions or characteristics of the Project, as determined by the Authority in its sole discretion, provided that a VECP cannot be based solely on a change in quantities. The Authority retains the right to determine, in its sole discretion, if a VECP represents an opportunity to reduce costs without impairing essential functions. Any VECP submission must include a determination of essential functions and characteristics including analyses of the relative service life of the proposed change and the existing requirement, the warranty service requirements of the proposed change and the existing requirement (level of effort and frequency), environmental and aesthetic impacts of the change, effects on system service; and effects on other system components.

24.2 Contents of the VECP Package

At a minimum, the following information must be submitted by the Contractor with each VECP:

a. A narrative description of the proposed change. In the event the Authority requests a VECP, it shall provide the description of the proposed change;

b. A comparison of the differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;

c. A complete cost analysis, including the cost estimate of any additional ROW or easements required for implementation of the VECP;

d. A justification for changes in function or characteristics of each item, and effect of the change on the performance on the end items;

e. A description of any previous use or testing of the proposed approach, and the conditions and results;

f. An estimate of the costs of development and implementation of the proposed change; and

g. A statement of the time by which a Contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the Contract completion time or delivery schedule.

h. A preliminary assessment regarding whether the VECP complies with all Environmental Requirements, whether the VECP will result in any Variation as defined in the General

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Provisions, or whether the VECP will require any additional CEQA/NEPA review and documentation and/or Supplemental or Amended Governmental Approvals.

The Authority, in its sole discretion, may request additional information to further the Authority's evaluation of the VECP. The VECP cost evaluation will also include any Authority costs necessary to implement the proposal.

24.3 Review by the Authority

The Authority shall process the VECP expeditiously, but will not be liable for any delay in acting upon any VECP submitted pursuant to this "Value Engineering" clause (Section 24.0). The Contractor may withdraw all or part of any VECP at any time prior to approval by the Authority, but shall be liable for costs incurred by the Authority in review of the withdrawn VECP, or part thereof. Except in the case of a withdrawn VECP, the Authority and the Contractor shall each be responsible for its own costs in connection with preparation and review of a VECP.

24.4 Approval or Rejection of a VECP

The Authority shall determine whether a VECP qualifies for consideration and evaluation. VECPs that require excessive time or costs for review, evaluation, or investigations, or that are not consistent with the Authority's design policies and basic design criteria, may be rejected. The Contractor shall have no claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profits, or increased material or labor costs. The Authority may approve, in whole or in part, any VECP submitted. The decision regarding rejection or approval of any VECP will be at the sole discretion of the Authority and will be final and not subject to appeal.

24.5 Share in Savings

Any net savings estimated to accrue to the Contractor due to an approved VECP will be split equally between the Authority and the Contractor, after taking into account any additional costs anticipated to be incurred by the Authority resulting from the VECP, including costs relating to Relocations, ROW, and implementation.

The Contractor is not entitled to share in any measurable net reductions in the Authority's costs resulting from the VECP, including costs of maintenance by the Authority and logistics, excluding net reductions in the Authority's costs relating to ROW; or any reductions in the cost of performance of future contracts resulting from a VECP.

24.6 Use of VECPs by Authority

All approved or disapproved VECPs and negotiated changes will become the property of the Authority, and shall contain no restrictions imposed by the Contractor on their use or disclosure. The Authority retains the right to use, duplicate, and disclose, in whole or in part, any data necessary for the utilization of the VECP on any other or subsequent projects without any obligation to the Contractor. This provision is not intended to deny rights provided by Law with respect to patented materials or processes.

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25.0 Escrowed Proposal Documents

The Contractor has delivered to the Authority all documentary information used in preparation of the Contract Price (the "Escrowed Proposal Documents"). The EPDs are held in a locked fireproof cabinet supplied by the Contractor and located in the Authority's offices or in another location as designated by the Authority, with the key held only by the Contractor. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the Contract and concurrently with approval of each Change Order, if appropriate, as determined solely by the Authority, all documentary information used in preparation of the quotation or Change Order shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained subject to this section until expiration of Contractor's warranties or termination of the Work, as applicable; all disputes regarding the Contract have been settled; and final payment on the Contract has been made by the Authority and accepted by the Contractor.

25.1 Availability for Review

The EPDs shall be available during business hours for joint review by the Contractor, the Authority, the DRB and any other dispute resolvers and their successors and assigns, in connection with approval of the schedules, negotiations of Change Orders, and the resolution of disputes. As described in Section 25.6, the Authority shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. Provided that the Authority has executed and delivered to the Contractor a confidentiality agreement, the Authority shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters. The confidentiality agreement shall specify that:

a. All proprietary information contained in such documents will be kept confidential;

b. Copies of such documents will not be distributed to any third parties other than the Authority's attorneys and experts, the DRB, and other dispute resolvers hereunder; and

c. All copies of such documents (other than those delivered to dispute resolvers) will be either destroyed or returned to the depository (or to the Contractor if the EPDs have been returned to it) upon final resolution of the negotiations or disputes.

The foregoing shall in no way be deemed a limitation on the Authority's discovery rights with respect to such documents.

25.2 Proprietary Information

The EPDs are, and shall always remain, the property of the Contractor, and shall be considered to be in the Contractor's possession, subject to the Authority's right to review the EPDs as provided in this "Escrowed Proposal Documents" clause. The Authority acknowledges that the Contractor may consider that the EPDs constitute trade secrets or proprietary information. This acknowledgment is based upon Authority's understanding that the information contained in the EPDs is not known outside the Contractor's business, is known only to a limited extent and by a limited number of employees of the Contractor, is safeguarded while in the Contractor's

possession, and may be valuable to the Contractor's construction strategies, assumptions, and intended means, methods, and techniques of construction. The Authority further acknowledges that the Contractor expended money in developing the information included in the EPDs, and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Authority acknowledges that the EPDs and the information contained therein are being made accessible to the Authority only because it is an express prerequisite to award of the Contract.

25.3 Representation

The Contractor represents and warrants that the EPDs constitute all of the information used in the preparation of its Contract Price, and agrees that no other Proposal preparation information will be considered in resolving disputes or claims. The Contractor agrees that the EPDs are not part of the Contract and that nothing in the EPDs shall change or modify the Contract.

25.4 Contents of EPDs

The EPDs provided with the Proposal shall, inter alia, clearly detail how each price included in the Proposal has been determined and shall be adequate to enable a complete understanding and interpretation of how the Contractor arrived at the Contract Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined and shall be adequate to enable a complete understanding and interpretation of how the Contractor arrived at its quotation and/or Change Order price. In this regard, crews, equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into the Contractor's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in the Contractor's usual format. The Contractor's allocation of plant and equipment, indirect costs, contingencies, mark-up, and other items to each direct cost item shall be clearly identified. The EPDs shall include all assumptions; detailed quantity takeoffs; rates of production and progress calculations; quotes from Subcontractors and suppliers; memoranda; narratives; and all other information used by the Contractor to arrive at the Contract Price or amendment or Change Order.

25.5 Form of EPDs

The Contractor shall submit the EPDs in such format as is used by the Contractor. It is not intended that the Contractor perform any significant extra work in the preparation of these documents. However, the Contractor represents and warrants that the EPDs provided, with the Proposal, were personally examined prior to delivery by an authorized officer of the Contractor and meet the requirements of Section 25.4; and that the EPDs provided in connection with quotations and Change Orders, will be personally examined prior to delivery by an authorized officer of the Contractor and meet the requirements of Section 25.4.

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25.6 Review by Authority

The Authority may at any time conduct a review of the EPDs to determine whether they are complete. In the event the Authority determines that any data is missing, the Contractor shall provide such data within three Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPDs information, and added to the EPDs. The Contractor shall have no right to add documents to the EPDs except upon the Authority's request.

At the Authority's option, which may be exercised at any time, representatives of the Authority and Contractor shall review, organize and index the EPDs associated with any Change Order or Contract amendment. EPDs shall be organized by labeling each page so that it is obvious that the page is part of the EPDs and so as to enable a person reviewing the page out of context to determine where it can be found within the EPDs. An index listing each document included in the EPDs shall be compiled along with a brief description of the document and its location in the EPDs.

The Authority shall have a right to retain a copy of the index. If, following the initial organization, the Authority determines that the EPDs are incomplete; the Authority may require the Contractor to supply data to make the EPDs complete.

25.7 Subcontractor Pricing Documents

The Contractor shall require each Subcontractor whose subcontract price equals or exceeds $5,000,000 to submit to the Contractor a copy of all documentary information used in determining its subcontract price, immediately prior to executing the Subcontract or change orders or amendments thereto, to be held in the same manner as the EPDs, and which shall be accessible by the Contractor and its successors and assigns (including the Authority), the DRB, and other dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that its EPDs constitute all the documentary information used in establishing its subcontract price. Each Subcontract with a Subcontractor whose subcontract price is less than $5,000,000 shall require the Subcontractor to preserve all documentary information used in establishing its subcontract price and to provide such documentation to either the Contractor or Authority or both in connection with any claim made by such Subcontractor.

26.0 Safety and Security

It is the policy of the Authority to perform work on the CHSRP in a manner that ensures the safety and security of employees, contractors, emergency responders, and the public. The application of system safety and security is a fundamental hazard and vulnerability management process that incorporates the characteristics of planning, design, construction, testing, operational readiness, and subsequent operation of the HSR system. Safety and security are priority considerations in the planning and execution of all work activities on the Project.

All trains, facilities, systems, and operational processes must be designed, constructed, and implemented in a manner that promotes the safety and security of persons and property. The

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design, construction, testing, and start-up of the CHSRP shall comply with applicable safety and security laws, regulations, requirements, and railroad industry practices. The Authority shall maintain or improve upon the public transit and railroad industry standards for safety and security. Through the RAMS Program, a standard of safety will be established that is as safe as or safer than conventional U.S. railroad operations. The design, construction, testing, and start-up of the CHSRP will be accomplished in compliance with this standard.

The Authority is committed to providing a safe and secure travel and work environment. Therefore, safety, accident prevention, and security breach prevention must be incorporated into the performance of every employee task. All Authority and Contractor personnel are charged with the responsibility for ensuring the safety and security of employees, contractors, emergency responders, and the public who come in contact with the CHSRP. Each individual and organization is responsible for hazard and vulnerability management, for applying the processes that are designed to ensure safety and security, and for maintaining established safety and security standards, consistent with their position and organizational function. Through a cooperative team effort and the systemic application of safety and security principles, the CHSRP shall be designed, constructed, tested, and placed into service in a safe and secure manner.

The Safety and Security Policy Statement is located in Book IV, Part C.6.

26.1 Safety and Security Program Objectives

The Safety and Security Program objectives are as follows:

a. Prevent personal injuries and property damage or loss;

b. Provide safe and secure work environment for employees, contractors, passengers, emergency responders, third parties, and the public at large;

c. To convey the Safety and Security Policy Statement to all contractors and Subcontractors;

d. To ensure compliance with the stated objectives and requirements contained in the Safety and Security Policy Statement, the Contractor's SSMP, the Contractor's SSHASP, the Contractor's SSSP, the Contractor's SSCP, Contract provisions, applicable Laws and industry consensus standards;

e. To identify general requirements for the Contractor's workplace safety and security programs; and

f. To identify a process for the Authority approval of the safety and security submittals.

26.2 Construction Safety and Security

26.2.1 Contractor Responsibilities

The Contractor is responsible for ensuring safety and security at all of its work sites, including the activities of Subcontractors. Safety and security management and enforcement for each contract shall be administered by employees (direct hire) of the Contractor. This responsibility shall not be delegated nor contracted out to Subcontractors, suppliers, consultant

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service/company, or any other persons/agency without written approval from the Authority. The effectiveness of the Contractor's safety and security efforts depends upon active participation, cooperation, and compliance by the Contractor's and Subcontractors' project managers, superintendents, supervisors, and other employees.

The Contractor shall:

a. Plan and execute all Work to prevent personal injury and property damage or loss, and ensure public safety, security of all people and assets;

b. Comply with Laws, applicable industry consensus standards as identified in Section 5.0; and the Authority and Contractor policies, procedures, and requirements;

c. Define, implement, and maintain a program for prompt identification and correction of hazards and unhealthy practices and conditions;

d. Define, implement, and maintain a program for prompt notification and investigation of all incidents of injury, damage, or near-miss incidents to determine causes and take necessary corrective action to prevent re-occurrence;

e. Define, implement and maintain a system of prompt identification, notification, investigation, and correction of security breaches and incidents;

f. Develop, establish, and conduct a safety and security training program for all employees assigned to the Project;

g. Ensure proper tools, equipment, and processes are available for use as required for the work at hand, and are used according to the manufacturer's guidelines;

h. Maintain an accurate record of data utilizing the Authority's integrated Safety Management System for all identified hazards, near-misses, and accidents and incidents resulting in death, personal injury, occupational disease, or damage or loss to property, materials, supplies, or equipment;

i. Plan and execute all Work in compliance with the stated objectives and requirements contained in the CHSRP Safety and Security Policy Statement (contained in the CHSRP SSMP); the Contractor's SSHASP and SSSP; Contract provisions; applicable federal, State, and local laws and regulations; and industry consensus standards;

j. Ensure all Subcontractors, suppliers, etc. are provided with a copy of the CHSRP Safety and Security Policy Statement, and the Contractor's SSHASP and SSSP, and are properly informed of their obligations with regards to compliance;

k. Complete safety and security certification requirements as identified in Section 26.2.1;

l. Obtain permits required by the California Division of Occupational Safety. Permits shall be kept on file at the Site;

m. Designate a Safety and Security Manager responsible to ensure the proper implementation of the SSHASP and SSSP and a team of Field Safety Representatives appropriate to the scope of the Project and work to be performed. The Contractor shall demonstrate that their representatives have sufficient knowledge and experience to perform the required duties;

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1. Minimum qualifications for the Safety and Security Manager include:
   i. Ten years of heavy civil construction safety experience;
   ii. Certification as a Construction Health and Safety Technician, Certified Safety Professional, or Certified Safety/Security Director - Rail;
   iii. OSHA 30-hour Construction Training card; and
   iv. One year of FRA Roadway Worker Protection qualification per 49 C.F.R. Part 213;
   v. The Contractor may propose combinations of the above qualifications that demonstrate sufficient competency for the Safety and Security Manager position;
2. Minimum qualifications for the Field Safety Representatives include:
   i. Three years of heavy civil construction safety experience;
   ii. OSHA 30-hour Construction Training card; and
   iii. First Aid/CPR;

n. Define, implement, and maintain a SSMP for the administration of the SSHASP(s), SSSP(s), and the Safety and Security Team including roles/responsibilities, reporting, and work plan approach; and

o. Contractor shall develop a plan for the use of heavy equipment that, when used, might encroach or otherwise intrude into third party operating space (public or adjacent railway). The plan must address how third party approval for potential encroachment will be achieved and how any safety requirements by third party will be communicated to the operators and responsible parties of the heavy equipment. Third party approvals shall be made available to the Authority for review upon request.

26.2.2 Contractor Deliverables

The Contractor shall submit the following:

a. A SSMP in accordance with the "Safety and Security Management Plan" clause (Section 26.2.3);

b. A SSHASP(s) in accordance with the "Construction Site-Specific Health and Safety Plan Elements" clause (Section 26.2.4);

c. SSSP(s) in accordance with the "Construction Site-Specific Security Plan Elements" clause (Section 26.2.5);

d. A Safety and Security Certification Plan in accordance with the "Safety and Security Certification Program" clause (Section 26.3);

e. Site-Specific Hazard Analysis (SiSHA) Reports and Site-Specific Threat/Vulnerability Assessment (SiSTVA) Reports, and an updated Certifiable Elements and Hazards Log, in support of the Contractor's Safety and Security Certification Plan. A SONO of new or revised SiSHAs and SSTVAs is required prior to commencement of Construction phase activities;

f. A monthly report utilizing the Authority's Integrated Safety Management System of safety performance including a narrative summary of safety activities, hazard identification and mitigation, incidents of injury or property damage incurred, injury rates, incident investigation results, corrective action plans, reports of near-miss incidents, a summary of communication and training efforts, a summary of field audits/observations for safety, a summary of Job Hazard Analyses completed, and other activities as identified by the Contractor; and

g. A monthly report of security performance, including incidents of trespass or security breach, incident investigation results, corrective action plans, a narrative summary of security activities, and other items as identified by the Contractor. The report shall be submitted to the Authority by close of the 5th business day of the following month.

26.2.3 Safety and Security Management Plan

The Contractor shall submit a SSMP to the Authority for review and SONO within 60 days following NTP. The Contractor's SSMP shall be developed in conformance with the Authority's SSMP and will identify the qualification and organizational structure of the Safety and Security Team, and the processes that the Team will employ to manage the SSHASP(s) and SSSP(s). The SSMP shall:

a. Describe a process for managing hazards or incident of injury or damage through identification, reporting, and correction or abatement or mitigation, including descriptions for processes and applicability of Job Hazard Analyses (JHA) for each job assignment within the scope of the contract for which a person may be exposed to incidents of injury or illness. JHAs previously performed by the Contractor will be acceptable for use in determining preventive measures if the scope and functionality of the jobs under review are justifiably the same. The previously-performed JHAs, however, must address the specific characteristics of each site and tasks performed within the Project scope. JHAs shall be kept on the Site and made available to the Authority upon request;

b. Describe procedures for work site safety audits and inspections, including assignment of responsibility, frequency, documentation method, and actions following various audit results;

c. Describe the program for Safety and Security Program training employees of the Contractor, Sub-contractors, the Authority, and other applicable third parties. The training program description shall include safety and security program training requirements and documentation including training curriculum, frequencies of and method of delivery for training, training records, a method for identifying and certifying qualified employees, and lists of qualified/competent persons for specific tasks;

d. Describe an employee communication program that identifies individual responsibilities for all employees, schedules for specific communication techniques, and a process for recording and tracking communication program performance. The employee communication program shall include job briefing procedures/requirements, Hazard Communications, employee safety and security committees, Project safety and security committees, and notification process for employees and the Authority of incidents or hazards when identified;

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e. Describe a process for identifying applicable health and safety rules and regulations applicable to the tasks to be performed on the Project, including all local, State, and federal occupational safety and health regulations, including but not limited to California Code of Regulations Title 8 Construction Safety Orders, FRA regulations 49 C.F.R. Parts 200-299, California MUTCD, the Contractor's corporate safety plan, and the CHSRP Safety and Security Policy Statement. Rules and procedures shall address Site-specific work activities and conditions including:

1. Safeguards for the protection of all workers, pedestrians, and the public from excavations, construction equipment, obstructions, and other dangers. Safeguards may include fencing, adequate railings, guard rails, temporary walks, barricades, warning signs, directional signs, overhead protection, planking, decking, danger lights, and other suitable safeguards;
2. Personal protective equipment requirements for all work site hazards and conditions, including equipment issuance/availability procedures;
3. Mobile equipment operation procedures and training program, including qualification process and requirements, and performance observation/evaluation requirements;
4. Fall protection and scaffolding procedures, including minimum fall protection equipment requirements, a process for training workers, and performance observation/evaluation requirements;
5. Motor vehicle operation program, including rules and procedures for specific equipment to be used at the work site (including industrial lift trucks), operator screening and qualification process and requirements, and performance observation/evaluation requirements;
6. Roadway worker protection (on-track safety) for the Authority ROW in compliance with FRA regulations contained in 49 C.F.R. Part 214;
7. Hazardous Materials handling and storage plan specific to each work site, including a plan for cataloguing Material Safety Data Sheets and submitting same to the Authority, and for communicating Material Safety Data Sheet information to employees;
8. Lockout/tagout programs for all applicable energy sources, including electrical, hydraulic, and kinetic; and
9. Fire prevention and suppression, including procedures for identification of hazards that could lead to fire, procedures for local fire suppression and notification to authorities, inspection processes, and a detailed training and exercise program;

f. Identify, develop, and implement a program for coordinating roadway worker protection activities and compliance with adjacent railroads. All contractors working in the shared corridor will meet frequently with the responsible representatives of the operating railway and coordinate activities to minimize risks and hazards to Contractor personnel, and to avoid hazards or disruptions to the operation of the railway;

g. Describe a process for managing security of Authority properties within the Contractor's Scope of Work. Security program elements shall include at a minimum:

1. Identification of threats and vulnerabilities, reporting, and controls or mitigation. Include process description and applicability of Threat and Vulnerabilities Assessments (TVAs) for each job location within the scope of the contract. Process should include how the processes would adapt in the face of imminent threat or change of security conditions;
2. Description of how the planned deployment of security measures such as fencing, guards, lighting will be evaluated for initial effectiveness;
3. Description of an audit and inspection plan to review security measures and ensure that controls are being managed effectively; and
4. Description of the internal and external (Authority and local law enforcement) reporting structure and process for security incidents, including thresholds for reporting including at a minimum:
   i. Description of a program for reporting Security incidents. Incident reports for graffiti, vandalism, and trespass to be submitted to the Authority within 48 hours. Incident reports for any significant damage or conditions observed, and any injuries to employees, Subcontractors or others will be submitted to the Authority immediately. Security reports submitted weekly to include: daily security logs noting deployment of security personnel, any significant weather conditions, site locations covered, incident notifications or threats, any noted security equipment conditions (cut fence, broken lights). Copies of an reports from local agencies who respond to incidents on the Authority's property under Contractor control;
   ii. Description of how the background check process will appropriately screen for internal threats to the security of the project Include a description of any code of conduct and expectations for employee behavior, and procedures for internal and external notification when personnel security is violated;
   iii. Description of how the access control to project sites will be applied to ensure the security and control of all project sites including procedures for authorizing new employees or visitors, and procedures for monitoring access control performance;
   iv. Description of the security awareness employee training program, content and schedule including record keeping of training completion;
   v. Description of the process for ensuring all Subcontractors on site adhere to the Contractor's SSMP requirements; and
   vi A process for recommending enhancements to the Authority's security elements;

h. Identify, develop, and implement an Emergency Response Plan for management of emergency situations associated with, but not limited to, the following: injury to an employee or member of the public; fire; flood; earthquake; property damage and damage to various utilities (such as, electrical, gas, sewage, water, telephone, or public roadways); public demonstrations; sabotage or threats of sabotage; other security incidents or threats, Hazardous Materials encountered; toxic spills; explosions; vehicular accidents; and confined space rescues. The Emergency Response Plan shall include the following items, at minimum:

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1. Identification of the person responsible for handling an emergency;
2. Establishment of teams for handling each type of emergency;
3. Identification of the person responsible for making emergency call (preferably the ranking Supervisor present);
4. The requirement to conspicuously post a list of emergency phone numbers, along with information to be transmitted. Include with the emergency phone numbers, the number of the Authority's representative to be contacted (request telephone number and name of the Authority contact person or persons);
5. Site identification and signage for emergency responders;
6. Trench and confined space rescue plan or tunnel evacuation plan, as applicable;
7. The procedure for contacting the Authority Representative when an incident requiring emergency response occurs; and
8. Scene management for the emergency response including procedures for ensuring the safety of employees and emergency responders, safeguarding the scene from unwanted entry, and handling on-scene media;

i. Identify, develop and implement a Hazardous Waste Operation and Emergency Response Plan for the control of hazardous substances in compliance with California Code of Regulations, Title 8, Section 5192;

j. Identify, develop, and implement a program for ensuring public safety at work sites and avoiding damage to public property. The public shall be considered as any persons and property not employed or owned by the Contractor or its Subcontractors. The program shall address site-specific work activities and conditions including:

1. Identification of potential hazards to the public;
2. Erection and proper upkeep at all times of all necessary safeguards for the protection of the public, including pedestrian and vehicle traffic, and the assignment of trained and competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the Work site;
3. Posting of signs warning against the hazards created by construction or warranty service activities;
4. Elimination of unnecessary noise, obstructions, and other annoyances to nearby residents and businesses;
5. Procedures and competency training for employees assigned to public safety and public property protection; and
6. Designated work zones – Work outside of the designated work zones shall be performed only when specifically stated in writing from the Authority Representative;

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k. Identify, develop, and implement a program for Temporary Traffic Control. Temporary Traffic Control Plans will be developed in compliance with the requirements of the current California Manual on Uniform Traffic Control Devices. The Contractor shall apply to the jurisdictional authority for approval of the plan and for a permit or permits to work in the public ROW. In cases where there is more than one jurisdictional authority, a separate Temporary Traffic Control Plan will be developed for each jurisdictional authority, as required. The Temporary Traffic Control Plan shall include:

   1. Drawings showing proposed traffic control devices including temporary signage and temporary pavement markings and striping;
   3. Different traffic diversion patterns and methods of control. Include for each phase detailed schedules for performance of work and include proposed traffic control devices;
   4. Requirements for flagger training and qualifications, assignment, and supervision;
   5. Notification plans for vehicular, bicycle, and pedestrian traffic detours including notifications of business owners, residents, and property owners in the vicinity of traffic and parking disruptions;
   6. Any other requirement of the authority having jurisdiction; and

l. Other safety and security elements as identified in the Contractor's corporate safety and security program.

26.2.4 Construction Site-Specific Health and Safety Plan Elements

The safety processes, equipment utilized, and personnel assignments to be provided by the Contractor at each individual work site may differ based upon a site-specific JHA performed by the Contractor. A SSHASP shall be developed for each distinct and unique work site. The SSHASP will be appropriate to the Project development, phasing, and tasks at hand. It may be submitted incrementally as work is designed and plans are approved for construction and will be revised as the Project evolves. A SONO of new or revised SSHASPs is required prior to the commencement of new work activities. Each SSHASP shall:

a. Be specific to the relevant work site conditions and Project phases for the Work;

b. Be kept on site and made available to all employees, authorized visitors, and the Authority upon request;

c. Include the Contractor's safety and security policy statement;

d. Conform to applicable workplace safety regulations including California Code of Regulations Title 8 Construction Safety Orders, FRA regulations as found at 49 C.F.R. Parts 214, 219, 225, 228, and 236; California Public Utilities Commission General Orders; Federal and State OSHA regulations;

e. Identify roles and responsibilities of all employees for the Contractor and Subcontractors with respect to safety;

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f. Identify the reporting and inter-action processes of the Contractor's Safety team with the rest of the Project work force (including Subcontractors and the Authority), and with third parties such as emergency responders, utilities, and adjacent railroad operators;

g. Include a detailed description of site-specific hazards and mitigations. A daily JHA shall be conducted and a plan developed to alter mitigations as daily conditions change;

h. Include a detailed description of site-specific workplace health and safety rules and procedures that conform to all regulatory requirements described in the SSMP;

i. Include a detailed Hazardous Waste Operations and Emergency Response Plan to be kept on site, available to all employees, authorized visitors, and the Authority upon request;

j. Roadway worker protection for adjacent railroad ROWs – Employees of any Contractor-Related Entity working in these locations shall be trained by the Contractor to ensure they become fully familiar with railway operations, procedures, rules, and safety requirements;

k. Include a detailed plan for work site first-aid resources and a training program for employees;

l. Include a detailed Emergency Response Plan. The Emergency Response Plan shall be updated when conditions or procedures change. The Emergency Response Plan will be kept on site;

m. Include a detailed program for ensuring public safety at work sites and avoiding damage to public property, specific to each phase of the work;

n. Include a detailed Temporary Traffic Control Plan for each phase of the work; and

o. Include other elements that conform to the Contractor's corporate health and safety plan.

p. Include the elements outlined in the California Department of Public Health's Cocci fact sheet to reduce exposure to Valley Fever. The fact sheet can be found on the California Department of Public Health's website.

(http://www.cdph.gov/programs/hesis/Documents/CocciFact.pdf)

26.2.5 Construction Site-Specific Security Plan Elements

Security at construction sites is to ensure all personnel working at the site, the Authority's assets and property, and the surrounding communities, are protected from trespassers, vandalism, theft, encroachment and other intentional criminal activity. In compliance with these provisions, the Contractor shall develop a SSSP which shall address crime and security- related conditions specific to the conditions and configuration of the individual work sites. This includes protection of property, materials, tools, equipment, and personal property of workers at specific sites. The SSSP will be appropriate to the Project development, phasing, and tasks at hand. The SSSP may be submitted incrementally as work is designed and plans are approved for construction, and will be revised as the Project evolves. A SONO of new or revised SSSPs is required prior to commencement of new work activities. The types of security to be provided by the Contractor at each site may differ based upon a site-specific security assessment performed by the Contractor.

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The SSSP shall include:

a. Safety and security policy statement;

b. Threat and vulnerability assessment process, including how the process will be informed of threat conditions and how specific mitigations or controls will be applied to those potential threats of the construction areas;

c. Identification of the makeup, reporting structure, and inter-action processes of the Contractor's Project Management Team, including the Contractor's Security Management Team, with the rest of the Project work force (including Subcontractors and the Authority) and with third parties such as local law enforcement agencies;

d. Identification of security roles and responsibilities of all employees for the Contractor and Subcontractors;

e. Protection plan of public and property, materials, equipment, and tools based on the outcome of the security assessment through appropriate security applications such as fencing, access control, locks, alarms, intrusion detection, lighting, security guards, and any other security requirements that may be applicable;

f. A description of how access to individual worksites will control who and how employees access the specific sites, how other authorized persons are identified for each work site, and procedures for monitoring site specific access control performance;

g. Coordination program with local law enforcement for incident reporting and other security-related conditions or events;

h. Procedures for providing site specific security information for inclusion into the Contractor's required project reporting requirements; and

i. Other elements that conform to the Contractor's corporate security plan or the SSMP.

26.2.6 Non-Compliance

The Contractor shall take all necessary corrective actions to avoid the issuance of a stop work order on identification of a safety or security noncompliance. If the Contractor fails or refuses to take corrective action promptly, the Authority may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances. The Contractor shall be responsible for its Subcontractors' compliance with this clause.

26.3 Safety and Security Certification Program

26.3.1 Purpose

The purpose of safety and security certification is to ensure:

a. The Work is in conformance with the safety and security design criteria and specifications requirements, and to verify their readiness for operational use; and

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b. The Project is safe and secure for customers, employees, emergency responders, and the general public.

The objective is to achieve an acceptable level of risk through a systematic approach to safety hazard and security vulnerability management, design criteria adherence, and specification and construction compliance. The Contractor shall apply hazard management principles in conformance with the CHSRP SSMP when designing and constructing elements contributing to overall system safety.

The VV&SC process detailed in the VV&SC Procedures and the "Verification, Validation and Self Certification" clause (Section 54.4) shall be applied to the Safety and Security Certification Program.

26.3.2 Safety and Security Certification Plan Elements

The Contractor is responsible for safety and security certification activities associated with its Work. The Contractor shall develop and comply with a Safety and Security Certification Plan that describes in detail how the Contractor shall identify, mitigate, verify/validate, and certify safety and security requirements. The Contractor shall submit the Safety and Security Certification Plan to the Authority subject to a SONO within 60 days following NTP.

The Safety and Security Certification Plan shall include the following:

a. Organizational structure identifying personnel responsible for safety and security certification activities;

b. Qualifications of safety and security personnel. Personnel must have adequate experience in either railroad system safety or security or both and be able to demonstrate proficiency in hazard management, systems safety and security hazard analysis, VV&SC, processes as supported by their resumes;

c. A method for demonstrating that that the Work is designed and constructed in conformance with the system-level Preliminary Hazard Analysis Reports, system-level Threat and Vulnerability Assessments, SiSHA Reports, SiSTVA Reports and CHSRP SSMP;

d. A plan for conducting SiSHA and SiSTVA to determine hazards and vulnerabilities associated with certifiable elements that can reasonably be expected to occur in the CHSRP within the Contractor's Scope of Work. The plan shall include documentation, and be in conformance with the hazard management program described in the CHSRP SSMP. Hazard and vulnerability mitigations are identified as output from site-specific hazard analyses, and are used to update the Contractor's CEHL, and are input to the V&V Process for the creation of Certifiable Items Lists. The site-specific hazard analyses and CEHL will be submitted to the Authority prior to the development of the sixty percent design and prior to the start of Construction phase activities, for review and SONO;

e. Management of the V&V of safety and security requirements, in conformance with the Contractor's V&V plan;

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f. Completion of the Safety and Security Certification Package in compliance with the requirements of the CHSRP SSMP and the CHSRP V&V Management Plan. A Safety and Security Certification Package shall be compiled by the Contractor when all Certifiable Items Lists for a particular element or infrastructure component are completed for applicable milestone payments. The Safety and Security Certification Package shall consist of a signed Certificate of Conformance for the Project element, all completed Certifiable Items Lists, a completed Certifiable Elements; and Hazards Log, Open Items Lists, a plan for non-conformance of Critical Items, and all supporting documentation such as hazard analysis, drawings, and design element descriptions;

g. Outreach to safety and security stakeholders including emergency response agencies, adjacent railroad operators, adjacent highway agencies, and local communities; and

h. Participation in the Authority's monthly Safety and Security Program Committee, Regional Fire/Life Safety and Security Committee meetings, and other committee meetings as identified by the Contractor or the Authority. Committee meeting participation shall facilitate consistent, comprehensive, and recorded communication of information pertinent to the fire and life safety of the Project elements included in the Contract scope.

26.4 Sensitive Security Information

In accordance with Parts 15 and 1520 of Title 49 of the Code of Federal Regulations and the Authority's Sensitive Security Information (SSI) Policy and Procedure, certain information deemed by the Authority to be Sensitive Security Information (SSI) may be made available to the Contractor for performance of the Work and/or the Contractor may develop materials, as Contract deliverables that will be deemed SSI. The Contractor shall comply with all SSI requirements as set forth in the Authority's SSI Policy and Procedure and applicable Law for information designated as SSI. Such requirements address, without limitation, the following:

1. Storage of SSI;
2. Protective marking of SSI;
3. Security protection for SSI;
4. Reproduction of SSI;
5. Control and release of SSI;
6. Packaging and transmission of SSI; and
7. Destruction of SSI.

The Contractor is directed to thoroughly review the provisions of the Authority's SSI Policy and Procedure for additional information regarding the Contractor's obligations related to treatment of SSI.

Upon the occurrence of any unauthorized disclosure of SSI by the Contractor, the Contractor shall immediately provide notice to the Authority. The Authority will document and investigate the circumstances related to the unauthorized disclosure of SSI. The Contractor agrees to fully

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cooperate with the Authority during the course of any investigation related to the unauthorized disclosure of SSI.

Additionally, the Contractor agrees to indemnify the Authority in accordance with the Contractor's indemnity obligations herein for any claim arising out of the unauthorized disclosure of SSI by the Contractor, its employees, officers, agents and Subcontractors.

27.0 Drug-Free Workplace Program

The Contractor shall adopt the U.S. DOT's "Government Requirements for Drug-Free Workplace under 49 C.F.R. Part 32 and comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code § 8350 *et seq.*), and shall provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited; and specifying actions to be taken against employees for violations;

b. Establish a Drug-Free Awareness Program to inform employees about the following the dangers of drug abuse in the workplace, the person's or organization's policy of maintaining a drug-free workplace, any available counseling, rehabilitation, and employee assistance programs; and penalties that may be imposed upon employees for drug abuse violations; and

c. Ensure that every employee who works on the Project will receive a copy of the company's drug-free workplace policy statement, and must agree to abide by the terms of this statement as a condition of employment on the Project.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both; and the Contractor may be ineligible for award of any future State agreements if the Authority determines that the Contractor has made false certification or has violated the certification by failing to carry out the requirements as noted above (Gov. Code Section 8350 et seq.). Pass-through Requirement A Drug-Free Workplace Program clause identical to the language in this clause (except for changes appropriate for designation of the parties), including this subparagraph, shall be included in every subcontract entered into in connection with this Contract.

28.0 Indemnification and Infringement

28.1 Indemnification

The Contractor shall fully defend, indemnify and hold harmless the Authority, FRA and all of their Board members, officers, employees, and agents and their respective successors and assigns (Indemnified Persons) from any and all third party claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description arising out of or related to any of the following:

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a. The breach or alleged breach of or failure or alleged failure to perform the Contract or any subcontract thereunder by any Contractor-Related Entity;

b. The failure or alleged failure by the Contractor or any Contractor-Related Entity to comply with any applicable Law or the Environmental Requirements, including any errors or omissions relating to any such failure or alleged failure;

c. The breach or alleged breach of or failure or alleged failure to perform any contract or agreement to use private property for any purpose under the Contract;

d. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault, of any Contractor-Related Entity arising out of or related to any contract or agreement to use private property for any purpose under this Contract;

e. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault of any Contractor-Related Entity;

f. Any service or design, or product called for in any service or design, provided by any Contractor-Related Entity that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret, or other proprietary right of a third party;

g. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Contractor-Related Entity with respect to any payment for the Work made to or earned by such Contractor-Related Entity under the Contract Documents;

h. Any and all stop notices and/or liens filed in connection with the Work,, including all expenses and attorneys' fees incurred in discharging any stop notice or lien, provided that the Authority is not in default in payments owing to the Contractor with respect to such Work;

i. Any release or threatened release of Hazardous Materials brought onto the Site by any CRE or where the removal or handling of Hazardous Materials involved negligence, willful misconduct, or breach of Contract by any Contractor-Related Entity; or

j. The claim or assertion by any contractor of inconvenience, disruption, delay, or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors or failure of any Contractor-Related Entity to cooperate reasonably with other contractors.

28.2 Infringement

The Contractor agrees to fully defend, indemnify, and hold harmless the Indemnified Persons against any demand, claim, cause of action, suit, proceeding, or judgment that any service or design, or product called for in any service or design, provided by any Contractor-Related Entity (herein called “deliverables”) that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret, or other proprietary right of a third party.

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The Contractor shall pay any and all costs of such defense and settlement (including interest, fines, penalties, costs of investigation, costs of appeals, and attorney 's fees), and will pay any and all costs and damages finally awarded against any of the Indemnified Persons. The Authority shall have the right to employ separate counsel and participate in its defense. No settlement pertaining to the Authority's right to use the deliverables as provided herein shall be made without the Authority's prior written consent.

In the event that any deliverables furnished hereunder, or called for in any design or services provided under this Contract, is in any suit, proceeding, or judgment held to constitute an infringement on any third party's right, and its use is enjoined, the Contractor shall, at its own expense, use its best efforts to immediately to procure the fully paid-up, irrevocable, and perpetual right for the Authority to continue using the deliverable; modify the deliverable; or provide for the replacement of the deliverable with an alternative product that is functionally equivalent to the deliverable.

If the Contractor is unable to provide the Authority with one of the forms of relief described above, the Contractor shall also reimburse to the Authority the total paid by the Authority for the deliverable that is held to constitute an infringement.

28.3 Design Defects

The Contractor shall fully defend, indemnify, and hold harmless the Indemnified Persons from any and all third party claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description arising out of or related to errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects in the design documents furnished by the Contractor, regardless of whether such errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects were also included in the Directive Drawings, Preliminary Design, or other Reference Materials. The Contractor agrees that, because the Directive Drawings, Preliminary Design and other Reference Materials are preliminary and conceptual in nature and are subject to review and modification by the Contractor, such documents shall not be deemed "design furnished" by the Authority or any of the other Indemnified Persons, as the term "design furnished" is used in Civil Code Section 2782. The Contractor hereby waives the benefit (if any) of Civil Code Section 2782 and agrees that this clause constitutes an agreement governed by Civil Code Section 2782.5.

28.4 Third Parties

The Contractor is specifically advised that the Third Party Agreements, Railroad Agreements, and other third party agreements include certain agreements by the Authority to indemnify, defend and hold harmless the Third Parties, railroads, and other third parties. With respect to all such matters and to the extent that such matters fall within the scope of the indemnities made by the Contractor, the Contractor’s obligations under this “Indemnification and Infringement” clause shall automatically apply to and require it to release, indemnify, defend and hold harmless the Third Parties, railroads, and other third parties in addition to the Indemnified Persons as set forth in this “Indemnification and Infringement” clause.

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28.5 Restrictions

This Section 28.5 sets forth the restrictions that shall apply to the indemnities set forth in this "Indemnification and Infringement" clause (Section 28.0).

With respect to any loss, damage, or cost of the type covered by the insurance required to be provided hereunder, the Contractor's indemnity obligation shall not extend to any loss, damage, or expense arising from the sole negligence or willful misconduct of such Indemnified Person or its agents, servants, or independent contractors who are directly responsible to such Indemnified Person.

With respect to any loss, damage, or cost that is not of the type covered by the insurance required to be provided hereunder, the Contractor's indemnity obligation shall not extend to any loss, damage, or cost to the extent that such loss, damage or cost was caused by the gross negligence or willful misconduct of such Indemnified Person or its agents, servants, or independent contractors, who are directly responsible to such Indemnified Person.

Except as permitted by Civil Code Sections 2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Person to impose liability on the Contractor for the active negligence (as determined by a court of competent jurisdiction) of an Indemnified Person, or to relieve an Indemnified Person of liability for such active negligence.

Such indemnities shall not be construed to affect any extension of statutes of limitations otherwise applicable to causes of action for breach of Contract held by the Authority against the Contractor.

In claims by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this "Indemnification and Infringement" clause shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

29.0 Royalties and License Fees

The Contractor shall pay all royalties and license fees.

30.0 Invoicing and Payment

The Contractor shall structure the billing periods on a monthly basis. On or about the fifth business day of each month or as agreed to by the Authority, the Contractor will submit a Progress Report with the monthly invoice in accordance with the Cost and Scheduling Controls Program. The Progress Report will be generated from the monthly schedule update to indicate the Work performed for that billing period. This information will be sorted by FRA Code, which will be reflected in the monthly invoice. The Progress Report and invoice will be based on a mutually agreed upon physical percentage of Work completed or a measured quantity or other agreed upon measure to support the estimated percentage completed. At a minimum, on a

monthly basis, the Contractor shall meet with the Authority to review the percentage of Work completed prior to submittal of the Progress Report for final Authority review and approval.

Payment shall be made only for Work completed per the agreed upon percentage of completion that is in compliance with the Contract pursuant to the following:

a. Premiums for payment and performance bonds required under the Contract shall be paid as a dollar for dollar pass through of the Contractor's actual costs as incurred (not to exceed the amount shown in the Payment Breakdown for such premiums); and

b. Premiums for insurance required under the Contract shall be paid as a dollar for dollar pass through of the Contractor's actual costs as incurred (not to exceed the amount shown in the Payment Breakdown for such premiums).

30.1 Invoices

Each invoice submitted by the Contractor shall be entered and uploaded to the Authority's CMS web portal or equivalent and submitted in hardcopy in a form approved by the Authority. Invoices may be submitted to the Authority no more frequently than once per month. The process for invoicing shall be defined in advance of any Work being performed.

Invoices shall be legible and shall contain, at a minimum, the following information:

a. All monthly updates required under the Cost and Scheduling Controls Program;

b. The Quality Milestones completed during the period.

c. A certificate by the Contractor's Project Manager that all amounts being requested are true and correct and the Work is completed per the Contract.

d. Evidence acceptable to the Authority that each Progress Report and invoice is equal in value to the progress of Work completed. This evidence will be presented in the form of notes, Progress Reports and other acceptable evidence that is used for the schedule progress meeting between the Contractor and the Authority.

e. Conditional lien releases from each first-tier Subcontractor and Subcontractors of any tier with a contract value greater than $5 million for the prior monthly invoice period.

f. Evidence acceptable to the Authority that payments have been made to each Subcontractor.

g. Any other information necessary to demonstrate entitlement to payment, such as payroll records, as determined or requested by the Authority.

Failure to provide the above information may result in the dispute of the invoice for resubmission with complete data. Payment will be made within 45 days after the Authority's receipt of an undisputed invoice.

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30.2 Prompt Payment and Payment to Subcontractors

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its subcontract no later than seven days from receipt of each payment the Contractor receives from the Authority. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-Subcontractors and suppliers in a similar manner. The Authority shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Law.

30.3 Retainage

Retainage will be withheld under the Contract at the rate of five percent of all invoices paid up to a cap of $10,000,000.00 (Retainage).

The Contractor acknowledges and agrees that, pursuant to Public Contract Code Section 7200, the percentage of Retainage amounts withheld by the Contractor from its Subcontractors, if any, may not exceed the percentage withheld by Authority from the Contractor as specified herein.

Upon satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates, and evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, the Contractor shall submit an application to the Authority for the release of the portion of the Retainage attributed to the Subcontractor's work, stating that the Subcontractor has completed all Work required to be performed under its subcontract, the amount withheld by the Contractor under the subcontract, and providing all backup information, stop notice, and lien releases as may be required by the Authority.

Within seven days following receipt of payment from the Authority for the completed Subcontractor Work, the Contractor shall return all monies withheld as Retainage from the Subcontractor, even if the Work to be performed by the Contractor or other Subcontractors is not completed and has not been accepted. The Contractor shall, by appropriate agreement with each Subcontractor, require each first tier Subcontractor to make payments to sub-Subcontractors and suppliers in a similar manner.

The Authority's release of such Retainage shall not relieve the Contractor of its contractual obligations relating to the Work.

The Authority agrees to release the remaining Retainage 60 days after the Substantial Completion date and following receipt of an approved Invoice, therefor, subject to reduction as specified below and subject to the following terms and conditions.

At such time, the Authority shall release to the Contractor all remaining Retainage other than amounts applied (or retained for future application) to the payment of Liquidated Damages or that which the Authority deems advisable, in its sole discretion, to retain to cover any existing or threatened Disputes, claims, Liens, and stop notices relating to the Project, or the cost of any incomplete or Non-Conforming Work (including incomplete warranty Work). Final payment of

such Retainage not applied to Liquidated Damages shall be made upon the Contractor's providing evidence that, to the Authority's reasonable satisfaction, all such matters have been resolved; including delivery to the Authority of a certification representing that there are no outstanding claims of the Contractor or any claims, Liens, or stop notices of any Subcontractor, supplier or laborer with respect to the Work.

The Contractor shall have the right to substitute securities or a letter of credit for the Retainage pursuant to the procedures contained in Public Contract Code Section 22300. No such substitution shall be accepted until:

a. Such securities or letter of credit have been approved by the Authority as qualifying for substitution based on the Authority's assessment of creditworthiness and other factors;

b. The value of such securities has been established to the Authority's reasonable satisfaction;

c. The parties have entered into an escrow agreement (if the securities are to be held in escrow) in form substantially similar to that contained in Section 22300; and

d. All documentation necessary for assignment of the securities to the Authority or to the escrow agent, as appropriate, has been delivered in form reasonably satisfactory to the Authority.

If the Contractor has substituted securities for any of the Retainage, then the Authority may request that such securities be revalued from time to time, but not more often than monthly. Such revaluation would be made by a Person designated by the Authority and approved by the Contractor. If such revaluation results in a determination that such securities have a market value that is less than the amount of Retainage for which they were substituted, then notwithstanding anything to the contrary contained herein, the amount of the Retainage required under the Contract shall be increased by such difference in market value. Such increased Retainage shall be withheld from the next payment due the Contractor hereunder.

30.4 Deductions

In addition to the deductions provided for under the "Retainage" clause (Section 30.3), the Authority may deduct from each payment the following:

a. Any Liquidated Damages that have accrued as of the date of the application for payment;

b. Any sums expended by the Authority in performing any of the Contractor's obligations under the Contract, which the Contractor has failed to perform;

c. Any sum for work previously paid, but subsequently found to be non-compliant;

d. Any costs associated with the implementation of ATCs; and

e. Any other sums that the Authority is entitled to recover from the Contractor.

If a notice to stop payment is filed with the Authority due to the Contractor's failure to pay for labor or materials used in the Work, money due for such labor or materials, plus the 25 percent prescribed by law, will be withheld from payment to the Contractor. In accordance with

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Section 9364 of the Civil Code, the Authority may accept a bond by a corporate surety in lieu of withholding payment.

The Authority shall have the right to deduct any amount owed by the Contractor to the Authority hereunder from any amounts owed by the Authority to the Contractor hereunder.

The failure by the Authority to deduct any of these sums from a payment shall not constitute a waiver of the Authority's right to such sums.

30.5 Interest

The Authority shall not be liable for interest on any late or delayed payment caused by any claim or dispute, any failure by the Contractor to provide supporting documentation or other information required with the invoice or as a precondition to payment under the Contract; or due to any payment the Authority has a right to withhold under the Contract.

30.6 Federal, State, and Local Taxes

The Contract Price includes all applicable federal, State, and local taxes and duties. In the event that an exemption from sales taxes becomes available for the Project, the Authority shall have no obligation to reimburse the Contractor for any such taxes, and the Authority shall be entitled to an equitable adjustment under the “Changes” clause (Section 17.0) equal to the amount saved.

31.0 Final Payment

The Authority shall pay the final amounts due the Contractor under this Contract after completion and acceptance of all work, and presentation to the Authority of a properly executed voucher, an executed release of all claims against the Authority, and all other documentation required by the Authority.

As a condition to Final Acceptance, the Contractor shall have prepared and the Authority shall have approved a final invoice as follows:

a. The Contractor shall prepare and submit to the Authority a proposed final invoice showing the proposed total amount due the Contractor, including the payment for Final Acceptance. The Contractor shall not be entitled to the Final Acceptance payment prior to delivery of its final invoice;

b. In addition to meeting all other requirements for invoices hereunder, the final invoice shall list all outstanding claims, stating the amount at issue associated with each such claim. The final invoice shall be accompanied by complete and legally effective releases or waivers of liens and stop notices satisfactory to the Authority, from all persons legally eligible to file stop notices in connection with the Work, consent of surety(s) to final payment, and other such documentation as the Authority may reasonably require. Prior applications and payments shall be subject to correction in the proposed final invoice. Claims filed concurrently with the final invoice must be otherwise timely and meet all requirements hereunder;

c. The Authority will review the Contractor's proposed final invoice, and changes or corrections will be forwarded to the Contractor for incorporation. If no changes or corrections are required, the Authority will approve the final invoice. The "Final Invoice Payment Date" shall mean the due date for payment of the final Approved Invoice under (d) or the (e) of this "Final Payment" clause, as applicable;

d. Notwithstanding anything to the contrary in the "Invoicing and Payment" clause (Section 30.0), if the final approved invoice shows no outstanding or pending claims, liens, or stop notices, and provided that no claim, lien, or stop notice is thereafter filed, the Authority, in exchange for an executed release meeting the requirements (f) of this "Final Payment" clause and otherwise satisfactory in form and content to the Authority, will pay the entire sum found due on the approved final invoice no later than 45 days after issuance of the Certificate of Final Acceptance pursuant to Section 7.14.2;

e. Notwithstanding anything to the contrary in the "Invoicing and Payment" clause (Section 30.0), if the final approved invoice lists any outstanding claims, liens, or stop notices, or if any claim, lien or stop notice is thereafter filed, final payment will be made no later than 60 days after issuance of the Certificate of Final Acceptance pursuant to Section 7.14.2. The Authority, in exchange for an executed release meeting the requirements (f) of this "Final Payment" clause and otherwise satisfactory in form and content to the Authority, will pay the entire sum found due on the approved final invoice. The Authority may withhold from payment an amount not to exceed 150 percent of any Subcontractor claims, liens or stop notices plus 150 percent of any amount in dispute between the Authority and the Contractor, pending resolution of such matters; and

f. The executed release from the Contractor shall be from any and all claims arising from the Work as represented in the Contract Documents, and shall release and waive any claims against the Authority and its Board, officers, agents, and employees, excluding only those matters identified in any claim listed as outstanding in the final invoice. The release shall be accompanied by an affidavit from the Contractor certifying that:

   1. It has resolved any claims made by Subcontractors and others against the Contractor or the Project;

   2. It has no reason to believe that any Person has a valid claim against the Contractor or the Project that has not been communicated in writing by the Contractor to the Authority as of the date of the certificate; and

   3. All guarantees and warranties are in full force and effect.

The release and the affidavit shall survive final payment.

32.0 Liquidated Damages

32.1 Basis for Liquidated Damages

As the result of late completion of the Project, the Authority will suffer financial damages that cannot be quantified as of the date of execution hereof. Therefore, the Contractor and Authority have agreed to a stipulated amount to be paid by the Contractor in the event the Contractor fails

to achieve Substantial Completion by the Substantial Completion Deadline. The Parties intend for the Liquidated Damages set forth herein to constitute liquidated damages under California law. The Contractor acknowledges and agrees that the Liquidated Damages are intended to compensate the Authority solely for the Contractor's failure to meet the Substantial Completion Deadline, and shall not excuse the Contractor from liability from any other breach of the Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that the Authority has agreed to accept Liquidated Damages as compensation for its damages associated with a delay in meeting the Substantial Completion Deadline shall not preclude the Authority from exercising its other rights and remedies available at law or in equity other than the right to collect compensation for other damages associated with such delay.

32.2 Reasonableness of Liquidated Damages

The Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by the Authority of damages which, it will incur in the event of late completion, including additional administrative costs. The Contractor and the Authority agree that the amount of such damages is impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix the Contractor's costs and to avoid later disputes over which items are properly chargeable to the Contractor. It is understood and agreed by the Contractor that any Liquidated Damages payable in accordance with this Section 32.2 are in the nature of liquidated damages and not a penalty and that such sums are a reasonable approximation of actual damages that the Authority will sustain and are not manifestly unreasonable under the circumstances existing as of the date of execution and delivery of the Contract.

The Contractor acknowledges and agrees that Liquidated Damages may be owed even though no Event of Default has occurred.

32.3 Waiver

Permitting or requiring the Contractor to continue and finish the Work or any part thereof after the Final Acceptance Deadline shall not act as a waiver of the Authority's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to the Authority.

33.0 Consequential Damages; Limitation of Contractor's Liability

33.1 Consequential Damages

The Contractor and Authority will not be liable for punitive damages or special, indirect, or incidental consequential damages, whether arising out of breach of the Contract, tort (including negligence), or any other theory of liability, and each party releases the other party from any such liability. The foregoing limitation on liability for consequential damages will not apply to or limit any right of recovery respecting the following:

a. Losses (including defense costs) to the extent covered by the proceeds of insurance (i) required to be carried under the Contract or (ii) actually carried by or insuring the Contractor under policies solely with respect to the Project and the Work;

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b. Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence;

c. The Contractor's or Authority's indemnities under the Contract;

d. The Contractor's obligation to pay Liquidated Damages in accordance with the Contract;

e. Specific amounts owing under the express provisions of the Contract;

f. Losses arising out of releases of Hazardous Materials by the Contractor or Authority; and

g. The Contractor's obligation to pay the Authority's costs of repair or of correcting or replacing Non-Conforming Work.

33.2 Limitation of Contractor's Liability

The Contractor's liability to the Authority for damages resulting from breach of the Contract shall be limited to the sum of the following:

a. All costs reasonably incurred by the Authority or any party acting on the Authority's behalf in completing the Work or having the Work completed by another Person (minus the unpaid portion of the Contract Price);

b. All costs reasonably incurred by the Authority or any party acting on the Authority's behalf in correcting the Work or having the Work corrected by another Person; and

c. An amount equal to 40 percent of the Contract Price.

Provided, however, that excluded from the cap will be:

i. Losses (including defense costs) to the extent covered by the proceeds of insurance:

- Required to be carried under the Contract or
- Actually carried by or insuring the Contractor under policies solely with respect to the Project and the Work;

ii. Any Liquidated Damages paid; and

iii. Any type of cost arising from fraud, gross negligence, intentional misconduct, or criminal acts of any Contractor-Related Entity.

This limitation of liability shall not affect the Contractor's obligation to provide insurance hereunder.

34.0 Procedure for Discovery of Certain Site Conditions

34.1 Notification to the Authority

As a condition precedent to the Contractor's right to a Change Order, the Contractor shall immediately notify the Authority thereof by telephone or in person, to be followed by written notification as soon as practicable, but in no event shall the written notice be later than 24 hours after becoming aware of any Differing Site Conditions, on-site material that the Contractor believes may contain Hazardous Materials that is required to be removed or treated, or any

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archaeological, paleontological, cultural, biological, or other Regulated Resources within the Project ROW.

The Contractor shall have the burden of proving such oral notice was given and when it was given. The Contractor's written notification shall advise the Authority of any obligation to notify any Governmental Person or other Person required under applicable Law, Governmental Approval, or the Contract Documents. The Contractor shall immediately stop Work in, and secure, the area. Operations that may impact the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the Authority. In such event, the Authority will view the location promptly upon receipt of notification, and will advise the Contractor at that time whether to resume Work or whether further investigation is required.

34.2 Further Investigation

The Contractor shall promptly conduct such further investigations, as the Authority reasonably deems appropriate. As soon as possible, but no later than five Working Days after its initial notice to the Authority, the Contractor shall advise the Authority of any action recommended to be taken regarding the situation in a written remediation or avoidance, minimization and mitigation plan. If Hazardous Materials are involved, the remediation plan shall describe the type of remediation Work, if any, that the Contractor proposes to undertake with respect thereto. If any archaeological, paleontological, cultural, biological, or Regulated Resources are discovered, the avoidance, minimization and mitigation plan shall advise the Authority what course of action the Contractor intends to take with respect thereto, whether all Project direct and indirect impacts to the Regulated Resource can be avoided by implementation of specified avoidance measures, such that Work can otherwise resume, whether a Project design change must be obtained prior to recommencing Work in any location, and whether such Project design change may result in a Variation that requires any additional CEQA/NEPA review and documentation and/or Supplemental or Amended Governmental Approvals. The Authority will then either approve, or require modification of, the Contractor's proposed remediation or avoidance, minimization and mitigation plan.

34.3 Recommence Work

The Authority shall have the right to require the Contractor to recommence Work in the area at any time, even though an investigation may still be ongoing, provided such Work will not result in any Variation and is not in violation of any Laws or Environmental Requirements. The Contractor shall promptly recommence Work in the area upon receipt of such notification from the Authority. On recommencing Work, the Contractor shall follow all applicable procedures contained in the Contract Documents and Laws with respect to such Work, consistent with the Authority's determination or preliminary determination regarding the nature of the Regulated Resource or other protected material, resources, species, or condition.

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35.0 Not Used

36.0 Not Used

37.0 Not Used

38.0 Not Used

39.0 Suspension of Work

The Authority may order the Contractor in writing to suspend all or any part of the Work for such period of time as determined appropriate by the Authority.

39.1 Suspension for Cause

No adjustment will be made for suspensions required to correct conditions unsafe for Project personnel or the general public; or to comply with any Laws or Environmental Requirements or to otherwise carry out the requirements of the Contract, including suspensions under the "Non-Compliance" clause (Section 26.2.6).

39.2 Suspension for Convenience

The Contractor shall be entitled to an equitable adjustment in accordance with the "Changes" clause (Section 17.0) for additional costs (including overhead and delay damages, but excluding profit) and a time extension for suspensions beyond a cumulative 240-hour period and not covered under Section 39.1.

No claim under this clause shall be allowed for any costs incurred unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred, but for a delay within the provisions of this clause.

39.3 Responsibilities of Contractor during Suspension

During periods that Work is suspended, the Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and erect necessary temporary structures, signs, or other facilities required to maintain the Project.

40.0 Termination for Convenience

The Authority may, whenever the interests of the Authority so require as determined by the Authority in the Authority's sole discretion, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying that the Contract is being terminated or the part of the Contract being terminated and when termination becomes effective.

The Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, the Contractor shall stop work to the extent specified.

The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Authority. The Contractor must still complete the Work not terminated by the notice of termination, and may incur obligations as are necessary to do so.

The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority, the following:

a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

b. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Authority.

The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.

40.1 Payments on Termination

The Authority shall pay the Contractor the following amounts for termination under this “Termination for Convenience” clause.

For Work performed before the effective date of termination, the total (without duplication of any items) of the cost of this Work; the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included above; plus 10 percent for overhead and profit. However, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Authority shall allow no profit under this “Termination for Convenience” clause and shall reduce the settlement to reflect the indicated rate of loss.

The reasonable costs of settlement of the Work terminated, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; the termination and settlement of subcontracts (excluding the amounts of such settlements); and storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

The total sum to be paid the Contractor shall not exceed the Contract Price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of construction, supplies, and construction materials under this “Payments on Termination” clause, and the Contract Price of Work not terminated.

40.2 Reduction in Amount of Claim

The amount, otherwise due the Contractor under this "Termination for Convenience" clause, shall be reduced by the following amounts:

a. All unliquidated payments for Work or materials not yet performed on or supplied to the Project at the time of the payment;

b. The amount of any claim which the Authority may have against any Contractor-Related Entity in connection with the Contract;

c. The agreed price for, or the proceeds of the sale of, any property, materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this "Termination for Convenience" clause, and not otherwise recovered by or credited to the Authority;

d. Amounts that the Authority reasonably deems advisable to retain to cover any existing or threatened claims, liens, and stop notices relating to the Project, including claims by Third Parties;

e. The cost of repairing any Non-Conforming Work; and

f. Any amounts due or payable by the Contractor to the Authority.

40.3 Subcontracts

The Contractor shall insert in all subcontracts a requirement that the Subcontractor shall stop Work on the date and to the extent specified in a notice of termination from the Authority in accordance with this "Termination for Convenience" clause, and shall require Subcontractors to insert the same provision in each subcontract at all tiers.

Upon termination of Work under any subcontract, the Contractor will not be entitled to reimbursement for that portion of the termination settlement with any such Subcontractor which constitutes anticipatory or unearned profit on Work not performed, or which constitutes consequential damages on account of the termination or partial termination.

40.4 No Unearned Profit or Consequential Damages

Under no circumstances shall the Contractor or any Subcontractor be entitled to anticipatory or unearned profit or consequential or other damages as a result of a termination or partial termination under this "Termination for Convenience" clause. The payment to the Contractor determined in accordance with this "Termination for Convenience" clause constitutes the Contractor's sole and exclusive remedy for a termination under this "Termination for Convenience" clause.

40.5 No Waiver

Notwithstanding anything contained in the Contract to the contrary, a termination under this "Termination for Convenience" clause shall not waive any right or claim to damages, which the Authority may have, and the Authority may pursue any cause of action, which it may have at law or in equity or under the Contract.

40.6 Allowable Costs

All costs claimed by the Contractor under this "Termination for Convenience" clause shall, at a minimum, be allowable, allocable, and reasonable in accordance with the cost principles and procedures of 48 C.F.R. Part 31.

40.7 Suspension of Work

In the event of any suspension for convenience of all Work by the Authority under the "Suspension for Convenience" clause (Section 39.2) for more than 180 consecutive days, the Contractor shall have the right to consider the Contract to have been terminated for convenience under this "Termination for Convenience" clause. The Contractor shall notify the Authority of such election by delivering to the Authority a written notice of termination due to such suspension specifying its effective date. Upon delivery by the Contractor to the Authority of a notice of termination under this Section 40.7, the provisions of this "Termination for Convenience" clause shall apply.

41.0 Interest on Contractor Indebtedness

Notwithstanding any other clause of this Contract, unless otherwise required by Law, all amounts that become payable by the Contractor to the Authority under this Contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. Unless otherwise required by Law, the interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563, 92 Stat. 2383), which is applicable to the period in which the amount becomes due, as provided in this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. In no event shall the interest charged or payable hereunder exceed that allowable under applicable Law. Amounts shall be due at the earliest of the following dates:

a. The date fixed under this Contract;

b. The date of the first written demand for payment consistent with this Contract, including any demand resulting from a default termination; or

c. The date the Authority transmits to the Contractor a proposed Change Order to confirm completed negotiations establishing the amount of debt (unless a later date is set forth therein).

If this Contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by Contract modification.

42.0 Environmental Requirements

The Contractor shall comply with all Environmental Requirements including, without limitation, the federal environmental Laws set forth in the "Federal Requirements" clause (Section 46.0), all other federal, state and local environmental Laws, the Final Environmental Documents, the

Governmental Approvals, and any subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals. It is anticipated that certain Governmental Approvals will not be obtained until after execution of the Contract. Regardless of when the Governmental Approvals are obtained, Contractor is required to comply with all such approvals and/or documents, including all terms, conditions, requirements, and minimization, avoidance, conservation and mitigation measures specified therein. In addition, Contractor shall timely provide, as needed, subsequent or supporting technical and environmental information, documents, drawings, plans and analyses necessary within the discretion of the Authority to obtain the Authority-Provided Governmental Approvals.

The Contractor shall document compliance with all Environmental Requirements and Governmental Approvals using the Authority's Environmental Mitigation Management and Assessment (EMMA) as described in the Environmental Compliance Manual.

42.1 Transfer of Environmental Information

The Contractor shall attend meetings at the direction of the Authority, including but not limited to, those meetings described below and any additional meetings identified in the Environmental Compliance Manual.

No later than 60 days following issuance of NTP, Contractor shall plan, coordinate, and attend a required knowledge transfer workshop with the Authority (independent of the GIS data meeting described below) to support the Contractor's acquisition of institutional and baseline environmental knowledge, information and materials. To the extent available, the Authority will provide Environmental Materials, including the final Environmental Footprint, the draft Regulated Resources Map, the draft Environmental Constrained Footprint, and draft applications for Authority-Provided Governmental Approvals to Contractor at the knowledge transfer workshop. Except for the final Environmental Footprint, Contractor may not rely on the Environmental Materials; such materials shall be provided for reference only. Contractor's Environmental Compliance Manager, and lead environmental regulatory specialists required by the Environmental Compliance Manual, including lead Environmental Compliance Team personnel, shall be required to attend. In addition, Contractor's technical specialists shall attend any separate focused subject meetings that the Authority may hold on the subject of specific Regulated Resources, including but not limited to, cultural, biological, habitat-related, water-related or other resources.

To facilitate the transfer of geospatial data, the Contractor shall attend periodic meetings to review the data and its development, present the file structure and naming convention and provide the specifications for maintaining and updating the data. At a minimum, these meetings will be attended by the Contractor's GIS lead specialist and the appropriate environmental technical specialist as determined by reference to the data to be discussed. Data related to cultural resources and the National Historic Preservation Act Section 106 process will be transferred only when a specialist that meets the Secretary of Interior's Professional Qualifications Standards for receipt of sensitive information regarding cultural resources (*see* 36 C.F.R. Part 61) is in attendance. No data will be transferred prior to an initial meeting of the

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Authority with the Contractor's qualified specialist for cultural resources, which shall occur no more than 60 days following issuance of NTP.

42.2 Environmental Compliance Plan Requirements and Maps

No more than 120 days following issuance of NTP the Contractor shall produce a draft Environmental Compliance Plan for Authority approval that demonstrates how it will integrate environmental compliance with all Environmental Requirements into all phases of the Project, including without limitation, Project compliance with Final Environmental Documents and Governmental Approvals, from design through restoration and Final Acceptance. Upon approval by the Authority, the draft Environmental Compliance Plan will become the final Environmental Compliance Plan. The Contractor shall have a final Environmental Compliance Plan approved by the Authority prior to the start of construction.

Contractor shall independently review the Final Environmental Documents and Governmental Approvals as they are issued to identify all Environmental Requirements, including all terms, requirements, conditions, and avoidance, minimization, conservation and mitigation programs, plans, measures, and design features required for the Project. Further, Contractor shall independently review, update, and correct any Environmental Materials provided by the Authority, including any Authority-Provided Governmental Approvals, in order to identify all Environmental Requirements contained in such materials. All Environmental Requirements shall be included in the Environmental Compliance Plan.

The Environmental Compliance Plan will be prepared in accordance with the Environmental Compliance Manual, and will include at a minimum:

a. A comprehensive and detailed checklist of all Environmental Requirements, including those detailed in the Final Environmental Documents and the Governmental Approvals, identifying:

    1. Each environmental condition, avoidance, minimization or mitigation plan, measure, or project design feature required for the Project, with reference to the corresponding Final Environmental Document or Governmental Approval;

    2. The activity or activities of the Contractor to which the plan, condition, measure, or feature applies; and

    3. The due date or time for performance, and the responsible party for performance of the applicable Environmental Requirements, including all avoidance, minimization or mitigation plans, conditions, measures or features; and the date on, and method by which those requirements, conditions, plans, measures, or features that are not ongoing have been satisfied.

b. The compliance reporting frequency and format for each applicable Environmental Requirement.

c. The Environmental Footprint.

d. An updated Regulated Resources Map.

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e. An updated Environmental Constrained Footprint.

f. An explanation of the methods that Contractor will use to assure that, consistent with Section 42.3 below, Contractor updates and revises appropriate provisions of the Environmental Compliance Plan, including the Regulated Resources Map, the Environmental Constrained Footprint, and, when approved by the Authority pursuant to the Environmental Re-examination Process(es), the Environmental Footprint.

g. An explanation regarding the manner in which the Contractor will effectively transition out of its environmental compliance responsibilities between Substantial Completion and Final Acceptance to ensure continued compliance with ongoing Environmental Requirements (including, without limitation, ongoing management and monitoring requirements identified in the Final Environmental Documents and Governmental Approvals).

The Environmental Compliance Plan shall assign Contractor staff and Subconsultants, and detail roles and responsibilities of all Environmental Compliance Team members involved in environmental compliance for the Project consistently with the Environmental Compliance Manual. The Environmental Compliance Plan shall detail compliance tracking processes and data capture requirements (including, without limitation, preparation and update of the Requires Surveys GIS Data Layer) necessary to document environmental compliance with all Environmental Requirements.

As required by the Environmental Compliance Manual, the Environmental Compliance Plan shall include procedures to identify and rectify environmental non-compliance. Discovery of all non-compliance shall be communicated to the Authority within 24-hours or less if a shorter time is otherwise specified in the Environmental Requirements, including applicable Laws, the Final Environmental Documents, and/or the Governmental Approvals.

The Contractor shall be responsible for implementing the Environmental Compliance Plan, as it is updated and amended pursuant to the Contract Documents, including Section 42.3 of these General Provisions.

The Environmental Compliance Plan and corresponding reporting data for Final Environmental Documents and Governmental Approvals shall be entered and uploaded on an ongoing basis to the Authority electronically via the EMMA. EMMA will be the primary reporting mechanism for environmental compliance and project status. Environmental compliance information and Environmental Compliance Reports uploaded to EMMA will be certified by appropriate environmental compliance staff specialists, with the appropriate area of expertise and minimum qualifications and experience described in the Environmental Compliance Manual. All EMMA users will be required to attend a specific EMMA training prior to being provided access.

The Contractor shall prepare an Interim Environmental Compliance Plan in accordance with the Environmental Compliance Manual to allow for preliminary field investigations in support of design efforts prior to the issuance of certain Governmental Approvals.

42.3 Updates to the Environmental Compliance Plan and Related Maps

No later than 30 days after each Governmental Approval is obtained, the Contractor shall update the appropriate provisions of the Environmental Compliance Plan, including the Regulated Resources Map and the Environmental Constrained Footprint to incorporate new environmental commitments, conditions, and requirements, and new avoidance, minimization, mitigation and conservation conditions, requirements, plans, measures, and Project design associated with each Governmental Approval issued; and as otherwise directed by the Authority in an Environmental Update Memo and/or the Environmental Compliance Manual.

Without limiting Contractor's obligation to complete all timely updates of the Environmental Compliance Plan, at a minimum, a comprehensive updated draft of the Environmental Compliance Plan shall be submitted to the Authority prior to any ground disturbance associated with implementation of the Project, and no later than 30 days after the last Authority-Provided Governmental Approval, other than the Section 402 Post-Development (Operations Phase) NPDES MS4 Stormwater Discharge Permit, is obtained.

In addition to the foregoing updates, the Contractor shall, within 30 days after each and any of the following events, update appropriate provisions of the Environmental Compliance Plan, including the Regulated Resources Map, the Environmental Constrained Footprint, and the as appropriate, the Environmental Footprint, to incorporate new and revised environmental conditions, and requirements, and avoidance, minimization, mitigation, and conservation requirements, conditions, plans, measures, and design features:

a. Authority approval of any Variation (including without limitation, any Variation relating to an ATC, VECP, Betterment, or other Project design change pursuant to the "Facilities of Others" clause (Section 49.0) after implementation of the Environmental Re-Examination Process(es) and attainment of any required subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals;

b. Discovery by the Contractor of any new Regulated Resource pursuant to required ground surveys and monitoring; or

c. Discovery by the Contractor of different locations for Regulated Resources based on ground surveys and monitoring.

42.4 Monthly Environmental Reporting and Obligations – Environmental Compliance Reports

The Contractor shall include in the monthly schedule updates required in the Cost and Scheduling Controls Program a general Environmental Compliance Report summarizing progress in complying with all Environmental Requirements, including those of the Final Environmental Documents and Governmental Approvals. In the narrative report the Contractor shall report on the status and schedule for environmental compliance activities that are to occur during the period addressed by the monthly schedule update. To support this effort, the Contractor shall provide Environmental Compliance Team personnel with those areas of expertise, qualifications and experience specified in the Environmental Compliance Manual to

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assure compliance with the Environmental Requirements, including, without limitation the Final Environmental Documents and Governmental Approvals.

The Contractor shall be responsible for community outreach, as addressed in the "Public Involvement" clause (Section 53.0).

The Contractor is required to conduct monthly environmental compliance and Governmental Approval review meetings with the Authority, as further detailed in the Environmental Compliance Manual. The Authority may also require Contractor participation in additional informal environmental compliance and Governmental Approval review meetings, coordination with the Authority regarding issuance of Governmental Approvals, compliance with the Environmental Re-Examination Process(es), and/or attainment of any subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals, and participation in meetings with Governmental Persons with jurisdiction to issue Governmental Approvals may also be necessary.

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42.5 Environmental Compliance for Project Changes, Subsequent, Supplemental, Additional or Amended Environmental Requirements

The Contractor shall determine whether any Supplemental or Amended Governmental Approvals are needed for design or construction of the Project, and shall provide, as needed, subsequent or supporting technical and environmental analyses necessary for the Authority to assess and, within the discretion of the Authority, obtain any Supplemental or Amended Governmental Approvals.

Any Variations are subject to the Environmental Re-Examination Process(es), whether or not proposed by the Contractor. The Contractor will be responsible for coordinating with the Authority to implement the Environmental Re-Examination Process(es) and to obtain any Supplemental or Amended Governmental Approvals required under applicable Laws due to any Variation or newly-discovered Regulated Resource, including without limitation any Variation associated with design and condition changes, changes that require additional right-of-way, ATCS, Design Variances, VECPs, Betterments, or Project Design Changes under Section 49.4.12 of these General Provisions. The Contractor shall, without any increase in the Contract Price or extension of any Completion Deadline, bear all responsibility and risk arising from any need, as determined in the sole discretion of the Authority, for: (a) obtaining any Supplemental or Amended Governmental Approvals necessary for any Variation; and (b) paying for and providing all supporting technical and environmental information, drawings, plans, analyses, materials and documentation determined to be necessary by the Authority in connection with any additional CEQA/NEPA review or, if required, additional CEQA/NEPA review and documentation.

Prior to proceeding with any Variation, the Contractor shall obtain Authority approval using the Environmental Re-Examination Process(es). Subject to the review and approval of the Authority, the Contractor will prepare and provide all technical work, analyses, permit applications, and other information, materials and documentation determined necessary by the Authority in the exercise of its sole discretion to evaluate any Variation, and any related

additional CEQA/NEPA review and documentation and/or Supplemental or Amended Governmental Approvals required. Further, the Contractor will coordinate with, and support the Authority in working with the appropriate Governmental Persons as needed to obtain any additional CEQA/NEPA review and documentation and/or Supplemental or Amended Governmental Approvals for any Variation approved by the Authority.

Prior to any Contractors' communications with Governmental Persons regarding additional CEQA/NEPA review and documentation and/or Supplemental or Amended Governmental Approvals, the Contractor will obtain the Authority's approval of such communications.

With respect to additional CEQA/NEPA review and documentation determined to be required pursuant the CEQA/NEPA Re-Examination Process, the Authority and FRA will normally serve as state and federal lead agencies. The Contractor shall provide the Authority with all technical work, analyses, information, materials and documents required for the Authority and FRA to timely complete, consider the information and decide what is necessary to proceed with the Project. . This includes reviewing any proposed Variation, ATC, amendment or Change Order and completing the necessary documentation in time to comply with all requirements of CEQA and NEPA, whether or not a subsequent EIR or supplemental EIS is required to be prepared and circulated for public review.

With respect to Supplemental or Amended Governmental Approvals determined to be required pursuant the Governmental Approval Re-examination Process, the Authority must approve the Contractor's approach and strategy for obtaining any Supplemental or Amended Governmental Approvals required for the Project. The Authority must also review and approve all regulatory submittals and communications proposed by Contractor prior to submittal to any Governmental Persons with jurisdiction to issue any Supplemental or Amended Governmental Approvals for the Project.

The Authority will generally take the lead in obtaining any Supplemental or Amended Governmental Approvals for the Authority-Provided Governmental Approvals. In the event Contractor is given lead responsibility for obtaining Supplemental or Amended Governmental Approvals for the Authority-Provided Governmental Approvals, Contractor shall apprise the Authority of all meetings and communications with the applicable Governmental Persons, and shall invite the Authority in a timely matter to attend meetings and conference calls with such Governmental Persons regarding the Supplemental or Amended Governmental Approvals. Upon written notice by the Authority to the Contractor, the Authority may assume the lead role and direct the process for obtaining any Supplemental or Amended Governmental Approvals it deems appropriate.

Additional details regarding the Environmental Re-Examination Process(es) are set forth in the Environmental Compliance Manual.

42.6 Contract Submittals

With respect to any Contract submittal provided for hereunder, no SONO, SOO, or Authority approval of such Contract submittal shall be final or effective for purposes of the Contract until

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and unless the Authority has completed review of the Contract submittal and the Environmental Compliance Report (if necessary), or the Contract submittal and its compliance with the Environmental Requirements, as applicable.

The Environmental Compliance Manager shall fully check each Contract submittal prior to being submitted to the Authority for compliance with Laws, Final Environmental Documents and Governmental Approvals.

42.6.1 Environmental Review of Technical Contract Submittals

The Contractor shall prepare an Environmental Compliance Report in accordance with the Environmental Compliance Manual for the following Technical Contract Submittals listed in Attachment 6 of the Scope of Work:

a. Design Baseline Report;

b. Final Design Report;

c. Nominal 60% Construction Drawings;

d. Nominal 90% Construction Drawings;

e. Ready for Construction Submittals; and

f. Design Variance Requests.

The Environmental Compliance Manager shall conduct an independent review of each such Technical Contract Submittal and accompanying Environmental Compliance Report, and shall certify in writing that the submittal is within the scope of the analysis and findings in the Governmental Approvals and Final Environmental Documents, complies with all Environmental Requirements, including, without limitation, those set forth in the Final Environmental Documents, the Governmental Approvals any additional CEQA/NEPA requirements and/or Supplemental or Amended Governmental Approvals determined to be applicable pursuant to the Environmental Re-Examination Process(es) (as applicable). This requirement is independent of and in addition to the Contractor's responsibilities and obligations provided for in the "Verification, Validation and Self Certification" clause (Section 54.4).

42.6.2 Contractor Environmental Submittals

The Contractor shall submit the following Contractor Environmental Submittals and all updates thereto to the Authority for approval:

a. Environmental Compliance Plan;

b. Regulated Resources Map;

c. Environmental Constrained Footprint;

d. Environmental Footprint; and

e. Required Surveys GIS Data Layer.

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The Authority will review and issue a response for each Contractor Environmental Submittal with a disposition of "Approved," "Approved with Comments," or "Rejected with Comments," subject to the "Submittal Requirements" clause (Section 8.0).

Except as otherwise directed by the Authority in writing, the Contractor must submit to the Authority for environmental compliance and SONO all Contractor Environmental Submittals that must be submitted to any Governmental Person other than the Authority pursuant to the requirements of the Final Environmental Documents and/or the Governmental Approvals. Such Contractor Environmental Submittals must be submitted to the Authority for SONO no less than 60 days prior to the date that the submittal must be provided to the Governmental Person other than the Authority as designated pursuant to the Final Environmental Documents and/or Governmental Approvals.

42.7 Change in Law Affecting Environmental Requirements

The Contractor is responsible for identifying any change in Law that may result in a Variation that requires any subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals. The Authority may also notify Contractor of such changes in Law by issuance of an Environmental Update Memo pursuant to the "Transfer of Environmental Information" clause (Section 42.1). Before complying with a change in Law that would require any subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Government Approvals or a change in Project design or construction the Contractor shall promptly provide notice of and detailed information to the Authority regarding the Contractor's proposed subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals and/or change in Project design or construction, and shall receive direction from the Authority regarding compliance with the change in Law. As deemed necessary by the Authority, in its sole discretion, the Contractor will prepare and provide all technical work, analyses, permit applications, and other information, materials and documentation needed to evaluate the change in Law, any related subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals, and/or change in Project design or construction. Further, the Contractor will coordinate with, and support the Authority in, working with the appropriate Governmental Persons as needed to obtain any subsequent or supplemental CEQA/NEPA documentation and/or Supplemental or Amended Governmental Approvals for any change in Law.

42.8 Environmental Compliance Team

42.8.1 Qualified Personnel

The Contractor's Environmental Compliance Team shall be comprised of qualified personnel as identified in the Environmental Compliance Manual.

42.8.2 Worker Environmental Awareness Training Program

The Contractor shall administer a Worker Environmental Awareness Training Program in accordance with the Environmental Compliance Manual.

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43.0 Hazardous Materials

The Contractor shall survey, remove, and dispose of all Hazardous Material associated with the Work. Prior to performing any demolition Work and prior to performing the Hazardous Material removal Work, the Contractor shall submit a hazardous materials remediation plan for Authority approval in accordance with the requirements of all Laws and the Contract, including the "Procedure for Discovery of Certain Site Conditions" clause (Section 34.0).

As between the Contractor and the Authority, the Authority will be considered the generator and arranger for Hazardous Materials other than Hazardous Materials brought onto the Site by any Contractor-Related Entity or Hazardous Materials where the removal or handling involved negligence, willful misconduct, or breach of Contract by any Contractor-Related Entity.

Whenever the Authority has such arranger liability, the Contractor's remediation plans will be subject to the prior written approval of the Authority and the Authority will have exclusive decision-making authority regarding selection of the destination facility to which such Hazardous Materials will be transported. The Authority will comply with the applicable standards for generators and arrangers with regard to such Hazardous Materials, including the responsibility to sign manifests for the transport of hazardous wastes. The Authority will indemnify, save, protect, and defend the Contractor from third party claims, causes of action, and losses arising out of or related to generator or arranger liability for such Hazardous Materials.

As between the Contractor and the Authority, the Contractor will be considered the generator and arranger for Hazardous Materials brought onto the Site by any Contractor-Related Entity or Hazardous Materials where the removal or handling involved negligence, willful misconduct, or breach of Contract by any Contractor-Related Entity.

If the Contractor encounters any Hazardous Materials that have the effect of increasing the cost or time of performance of the Work, then the Contractor shall be entitled to an equitable adjustment for direct remediation costs (excluding overhead, delay damages, and profit) and a time extension, in accordance with the "Changes" clause (Section 17.0).

To the extent the Hazardous Materials are within a category for which unit prices are provided in the Signature Document, compensation will be based on the unit prices.

Compensation under this clause will not be made unless the Contractor demonstrates to the Authority's satisfaction that any remediation work could not have been avoided by reasonable design modifications or construction techniques; and the Contractor's remediation plan represents the approach that is most beneficial to the Project and the public.

The Contractor shall provide the Authority with such information, analyses and certificates as may be requested by the Authority in order to enable a determination regarding eligibility for payment.

The Contractor shall not be entitled to an equitable adjustment under this clause for:

a. Investigation or characterization of Hazardous Materials or preparation of a remediation plan;

b. Hazardous Materials brought onto the Site by any Contractor-Related Entity or Hazardous Materials where the removal or handling involved negligence, willful misconduct, or breach of Contract by any Contractor-Related Entity;

c. Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques; or

d. Hazardous Materials on additional properties requested by Contractor.

44.0 Sustainability

In addition to California regulatory requirements and Project specifications, the Contractor shall address Project sustainability while carrying out the Work under the Contract.

44.1 Project Sustainability Requirements

The Project Sustainability Requirements are as follows:

a. Exemplary energy use minimization and energy efficiency;

b. Minimize water use;

c. Reduce GHG emissions and dependency on fossil fuels;

d. Employ sustainable, healthy materials and reduce the extraction of scarce resources; and

e. Eliminate concrete and steel waste to landfill, reduce all other waste.

44.2 Requirements

The Contractor shall manage and minimize construction waste by diversion of construction and demolition debris from landfills, which shall not be less than that required by local regulations. The minimum percentages for diversion of construction and demolition waste are 75 percent of construction and demolition waste from landfills and 100 percent of steel and concrete construction and demolition waste from landfills. Excavated soil shall be excluded from the waste calculation. Contaminated materials shall be excluded from the waste calculation.

Within 60 days following issuance of NTP, the Contractor shall enter and upload the estimated weight and volume of construction waste and demolition debris via the Authority's web portal, EMMA.

Within 60 days following issuance of NTP, the Contractor shall submit estimated construction phases, equipment type, make and model year, estimated operations hours, and fuel type. The Contractor shall comply with reporting requirements identified in the VERA between the Authority and the San Joaquin Valley Air Pollution Control District.

a. The Contractor shall reduce emissions and energy use below regulatory requirements and the estimated baseline by:

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i. Use of cleaner engines, including non-road engines meeting or exceeding Tier III, and on-road engines meeting 2004 On-Highway Heavy Duty Engine Emissions Standards or cleaner, whether the equipment is owned or rented;

ii. Use of cleaner fuels including ultra-low sulfur diesel;

iii. Use of cleaner diesel control technology, including EPA or California Air Resources Board verified Diesel Particulate Filters or Diesel Oxidation Catalysts;

iv. Efficient use of fuel;

v. Use of Renewable Diesel or Bio-Diesel

vi. Reduction of energy use;

vii. Efficient energy practices;

viii. Efficient construction practices;

ix. Materials delivery streamlining; and/or

x. Other Contractor identified initiatives.

b. The Contractor shall practice water conservation and efficiency in water use by:

i. Use of efficient fixtures in facilities and temporary offices, such as Energy Star or Water Sense certified products;

ii. Using non-potable water for appropriate uses such as allaying dust (including, for example, retaining and treating concrete wash water on site);

iii. Strategies for addressing equipment and temporary system maintenance to avoid leaks;

iv. Strategies for reducing runoff and increasing ground water re-charge; and

v. Strategies for monitoring compliance with the SMP, identifying opportunities to enhance performance, and addressing non-compliance conditions.

c. The Contractor shall apply pollution controls beyond regulatory requirements.

d. The Contractor shall procure environmentally preferable products. refer to:

http://www.dgs.ca.gov/buyinggreen/Home/BuyersMain.aspx;

e. The Contractor shall promote sustainability activities and successes as part of its public involvement requirement. Sustainability goals shall be included in on-boarding presentations for site workers.

f. Where practicable the Contractor shall use post-consumer, post-industrial recycled products and materials or waste materials, such as fly-ash, Ground Granulated Blast-Furnace Slag, crushed glass, recycled aggregate and Tire Derived Aggregate.

g. Where feasible the Contractor shall use renewable energy.

h. The Contractor shall evaluate the use of all reasonably feasible renewable energy sources. Sources of renewable energy include solar, wind, and biomass and biogas. Examples of renewable energy technologies include photovoltaic panels, wind turbines, digesters, gasifiers, and microturbines.

i. The Contractor shall conduct a cost analysis that compares the energy costs from renewable sources versus traditional electricity sources provided by local utilities, over the expected Project schedule. Similarly, an evaluation of the avoided emissions as a result of using renewable energy sources versus traditional energy sources provided by local utilities shall be performed.

j. The Contractor shall also evaluate the cost of purchasing green power from organizations that offer green power within the appropriate utility provider.

44.3 Plans

44.3.1 Sustainability Management Plan

The Contractor shall submit to the Authority a SMP for review within 90 days after NTP. The SMP is subject to SONO by the Authority. The plan shall demonstrate how the Contractor shall meet or exceed regulatory and Contract requirements during design and construction activities. The plan shall identify and establish a sustainability baseline from which improvements shall be measured and against which progress shall be tracked. The plan shall identify how the Contractor will track and report site fuel, emissions, energy, water consumption (Construction GHG Emissions baseline), waste, materials, and other appropriate subcategories. The SMP shall identify staff assigned for implementation of the plan and collection and reporting of data. The SMP shall identify how sustainability management is integrated into the overall management of the Project. The SMP shall include reference to the estimated number of site staff, and how staff will be oriented concerning Project sustainability requirements and goals.

44.3.2 Construction Waste Management Plan

Included in the SMP, the CWMP will demonstrate how the Contractor shall comply with the regulatory and Contract requirements to divert the specified percentage of construction and demolition debris from landfill. The CWMP will include a map identifying waste management areas throughout the site, proposed travel routes form the site to recycling facilities, and either written or graphic information or both to indicate how waste will be diverted from landfills, and calculations of estimated quantities to establish the sustainability baseline. The CWMP will include a write up of the process for waste separation and recycling. The CWMP shall include the following details:

a. The collection and separation of each type of waste deemed reusable or recyclable. Designation of specific area(s) on the construction site for segregated or comingled collection of recyclable materials;

b. Tracking of recycling efforts throughout the construction process;

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c. Materials to be recycled, which may include cardboard, asphalt, metal, brick, mineral fiber panel, concrete, plastic, clean wood, glass, gypsum wallboard, carpet, and insulation;

d. Materials to be re-used in the Work, such as demolished concrete to be crushed and used as aggregate base. Indicate items to be salvaged and re-used in the Work, and items to be salvaged and turned over to jurisdictional authorities or utilities in accordance with Contract requirements;

e. Items to be removed for salvage and sale or re-use through donation to identified charitable or other organizations; and

f. Materials that are not recyclable or otherwise recoverable, and which will be disposed of in landfill (or other means acceptable to the State and other jurisdictional authorities). Explain why these materials are not recyclable or otherwise recoverable. Include a list of permitted landfill or other permitted disposal facilities that will be accepting waste materials.

g. The identified recycling facilities and demonstration of capacity to receive identified materials.

44.3.3 Innovative Project Sustainability Methods

Within the plans above, the Contractor shall consider improvements to the sustainability of the Project with innovations such as:

a. Construction and demolition debris which may be candidates for recycling and reuse on-site include non-hazardous and non-contaminated solid waste resulting from construction, repair, renovation, or demolition operations such as, concrete, cement, masonry materials, scrap metal, rock, wood (not treated), glass, plastics, landscape materials, piping/plumbing materials, drywall, asphalt pavement, and other construction materials; Modular construction and offsite fabrication to minimize on-Site waste;

b. Using low impact development approaches like permeable pavement and cool and green roofs for temporary facilities;

c. Reusable formwork;

d. Packaging take-back arrangements with suppliers;

e. Selection of compostable or re-usable temporary erosion control devices;

f. Minimizing site travel;

g. FSC-certified timber for on-site carpentry or formwork;

h. Recycling and composting facilities in Site offices;

i. Recycled paper for Site office use;

j. Purchase products formulated with safer chemicals to reduce chemical exposures to workers and the public;

k. Use of electronic reference standards; and

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l. Paperless documentation, records management, and submittal process during design and construction to the extent permitted by the Authority and other governmental agencies including federal and state.

The SMP shall document all measures the Contractor shall take that are beyond regulatory requirements and Contract requirements for use of recycled materials, construction site emissions, energy efficiency, water efficiency, pollution controls, construction waste management, and any other sustainability practices that the Contractor considers exemplary.

44.4 Reporting

The Contractor shall enter and upload monthly reporting via EMMA on its sustainability and construction waste management activities including:

a. Off-Site recycling services and identification of the hauler of each designated material or item, who have agreed to accept and divert that item from landfill, in the proposed quantities. Schedule each item and list off-site recycling service and hauler company name, telephone number, address, and person(s) contacted;

b. Delivery receipts for the materials and waste materials sent to the permitted recycling facilities, processing facilities, or landfill;

c. Delivery receipts for the materials and salvaged items donated, sold, or delivered to jurisdictional authority or Utility Owner;

d. Documentation for these materials and salvaged items re-used as part of the Work;

e. Data including equipment type, serial number, engine model year, estimated load factor, total hours used daily, of on- and off-road equipment used on site, fuel use (by type of fuel), water use, power use, materials delivery (distance, equipment type and model year, fuel type), waste (recycled quantity, reused quantity, type of waste and disposal destination), and diesel emissions (of any equipment or activity not captured elsewhere); and

f. The use of post-consumer, post-industrial recycled products, and materials including data on type of material/product, quantity, location/structure, and dollar value.

At Substantial Completion, the Contractor shall complete a Contract close-out report, documenting final levels of fuel savings, emissions savings, energy savings, water savings, recycling/waste diversion, and materials goals against the Construction GHG Emissions baseline.

44.5 Materials Quantity Estimate

The Contractor shall provide quantity estimates as inputs to the Authority's energy analysis for construction materials. Upon completion of final design for incremental sections, the Contractor shall enter and upload a quantity estimate for that section of completed design, using the materials report form in EMMA, of the following materials:

a. Concrete (cast in place) cubic yards by mix design

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b. Pre-cast cubic yards

c. Aggregate cubic yards

d. Imported fill or soil cubic yards

e. Rebar ton

f. Structural steel ton

Prior to Final Acceptance, the Contractor shall enter and upload an updated materials report form in EMMA with the actual material quantities incorporated into the Project based on the as-built drawings.

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45.0 Labor Code Requirements

45.1 Worker's Compensation

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

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

45.2 Prevailing Wages

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

45.3 Hours of Work

Eight hours labor constitutes a legal day's work.

45.3.1 Specific Labor Code Provisions

The Contractor's attention is directed to the requirements of the Labor Code in this Section 45.3.1. A copy of each such Code section shall be included in each subcontract.

45.3.1.1 Labor Code Section 1771

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

45.3.1.2 Labor Code Section 1775

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

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

a. Whether the failure of the contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or Subcontractor;

b. Whether the contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations;

c. The penalty may not be less than forty dollars ($40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or Subcontractor;

d. The penalty may not be less than eighty dollars ($80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or Subcontractor has been assessed penalties within the previous 3 years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned; and

e. The penalty may not be less than one hundred and twenty dollars ($120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

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

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

The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the contractor or Subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

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

i. The contract executed between the contractor and the Subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1776, 1777.5, 1813, and 1815.

ii. The contractor shall monitor and ensure the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees, by periodic review of the certified payroll records of the Subcontractor.

iii. Upon becoming aware of the failure of the Subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public works project.

iv. Prior to making final payment to the Subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

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

45.3.1.3 Labor Code Section 1776

Each contractor and Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time, and overtime hours worked

each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

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

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

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

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

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

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

Cooperation Act of 1978 (29 U.S.C. § 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision of Section 1776 may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

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

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

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

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

The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 [commencing with Section 1798] of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

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

45.3.1.4 Labor Code Section 1777.5

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

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

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

a. The apprenticeship standards and apprentice agreements under which he or she is training; and

b. The rules and regulations of the California Apprenticeship Council.

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

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

Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and

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the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

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

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

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

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

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

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

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

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

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

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

At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

i. If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made;

ii. If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program; and

iii. All training contributions not distributed under subparagraphs (A) and (B) of Section 1777.5 shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

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

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

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

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

45.3.1.5 Labor Code Section 1813

The contractor or Subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

45.3.1.6 Labor Code Section 1815

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

45.3.1.7 Labor Nondiscrimination

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

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

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

45.3.1.8 Nondiscrimination

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

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

46.0 Federal Requirements

The Contractor understands that the Authority 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 Contractor acknowledges that federal laws, regulations, policies, and related administrative practices may change and that such changed requirements shall apply to the Project. The Contractor 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.

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a

party to this Contract and shall not be subject to any obligations or liabilities to the Authority, the Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

Notwithstanding anything to the contrary contained in this Contract, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of FRA requirements.

46.1 Compliance with Federal Requirements

The Contractor's failure to so comply with federal requirements shall constitute a material breach of this Contract.

46.2 Access Requirements for Individuals with Disabilities

The Contractor 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.

46.3 Environmental Requirements

When performing work under this Contract, the Contractor and any Subcontractor shall comply with all applicable Environmental Requirements, Laws and regulations, as amended, including but not limited to the following:

46.3.1 Clean Air

The Contractor 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.

46.3.2 Clean Water

The Contractor 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 Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding $50,000, financed in whole or in part with federal assistance provided by the FRA.

46.3.3 National Historic Preservation

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal National Historic Preservation Act, as amended, 16 U.S.C. 470 *et seq*. The Contractor agrees to report each violation to the Authority, and understands and agrees

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that the Authority shall, in turn, report each violation as required to assure notification to the National Park Service and the appropriate State Historic Preservation Office.

The Contractor also agrees to include these requirements in each subcontract exceeding $50,000, financed in whole or in part with federal assistance provided by the FRA.

46.3.4 Energy Conservation

The Contractor 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.*).

46.3.5 Agreement Not To Use Violating Facilities

The Contractor agrees not to use any facility to perform Work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Contractor shall promptly notify the Authority if the Contractor or 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 Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.

46.3.6 Environmental Protection

The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*

46.3.7 Incorporation of Provisions

The Contractor shall include the above provisions in this Section 46.3 in every Subcontract hereunder exceeding $50,000 financed in whole or in part with federal assistance.

46.4 Recycled Products

The Contractor shall comply with all applicable requirements of Section 6002 of 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.

46.5 Fly America

The Contractor 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 Contractor 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 Contractor agrees to include the requirements of this section in all Subcontracts that may involve international air transportation.

46.6 Restrictions on Lobbying

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer, or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601) who has made lobbying contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier-to-tier up to the recipient. See the form entitled "Certification Regarding Lobbying" in Section 46.19.

46.6.1 Fraud and False or Fraudulent Statements, and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. 13), as amended, 31 U.S.C. § 3801 *et seq.*, and U.S. DOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to this Project. Upon execution of this Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FRA assisted project for which Work is being performed under this Contract. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as cited above on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FRA, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1) on the Contractor, to the extent the federal government deems appropriate.

The Contractor agrees to include the above paragraphs in each Subcontract financed in whole or in part with federal assistance provided by FRA. It is further agreed that the paragraphs shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

46.6.2 No Obligation by the Federal Government

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract,

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absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above paragraph in each Subcontract financed in whole or in part with federal assistance provided by FRA. It is further agreed that the paragraph shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

46.6.3 Debarment and Suspension

This Contract is a covered transaction for purposes of 2 C.F.R. Part 1200. As such, the Contractor 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.

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Contractor must verify that the Subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" such certifications to (EPLS) at the following website:

https://www.sam.gov/portal/public/SAM//

The Contractor shall obtain appropriate certifications from each such Subcontractor and provide such certifications to the Authority. The Contractor shall include a term or condition in the contract documents for each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each Subcontractor will review the "Excluded Parties Listing System," will obtain certifications from lower tier Subcontractors, and will include a similar term or condition in each of its lower-tier covered transactions.

Should the Contractor or any Subcontractor become excluded or disqualified as defined in this section during the life of the Contract, the Contractor shall immediately inform the Authority of this exclusion or disqualification.

46.7 Civil Rights

The following requirements apply to the Contract:

46.7.1 Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d; Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102; Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; and 49 U.S.C. § 306, the Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Contract. In

addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

46.7.2 Equal Employment Opportunity

The following equal employment opportunity requirements apply to this Contract:

46.7.2.1 Race, Color, Religion, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," including 41 C.F.R 60 *et seq.* (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following:

a. Employment;

b. Upgrading;

c. Demotion or transfer;

d. Recruitment or recruitment advertising;

e. Layoff or termination;

f. Rates of pay or other forms of compensation; and

g. Selection for training, including apprenticeship.

In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

46.7.2.2 Age

In accordance with Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

46.7.2.3 Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R Part 1630, pertaining to employment

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of persons with disabilities. Further, in accordance with Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 794, the Contractor also agrees that it will comply with the requirements of U.S. DOT, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

The Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, and to comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-2, cited in FR-HSR-009-10-01-05 as 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FRA, modified only if necessary to identify the affected parties.

46.8 Access to Records

The Contractor agrees to provide the Authority, the Secretary of the U.S. Department of Transportation, the FRA Administrator, the Comptroller General of the United States, or any of their authorized representatives' access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Pursuant to 49 C.F.R. § 18.26(i)(11), 49 C.F.R. § 19.26, or A-133 (whichever applicable) the Contractor agrees to maintain all books, records, accounts, and reports required under this Contract for a period of not less than seven years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. The Contractor shall notify the Authority not less than six months prior to disposal of any books, records, accounts and reports.

The Contractor agrees to assist the Authority to comply with the reporting requirements set forth in the Project funding agreements, including assistance with the monitoring, program performance reporting and financial reporting requirements in 49 C.F.R. §§ 18.40 and 18.41.

46.9 Contracts Involving Federal Privacy Act Requirements

a. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552(a). Among other things, the Contractor agrees to obtain the express consent of the federal government before the Contractor or its employees operate a system of records on behalf of the federal government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved with the maintenance of federal records, and that failure to comply with the terms of the Privacy Act may result in termination of this Contract; and

b. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by the FRA.

46.10 Seismic Safety

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

46.11 Not Used

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46.12 Buy America

The Contractor shall comply with 49 U.S.C. 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 Asked Questions available at:

http://www.fra.dot.gov/Page/P0391

Appropriate Buy America certifications in the following form shall be provided with the executed Contract and with each Change Order Proposal that includes steel, iron, and manufactured products. The Authority shall not approve a contract or such Change Order Proposal unless the completed Buy America certification is provided. If a Certificate of Non-Compliance is provided, the Contract or Change Order Proposal will be accepted only if the Authority determines that an exception to the Buy America requirements might apply and has requested and received a Waiver from the US Secretary of Transportation.

46.12.1 Certification Requirement for Procurement of Steel, Iron, or Manufactured Goods

a. Certificate of Compliance with 49 U.S.C. § 24405(a)

The Contractor hereby certifies that it will meet the requirements of 49 U.S.C. § 24405(a)

Date: _____

Signature: _____

Company Name: _____

Title _____

b. Certificate of Non-Compliance with 49 U.S.C. § 24405(a)

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 24405(a) but it may meet the requirements for a waiver pursuant to 49 U.S.C. 25505(a) (2) and has provided the Authority with a written Buy America waiver justification.

Date: _____

Signature: _____

Company Name: _____

Title _____

46.12.2 Failure to Demonstrate Compliance

If the Contractor at any time fails to demonstrate that it is in compliance with its certification, the Contractor must take the necessary steps in order to achieve compliance, at no cost to the Authority. The Contractor's failure to comply with this provision shall be a material breach of the Contract.

46.12.3 Waiver Request Justification

Where the Contractor is unable to certify that it will meet the Buy America requirements and believes it may qualify, pursuant to 49 U.S.C. § 24405(a) (2) for a waiver from the Buy America requirements set forth therein, the Contractor must submit to the Authority, along with the required certificate, a written justification detailing the reasons it believes it meets the particular waiver exception(s). If such written justification is necessary, it shall be submitted with the Proposal as required by the Instructions for Proposers of this RFP. At minimum, the Contractor's written waiver request justification shall contain:

a. Description of the Project;

b. Description of the steel, iron or manufactured good not meeting the Buy America requirement;

c. Description of the percentage of U.S. content in the steel, iron, or manufactured goods, as applicable;

d. Description of the efforts made to secure the Buy America compliant steel, iron, or manufactured goods;

e. Description of the bidding process used in the procurement (e.g., whether open or closed, how many bids were received, were any compliant products offered in competing bids);

f. If a waiver is based on price, cost differential(s) that would be incurred in order to secure compliant Buy American steel, iron, or manufactured goods;

g. Citation to the specific 49 U.S.C. § 24405(a) (2) waiver category(s) under which the waiver is sought; and

h. Justification supporting the application of the waiver category(s) cited.

46.12.4 Investigation

If the evidence indicates noncompliance with Buy America requirements, the Authority will or FRA may on its own initiate an investigation. The Contractor shall have the burden of proof to establish compliance with its certification. If the Contractor fails to so demonstrate compliance, then the Contractor shall substitute sufficient domestic materials without revision of the Contract terms. Failure to comply with the provisions of this "Buy America" clause shall constitute a material breach of the Contract and may lead to the initiation of debarment proceedings pursuant to 49 C.F.R. Part 29.

46.13 Cargo Preference

As required by 46 C.F.R. Part 381, the Contractor 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 this 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 paragraph (a) of this section. This bill-of-lading shall be furnished to the Authority (through the Contractor in the case of a Subcontractor's bill-of-lading), and to the Division of National Cargo, Office of Market Development, Maritime Administration, 1200 New Jersey Ave SE, Washington, D.C. 20590, marked with appropriate identification of the Project.

c. To include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

46.14 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 Contractor shall comply with the Contract Compliance provisions set forth in the Technical Assistance Guide for Federal Construction Contractors and for a Mega Project.

46.15 Davis-Bacon and Copeland Anti-Kickback Acts

46.15.1 Minimum Wages

i. The Contractor must pay prevailing wages on the Project, as required by 49 U.S.C. § 24405(c) (2) and section 1606 of the American Recovery and Reinvestment Act of 2009 ("ARRA"). All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the U.S. Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor provided in Attachment G of the Signature Document, regardless of any contractual relationship which may be alleged to exist between the Contractor or Subcontractor and such laborers and mechanics. Notwithstanding the foregoing, for Project components that use ROW owned by a railroad, the Contractor shall comply with the provisions of 49 U.S.C. § 24405(c) (2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. § 24312. For these purposes, wages in collective bargaining agreement negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the Site in a prominent and accessible place where it can be easily seen by the workers.

ii. A. The Authority shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Authority shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the Work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 C.F.R. 5.2(n) (4), such a classification prevails in the area in which the Work is performed.

B. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Authority to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

C. In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Authority do not agree on the proposed

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classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Authority shall refer the questions, including the views of all interested parties and the recommendation of the Authority, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

D. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (ii)(B) or (ii)(C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

iii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

iv. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

v. A. The Authority shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Authority shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

B. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Authority to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

C. In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Authority shall refer the questions, including the views of all interested parties and the recommendation of the Authority, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

D. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (v)(B) or (v)(C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

46.15.2 Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

46.15.3 Payrolls and Basic Records

i. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of six years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the

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plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor or Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii. A. The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the Authority for transmission to the Federal Railroad Administration (FRA). The Contractor is also responsible for the submission of copies of payrolls by all Subcontractors.

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a) (3) (i) of 29 C.F.R. Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402.

B. Each payroll submitted shall be accompanied by a Statement of Compliance signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract, and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of 29 C.F.R. Part 5, and that such information is correct and complete
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract

C. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (ii) (B) of this section.

D. The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

iii. The Contractor or Subcontractor shall make the records required under paragraph (i) of this section available for inspection, copying, or transcription by authorized representatives of

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the Federal Railroad Administration (FRA), the Department of Labor (DOL), and the Authority, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

46.15.4 Apprentices and Trainees

46.15.4.1 Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

46.15.4.2 Trainees

Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

46.15.4.3 Equal Employment Opportunity

The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

46.15.5 Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

46.15.6 Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System

The Contractor and Subcontractors shall comply with the requirements of Executive Order No. 12989, as amended, which are incorporated by reference in this Contract, to use an electronic employment verification system as designated by the Secretary of Homeland Security. This system has been designated to be the United States Citizenship and Immigration Service (USCIS) E-Verify System. The Contractor and its Subcontractors are further required to comply with the Federal Acquisition Regulations, as amended, which require compliance with the E-Verify System and its requirements.

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46.15.7 Subcontracts

The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as the Federal Railroad Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower-tier Subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower-tier Subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

46.15.8 Contract Termination: Debarment

A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

46.15.9 Compliance with Davis-Bacon and Related Acts

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are hereby incorporated by reference in this Contract.

46.15.10 Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general “Disputes” clause (Section 51). Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Authority, the U.S. Department of Labor, or their employees or their representatives.

46.15.11 Certification of Eligibility

By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor, is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

46.16 Contract Work Hours and Safety Standards

46.16.1 Overtime Requirements

Neither the Contractor nor any Subcontractor contracting for any part of the Work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation

at a rate not less than one and one-half (1 1/2) times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

46.16.2 Violation, Liability for Unpaid Wages, Liquidated Damages

In the event of any violation of the clause set forth in Section 46.16.1, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Section 46.16.1, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in Section 46.16.1.

46.16.3 Withholding for Unpaid Wages and Liquidated Damages

The Authority shall upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Section 46.16.2.

46.16.4 Final Labor Summary

The Contractor and each Subcontractor shall furnish to the recipient, upon the completion of the Work, a summary of all employment, indicating for the completed Project, the total hours worked and the total amount earned, as designated by the Authority.

46.16.5 Final Certification

Upon completion of the Work, the Contractor shall submit to the Authority with the voucher for final payment for any work performed, a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form, as designated by the Authority:

THE UNDERSIGNED CONTRACTOR ON CONTRACT:

_____ hereby certifies that all laborers, mechanics, apprentices, and trainees employed by him or by a Subcontractor performing Work on the Project have been paid wages at rates not less than those required by the Contract Documents. Additionally, the above signed Person further certifies that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract Documents or training program provisions applicable to the wage rate paid.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

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46.16.6 Notice to the Recipient of Labor Disputes

Whenever the Contractor has acknowledged that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Authority.

46.16.7 Safety

As determined under applicable health standards promulgated by the Secretary of Labor and pursuant to Section 107 of the Contract Work Hours and Safety Standards Act and DOL Regulations at 29 C.F.R. Part 1926, no laborer or mechanic working on this Contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health and safety.

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

46.16.8 Insertion in Subcontracts

The Contractor and each Subcontractor shall insert in any Subcontracts the clauses set forth in Sections 46.16.1 through 46.16.7 of this "Contract Work Hours and Safety Standards" clause (Section 46.16), and a clause requiring the Subcontractors to include these clauses in any lower-tier Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor (including any lower-tier Subcontractor) with the clauses set forth in Sections 46.16.1 through 46.16.7.

46.17 Site Visits

The Contractor agrees that FRA, through its authorized representatives, has the right, at all reasonable times, 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 Contractor or any of its Subcontractors under this Contract, the Contractor 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 Contractor or Subcontractor. All individuals making site visits must comply with the Contractor's safety standards. If an individual fails to comply with Contractor's safety standards, that individual may be removed from the Work site.

46.18 Reprints of Publications

Whenever an employee of a Contractor-Related Entity writes an article regarding the Project or otherwise resulting from work under this Contract that is published in a scientific, technical, or professional journal or publication, the Contractor shall ensure that the Authority is sent two reprints of the publication, clearly referenced with the appropriate identifying information.

An acknowledgement of FRA support and a disclaimer must appear in any publication, whether copyrighted or not, based on or developed under the Contract, in the following terms:

"This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement FR-HSR-0009-10-01-00, as amended. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT."

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46.19 Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 an 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 contract, 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 contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is 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 31 U.S.C. § 1352. 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.

Executed this _____day of _____, 20 _____.

Company Name: _____

By: _____
(Signature of Company Official)

_____
(Title of Company Official)

Note:
1) If Joint Venture, each Joint Venture member shall provide the above information and sign the certification.

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47.0 Small and Disadvantaged Business Enterprise Program and Community Benefits Agreement

The Contractor shall comply with the Authority's Small and Disadvantaged Business Enterprise Program, which establishes an overall 30 percent goal for SB utilization in the Authority's contracting and procurement program. The Contractor shall also comply with 41 C.F.R. Part 60, Best Practices of 49 C.F.R. Part 26, Executive Order 11246, and Title VI of the Civil Rights Act of 1964 and related statutes.

For more detailed information regarding the Authority's Small and Disadvantaged Business Enterprise Program requirements, including SB utilization reporting, Substitution/Termination processes, Prompt Payment Provisions, Recognized SB Roster of Certifying Agencies and other performance related factors, refer to the Authority's Small and Disadvantaged Business Enterprise Program.

The Contractor shall establish and implement a Small Business Performance Plan to address how the Contractor will meet the overall 30 percent SB goal throughout the duration of the Contract. For more detailed information regarding what components should be in the SB Performance Plan see the SB/DBE Program. The Authority's SB/DBE Program requirements, including the SB Performance Plan expectations, SB utilization reporting, Substitution/Termination processes, Prompt Payment Provisions, Recognized SB Roster of Certifying Agencies, and other performance related factors, are included in the Authority's SB/DBE Program. The document is on the Authority's Small Business website:

http://www.hsr.ca.gov/Programs/Small_Business/index.html

The SB Performance Plan shall be submitted at the date and time specified by the Authority. The SB Performance Plan shall be subject to concurrence by the Authority. If requested by the Authority, either before or after NTP, the Contractor shall revise its SB Performance Plan to incorporate the Authority's comments.

The Contractor shall provide quarterly SB utilization reports to reflect the level of small business utilization, including DBE and DVBE on the Contract, including any amended portion of the Contract.

47.1 Community Benefits Agreement and National Targeted Hiring Initiative Plan

The Contractor shall comply with the Authority's Community Benefits Policy (Resolution #HSRA 12-30 and POLI-SB-05) and Policy, inclusive of the NTHI Plan. The Authority has entered into a Community Benefits Agreement with the State Building and Construction Trades Council of California and the Signatory Craft Councils and Local Unions. The Contractor shall comply with the terms and conditions of the executed Community Benefits Agreement and shall require each Subcontractor (at all tiers) to comply with the executed Community Benefits Agreement.

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48.0 Supplemental Terms and Conditions for Contracts Using ARRA Funds

48.1 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 Authority has the right to cancel, terminate, or suspend the Contract if the Contractor or any Subcontractor fails to comply with the reporting and operational requirements contained herein.

48.2 Enforceability

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

48.3 Prohibition on Use of ARRA Funds

The Contractor agrees in accordance with ARRA, Provision 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 pool.

48.4 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 that use or would use ROW owned by a railroad, the Contractor 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 (45 U.S.C. § 151, *et seq*.) are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use ROW owned by a railroad, the Contractor shall comply with the provisions of 40 U.S.C. § 3141 *et seq.* The Contractor shall also comply with the Copeland "Anti-Kickback" Act provisions of 18 U.S.C. § 874 and 29 C.F.R. Part 3.

When prevailing wage rates apply, the Contractor must submit, with each invoice, a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Authority.

If there is any conflict between State prevailing wages and the federal prevailing wages, the higher rate shall be paid.

Any sub-agreement entered into as a result of this Contract shall contain all of the provisions of this clause.

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48.5 Access and Inspection of Records

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

   i. Access any books, documents, papers and records of the Contractor that directly pertain to, and involve transactions relating to, this Contract for the purposes of making audits examinations, excerpts and transcriptions; and

   ii. Interview any officer or employee of the Contractor or any of its Subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions.

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

48.6 Whistleblower Protection

The Contractor agrees that both it and its Subcontractors shall comply with Section 1553 of 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:

a. Gross mismanagement of a contract relating to ARRA funds;

b. Gross waste of ARRA funds;

c. A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;

d. An abuse of authority related to implementation or use of ARRA funds; or

e. 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.

The Contractor agrees that it and its Subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of ARRA.

48.7 False Claims Act

The Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, Subcontractor, or other person has:

a. Committed a false claim under the False Claims Act; or

b. Has committed a criminal or civil violation of laws pertaining to:

   i. Fraud;

   ii. Conflict of interest;

   iii. Bribery;

   iv. Gratuity; or

   v. Similar misconduct involving ARRA funds.

48.8 Recovery Act Funding Announcement

The Contractor shall post a sign at all fixed project locations at the most publicly accessible location announcing that the project or equipment was funded by the U.S. DOT, FRA, with funds provided through the ARRA. The configuration of the signs or plaques will be consistent with guidance at this website: http://www.fhwa.dot.gov/economicrecovery/arrasignguidance.htm

48.9 Reporting Requirements

The Contractor agrees, if requested by the Authority in writing, to provide the Authority with the following information:

a. The total amount of funds received by the Contractor during the time period defined in the Authority's request;

b. The amount of funds that were expended or obligated during the time period requested;

c. A detailed list of all projects or activities for which funds were expended 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

   4. An estimate of the number of jobs that were either created or retained or both by the project or activity;

d. For any contracts or Subcontracts equal to or greater than $25,000, the following information must be included:

   1. The name of the entity receiving the contract;

   2. The amount of the Subcontract;

   3. The date of execution of the Subcontract;

   4. The transaction type;

   5. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number (if known);

   6. The location of the entity receiving the Subcontract;

7. The primary location of the Subcontract, including the city, state, congressional district, and country;
8. The DUNS number, or name and zip code for the entity headquarters (if known);
9. A unique identifier of the entity receiving the Subcontract and the parent entity of the Subcontractor, should the entity be owned by another; and
11. The names and total compensation of the five most highly compensated officers of the company if it received:
    i. 80 percent or more of its annual gross revenues in federal awards;
    ii. $25,000,000 or more in annual gross revenue from federal awards; and
    iii. If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or Section 6104 of Internal Revenue Code of 1986.

e. For any contracts of less than $25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of the Contractor that the information contained in the report is accurate;

f. Any other information reasonably requested by the State 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.federalregister.gov. The additional requirements will be added to this Contract by amendment.

49.0 Facilities of Others

49.1 Scope of Work

49.1.1 General Scope and Work Excluded

The Contractor is responsible for performing (and the scope of the Third Party Facility Work includes) all Work with respect to existing Third Party Facilities, (including Relocation), that is necessary to accommodate or permit construction, operation, maintenance or use of the Project. As well as, all such work that is necessary to accommodate future CHSRP facilities to be designed and constructed by others as described in the Scope of Work; provided, however, that the Work excludes any efforts and costs which any of the Contract Documents specifically identify(s) as the responsibility of the Third Parties or of the Authority or otherwise specifically excludes from the Third Party Facility Work, such as acquisition of real property. (By way of clarification, efforts and costs assigned to the Authority in a Third Party Agreement, which are otherwise the Contractor's responsibility pursuant to this Section 49.1, shall remain the Contractor's responsibility unless a provision of the Contract Documents expressly states that such efforts and costs are excluded from the Third Party Facility Work.)

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49.1.2 Work Included

Except as otherwise provided in Section 49.1.1, in the Special Provisions, or in the Scope of work the Third Party Facility Work includes the following:

a. Identification and verification of all Third Party Facilities located within or near the Project limits or that may otherwise be impacted by the Project;

b. All other design activities related to the Third Party Facility Work, including planning, local agency encroachment permits, preliminary design, engineering, surveys, coordination with all interested parties, final design, construction document preparation, scheduling, cost estimates, and quality assurance and control;

c. All construction activities related to the Third Party Facility Work, including field surveys and staking, coordination with all affected and interested parties, construction of Relocations, protection of existing facilities, health and safety measures (including traffic control), preparation of as-built drawings, inspections, field engineering, certifications, and quality assurance and control;

d. In some instances, individual Third Parties will design and/or construct all or portions of the Relocation work pertaining to their Facilities. In these specific circumstances, the Contractor shall coordinate, monitor, review, inspect and certify this work;

e. Reimbursement of individual Third Parties for the Relocation work they perform, where the Authority has Cost Liability;

f. Collection of payment from Third Parties where the Third Party has cost liability;

g. All Incidental Utility Work and any other incidental work related to and/or necessary for the successful and complete construction of Relocations;

h. Work related to the Relocation of Cross-Border Utilities, as described in this Section 49.0;

i. Compliance with all local agency and/or private utility permitting and requirements necessary to complete the Third Party Facility Work including payment of all fees, furnishing all warranties and insurances, adherence to design, construction and safety standards, furnishing all mitigation measures and complying with all other required provisions;

j. All necessary coordination with Third Parties;

k. Performance of the Contractor's duties described in the "Right-of-Way" clause (Section 59.0), with respect to the Authority's acquisition of ROW necessary for Third Party Facilities, and preparation of exhibits and other supporting documentation relating to Utility Easements, joint use agreements, consent to common use agreements and other property rights and interests associated with the interests of Third Parties; and

l. All cost monitoring related to Relocation work performed in part or whole by an individual Third Party.

49.1.3 Necessary Relocations

For purposes of Section 49.1.1, Relocations of Third Party Facilities are necessary in the following circumstances:

a. An anticipated physical conflict between the Third Party Facility and the Project (including their respective construction, operation, maintenance, or use);

b. An incompatibility between the Project as designed and the Third Party Facility based on the Authority's requirements as set forth in the Contract Documents (including the Design Criteria), the applicable Third Party Standards, Governmental Approvals and/or Laws (even if there is no physical conflict); and/or

c. An anticipated physical conflict or other incompatibility (as described in the previous bulleted subparagraph) between the Third Party Facility and future CHSRP facilities to be designed and constructed by others as described in the Scope of Work.

The limits of Relocations shall extend as far as is necessary to eliminate said conflicts and incompatibilities in accordance with the requirements of the Contract Documents, whether inside or outside the Project limits. The Contractor shall ensure that all Third Party Facility Relocations are compatible with and interface properly with the Project.

49.1.4 Coordination with Third Parties

The Contractor shall be responsible for coordinating with all Third Parties as necessary to ensure that all Third Party Facility Work performed or managed by such Third Parties integrates and interfaces properly with the Project, as appropriate. The Contractor shall address the Third Party Facilities as part of the coordination efforts required of the Contractor under the "Coordination with Other Contracts" clause (Section 7.5) and the "Interface Coordination and Design Integration" clause (Section 55.0) of these General Provisions (e.g., addressing the work by such Third Parties in the IMP and involving such Third Parties in the required interface coordination workshops).

49.1.5 Relocation of Cross-Border Utilities

The Contractor's responsibility to perform all Relocation work necessary to accommodate the Project under Section 49.1.1 does not include the Relocation of any Third Party Facilities located entirely outside of the Project limits, unless otherwise specified in the Special Provisions. The Contractor's responsibility to perform Relocation work for any Cross-Border Utility shall extend to the tie-in location determined by mutual agreement among the Contractor, the Authority, and the affected Third Party, regardless of whether the tie-in location is located on either side of Project limit. These determinations shall address both the location of the tie-ins for Cross-Border Utilities (including any related design issues) and the schedule for performance of the Relocation work. Neither the Contractor nor the Authority shall be entitled to a change in the Contract Price (either up or down) or to any Completion Deadline based on these determinations. Notwithstanding anything contrary, this Section 49.1.5 does not impose a requirement to perform Work outside of the Site.

The Contractor shall obtain from the Third Party any permits and approvals needed to enter onto its ROW to perform Relocation work. Whenever due to the location of a tie-in the Contractor is responsible for performing Relocation work outside of the Project limits, the Contractor's obligations with respect to Relocations extend to the tie-in location.

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49.1.6 Contractor's Investigations and Reporting of Third Party Facilities

The Contractor shall investigate existing conditions, including taking all actions necessary to identify and confirm the existence and exact location, size, type, and all other relevant characteristics of all Third Party Facilities located within the Project limits as well as any other Third Party Facilities potentially impacted by Project construction (whether or not such Third Party Facilities are shown in the Utility Information or elsewhere in the RFP, and including all potentially impacted Service Lines and all Cross-Border Utilities located within said Project limits). The Contractor's obligations pursuant to this Section 49.1.6 pertain to all Third Party Facilities.

The Contractor shall maintain a Third Party Conflict Matrix in a form that lists all Third Party Facilities affected or potentially affected by the Project. The Third Party Conflict Matrix shall provide not less than the following information for each listed Utility and Public Facility:

a. The name of the Utility Owner or Public Facility Owner;

b. A brief description of the Utility or Public Facility by size, type, and any other relevant characteristics;

c. The location of the Utility or Public Facility;

d. The proposed disposition of the Utility or Public Facility and the date such disposition was approved by the Authority;

e. With respect to Third Party Facilities, the party bearing Cost Liability for the Relocation; and

f. Other such information as the Authority may request.

The first Third Party Conflict Matrix prepared by the Contractor shall identify all changes from and additions to the information provided by the Authority. Each subsequent version of the Third Party Conflict Matrix must identify all changes from the previous version. The Contractor shall incorporate into the Third Party Conflict Matrix the results of the investigations described in this Section 49.1.6, and shall submit one copy of the Third Party Conflict Matrix to the Authority weekly or as otherwise directed by the Authority.

49.1.7 Betterments

49.1.7.1 Betterments Included in the Original Scope of the Work

If any Betterments are included in the original scope of the Work as described in the Contract Documents (whether or not identified as betterments therein), such Betterments are included in the Contract Price and shall not be grounds for any increase in compensation or time extension.

49.1.7.2 Addition of Betterments to the Work

If a Third Party requests that the Contractor design and/or construct a Betterment not included in the original scope of the Work, then, subject to Section 49.1.7.4 the Contractor may negotiate an agreement with the Third Party providing for the Contractor to perform such work, so long as the design and construction of the Betterment do not interfere with the Contractor's efforts to design and construct the Project and do not increase the Authority's costs or delay any

Completion Deadlines. Any such Betterment shall be treated as an addition to the scope of the Work; provided, however, that:

a. Such addition shall not be treated as an Authority-Directed Change; and

b. The Contractor shall not be entitled to any increase in the Contract Price or time extension as a result thereof.

Instead, the Contractor shall arrange to collect payment for such work directly from the Third Party, subject to the provisions of the applicable Third Party Agreement(s).

49.1.7.3 Third Party Projects

If a Third Party requests that the Contractor design and/or construct a Third Party Project, then, subject to Section 49.1.7.4, the Contractor may negotiate an agreement with the Third Party providing for the Contractor to perform such work, so long as the design and construction of the Third Party Project does not interfere with the Contractor's efforts to design and construct the Project and does not increase the Authority's costs or delay any Completion Deadlines. Any Third Party Project that the Contractor agrees to perform shall not be added to or treated as part of the scope of the Work.

49.1.7.4 Limitations

The Contractor shall not proceed with any Betterment or Third Party Project that is incompatible with the Project or cannot be performed within the constraints of applicable Laws, the Governmental Approvals and the Contract Documents, including the Completion Deadlines, in each case as determined by the Authority in its sole discretion. The Contractor shall not be entitled to any additional compensation or time extension hereunder as the result of any Betterment or Third Party Project, whether performed by the Contractor (either outside of this Contract or as part of the Work), or by the Third Party or its contractors. The Contractor shall provide the Authority with such information, analyses, and certificates as the Authority may request in order to determine compliance with this Section 49.1.7.

49.1.8 New Third Party Facility Work

All provisions of the Contract Documents pertaining to Relocations also apply to any new Third Party Facilities included in the scope of the Work that do not result from a Relocation to the same extent that they would apply to existing Third Party Facility, unless the context requires otherwise. In performing Work with respect to such new Third Party Facilities, the Contractor shall comply with all applicable Third Party Agreements. All Work relating to such new Third Party Facilities is included in the Contract Price.

49.2 Agreements

49.2.1 Third Party Agreements

The Contractor shall comply with the terms and conditions of all Third Party Agreements and shall timely perform the Contractor's obligations thereunder (including entry into Task Orders, Utility Agreements and any other agreements called for therein). As well as, any of the

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Authority's obligations thereunder that are the Contractor's responsibility pursuant to these General Provisions or any other Contract Documents. The Contractor shall have no authority to enter into any Third Party Agreements on the Authority's behalf.

49.2.2 Cooperative Agreements

The Authority has entered or intends to enter into Cooperative Agreements with Third Parties known to be impacted by the Project. Nevertheless, the Authority is not required to enter into Cooperative Agreements with Third Parties. Each Cooperative Agreement will govern the Relocation of the Third Party's Facilities to which it relates. Executed and draft Cooperative Agreements are treated as follows:

a. All Cooperative Agreements are Contract Documents.

b. Unless and until a fully executed Cooperative Agreement is provided to the Contractor, a draft Cooperative Agreement will apply as between the Authority and the Contractor.

If Cooperative Agreement for any Third Party is not provided to the Contractor, the terms of California Public Utilities Code § 185505 will apply.

If Relocation is required for any Utility identified in the Utility Information, but for which the Utility Owner is unknown and therefore not identified therein; once the Utility Owner has been determined and if it is not a Utility Owner for which a Cooperative Agreement already exists; the Authority may prepare, negotiate, and enter into a Cooperative Agreement with such Utility Owner. The Contractor is not entitled to a claim or delay because the Utility Owner is unknown or because the Authority has not entered into a Cooperative Agreement with a Utility Owner.

The Contractor will not be a party to any Cooperative Agreements, but shall provide such assistance as the Authority shall reasonably require with respect to negotiating and finalizing Cooperative Agreements and amendments thereto; including attendance at negotiation meetings; providing such design, reports, documentation, and information as may be required for negotiations, and preparation of exhibits. Any executed Cooperative Agreement or amendment thereto provided to the Contractor after the Proposal Deadline will be added to the Contract and will thereupon become a Contract Document.

49.2.3 Task Orders

49.2.3.1 Requirements

All Task Orders are subject to the Authority's approval and shall be three-party agreements among the Authority, the Contractor, and the Third Party. Task Orders may address a single Relocation or a group of Relocations, as appropriate. Task Orders are not required for Incidental Utility Work.

49.2.3.2 Preparation and Execution of Task Orders

Except as otherwise provided in Section 49.2.3.1 and subject to the Authority's approval as provided herein, the Contractor shall prepare, negotiate, and obtain execution of a Task Order(s) for each Relocation where a Task Order is required. For this purpose, the Contractor

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shall use as the basis for preparing each Task Order either a Task Order template provided by the Authority or one developed by the Contractor and approved by the Authority, as directed by the Authority. The Contractor acknowledges that the Third Parties may or may not agree to use said Task Order template; provided, however that each executed Task Order shall, at a minimum:

a. Incorporate the terms of the relevant Cooperative Agreement by reference;

b. Identify the party (the Third Party or the Contractor) responsible for specific Third Party Facility Work;

c. Set forth the schedule and the deadlines for Third Party Facility Work;

d. Allocate cost liability for the Third Party Facility Work;

e. Describe any Third Party Facility Work that is a Betterment;

f. Identify any credits to which the Authority is entitled;

g. Set forth billing and invoicing procedures;

h. Include all applicable requirements imposed by the State of California;

i. Include all applicable requirements imposed by the FRA as conditions of its funding; and

j. Otherwise be acceptable to the Authority.

The Contractor shall submit each draft Task Order to the Authority and the Utility Owner for review, comment and approval. The Authority shall, as applicable, provide its approval of or comments on the draft Task Order within 15 days of submittal. The Contractor shall promptly address the Authority's comments and any comments received from the Utility Owner, and shall resubmit the revised Task Order to the Authority and the Utility Owner for review and approval or comment as provided above. This process shall repeat until the draft Task Order is approved for execution by the Authority and the Utility Owner. Executed Task Orders shall be considered Contract Documents upon execution.

49.2.3.3 Cooperative Agreements and Task Orders

An executed Task Order may include provisions which deviate from the requirements of the applicable Cooperative Agreement (only if such deviation is expressly identified in the Task Order), but shall in no event be deemed to modify the terms of any other Contract Documents or any agreement to which the Authority is a party. If a conflict occurs between the terms of any Task Order and the terms of the Contract Documents, the Contract Documents shall prevail as between the Authority and the Contractor.

49.2.4 Utility Agreements

49.2.4.1 Requirements

All Utility Agreements are subject to the Authority's approval and shall be two-party agreements between the Authority and the Third Party. Utility Agreements may address a single Relocation or a group of Relocations, as appropriate. Utility Agreements are not required for Incidental

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Utility Work. As between the Authority and Contractor, except as otherwise provided in Section 49.1.1, all efforts, costs, or other obligations in a Utility Agreement allocated to the Authority shall be the responsibility of the Contractor.

49.2.4.2 Preparation and Execution of Utility Agreements

Except as otherwise provided in Section 49.4.7 and subject to the Authority's approval as provided herein, the Contractor shall prepare, negotiate, and obtain execution of a Utility Agreement(s) for each Relocation where a Utility Agreement is required. For this purpose, the Contractor shall use as the basis for preparing each Utility Agreement either a Utility Agreement template provided by the Authority or one developed by the Contractor and approved by the Authority, as directed by the Authority. The Contractor acknowledges that the Third Parties may or may not agree to use said Utility Agreement template; provided, however that each executed Utility Agreement shall, at a minimum:

a. Incorporate the terms of the relevant Cooperative Agreement by reference;

b. Identify the party (the Third Party or the Authority) responsible for specific Third Party Facility Work;

c. Set forth the schedule and the deadlines for Third Party Facility Work;

d. Allocate cost liability for the Third Party Facility Work;

e. Describe any Third Party Facility Work that is a Betterment;

f. Identify any credits to which the Authority is entitled;

g. Set forth billing and invoicing procedures;

h. Include all applicable requirements imposed by the State of California;

i. Include all applicable requirements imposed by the FRA as conditions of its funding; and

j. Otherwise be acceptable to the Authority.

The Contractor shall submit each draft Utility Agreement to the Authority and the Utility Owner for review, comment and approval. The Authority shall, as applicable, provide its approval of or comments on the draft Utility Agreement within 15 days of submittal. The Contractor shall promptly address the Authority's comments and any comments received from the Utility Owner, and shall resubmit the revised Utility Agreement to the Authority and the Utility Owner for review and approval or comment as provided above. This process shall repeat until the draft Utility Agreement is approved for execution by the Authority and the Utility Owner. Executed Utility Agreements shall be considered Contract Documents upon execution.

49.2.4.3 Cooperative Agreements and Utility Agreements

An executed Utility Agreement may include provisions which deviate from the requirements of the applicable Cooperative Agreement (only if such deviation is expressly identified in the Utility Agreement), but shall in no event be deemed to modify the terms of any Contract Documents or any other agreement to which the Authority is a party. If a conflict occurs between the terms of

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any Utility Agreement and the terms of the Contract Documents, the Contract Documents shall prevail as between the Authority and the Contractor.

49.3 Compensation/Payment

49.3.1 Contract Price

The Contract Price includes compensation for the following:

a. All Relocation design and construction assigned to the Contractor pursuant to Section 49.4.7;

b. All payments due and owing to Third Parties as a result of or in connection with Relocations (including normal and customary fees or costs imposed by such Third Parties);

c. All of Contractor's direct and indirect costs of coordinating with Third Parties as necessary to ensure that all Third Party Facility Work performed by Third Parties is compatible with and interfaces properly with the Project; and all of Contractor's direct and indirect costs of performing any Contractor obligations arising pursuant to or in connection with the Third Party Agreements and/or related to any Third Party's facilities;

d. Work with respect to new Third Party Facilities;

e. Incidental Utility Work;

f. Maintaining reasonable functionality of existing Third Party Facilities during performance of the Work;

g. Restoration of facilities following Temporary Relocation of a Utility (whether to the original location or a nearby location as approved by the Utility Owner);

h. All of the Contractor's indirect costs associated with Third Party Facility Work;

i. Any additional Relocation work specified in the Special Provisions; and

j. Any other costs of performing Third Party Facility Work, including all other costs of performing Contractor's obligations with respect to Third Party Facilities.

49.3.2 Payments to and Collection from Third Parties

49.3.2.1 Reimbursement by Contractor

The Contractor shall reimburse each Third Party directly for the cost of Relocation work incurred by the Third Party; to the extent the Authority has Cost Liability for such Relocation work, subject to the provisions of the applicable Third Party Agreement(s) and excluding any costs incurred by Utility Owners to acquire Utility Easements.

49.3.2.2 Contractor's Failure to Pay

If the Contractor fails to make any payment to a Third Party required by Section 49.0 within 10 days of receipt of the Authority's notice requesting such payment, then the Authority may make such payment and deduct the payment amount from any moneys due or to become due to the Contractor and/or obtain reimbursement from the Contractor for such cost.

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49.3.2.3 Utility Escrow Account

The Contractor shall set up an escrow account for each Third Party who's Cooperative Agreement includes a provision allowing the Third Party to be paid from an escrow in the event the Contractor fails to make a payment to the Third Party on a timely basis. The Contractor shall establish each escrow in accordance with the requirements of the applicable Cooperative Agreement. At the time it establishes the escrow, the Contractor shall, out of its own funds, place into the escrow the amount specified in the applicable Cooperative Agreement. The Contractor shall maintain this minimum amount in the escrow at all times until the Third Party is fully paid for its Relocation work under the Cooperative Agreement. The Contractor shall not submit for progress payment any of the Relocation work covered by the escrows unless and until the Relocation work is actually performed by the Third Party and funds are paid either directly from the Contractor or from the escrow to the Third Party for expenses actually incurred by the Third Party.

49.3.2.4 Collection by Contractor

Where the affected Third Party has Cost Liability for Third Party Facility Work, the Contractor shall collect the appropriate reimbursement directly from the Third Party, subject to the provisions of the applicable Third Party Agreement(s).

49.3.2.5 Third Party's Failure to Pay

If for any reason the Contractor is unable to collect amounts due from an Third Party pursuant to Section 49.3.2.4, the Contractor shall notify the Authority and shall resolve such dispute directly with the Third Party, subject to the requirements of Section 49.5.4. The Contractor shall not be entitled to any additional compensation from the Authority on account of any unpaid amounts owed by Third Parties.

49.3.2.6 Cost Liability

For each Third Party Facility impacted by the Project, the initial determination of whether Cost Liability lies with the Third Party or the Authority shall be specified in the applicable Cooperative Agreement. If the Cost Liability for a particular Third Party Facility is not indicated in the Cooperative Agreement, the Authority shall be deemed to have Cost Liability.

49.3.3 Records

The Contractor shall maintain separate and distinct records to track the cost of designing and constructing all Third Party Facility Work as well as for Relocations designed and constructed by Third Parties. The Contractor shall provide the Authority with access to all such records.

49.4 Changes

49.4.1 Change Orders

The Contractor shall be entitled to receive a Change Order increasing the Contract Price and extending applicable Completion Deadlines for additional costs and delays associated with Relocations and with Facilities owned by Third Parties; as permitted by this Section 49.0 and for circumstances for which a Change Order is independently permitted under the "Changes"

clause (Section 17.0), and for no others. A deductive Change Order for reductions in the Work described in this Section shall be issued in the circumstances providing for a decrease in the Contract Price described in this Section 49.0 and in circumstances for which a deductive Change Order is independently permitted under the "Changes" clause (Section 17.0). All Change Orders pursuant to this Section 49.0 shall be subject to the limitations, restrictions, and procedures set forth in the "Changes" clause (Section 17.0) or in the "Equitable Adjustments" clause (Section 23.0).

49.4.2 Acknowledgments and Waivers

Except as expressly provided otherwise in Section 49.4.5, the Parties specifically intend by this Section 49.4.2 to delegate to the Contractor the obligation to perform all responsibilities with respect to identification of Utilities, and to allocate to the Contractor all risk of increased costs and time of the Work resulting from inaccuracies in the reputed locations of such Third Party Facilities (and in any other relevant information with respect to such Third Party Facilities). The Contractor acknowledges and agrees that:

a. Except as otherwise provided in Sections 49.4.5, 49.4.6 and 49.5.2 with respect to certain underground Utilities, any information concerning the location, nature or other characteristic of a Utility contained in the Utility Information or elsewhere in the Reference Materials or Contract Documents is for informational purposes only, has not been verified by the Authority, may be inaccurate, and shall not be relied upon by the Contractor;

b. The Authority has not confirmed or determined the extent of the investigation performed by Utility Owners who have provided or confirmed the information provided concerning their Utilities;

c. Any information concerning existing Utilities found outside the Utility Information shall not be deemed "indicated in the plans and specifications" as that term is used in Government Code Section 4215;

d. Sections 49.4 and 49.5.2 satisfy the Authority's obligations pursuant to California Government Code section 4215; and

e. To the extent that California Government Code section 4215 might be construed to the contrary, the Contractor hereby waives the benefit of such statute.

49.4.3 Assumption of Third Party Facility Risks by Contractor

The Contractor agrees that:

i. The Contract Price covers all of the Third Party Facility Work described in the Contract Documents; and

ii. It is feasible to obtain and/or perform all necessary Relocations and work with respect to all Third Party Facilities within the time deadlines of the Contract Documents.

Without limiting the generality of the foregoing, the Contractor acknowledges and agrees that:

a. Prior to the date of execution hereof, the Contractor analyzed the risks involved and in calculating the Contract Price included adjustments deemed appropriate by the Contractor to account for the potential risks of additional costs and delays relating to Relocations;

b. Except as specified in Section 49.5, the Contractor shall not be entitled to any Change Order with respect to any Relocation, including any act or failure to act of any Third Party which may result in a delay to the Contractor's planned schedule or in the Contractor's incurring costs not included in its budget for the Project; and

c. The Contractor shall not be entitled to a Change Order for any costs or delays which it may incur attributable to any errors, omissions, inconsistencies, or other defects in designs furnished by Third Parties for Relocations.

49.4.4 Accuracy of Utility Information

The Contractor acknowledges that prior to the Proposal Deadline, the Contractor had ample opportunity to analyze the Utility Information, to contact and make inquiries of Utility Owners, and to perform such additional investigations as it deems appropriate to verify and supplement such information, and that such investigations constituted the basis for establishing its Proposal price.

The Contractor shall verify all information with respect to Utilities included in the Utility Information or elsewhere in the Reference Materials or Contract Documents and shall perform its own investigations as provided in Section 49.1.6. Accordingly, there shall be no changes in the Contract Price (either up or down) and no extensions of any Completion Deadlines on account of any inaccuracies in the Reference Materials or Contract Documents with respect to any Utility (including its existence, location, ownership, type, and/or any other characteristic), unless otherwise expressly allowed pursuant to Sections 49.4.5, 49.4.6, and 49.5.2.

49.4.5 Inaccuracy Increasing the Work

If any existing underground Utility located within the Project limits is not indicated in any way in the Utility Information (i.e., is "unidentified"), or is not indicated with Reasonable Accuracy therein (i.e., is "misidentified"), then upon the Contractor's fulfillment of all applicable requirements of the “Changes” clause (Section 17.0) and the “Equitable Adjustments” clause (Section 23.0), and subject to the limitations contained in this Section 49.4, and/or in the applicable provisions of said Sections 17.0 and 23.0 the Contractor shall be entitled to:

a. A Change Order increasing the Contract Price in an amount equal to the incremental increase in the direct costs of performing the Utility Work arising from the fact that the Utility was unidentified or misidentified provided, however, that any such increase in the Contract Price shall be limited to:

   1. Costs of the types described in subparagraph (a) and subparagraph (b) of Section 49.3.1; and

   2. If the Contractor is entitled to an extension of any Completion Deadline pursuant to Section 49.5.2 on account of a delay to the Critical Path as described therein, compensation for idle time of equipment on account of such delay.

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Notwithstanding the foregoing, the Contractor shall be fully liable for, and no Change Order shall be issued with respect to, unidentified or misidentified underground Utilities to the extent that:

a. The existence of the Utility, or Reasonably Accurate information concerning the Utility, as applicable, was known to the Contractor as of the Proposal Deadline;

b. A surface inspection of the area prior to the Proposal Deadline would have shown the existence or the reasonable likelihood of the existence of the Utility with Reasonable Accuracy, by reason of above-ground facilities such as buildings, meters, junction boxes or identifying markers; or

c. The exercise of reasonable care (including appropriate inquiry of the Utility Owner) would have indicated the Utility with Reasonable Accuracy.

49.4.6 Inaccuracy Decreasing the Work

The Authority shall be entitled to a Change Order reducing the Contract Price to reflect the full value of any reduction in the Work that is directly attributable to such correction if any underground Utility identified in the Utility Information is not identified therein with Reasonable Accuracy, and if as a result of corrected information:

a. It is not necessary to Relocate such Utility; or

b. There is a reduction in the cost of the Work necessary to Relocate such Utility.

Such Change Order shall be based on the Parties' reasonable estimate of the reduction in the cost of performance of such Work (including mark-ups).

49.4.7 Initial Allocation of Work Responsibility

The Contractor is responsible for performing design and construction of all Relocations, except where such work is assigned to the Third Party pursuant to the applicable Cooperative Agreements. For purposes of this Section 49.0, references to responsibility for performing Relocation design or construction include all tasks customarily associated therewith; provided, however, that the Contractor shall be responsible for all coordination with Third Parties that is necessary in order to accomplish all Relocations in compliance with the requirements of the Contract Documents.

49.4.8 Change in Allocation of Work Responsibility

For each Relocation, the allocation of responsibility between the Contractor and a Third Party for performing design and/or construction can be changed from the initial allocation determined pursuant to Section 49.4.7, by any of the following occurring after the Proposal Deadline:

a. Execution of a Cooperative Agreement (whether or not there is a draft Cooperative Agreement for the affected Third Party); or

b. Execution of an amendment to an executed Cooperative Agreement; or

c. Issuance of a Directive Letter by the Authority.

A change in the allocation of work responsibility resulting from the execution of a Cooperative Agreement by a Third Party and the Authority or amendment to a Cooperative Agreement shall be addressed in accordance with Section 49.4.10. Otherwise, such change shall be implemented in accordance with the "Changes" clause (Section 17.0).

Notwithstanding anything in the Contract Documents to the contrary, any changes shifting responsibility for Relocation work from a Third Party to the Contractor or from the Contractor to a Third Party shall not be grounds for any change in the Contract Price or for an extension of any Completion Deadline.

49.4.9 Change in Cost Liability Determination

The Authority may, at any time, notify the Contractor of a change in the determination of Cost Liability for a particular Relocation or group of Relocations. If such change results from the execution of a Cooperative Agreement or amendment to a Cooperative Agreement, such change shall be addressed in accordance with Section 49.4.10. Otherwise, the Authority shall issue a directive letter with respect to such change, and such change in the Work directed by the Authority shall be treated as an Authority-Directed Change, resulting in an increase or decrease in the Contract Price, as applicable. The Contractor shall not be entitled to any time extension on account of a change in Cost Liability determination.

49.4.10 Material Change in Cooperative Agreement

49.4.10.1 Notice of Change

If, after the Proposal Deadline, the Authority and any Third Party enter into a Cooperative Agreement (or an amendment to an existing Cooperative Agreement) that includes terms differing from the terms of the applicable Cooperative Agreement, (or from assumed or deemed terms set forth in the Contract Documents if applicable), then the Authority will promptly provide notice to the Contractor of the agreement or amendment, including a copy of the agreement or amendment. Such changed terms may include:

a. A change in the responsibility for performing design and construction of Relocations from the initial allocation established pursuant to Section 49.4.7;

b. A change in Cost Liability from the determination established pursuant to Section 49.3.2.6;

c. A change in applicable Third Party Standards; and/or

d. Any other changes from the applicable terms established in the Contract Documents.

The Authority's notice shall be considered a directive letter in accordance with the "Changes" clause (Section 17.0) modifying the Third Party Facility Work to account for all such changed terms.

49.4.10.2 Authority-Directed Change

Subject to the other provisions of this Section 49.4.10, any material change in the scope of the Third Party Work as described in Section 49.4.10.1 shall be treated as an Authority-Directed Change. The requirements and limitations set forth in the "Changes" clause (Section 17.0) and

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in the "Equitable Adjustments" clause (Section 23.0) shall apply with respect to such Authority-Directed Changes, except that:

a. The notification and other requirements of this Section 49.4.10 shall apply in lieu of the notice requirements set forth in Section 17.3, and

b. Subject to the provisions of this Section 49.4.10, a notice given by the Contractor pursuant to this Section 49.4.10 shall be treated as a notice given in accordance with Section 17.3.

49.4.10.3 Notice of Change in Draft Cooperative Agreement or Amendment

Within 10 days after the Authority delivers to the Contractor a draft Cooperative Agreement or draft amendment to a Cooperative Agreement, the Contractor shall provide written notice to the Authority of any provisions that the Contractor believes would constitute an Authority-Directed Change (pursuant to Section 49.4.10.2) warranting an increase in the Contract Price or extension of a Completion Deadline. Following delivery of the Contractor's notice, the Contractor shall consult with the Authority to discuss potential methods for modifying the draft Cooperative Agreement or amendment or minimizing its impacts. The Authority may send more than one draft Cooperative Agreement or amendment with regard to a particular Third Party and the Contractor shall respond to each such draft as provided herein.

49.4.10.4 Notice of Change in Executed Cooperative Agreement or Amendment

Notwithstanding any notices given pursuant to Section 49.4.10.3, the Contractor shall notify the Authority in writing within 20 days after the Contractor receives an executed Cooperative Agreement or amendment to a Cooperative Agreement that the Contractor believes constitutes an Authority-Directed Change warranting an increase in the Contract Price or extension of a Completion Deadline pursuant to this Section 49.4.10.

49.4.10.5 Waiver

If the Contractor fails to timely provide any notice required by Sections 49.4.10.3 or 49.4.10.4, the Contractor shall be deemed to have waived any right to later claim that an Authority-Directed Change has occurred and shall be precluded from any relief on account of the terms for which such notice should have been given, notwithstanding the following:

a. Any contrary provision of the Contract Documents;

b. Actual notice or knowledge on the part of the Authority; and

c. Any alleged lack of prejudice to the Authority from the late notice.

49.4.10.6 Timing of Notice

Solely for purposes of determining when notices are required from the Contractor pursuant to Sections 49.4.10.3 or 49.4.10.4, any draft or executed Cooperative Agreements or amendments thereto that were provided to the Contractor during the period between the Proposal Deadline and the date of issuance of NTP shall be deemed to have been given to the Contractor one day after said date of issuance.

49.4.10.7 Contractor's Responsibility

Regardless of the arrangements made with the Third Parties, and except as may be otherwise provided in this "Facilities of Others" clause, the Contractor shall continue to be the responsible party to the Authority for timely performance of all Relocations in accordance with the requirements of the Contract Documents.

49.4.10.8 Incidental Utility Work

Notwithstanding any contrary provision of the Contract Documents, Contractor shall be responsible for all Incidental Utility Work necessary with respect to all Third Party Facilities, without regard to the allocation of work responsibility otherwise established pursuant to this Section 49.0. The Contractor also shall be responsible for furnishing all designs for Incidental Utility Work that it performs, unless such designs are included in designs otherwise supplied by the Utility Owner. Unless otherwise requested by the Utility Owner, no Task Orders or Utility Agreements are required, nor will Task Orders or Utility Agreements be issued, for Incidental Utility Work, and Contractor's responsibility for the same shall not be contingent upon the issuance of a Task Order or Utility Agreement. No increase or decrease in the Contract Price shall be made pursuant to this Section 49.4.10 on account of any change in the allocation of responsibility for Incidental Utility Work.

49.4.11 Decrease in Scope

If any Authority-approved changes to the Third Party Facility Work are made which eliminate or reduce the cost of any Betterments that were included in the original scope of the Work, thereby reducing the cost of the Work, then the Authority shall be entitled to a Change Order reducing the Contract Price, to reflect the value of any reduction in the allowable costs of the Work that is directly attributable to the reduction or elimination of such Betterment. Such Change Order shall be based on the Parties' reasonable estimate of the reduction in allowable costs of performing such Work.

49.4.12 Project Design Changes

Inasmuch as the Contractor is both furnishing the design of and constructing the Project, the Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering such opportunities, the Contractor shall at all times consider the impact of Project design changes on Third Party Facilities with the overall goal of minimizing the necessity for Relocations and relocation or other work with respect to the Third Party Facilities to the extent practicable. Accordingly, except to the extent resulting from Authority-Directed Changes in Project design affecting Relocations or other work with respect to the Third Party Facilities, the following rules shall apply with respect to any resulting delays to the Critical Path and with respect to any cost increases or decreases associated with Project design changes which either:

a. Eliminate or reduce the nature or extent or costs of any Relocation; or

b. Result in unanticipated Relocations or an increase in the nature or extent or costs of existing Relocations or the cost to Authority of relocation or other work with respect to the Third Party Facilities:

1. The Contractor shall not be entitled to any time extension on account of delays to the Critical Path caused by such Project design changes;
2. The Contractor shall not be entitled to any increase in the Contract Price for any such additional costs which it incurs, including both additional Relocation costs and the costs of any additional Work on other aspects of the Project undertaken in order to facilitate the avoidance or minimization of Relocations;
3. The Contract Price shall not be increased as the result of:
   - Any increase in amounts owed by the Contractor to Third Parties that is directly attributable to such Project design change; or
   - Any amounts owed to Third Parties for work which is unusable or which must be redone as a result of such Project design change;
4. The Contractor shall reimburse the Authority for any additional costs incurred by the Authority as the result of any such Project design change (e.g., costs incurred by the Authority for additional or expanded Utility Easements or for relocation or other work with respect to Third Party Facilities);
5. The Contractor shall be responsible for all reimbursement owed to affected Third Parties for "wasted work", either by reimbursing the Third Parties directly, or by reimbursing the Authority for the costs of reimbursing such Third Parties; and
6. The Contractor shall not be obligated to provide a credit to the Authority on account of reductions in the cost of the Work due to any such avoided or reduced Relocations unless the Authority is entitled to such credit pursuant to any other provision of this Section 49.0.

49.4.13 Additional Restrictions on Change Orders

In addition to all of the other requirements and limitations contained in this Section 49.0 and in the “Changes” clause (Section 17.0) and the “Equitable Adjustments” clause (Section 23.0), the entitlement of either the Contractor or the Authority to any Change Order under this Section 49.0 shall be subject to the following restrictions and limitations.

49.4.13.1 Coordination Costs

In no event will the Contractor be awarded any increase in the Contract Price for any increased costs of coordinating with Third Parties or for assisting the Authority in its coordination with Third Parties.

49.4.13.2 Avoidance of Relocations

The Contractor shall at all times consider the impact of design changes on Relocations and on facilities owned by Third Parties with the overall goal of minimizing the necessity for Relocations and relocation and other work with respect to facilities owned by all Third Parties to the extent practicable. Whenever the Contractor claims entitlement to an increase in compensation or a time extension for a Relocation, the Contractor shall bear the burden of:

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a. Proving that the Relocation or work related to Third Party Facilities could not reasonably have been avoided; and

b. Proving and justifying the amount of any costs and/or delays claimed by the Contractor, including demonstrating that the timing and nature of the investigations undertaken by the Contractor were appropriate and that the increased costs and/or time could not have been avoided by the Contractor undertaking more timely and/or appropriate investigation.

49.4.13.3 No Adjustment for Incidental Utility Work

The Contractor shall not be entitled to an adjustment for increased costs of the Work resulting from, or for any extension of time for delays associated with, the performance of Incidental Utility Work by the Contractor or any Third Party.

49.4.13.4 Voluntary Action

If the Contractor elects to make payments to Third Parties or to undertake any other efforts which are not required by the terms of the Contract Documents, the Contractor shall not be entitled to any adjustment in the Contract Price in connection therewith. The Contractor shall promptly notify the Authority of the terms of any such arrangements.

49.5 Delays

49.5.1 Notice

The Contractor shall give notice to the Authority of any circumstance that may lead to a claim under this Section 49.5 within 72 hours after the Contractor's becoming aware that such circumstance has occurred or is likely to occur. Any Change Order under this Section 49.5 is subject to the applicable limitations and restrictions set forth in the "Changes" clause (Section 17.0) and the "Equitable Adjustments" clause (Section 23.0).

49.5.2 Inaccuracies in Utility Information

The Contractor shall be entitled to an extension of any affected Completion Deadline to the extent that any delay in the Critical Path is directly attributable to a circumstance for which the Contractor is entitled to a Change Order for increased costs pursuant to Section 49.4.5.

49.5.3 Third-Party-Caused-Delays

49.5.3.1 Relocations without Executed Task Orders/Utility Agreements

For any Relocation as to which a Task Order or Utility Agreement is necessary and has not yet been executed, the Contractor shall be entitled to one day of extension of any affected Completion Deadline for every two days of delay in the Critical Path that is directly attributable to a delay by a Third Party in completing any task necessary for a Relocation beyond the later to occur of:

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a. The deadline for performance of such work pursuant to the applicable Cooperative Agreement (for purposes of this section, the Third Party's deadline shall not be extended due to the occurrence of a force majeure event that entitles the Third Party to a time extension under the terms of the Cooperative Agreement); and

b. The approved Baseline Schedule for the Project.

No time extension shall be granted pursuant to this Section 49.5 with respect to any delay caused by a Third Party occurring after a Task Order or Utility Agreement has been fully executed with respect to the affected Relocation.

49.5.3.2 Delays Caused by Third Parties

Contractor shall be entitled to one day of extension to any affected Completion Deadline for every two days of delay in the Critical Path that is directly attributable to a delay by a Third Party in completing work outside of the Project limits assigned to it under a Third Party Agreement beyond the later to occur of:

a. The deadline for performance of such work pursuant to the applicable Third Party Agreement (for purposes of this section, the Third Party's deadline shall not be extended due to the occurrence of a force majeure event that entitles the Third Party to a time extension under the terms of the Third Party Agreement); and

b. The approved Baseline Schedule for the Project.

49.5.3.3 Requirements for Obtaining Time Extensions for Delays Caused by Third Parties

Notwithstanding the provisions of Section 49.5.3.1 or 49.5.3.2, the Contractor shall not be entitled to a time extension under either Section 49.5.3.1 or 49.5.3.2 unless both the following conditions are satisfied:

a. The Contractor has made all reasonable efforts to obtain the timely cooperation of the Third Party;

b. If applicable, the Contractor has provided a reasonable Relocation plan to the Third Party that has been approved by the Authority; and

c. The party(s) responsible hereunder for obtaining permits necessary to perform the work that is the subject of the delay (the Contractor, the Authority, and/or the Third Party) has/have obtained, or is/are in a position to timely obtain all such permits.

49.5.4 Failure of Third Parties to Cooperate

49.5.4.1 Notice to Authority

The Contractor shall make diligent efforts to obtain the cooperation of each Third Party as necessary for the Project. The Contractor shall notify the Authority immediately if:

a. The Contractor believes that it will be unable to successfully negotiate and obtain execution of a necessary Task Order or Utility Agreement;

b. The Contractor believes that any Third Party would not undertake or permit a Relocation in a manner consistent with the timely completion of the Project;

c. The Contractor becomes aware that a Third Party is not cooperating in providing needed work or approvals; or

d. Any other dispute arises between the Contractor and any Third Party with respect to the Project, including any dispute as to whether or not a particular Third Party request or requirement is a Betterment.

49.5.4.2 Authority Actions

After giving notice, the Contractor shall continue to diligently pursue the Third Party's cooperation or to otherwise resolve the dispute, as applicable, and may request the Authority's assistance for such purpose. The Contractor shall include in such request evidence satisfactory to the Authority showing that the Contractor has made diligent efforts to obtain the Third Party's cooperation or to otherwise resolve the dispute, but that such efforts have not succeeded. The Authority may elect whether or not to provide the requested assistance; provided, however, that if the dispute involves determination as to a Betterment, the Authority shall reasonably cooperate with the Contractor in any action or proceeding brought by the Contractor to establish that such request or requirement is a Betterment, at no cost to the Authority other than the time of its internal staff. Without limiting the generality of the foregoing, the Authority shall not be obligated to take legal action against an uncooperative Third Party (and/or to undertake such other alternate proceeding to enforce the Third Party's obligations as may be authorized by the applicable Third Party Agreement(s)), unless the Authority elects to do so in its sole discretion. The Authority may, at its sole discretion, participate in the resolution of any dispute between the Contractor and a Third Party, whether or not requested to do so by the Contractor.

49.5.4.3 Contractor Actions

As requested by the Authority, the Contractor shall cooperate with the Authority in any efforts to obtain Third Party cooperation and/or to resolve disputes with them, including in connection with any lawsuit or alternate proceedings undertaken by the Authority for such purpose. Such cooperation shall include the Contractor's staff and consultants acting as witnesses in lawsuits and proceedings and providing testimony, information, reports, graphs, photos, plans, renderings, and similar materials to the Authority's counsel at the Contractor's expense. The Authority shall remit to the Contractor any amounts collected on the Contractor's behalf as a result of any such action or proceeding, after first deducting therefrom all costs (including attorneys', accountants', and expert witness fees and costs plus an administrative charge equal to 10 percent of the costs) incurred by the Authority in pursuing such action or proceeding. Any assistance provided by the Authority shall not relieve the Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations under the Contract Documents and timely completion of all necessary Relocations.

49.5.4.4 Performance of Work by Contractor

In certain cases where a Third Party is not cooperating with the Contractor or the Authority, the Authority may, in its sole discretion and where permitted pursuant to applicable Laws, issue a

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directive letter directing the Contractor to proceed with a Relocation without an agreement or other written consent from the Third Party. In other cases, if a Third Party fails to complete work for which it is responsible on or before the deadline established in the applicable Third Party Agreement(s), or if the Authority reasonably determines that the Third Party will be unable to timely complete such work, then the Authority may, in its sole discretion and if permitted by applicable Laws and/or the applicable Third Party Agreement(s), terminate the Third Party's performance of such work and either direct the Contractor to perform such work or cause it to be performed by another contractor.

49.6 Insurance/Bonds

All Third Party Facility Work shall be covered by the payment and performance bonds (see Attachments D and E of the Signature Document) required under the Contract. All premiums for including such Third Party Facility Work in the payment and performance bonds required hereunder shall be included in the Contract Price. Any liability insurance required by a Third Party for Third Party Facility Work shall be provided by naming such Third Party as an additional insured on the insurance provided by the Contractor pursuant to the Contract.

49.7 Railroad Agreements

49.7.1 General

This "Railroad Agreements" clause describes how responsibility and liability are allocated between the Parties related to the Railroad Agreements.

49.7.2 Executed Agreements

The Authority shall provide the Contractor with executed versions of any Railroad Agreements that were not executed and provided to the Contractor prior to the Proposal Deadline. The Contractor shall comply with the terms of the executed versions of such Railroad Agreements, which shall supersede the terms of the draft versions of the corresponding Railroad Agreements. Any changes in the scope of the Work to be performed by Contractor as a result of material modifications contained in the executed versions of the Railroad Agreements from the draft versions of the corresponding Railroad Agreements that have a material adverse impact on the Contractor's obligations hereunder and was not caused by the construction means, methods, and techniques employed by Contractor, shall be treated as an Authority-Directed Change.

An executed version of a Railroad Agreement delivered by the Authority shall be considered a directive letter in accordance with Section 17.0. The requirements and limitations set forth in Sections 17.0 and 23.0 shall apply to Authority-Directed Changes under this section, with the exception of the following:

a. The notification and other requirements regarding executed Cooperative Agreements in Section 49.4.10.4 through 49.4.10.6 shall apply in lieu of the notice requirements set forth in the "Changes" clause (Section 17.0); and

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b. Subject to the provisions in Section 49.4.10.4 through 49.4.10.6, solely for purposes of determining Contractor's satisfaction of the notice requirement that is a condition precedent to Contractor's right to a Change Order, a notice given by the Contractor pursuant to this Section 49.7.2 shall be treated as a notice given in accordance with Section 17.3.

49.7.3 Contractor Duties under the Railroad Agreements

Subject to Section 49.1.7, without any increase in the cost or time of performance of the Work, Contractor shall:

a. Perform all tasks and duties attributed to the Authority's contractor in the Railroad Agreements; and

b. Perform all tasks and duties attributed to the Authority in the Railroad Agreements except for the Authority's obligations to make payments to the railroads and to provide notice of Change Orders.

49.7.4 Failure of Railroads to Cooperate

The Contractor and the Authority's obligations under Section 49.5.4 regarding the failure of Third Parties to cooperate shall apply to the railroads' failure to cooperate as if the railroads were Third Parties provided that:

a. This provision shall not otherwise result in the Contract Documents treating railroads as Third Parties; and

b. Subparagraph (a) and subparagraph (b) in Section 49.5.4.1, as well as the language throughout Section 49.5.4 regarding Betterments do not apply.

49.7.5 Railroad-Caused Delays

Subject to the terms of the "Changes" clause (Section 17.0) and the "Equitable Adjustments" clause (Section 23.0), the Contractor shall be entitled to a one-day of extension of any affected Completion Deadline for every two days of delay in the Critical Path that is directly attributable to a delay by a railroad in performing its obligations under a Railroad Agreement.

Notwithstanding the foregoing, the Contractor shall not be entitled to a time extension unless all the following conditions are satisfied:

a. The Contractor has made all reasonable efforts to obtain the timely cooperation of the railroad;

b. The Contractor has provided the Authority and the railroad with reasonable "Preliminary Engineering Documents" for the work that is the subject of the delay; and

c. The party(s) responsible hereunder for obtaining permits necessary to perform the delayed work (the Contractor, the Authority and/or the railroad) has/have obtained, or is/are in a position to timely obtain all such permits.

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50.0 Partnering

The Parties agree to use the principles of partnering, collaboration, and cooperation to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions. Such measures should extend to all levels of the Work, including lower-tiered Subcontractors.

50.1 Post-Award Partnering Workshop

In order to achieve effective and efficient completion of this Project, the Parties agree to conduct a one to two day Partnering Workshop within 60 days of the issuance of the NTP. Certain Project stakeholders have also agreed to participate in the Partnering Workshop. The Partnering Workshop shall be conducted at a facility local to Sacramento, CA, shall be facilitated by an independent facilitator mutually selected by the Contractor and the Authority, and will include the following topics:

a. Developing and implementing an IRL establishing a hierarchy of those individuals responsible for addressing issues as they arise during the course of the Project;

b. Developing and implementing a Partnering Implementation Plan to sustain the partnering relationship after the workshop by establishing regularly scheduled partnering meetings and any procedures necessary for the identification and resolution of issues during the performance of the Work to be addressed by the partnering participants;

c. Conducting facilitated Executive Partnering Sessions among the senior managers of each party to discuss issues related to potential conflicts and to engage in collaborative problem solving;

d. Conducting training for all Parties in teambuilding, collaborative problem solving, and conflict resolution skills;

e. Conducting evaluations of the Project Partnering efforts; and

f. Including language from this “Partnering” clause in contracts for Subcontractors involved in the performance of the Work.

50.2 Periodic Partnering Meetings

The purpose of the periodic partnering meetings scheduled in the aforementioned Partnering Implementation Plan is to evaluate the ongoing efficacy of the partnering relationship and to review its processes as necessary to improve or correct any procedures/practices and to efficiently identify and resolve Project issues.

50.3 Partnering Cost Allocation

The cost of the Partnering Workshop and subsequent partnering meetings shall be borne initially by the Contractor and then the actual cost, without markup, will be invoiced to the Authority as a Change Order.

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50.4 Project Completion

At the completion of the Project, partnering participants shall formally evaluate the Project and goal achievement or failure and what was accomplished by the partnering process by way of, but not limited to; Project quality, cost savings and schedule adherence. Additionally, the evaluations should provide lessons learned and suggestions to improve the partnering process.

50.5 Partnering Confidentiality

Neither the language of this "Partnering Confidentiality" clause nor any statements made or materials prepared during partnering meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any DRB hearing, arbitration or other judicial or dispute resolution proceeding. Notwithstanding the foregoing, the Parties acknowledge and agree that such information may be considered public information under the Public Records Act.

51.0 Dispute Resolution

Except with respect to the Ineligible Matters described below, all disputes between the Parties must be resolved in accordance with this "Dispute Resolution" clause and the "Arbitration" clause (Section 52.0).

51.1 Authority Decision

Before the Contractor may submit any matter to dispute resolution hereunder, it must first obtain a final Authority recommendation in accordance with the following procedures.

If the Contractor objects to any recommendation, action, order, or position of the Authority (including any rejection or modification of a proposed Change Order by the Authority), as a condition precedent to referral of a dispute, the Contractor shall first seek to resolve the dispute through the partnering process, including escalation of the dispute through all levels of the Issue Resolution Ladder. If the dispute is not resolved through partnering, the Contractor shall file a written request for an Authority recommendation with the Authority, within 14 days after completion of the partnering effort. The request shall state clearly, and in detail, the basis for the objection, a statement of the facts asserted, the nature and amount of the costs involved, the Contractor's plan for mitigating such costs, and its best estimate of the schedule impact of the matters that give rise to the potential dispute.

The Authority will consider any timely filed written objection and provide a written response on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the dispute. The response will be furnished, in writing, to the Contractor within two weeks after receipt of the Contractor's written objection, provided that, if no written decision is issued, the Authority shall be deemed to have denied the Contractor's written objection and a response to that effect shall be deemed received by the Contractor at the end of such two-week period.

The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the Contractor furnishes a written appeal to the Authority's

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Chief Executive Officer or designee. In connection with any appeal of the Authority's decision, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. If the Chief Executive Officer or designee fails to issue a new decision within two weeks after the date on which the appeal is submitted, the Authority's previous decision shall be final and conclusive at the end of the two-week period. If the Chief Executive Officer or designee issues a new decision within the two-week period, such decision shall be the Authority's decision and shall be final and conclusive unless the dispute is referred to the DRB.

If the dispute is not resolved by the Chief Executive Officer's or designee's decision, either Party may refer the dispute to the DRB; provided, however, that the Contractor must refer the dispute to the DRB within 42 days from the date of the Contractor's receipt (or deemed receipt) of the Authority's final decision. Pending the final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Authority's decision. If it is determined, on appeal, that the Authority's interpretation of the Contract, direction to the Contractor, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under the Contract, the Contractor's sole remedy shall be the same as if such action were a "Changes" pursuant to Section 17.0 of these General Provisions.

In the event the Contractor fails to file a written objection or to appeal a decision by the Authority within the time periods specified herein, or if the Contractor fails to refer the dispute to the DRB within the specified time period, the Contractor shall be deemed to have waived any and all rights it may have to object to or to seek DRB review of such decision, action, or order. This waiver shall occur whether or not there is any showing of prejudice to the Authority resulting from the delay in filing the objection.

As a condition to Final Acceptance, the Contractor shall identify all outstanding matters relating to this Contract that have been elevated to the dispute resolution process. By provision of the list of outstanding matters, or by its failure to provide such a list, the Contractor shall be deemed to have waived any and all rights it may have to make any claim against the Authority with respect to this Contract except with respect to the listed matters, provided that such waiver shall not extend to any matters arising after Final Acceptance with respect to obligations of the Parties under the Contract after Final Acceptance.

51.2 Continuance of Work during Dispute

At all times during the course of the dispute resolution process, the Contractor shall continue with the Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, orders; and shall be governed by all applicable provisions of the Contract. The Contractor shall keep records of the Work in sufficient detail to enable payment in accordance with applicable provisions in this Contract irrespective of the ultimate outcome of any dispute.

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51.3 Disputes Resolution Board

A standing DRB will be established to assist in the resolution of disputes, including claims and other controversies, arising out of the Work of this Contract, excluding any Work to be performed after Final Acceptance. This Section 51.0 describes the purpose, procedure, function, and key features of the DRB. A three-party agreement, in the form provided in the Signature Document, shall be executed by the Authority, the Contractor, and members of the DRB for the purpose of formalizing the creation of the DRB.

The DRB will assist in and facilitate the timely and equitable resolution of disputes between the Authority and the Contractor in an effort to avoid construction delay and litigation. It is not intended for the Authority or the Contractor to default on their normal responsibility to amicably and fairly settle their differences by indiscriminately referring them to the DRB. The Authority and Contractor shall attempt to resolve potential disputes without resorting to the DRB procedures.

The DRB shall fairly and impartially consider disputes referred to it, and shall provide written recommendations to the Authority and the Contractor to assist in the resolution of these disputes.

51.4 Matters Ineligible for DRB Procedures

The following matters (collectively, "Ineligible Matters") are ineligible for resolution through the DRB procedures specified in this Section 51.0:

a. Any matters that the Contract Documents expressly state are final, binding, or not subject to dispute resolution;

b. Any matters relating to the scope or applicability of indemnities provided under the Contract Documents;

c. Any claim for injunctive relief;

d. Any claim against an insurance company, including any Subcontractor dispute that is covered by insurance;

e. Any claim arising solely in tort;

f. Any claim involving a third party which is a necessary or appropriate party to such dispute, including any related claims between the Parties arising therefrom, unless the third party has agreed to the jurisdiction of the DRB in the Cooperative Agreement or otherwise;

g. Any dispute regarding failure to comply with equal employment opportunity requirements or requirements of the Contract relating to SBEs, DBEs, DVBEs and MBs;

h. Any claim for, or dispute based on, remedies expressly created by statute; and

i. Any dispute that is actionable only against a surety.

51.5 Membership

The DRB will consist of one member selected by the Authority, who shall be:

a. A professional engineer and approved by the Contractor;

b. One member selected by the Contractor, who shall be a professional engineer and approved by the Authority; and

c. A third member selected by the first two members who shall be approved by both the Authority and the Contractor. The third member will act as a Chairperson for all DRB activities.

All DRB members shall be experienced with the type of construction involved in this Contract, and interpretation of the Contract documents. The goal in selecting the third member is to complement the experience of the first two DRB members and to provide leadership for the DRB's activities. It is imperative the DRB members show no partiality to either the Contractor or the Authority, or have any conflict of interest.

51.5.1 Criteria and Limitations for Membership on the DRB

The following provide the criteria and limitation for membership on the Dispute Resolution Board:

a. No member shall be an Affiliate of or otherwise have a financial interest in the Contractor, any Subcontractor, the Project, the CHSRP, or in the outcome of any dispute decided hereunder, except for payment for services on the DRB;

b. Except for fee-based consulting services on other projects, no member shall have ever been previously employed by the Authority, Contractor, or any Affiliate (including any work for such entity through an arrangement with his or her direct employer), except for fee-based consulting services on other projects, which are disclosed to the Parties, and no member shall have otherwise had financial ties to any Party during the two years preceding his or her engagement for the DRB;

c. No member shall have had a professional or personal relationship, with the Contractor, any Subcontractor, the Authority, or an employee of any of the foregoing of a nature which could affect his/her ability to impartially resolve disputes;

d. No member shall have had substantial prior involvement in the Project or the CHSRP of a nature, which could affect his/her ability to impartially resolve disputes; and

e. No member shall have a conflict of interest under the Authority's Organizational Conflict of Interest Policy.

Refer to the form of DRB Agreement attached to the Signature Document for additional limitations applicable to DRB members.

Before their appointments are final, the first two prospective members shall submit complete disclosure statements for the approval of both the Authority and Contractor. Each statement shall include:

1. A resume of experience;

2. A declaration describing all past, present, and anticipated or planned future relations to this Contract and the Project, and with all entities involved in the design and construction of the Project, as well as any other possible or potential conflicts of interest;
3. Disclosure of all relationships with any Parties or persons otherwise involved in the Project; and
4. A statement that the member meets all criteria applicable to DRB members as specified in the form of DRB Agreement set forth in the Signature Document.

The third DRB member shall supply a similar statement to the first two DRB members and to the Authority and Contractor before his or her appointment is final.

The duty to disclose conflicts of interest shall be continuing. Members of the DRB shall promptly notify the Authority and the Contractor not only of any possible or potential conflict of interest that exists at the time they are appointed to the DRB, but also any possible or potential conflict of interest that they become aware of while they are serving on the DRB.

During each DRB member's tenure on the DRB, neither Party shall employ such DRB member nor contact such DRB member regarding employment, other than as a DRB member; nor shall either Party contact any individual DRB member in an ex parte manner to seek advice or consultation during job site meetings described below or at any other time. If either Party makes such inappropriate contact with a DRB member, the DRB member shall be expected to report such contact to the other Party, and the other Party may in its sole discretion terminate the DRB process. If the DRB process is terminated because of inappropriate contact, the contacting Party shall reimburse the non-contacting Party for all costs incurred to date in the DRB process. The DRB process shall then commence anew from the beginning with the selection of all new members.

51.5.2 Selection of DRB Members

The Authority and the Contractor shall each select and negotiate an interim agreement with their respective member within six weeks after award of this Contract. Immediately after approval, the Authority and Contractor shall notify their members to begin selection of the third member. The first two members shall ensure that the third member meets all of the criteria listed above. The third member shall be selected within four weeks after the first two members are notified to proceed with his or her selection. In the event of an impasse in selection of the third member, that member shall be selected by mutual agreement of the Authority and the Contractor. In so doing, they may, but are not required to, consider the nominees offered by the first two members.

Within a reasonable time after selection of the third member, the Authority, the Contractor, and all three members of the DRB shall execute a three-party agreement in the form provided in the Signature Document.

51.6 Operation

The DRB shall formulate its own rules of operation consistent with the terms and conditions specified herein. It is not desirable to adopt hard and fast rules for the functioning of the DRB.

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The entire procedure shall be kept flexible to adapt to changing situations. The DRB shall initiate, with the Authority's and the Contractor's concurrence, new rules or modifications to old ones whenever this is deemed appropriate. In order to keep abreast of construction developments and progress, the DRB members will be promptly informed of construction activities by means of regular written progress reports and other relevant data prepared by the Contractor and approved by the Authority. The DRB shall visit the Project and meet with representatives of the Authority and the Contractor at intervals as requested by the Authority and the Contractor, and at times of critical construction events. The frequency of these visits shall be as agreed among the Authority, the Contractor, and the DRB, depending on the progress of the Work. During Project visits by the DRB, meetings shall be held at the Site. Each meeting shall consist of an informal round table discussion followed by field inspection of the Work. The round table discussion shall be attended by selected personnel from the Authority and the Contractor. The agenda shall generally include the following:

a. Meeting convened by the chairperson of the DRB;

b. Opening remarks by the Authority's representative;

c. A description by the Contractor's representative of:

   1. The Work accomplished since the last meeting;
   2. The current status of the work schedule;
   3. The schedule for future work;
   4. Potential disputes, claims, and other controversies; and proposed solutions for these problems;

d. A description by the Authority's representative of:

   1. The Work accomplished since the last meeting;
   2. The current status of the work schedule;
   3. The schedule for future work;
   4. Potential disputes, claims, and other controversies; and proposed solutions for these problems; and
   5. Set tentative date for the next Project visit and meeting.

The Contractor shall prepare minutes of the meetings and circulate them for any comments, revisions, and approval of all concerned. The field inspection covering all active segments of the Work shall occur after the meeting. The DRB shall be accompanied by representatives of both the Authority and the Contractor at all times during the field inspection.

51.6.1 Procedure and Schedule for Dispute Resolution

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. If agreed by the Authority, Contractor and DRB members in writing, steps may be omitted and the time periods stated below may be shortened in order to hasten resolution. The Contractor may submit a

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dispute to the DRB only after obtaining a final Authority recommendation as specified in this "Dispute Resolution" clause. The Authority may refer a dispute to the DRB at any time.

A Statement of Dispute shall be submitted to the DRB separately by the Authority and the Contractor stating clearly and in full detail the specific issues of the dispute and its position. Simultaneous with submittal to the DRB, a copy of the Statement of Dispute shall be provided to the other Party.

When a dispute is referred to the DRB, it shall first be decided when to conduct the hearing. If the matter is not urgent, it may be heard at the next scheduled DRB Project visit and/or meeting. For an urgent matter, the DRB shall meet at its earliest convenience.

Once a dispute is referred to the DRB, discovery shall be permitted to the full extent provided by Code of Civil Procedure sections 1283.05(a) through (d); provided that the Parties may agree to shorten the discovery period for individual disputes.

51.6.2 Conduct of Hearing

The DRB may request that written documentation and arguments in addition to the Statements of Dispute be submitted by either Party or both Parties to each DRB member before the hearing begins.

Normally the hearing will be conducted at the Site. However, any location that would be more convenient and still provides all required facilities and access to necessary documentation is satisfactory as determined at the sole discretion of the DRB. Private meetings of the DRB may be held at any convenient location.

The third member of the DRB will act as chair of the hearing. Each member shall keep his or her own notes, and a formal transcript will normally not be prepared. Audio or video recordings will normally not be used. The recommendation to keep a formal transcript or use audio or video recordings shall be at the sole discretion of the DRB.

The Authority and the Contractor shall have representatives at all hearings. The Contractor shall first discuss the dispute, followed by the Authority. Each Party will then be allowed successive rebuttals until all aspects are fully covered. The DRB members may ask questions, request clarification, or ask for additional data. Additional hearings may be necessary if ordered by the DRB, in its sole discretion if determined necessary, to consider and fully understand all the evidence presented by both parties. Both the Authority and the Contractor shall be provided full and adequate opportunity to present all of their evidence, documentation, and testimony regarding all issues before the DRB.

During the hearings, no DRB member shall express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the DRB shall meet to formulate its recommendation. All DRB deliberations shall be conducted in private, with all individual views kept strictly confidential. The DRB's recommendation, together with a detailed explanation of its reasoning, shall be submitted as a written report to both Parties. The recommendation shall be based on the

pertinent Contract provisions, applicable laws and regulations, and the facts and circumstances set forth in the record of the dispute.

The DRB shall make every effort to reach a unanimous recommendation. If this proves to be impossible, the dissenting member shall prepare a written minority report.

51.6.3 Additional Requirements for Subcontractor Demands

For purposes of this "Dispute Resolution" clause, a "Subcontractor Demand" shall include any claim by a Subcontractor (including also any pass-through claims by a lower tier Subcontractor) against Contractor that is actionable by Contractor against the Authority and arises from work, services, or materials provided or to be provided under the Contract Documents. If the Contractor determines to pursue a claim against the Authority that includes a Subcontractor Demand, the following additional conditions shall apply:

a. Pursuant to this "Dispute Resolution" clause, the Contractor shall identify clearly in all submissions that portion of the claim which involves a Subcontractor, including the following:

   1. The Contractor shall include, as part of its submissions, a certification in a form acceptable to the Authority by the Subcontractor's officer, partner, or authorized representative with authority to bind the Subcontractor and with direct knowledge of the facts underlying the Subcontractor's claim;

   2. The Contractor also shall submit a Contractor's certification that:

      i. The Contractor has investigated the basis of the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and time requested, and has reviewed and verified the adequacy of all back-up documentation;

      ii. The Subcontractor's claim has been prepared and submitted in accordance with the terms of the Contract Documents and the applicable Subcontract(s) and contains all information required by the Contract Documents and applicable Subcontract; and

      iii. The Contractor has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented;

b. Any claim under this "Dispute Resolution" clause involving Subcontractor Work shall be considered incomplete if it is not accompanied by such analysis and certification;

c. At any DRB hearing on a dispute that includes one or more Subcontractor Demands, the Contractor shall require that each Subcontractor that is involved in the dispute have present one or more authorized representatives with actual knowledge of the facts underlying the Subcontractor's claim to assist in presenting the Subcontractor's claim and to answer questions raised by the DRB members or the Authority's representatives;

d. Failure of the Contractor to assert a Subcontractor's claim on behalf of any Subcontractor or supplier at the time of filing a written objection with the Authority as provided in the "Authority Decision" clause (Section 51.1), shall constitute a release of the Authority by the Contractor on account of such Subcontractor's claim;

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e. The Contractor shall require in all Subcontracts that all Subcontractors and suppliers of any tier agree as follows:

   1. To submit Subcontractor's claims to the Contractor in a proper form and in sufficient time to allow processing by the Contractor in accordance with this "Dispute Resolution" clause;
   2. To be bound by the terms of this "Dispute Resolution" clause to the extent applicable to Subcontractor's claims;
   3. That, to the extent a Subcontractor's claim is involved, completion of all steps required under this "Dispute Resolution" clause shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law;
   4. That any Subcontractor's claim brought against a bonding company, that also is actionable against the Authority through the Contractor, shall be stayed until completion of all steps required under this "Dispute Resolution" clause; and
   5. That the existence of a dispute resolution process for involving Subcontractor's Demands shall not be deemed to create any claim, right, or cause of action by any Subcontractor or supplier against the Authority;

f. Notwithstanding the foregoing, this "Dispute Resolution" clause shall not apply to, and the DRB shall not have the authority to consider any of the following Subcontractor claim(s):

   1. Between the Subcontractor(s) and the Contractor that is not actionable by the Contractor against the Authority;
   2. Based on remedies expressly created by statute;
   3. That is covered by insurance; or
   4. That is actionable only against a bonding company.

51.6.4 DRB Recommendation

The DRB's initial recommendation for resolution and basis for recommendation shall be given in writing, to both the Authority and the Contractor, within two weeks of completion of the hearings. This time may be extended by mutual agreement of all Parties.

If requested by either Party, the DRB shall meet with the Authority and Contractor to provide additional clarification of its recommendation.

Within two weeks of receiving the DRB's initial recommendation, or such other time as agreed by the DRB and the Parties, both the Authority and the Contractor may respond to the other and to the DRB in writing, signifying either acceptance or rejection of the DRB's recommendation. The failure of either Party to respond within the specified period shall be deemed an acceptance of the DRB's initial recommendation. If, with the aid of the DRB's initial recommendation, the Authority and the Contractor are able to resolve their dispute, the Authority will promptly process any required Contract changes.

If the dispute remains unresolved then the DRB shall make its final recommendation which shall either uphold its initial recommendation or amend the recommendation as the DRB may determine appropriate. The final recommendation of the DRB shall be non-binding on the Parties for all disputes. Either Party may seek a reconsideration of the final DRB recommendation based on new evidence provided that a request for reconsideration is submitted within 14-days of the DRB's final recommendation. Should the request for reconsideration be denied, the Parties may file a notice of intent to appeal the DRB final recommendation to arbitration to the other Party. The notice of intent to appeal must be filed within 42 days of the issuance the request for reconsideration. A non-response by the DRB for the request for reconsideration shall be deemed a rejection for consideration.

If neither Party gives notice of intent to appeal the DRB final recommendation to arbitration within the 42 day period, the DRB final recommendation shall conclude the DRB process. If the Party that provided notice of intent to appeal fails to submit the dispute to arbitration as provided in Section 52.0 within 180 days of the DRB final recommendation then the DRB process shall be concluded.

51.6.5 Compensation

The Contractor shall prepare and mail the regularly written progress reports and other relevant data it provides to the DRB members and the Authority. The Contractor will provide conference facilities for DRB meetings and hearings.

If the DRB desires special services, such as legal consultation, accounting data, research, and the like, the Parties must agree prior to expenses being incurred for such services. The Authority and the Contractor shall share the cost equally.

The Contractor shall pay the invoices of the DRB members, after both Parties agree to the amounts, and for special services for the DRB. The Contractor shall then invoice the Authority for 50 percent of the invoices of the DRB and the cost of the special services. Submittal of invoices for 50 percent of the cost of services provided and for other such special services as are mutually agreed upon shall be submitted as a Change Order, and shall not include mark-up of any kind.

51.7 Provisional Remedies

No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy, which may be necessary and is not otherwise available under this Section 51.0, to protect its rights, including temporary and preliminary injunctive relief, attachment, claim and delivery, receivership, and any extraordinary writ.

52.0 Arbitration

If the Parties cannot resolve claims informally or through the DRB process, then either Party shall have the right to bring unresolved claims in accordance with this "Arbitration" clause, provided that the matters identified in Section 51.4 as "Matters Ineligible for DRB Procedures"

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shall also be ineligible for resolution through arbitration. Unless the Parties otherwise agree in writing, as a condition precedent to the right to bring a claim to arbitration, either Party electing to bring a matter to arbitration shall first have attempted to resolve the matter informally in accordance with the "Partnering" clause (Section 50.0) and before the DRB if applicable. Any such arbitration proceeding shall be *de novo.*

The Party requesting arbitration shall file notice of the demand for arbitration in writing with the other Party within 180 days of the date the DRB final recommendation is rendered.

Within 30 days after delivery of the request for arbitration, the Parties shall seek to jointly appoint a panel of three arbitrators who have at least 10 years' experience in complex construction disputes involving public works transportation projects. For any insurance disputes that are subject to arbitration, at least one of the arbitrators shall be experienced with regard to insurance coverage underwriting. Each Party shall appoint one arbitrator of its choosing, and jointly appoint a mutually agreeable third arbitrator, all of whom shall meet the foregoing qualifications. If any Party fails to select one arbitrator of its choosing who meets the foregoing qualifications, or if the Parties are unable to agree upon the selection of the third arbitrator, within such 30-day period, then either party may petition the Superior Court of Sacramento County to select such arbitrator(s) meeting the foregoing qualifications.

Unless the Parties agree otherwise, arbitrations shall be conducted in accordance with the procedures for arbitrations under Public Contract Code sections 10240 *et seq.* (the "State Arbitration Act"), and implementing regulations set forth in California Code of Regulations, Title 1, Chapter 4, sections 1300 *et seq.*

The decision of the arbitrators shall be based upon the relevant facts, circumstances, and equities of the case, as well as the pertinent provision(s) of the Contract Documents and applicable law, and shall be set forth in writing.

The arbitrators shall not have the power to award punitive damages, rescind this Contract, reform the Contract Documents, or void any limitations on liability contained in this Contract.

The prevailing party in arbitration shall be awarded its reasonable investigation costs, attorneys' fees, court costs, expert witness costs, consultant costs and other reasonable costs attendant to the arbitration. The arbitration panel will be specifically required to name the prevailing party pursuant to the award. However, if the award is simply monetary, the award shall be a single lump sum award and shall not separate the damages from the costs.

The arbitration decision shall be decided under and in accordance with the law of the State of California, supported by substantial evidence and, in writing, contain the basis of the decision, findings of fact and conclusions of law

During the resolution, DRB process, arbitration, or litigation of any and all claims, disputes and other matters in question arising out of or relating to this Contract, the breach thereof or provision of construction work, the Contractor shall be required to continue to progress the Work to completion and comply with all other terms and provisions of this Contract in a diligent, timely, and faithful manner, unless otherwise excused in writing by the Authority.

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It is expressly agreed by the Parties that the DRB final recommendation rendered prior to the notice of intent to appeal the DRB final recommendation to arbitration shall be admissible in any subsequent arbitration proceeding by either Party.

53.0 Public Involvement

53.1 General

Communications, community involvement, and minimizing impacts to businesses, residents, and traffic are critical components to the successful development of the CHSR Project. The Authority has developed a statewide set of goals and objectives related to construction-related activities, including community relations (with specific outreach to impacted businesses), construction and traffic mitigation, public information, and responsiveness to public concerns.

Based on these goals and objectives the Contractor shall develop a Contract-specific Public Involvement Program (PIP) for all construction-related activities to facilitate management of community issues and mitigation of construction impacts on the community and neighborhoods adjacent to the construction work sites. It will include, at a minimum, an ongoing public information program, which identifies public meetings, construction advisories, newsletters, and other community outreach plans to effectively communicate the construction-related activities, as well as specific initiatives and actions to build community awareness and support. The PIP will also include a Business and Residential Impact Mitigation Plan (refer to Section 53.3) and Crisis Communications Plan. The Contractor shall manage the community advisory plan for construction-related activities and work closely with the Authority regarding community issues. The Contractor shall also work with other city departments and Caltrans to provide construction advisories and current construction-related traffic information to the public.

Developing and implementing an effective PIP will require a team effort, involving the Authority, stakeholder representatives and the Contractor. Working together as a communications team, the Authority, the stakeholders, and the Contractor will accomplish the following:

a. Maintain, improve, and build positive public involvement for the CHSR Project through traditional channels, social media and traditional media usage;

b. Provide regular reports on Project progress;

c. Provide meaningful mechanisms for community outreach and responding to Project area concerns; and

d. Mitigate construction impacts for the Project area residents, business owners, and commuters.

Above all, this communications team must place a high priority on being responsive to the concerns of the public, neighborhoods, and business owners throughout the life of the Contract.

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53.1.1 Roles and Responsibilities

53.1.1.1 Authority's Role

The Authority shall maintain overall responsibility for public involvement and information for the entire CHSRP. The Contractor shall be responsible for implementing the PIP for this Contract. The Authority's responsibilities will include the following:

a. Providing leadership in establishing the state-wide communications policy and strategic direction through collaboration with the Authority's communication team.

b. Providing the Contractor with communications goals, objectives and deliverables.

c. Ensuring that the Contractors' communications programs and products are consistent system-wide and in line with the Authority's overall public information, branding and involvement efforts.

d. Conducting Authority-sponsored public relations activities targeted to the general public.

e. Monitoring the Contractor's performance for compliance with the Contractor's PIP.

f. Identifying stakeholder representatives in the Project area.

g. Providing oversight and direction on the creation of outreach materials for the public and media.

53.1.1.2 Contractor's Role

The Contractor, in coordination with the Authority, shall be the focal point for the public involvement effort to address concerns, prepare affected neighborhoods for construction and to minimize the actual impact of construction. The Contractor shall have primary responsibility for performing the Project-specific public involvement activities. The Contractor shall be responsible for day-to-day public involvement and mitigating the impact of construction for businesses and residents in the Project area, as defined in the Contract Documents, including the Contractor's Proposal.

53.1.2 Contractor's Responsibilities

53.1.2.1 Contractor's Public Involvement Plan

Within 60 days following issuance of any NTP, the Contractor shall complete and submit to the Authority for approval its PIP based on the summary submitted with its Proposal and the other Contract Documents. The Business and Residential Impact Mitigation Plan defined in Section 53.3 must be included as a subset of the PIP. The PIP must reflect the Authority's communications goals and objectives and must target public involvement activities to those most affected by the construction of the Project. The Contractor's PIP must include, at a minimum, the items described in the General Provisions, as well as Title VI compliance.

The official Project logo must be used on all final communications products. The Contractor may identify itself and use its logo, as approved by the Authority. The Authority must approve all deliverables and public communications related to the Project, including but not limited to letters, brochures, and newsletters before final production.

The Contractor shall update the PIP at least semi-annually, soliciting input from the businesses and residents along the corridor, and the stakeholders' representatives. A copy of each update shall be submitted to the Authority subject to a SONO.

The Contractor must provide monthly reports of activities undertaken to implement the PIP. The monthly report must be entered and uploaded in a format agreed upon by the Authority on or before the 10th day of the month for activities undertaken during the previous month via the Authority's CMS web portal or equivalent. The report should also forecast known activities for the month ahead, to the extent feasible.

The Authority shall be responsible for assessing the effectiveness of the PIP and request changes as necessary, and the Contractor shall not be entitled to an increase in Contract Price as a result of any Authority directed changes to the PIP. Working in conjunction with the Authority's Communications team, the Contractor shall provide information to the Authority that will be used to determine if any course corrections are needed in the delivery of information and interaction activities with Project area residents, businesses, and commuters.

During the time this Contract is in force, the Contractor shall also be responsible for coordinating all public involvement issues that arise within and adjacent to the geographical limits of this Contract directly with the Authority.

53.1.2.2 Staff Requirements

The Contractor shall provide, at a minimum, a full-time Public Involvement Manager responsible for managing its PIP and other staff as needed to accomplish specified tasks. The Public Involvement Manager will not have any other significant roles or responsibilities so that they may dedicate their time to the goals of this Contract and should have the authority to make relevant decisions on behalf of the Contractor. The Public Involvement Manager shall have relevant experience in managing public involvement on large, complex infrastructure projects and local knowledge. If requested by the Authority, the Contractor shall allow the Authority to participate in the recruitment of the Public Involvement Manager.

The Contractor's Public Involvement Manager shall have "real-time" access to all Project details that may be relevant to the public, public agencies, emergency service providers, businesses, etc. The PI Manager must provide information as requested by the Authority in a timely manner.

The Contractor's PI team shall be the primary interface between the public and the Contractor's organization. The Contractor shall have the necessary resources to address the concerns of multilingual and disabled stakeholders, including interpretative language services as necessary.

53.1.2.3 Public Interaction

The Contractor shall maintain day-to-day contact with the affected Project area residents, businesses, and commuters related to the Work Contractor shall not discuss topics of a sensitive nature, including but not limited to, political activities and ROW negotiations, with

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stakeholders. Contractor shall alert the appropriate Authority staff when such topics arise so that the Authority may respond to stakeholders accordingly.

It is essential that the Contractor provide information to all parties impacted by the Project. If a resident, business, commuter, or other member of the public has a question or comment related to construction or preparation for construction, the first and preferred point-of-contact should be the Contractor's PI Manager. The Contractor shall take necessary steps to foster these contacts, including continuous interaction with the affected residents, businesses, and commuters.

53.1.2.4 Public Notifications

The Contractor shall notify specifically affected businesses and residents along the Project, as well as the public and community in general, of construction progress and upcoming events. Advertising in print, radio, television and other mediums will be at the discretion of the Authority and should be done, at minimum, for conditions that affect the general public for over a week. A commuter alert shall be developed and promulgated for any planned traffic impacts. The Contractor shall provide information to mitigate impacts that have immediate and long term results.

The Contractor shall provide the specific notifications, including but not limited to, those notifications specified in the "Table of Notifications" clause (Section 53.2.1). The Contractor is responsible for providing all public notifications in the three most common languages of the region. The Authority must approve all notifications before final production or issuance. These requirements are in addition to any other requirement in the Contract, including but not limited to the requirements in the Final Environmental Documents and any Third Party requirements.

53.2 Table of Notifications

53.2.1 Notice Requirements

Table 4: Table of Notifications

Notification	Notification Period	Notification Details
Heavy Construction Notification	30-Day	Written notification of Heavy Construction shall be given 30 days prior to construction. Access maps shall be provided per the Maintenance of Traffic Plan.
Light Construction Notification	Three-Day	Written notification of Light Construction shall be given three days prior to construction. Access maps shall be provided per the Maintenance of Traffic Plan
Critical Utility Shut-off/Diversion	72 Hours	Written notice of at least 72 hours in advance of, but not more than 96 hours before, either shut-off or diversions or both.

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Notification	Notification Period	Notification Details
Business/Commercial Utility Shutdown	72-Hour	Written notification of utility shutdown for businesses and commercial property. Shall be given 72 hours prior to shutdown
Residential Utility Shutdown	48 Hour	Written notification of utility shutdown for residential property.
Heavy Construction Updates	Weekly	A weekly construction update will be provided to each business or resident fronting a Heavy Construction Zone. Shall be given 48 hours prior to shut down.
Road and Driveway Closures	72 Hour	Written notice and personal contact at least 72 hours in advance of, but no sooner than seven days prior to closure.
Construction Schedule	One Month Prior	One month prior to start of construction.
Access Map Availability	7 Days Prior to Construction	The access maps shall be made available at least seven days prior to construction where a business or residence is impacted.
Changes in Access	2 Weeks Prior to Construction	The Contractor shall inform businesses and residents in writing of any changes to access that may impact them, at least two weeks prior to start of construction

The Contractor is required to provide a weekly written report to the Authority, in a format agreed upon by the Authority, identifying the nature of public contacts and the Contractor responses for the preceding week. The Public Involvement Manager shall meet with the Authority on a weekly basis to discuss the report.

The Contractor shall prepare public notices for radio, broadcast and cable television, and for the Authority's website to notify the public of inconveniences caused by the Project works, including traffic and utility disruptions. Public notices for scheduled disruptions shall be submitted to the Authority 15 days in advance of the event. Inconveniences caused by unpredictable events (e.g., damage to utility lines, extended street closures) will be communicated to the public as expeditiously as possible.

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The Contractor shall provide a monthly Project update for public dissemination that will be posted on the Project website; published in print outlets; and broadcast on radio, television, and cable television. Costs associated with production and publication/airing of these updates, and public notices will be borne by the Contractor.

The Contractor shall also use Quick Map,as requested by the Authority to notify the public of planned traffic disruptions.

53.2.2 Database

All contacts made by the Contractor shall be logged into a database that is capable of tracking all contacts made with the public. Each month, the Contractor shall enter and upload the information of its public contacts identified in the weekly reports into the Authority's database via the CMS web portal or equivalent.

The Contractor's entries, at a minimum, shall list the following:

a. Contact name, business name, address, email address, phone number, and home phone for business owners;

b. When the contact was made;

c. Who accepted/responded to the contact;

d. How the contact was made (in person, phone, e-mail);

e. A brief description of the nature of the contact;

f. A brief description of any handouts provided; and

g. Language, if other than English.

A referencing system shall be developed to track the distribution of handouts and mass mailings in order to minimize the amount of hard copy information filed.

A standardized form shall be developed to log contact information. This form will become the hard copy of all contacts. Handouts shall be attached to this form. The contact information shall include the information provided for the database as well as a description of what was discussed. The database shall document all contact with the public and be capable of recreating what transpired during the Project.

All contact information shall be entered into the database within three days of contact by the recipient. The contact information from the database may be used for public notifications and outreach and shall be provided to the Authority upon request.

53.2.2.1 Complaint/Comment Forms

The Contractor shall provide complaint/comment forms to businesses and residents along the Project as a method for the public to express Project concerns. These forms shall provide all information needed for entry into the database. The forms shall indicate the business address or email address where the forms can be sent.

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53.2.2.2 Responses to Complaint/Comment Forms

Complaints received shall be responded to within five days of receipt for non-emergency issues and within 24 hours for emergency issues. The Contractor shall coordinate with the Authority on all responses.

Emergency calls relating to hazardous conditions, diminished security, or loss of access or utility services shall be evaluated on a case-by-case basis. Verification calls shall be provided on all calls to inform the callers that their calls have been addressed.

53.2.2.3 Emergency, Unforeseen Utility Disruptions, Hazardous Conditions, Traffic Signal Emergencies, Security, and Loss of Access Notifications

The Contractor shall initiate immediate response to emergencies by trained personnel from an incident response team within 30 minutes of receiving notification from either the Authority, a utility owner, an Authority official, affected business(es), resident(s) or any combination thereof.

All emergencies and unforeseen disruptions shall be explained to the public immediately by a personal contact from the Contractor's PI Manager or designated member of the Contractor's public information staff. The Authority must be made aware of the issue and explanation immediately. The person making the contact shall provide to the affected party(s) information such as the cause of disruption (i.e., whether it is construction-related or not), actions being taken to alleviate the problem, and anticipated duration of the disruption.

53.2.2.4 Construction Schedule/Maintenance of Traffic and Access

The Contractor shall notify businesses and residents along the Project and shall publicize commencement of construction in accordance with the "Table of Notifications" clause (Section 53.2). Notification options include but are not limited to advertising in print, radio, television and other mediums at the discretion of the Authority and subject to its approval. The notices must provide, at a minimum, information addressing public safety, business impact mitigation, and proposed alternative routes and detours. This notification shall indicate the projected dates for the construction by individual notices to stakeholders, community groups, businesses, and residents along the corridor as well as along alternative routes.

The Contractor shall provide all relevant information concerning the construction schedule to the Authority and prepare a commuter alert for public distribution.

The Contractor shall establish and manage an emergency response telephone tree. All appropriate stakeholder personnel shall be included on this telephone tree for immediate response in the event of an emergency. The telephone tree shall be divided into areas of expertise so the proper people are called for specific emergency situations. After emergency services has been called, the Contractor's first point of contact will be a representative of the Authority.

53.3 Business and Residential Impact Mitigation

The Business and Residential Impact Mitigation Plan shall be included in the PIP and shall address the PI activities described in the sub-sections below. The activities described below will

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be shaped to address the needs of the community, including but not limited to work hours and language barriers.

53.3.1 Door Notifications

The Contractor may use door hangers to inform particular property owners/residents about day-to-day preconstruction and construction progress and disruption. The Contractor shall receive Authority approval prior to final production of any door notifications. These door notifications are in addition to the notifications in the “Table of Notifications” clause (Section 53.2).

53.3.2 Access Maps

The Contractor shall develop access plans with businesses and residents on each block and shall provide maps showing existing and planned patron, delivery, and residential access during any construction period. The map(s) shall identify times of business operation and deliveries. The Contractor may show the utilization of either alleys or adjacent driveways or both alleys and adjacent driveways upon receiving written permission from the Authority or owner having jurisdiction over such driveways and alleys. Individual business and residential access shall be recorded in the database. The access maps shall be made available at least seven days prior to construction where a business or residence is impacted. The final configuration for permanent access after the completion of construction will be coordinated with the impacted business owners and residents, and incorporated into the final design documents.

53.3.3 Changes to Access

The Contractor shall inform businesses and residents in writing of any changes to access that may impact them, at least two weeks prior to start of construction. Changes in access, along with an access map, shall be submitted to the Authority subject to a SONO at least three weeks prior to start of construction.

53.3.4 Garbage and Recycling Removal

The Contractor shall provide adequate access for all garbage and recycling removal. The Contractor shall negotiate with public and private garbage and recycling removal services, and provide them access at agreed upon times.

53.3.5 Construction Kiosks

On blocks that are undergoing construction, the Contractor shall maintain signage at each intersection on both sides of the street that lists all businesses that face on the block or use the block for access and whether or not they will be open during construction. This signage must be maintained throughout the duration of construction in any area affected.

The Contractor shall install signs throughout the Project to be placed in prominent automobile traffic zones where construction is occurring, at the Contractor's main office, and at all field offices. The signs will identify the Project and will comply with FRA requirements. The signs will also identify the Contractor’s name, public contact information, and the participating agencies. A sample of the Project Identification Board shall be submitted to the Authority

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subject to a SONO. Signs and lettering shall be sized appropriately for the speed limit in the area using the MUTCD size guidelines, and be consistent with applicable city sign ordinance(s).

53.4 Community Updates/Neighborhood Boards

Besides the daily contacts made, the Contractor shall conduct community updates to give the public the opportunity to discuss the Project. All neighborhood meetings must be advertised in newspapers, neighborhood and community newsletters, and other media as appropriate and noticed mailed to impacted property owners at least 10 Working Days prior. At a minimum, community updates must be hosted once per month starting one month prior to construction. The Contractor shall be responsible for selecting an appropriate, easily accessed venue, and for convening the community updates at a convenient time for maximum attendance. The information displayed or discussed shall include schedule, staging, maintenance of traffic and access, and any other Project information. The stakeholders will be provided the opportunity to participate in all community updates. The Contractor shall prepare a three-month look-ahead plan that details their schedule of community update events for approval by the Authority.

Additionally, the Contractor shall accompany the Authority's representatives to all neighborhood board meetings to serve as a resource when the Authority's representatives present Project updates.

The fees or costs associated with the meetings or community updates are the responsibility of the Contractor. The selected venue shall be subject to Authority approval. Additional services such as language interpretation and hearing assistance devices shall be made available. The venue and any additional services needed for the event must be selected in a fiscally responsible manner.

53.5 Construction Tours

The Authority shall manage and handle all requests for construction tours in consultation with the Contractor, including scheduling tours and requiring tour participants to observe the Contractor's reasonable safety program guidelines, such as the wearing of protective equipment and waiver of liabilities. The Contractor shall participate in tours as requested to provide construction information and the Authority shall approve all tour requests.

The Contractor shall develop a comprehensive construction tour protocol and plan that delineates the types of tours and when they are available.

53.6 Not Used

53.7 Not Used

53.8 Media Relations

An ongoing media relations campaign will be implemented and managed by the Authority. The Contractor shall not meet with the media without the Authority's authorization, and shall direct all questions from the media to the Authority. The Contractor shall give timely information to the Authority regarding construction activities for use in media events.

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The Contractor shall develop press releases and other communication pieces for the Authority as needed to keep the public informed of the Project, and according to Authority objectives and deliverables. All press releases must be approved by the Authority prior to release and will be distributed by the Authority to media.

Radio and television traffic reporters will receive appropriate and timely updates on construction activity and traffic management information from the Authority in conjunction with the Contractor. Public service announcements will be developed as part of the Contractor's traffic management information in coordination with the Authority.

Neither the Contractor nor any Subcontractor nor their employees shall conduct or participate in media interviews or events, radio or television broadcasts relating to the Project, without consent of the Authority. In emergency situations, the Contractor shall immediately notify the Authority of any situation that may involve the media.

53.9 Not Used

53.10 Special Events

The Contractor shall assist the Authority as needed with the planning and implementation of special events that recognize significant Project milestone achievements such as groundbreaking.

53.11 Website

The Contractor shall recommend and provide adequate Project updates (weekly, monthly, or quarterly) for the Authority's website. Website information to be submitted by the Contractor includes information to prepare Project area residents and business owners for construction and to mitigate the impact of construction, public notifications, neighborhood meetings, the dates and location of scheduled construction, and detours and alternative routes. The Authority has final approval on content. The Contractor shall submit information to the Authority within two Working Days prior to scheduled updates in electronic formats that facilitate website posting. The Authority shall maintain website links to other appropriate sites that convey facts and benefits of the rail Project to the California general public, business community, and elected and appointed government officials.

53.12 Emergency Communications Plan

The Contractor shall develop a comprehensive Emergency Communications Plan, subject to Authority approval, that delineates protocols for responding to unanticipated events and roles and responsibilities for the Authority and the Contractor under such conditions.

54.0 Quality Program

54.1 Introduction

The QC and QA requirements presented in this document apply to all program participants and are based upon the CHSRA Master Quality Plan.

54.2 Quality Program

The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all surveys, designs, drawings, specifications, geotechnical investigations, construction, manufacturing, installation, and other services furnished under this Contract, including the warranty service element. The Quality Program and Quality Management System developed shall be in compliance with the CHSRA Master Quality Plan.

The Contractor's QMS shall establish and document the organizational structure, responsibilities, procedures, processes, and resources needed to meet the quality policy and objectives of the CHSRP while keeping the project within scope, on schedule and within budget. The QMS shall include comprehensive QC, QA, VV&SC, Audit and Inspection and Testing Programs. QA shall be independent of QC with both roles reporting to the QM. The QM shall report outside of the Project reporting chain to the Contractor's Officer in Charge. The Contractor shall implement the Quality Program from NTP and maintain it until Final Acceptance. The QM shall be responsible for implementing an effective Quality Program to ensure the quality of the Work.

The Contractor shall submit to the Authority within 90 days of NTP a comprehensive Quality Manual subject to a SONO from the Authority describing the scope, organization, and implementation of the Contractor's Quality Program and QMS. The Contractor shall submit to the Authority within 60 days of NTP a draft Quality Manual subject to a SONO from the Authority.

54.2.1 Testing Facilities

The Contractor's testing facilities shall be properly certified according to industry standards. Standard to be used and procedures to ensure compliance shall be included in the Contractor's Quality Manual.

54.3 Audits, Inspections, and Tests

The Contractor shall notify the Authority of the schedule of technical audits for design and construction activities. Audits shall be scheduled, planned, performed, followed upon as necessary, and closed out.

A copy of the audit and the corresponding corrective/preventative action plans shall be submitted to the Authority. The Contractor shall submit close out reports that demonstrate how and when corrective action was completed for each non-conformance.

The Contractor shall submit an Inspection Test Plan and weekly updates subject to a SONO during construction to the Authority. The plan shall specify location, time, date, and test or inspection type. The Contractor shall notify the Authority at least one day prior to any change to an inspection or test taking place, differing from the Inspection Test Plan. The Authority does not have to confirm attendance at any inspection or test, and if not present the inspection or test shall continue as planned. The presence of the Authority at any inspection or test does not confirm acceptance of the results.

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The Authority may conduct independent assurance testing and/or statistical sampling of the Work. None of the Authority-performed tests and assessments shall relieve the Contractor of the obligations specified in the Contract.

The Authority may audit the Contractor at any time.

54.4 Verification, Validation and Self Certification

The Contractor shall develop and implement a VV&SC process to confirm to the Authority that by examination and provision of objective evidence of the Technical Contract Requirements and the particular requirements for specific intended use have been fulfilled.

With every Contract submittal to the Authority subject thereto, the Contractor shall provide a V&V submittal self-certifying compliance with the Contract requirements and fitness for purpose.

Refer to the VV&SC Procedures of the Contract Documents for detailed VV&SC requirements.

54.5 Deficient and Non-Conforming Work

The Authority will not pay for incomplete or Non-Conforming Work or for Work placed on top of identified Non-Conforming Work. The Contractor shall not place Work in a manner that will conflict with the Contractor's ability to repair or replace identified Non-Conforming Work.

a. The Contractor shall notify the Authority when deficient Work is identified by submitting the relevant non-conformance report;

b. Deficient Work shall remain open until the root cause of the deficient Work is identified and a corrective action plan implemented to address the problem. All corrective action plans and subsequent close out reports shall be submitted to the Authority. The Authority may review and issue an objection to either the corrective action plan in which case the contractor shall resubmit the plan to incorporate the comments;

c. The Contractor shall not place Work on top of identified Non-Conforming Work and shall not place Work in a manner that will conflict with the Contractor's ability to repair or replace the identified Non-Conforming Work. In the event the Contractor chooses to place Work on identified Non-Conforming Work, the Authority will not pay for the Work performed until the Non-Conforming Work is brought into conformance with the Contract Documents;

d. The Authority may choose to conduct testing on a piece of Work that has been completed by the Contractor. Should the test results prove non-conformance, the Contractor shall rectify the defect at its own cost and without a time extension. Should test results fail to establish non-conformance, the Authority is responsible for all costs and time impacts associated with the testing and restoration of the affected Work;

e. The Contractor's decision to "remove from site," "rework," "repair," or "use as is" shall be recorded in a non-conformance log regardless of who originated the non-conformance; and

f. The Authority may, in its sole discretion, accept Non-Conforming Work without requiring it to be fully corrected, in which case the Contract Price will be decreased accordingly.

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54.6 Reporting

The Contractor shall submit a monthly quality report as part of the overall Project progress reporting.

The Contractor shall enter and upload quality related data via the Authority's CMS web portal or equivalent, detailing non-conformances, including environmental non-conformances, notice of defects and corrective actions completed on a daily basis.

55.0 Interface Coordination and Design Integration

The CHSR System is being delivered in segments and in stages in which multiple concurrent contracts may be underway. The scope of this Contract is a defined portion of the design and construction of the full CHSR System, which will be delivered over several years. As the Contractor executes its scope of work under the terms of this Contract, concurrent design, and construction activities will be taking place at various interface points along the system.

The Authority will manage multiple contracts to deliver the complete CHSR System.

The Contractor shall:

a. Employ an interface and integration management approach to the scope of this Contract by identifying and coordinating the interfaces as well as performing design integration with adjacent contracts, Third Parties, and other entities in cooperation with the Authority;

b. Demonstrate that the Work is being designed and executed such that facilities and subsystems identified in the design criteria, drawings, and by other means are being accommodated without functional or spatial constraints;

c. Ensure delivery of the complete Project that integrates into the adjacent geographical territories and functions to support future systems and facilities components of the complete HSR system; and

d. Resolve conflicts by partnering with all parties associated with the interface conflict to reach an agreeable solution so as not to place constraints on this or other/future contracts.

55.1 Interface Management Plan

The Contractor shall develop an IMP that establishes and maintains a systematic, documented, comprehensive and verifiable management process applied throughout the duration of the Contract to coordinate the interfaces. The IMP shall include the following:

a. In accordance with the V&V processes, detailed processes for systematic identification, management, tracking, and documentation of the physical, technical, functional, and other interfaces by means of the RM Tool;

b. Documentation of interfaces with systems components as applicable to the Contract (e.g., track, traction power, overhead contact system, train control, communications, electrical, mechanical, and safety and security);

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c. Identification of interfaces between the Contract and adjacent geographical contracts;

d. Identification of third party interfaces (utilities, agencies, regulators, sub-projects, railroads and others);

e. Identification of major coordination milestones (e.g., engineering, construction, testing, and commissioning) and the handling of interface requirements during these phases;

f. Procedures for the identified interfaces to be included in the Interface Registry held in the RM Tool;

g. Defined processes to confirm and demonstrate interface compatibility through testing or other verification methods throughout the Contract;

h. Defined processes to assure that RAMS requirements are propagated through all interface components, elements, and systems to meet the criteria set out in the RAMS requirements;

i. A schedule of expected meetings and workshops that shall include organizations external to the Contractor;

j. Provision for the establishment of an ICT as the management group for the interface and design integration task; and

k. An organization chart showing members of the ICT.

The Contractor shall submit to the Authority a draft IMP 60 days after NTP and the final IMP 90 days after NTP, which shall be subject to a SONO. The IMP will be updated as required to reflect the current interface management and design integration process as the Project progresses.

55.2 Interface Coordination Team

As stipulated in the IMP, the Contractor shall employ an interface and integration management approach to the scope of this Contract by establishing an ICT as follows:

a. The ICT shall have identified members from the Contractor's and relevant Sub-contractors' staff(s) with specific assigned Project responsibility and accountability for interface coordination and control within the overall design and construction activities;

b. The ICT lead shall have a minimum 10 years previous experience in managing multi-disciplinary coordination and interface in the rail transportation industry with a focus on systems and technologies, utilities, roadways, infrastructure, and ROW; and

c. The ICT shall be staffed by professionals with a minimum of five years of experience in interface coordination between high-speed, conventional and freight railroad disciplines including: systems and technologies, utilities, roadways, regulatory agencies, infrastructure, and ROW.

55.3 Interface Coordination Workshops, Meetings and Reports

The following provides the responsibilities and requirements of the ICT regarding the content, purpose, and preparation for the interface coordination workshops under this Contract:

a. The ICT shall conduct no less than monthly interface coordination workshops with the Authority, adjacent contractors, third parties, and other entities, or at other times as required;

b. The interface coordination workshops will be used to discuss the specifics of the interfaces, resolution of conflicts, and to monitor and track the incorporation of the interfaces contained in the RM Tool;

c. The ICT shall demonstrate that the Work is being designed and executed such that facilities and subsystems identified in the design criteria and drawings are being accommodated without functional or spatial constraints; and

d. The workshops shall also be used to identify new interfaces, which may affect the design or construction, and to reach a common agreement on the management approach to addressing the interface and any possible constraint on this or future contract(s). New interfaces shall be incorporated into the Interface Registry of the RM Tool.

The Contractor shall coordinate and prepare all materials required for the interface discussions and activities as follows:

1. The Contractor shall provide the Authority, third party or other entity attending workshops or meetings with an agenda and any additional preparatory reading materials;
2. Agendas shall be circulated for comment no less than 48 hours prior to each event;
3. The Contractor shall produce and present a matrix or tracking sheet for the workshops which provides updates, activities, and responsible parties of interface and integration activities;
4. The Contractor shall produce output reports from the RM Tool to demonstrate progress on interface and integration activities; and
5. The Contractor shall record and distribute minutes and actions of the meetings or workshops to the participants within five Working Days after the event.

Notwithstanding the recordings of the minutes of any Interface Coordination Workshop or meeting, no resolution or communication at any Interface Coordination Workshop or meeting (nor minutes recording any resolution or communication) nor anything else which occurs during an Interface Coordination Workshop or meeting or as part of the process for such meeting will:

i. Affect the Contractor's obligations under the Contract or otherwise according to Law;

ii. Affect the Authority's rights under the Contract or otherwise according to Law; or

iii. Be construed as, or amount to, a direction under the Contract, unless and until a separate direction is given to the Contractor in writing by the Authority.

The conclusion of the workshops shall be an understanding between the Contractor and Authority as to the handling of the interface in the design and the documentation of the process to be implemented in the IMP.

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56.0 Not Used

57.0 Not Used

58.0 Project Controls

58.1 Project Cost and Scheduling Controls Program

The Contractor shall comply in all respects with the Cost and Scheduling Controls Program. The cost for such compliance shall be included in the Contract Price.

58.2 Not Used

58.3 Not Used

58.4 Not Used

58.5 Change Control and Configuration Management

The CHSR program configuration is comprised of segments and defined by a baseline scope, schedule and cost. The scope of this Contract is a defined portion of the design and construction of the full program configuration, which will be delivered over several years. As the Contractor executes its Work under the terms of this Contract, changes may arise at the Project level which may impact the full program configuration.

The Contractor shall support the Authority in the management of changes to the program configuration during the design and construction of the Project. This support may include the development of position papers or design support for changes to an approved Design Baseline Report or changes identified during Interface Coordination and Design Integration workshops. The Contractor shall submit proposed changes to the Design Baseline Report or established interfaces to the Authority. Approvals of changes to the Design Baseline Report interfaces or the program configuration will be subject to direction given by the Authority.

58.6 Risk Management

The Contractor shall support the Authority in risk assessment and mitigation workshops that will occur during the design and construction of the Project. This support may include development of position papers or design support for identified risk items of significance.

59.0 Right-of-Way

59.1 General

The Authority will acquire all ROW identified in the ROW Acquisition plan and any other ROW necessary for the Project. The Contractor shall not enter into negotiations for purchase of any property or property rights except as provided herein.

Contractor acknowledges that the final ROW available for construction may differ from the ROW Acquisition Plan as ROW negotiations proceed. The Authority will work with Contractor to minimize the impact of a decrease or adjustment in available ROW.

Right of possession of the Site and the improvements made thereon by the Contractor shall remain at all times with the Authority. The Contractor's right to entry and use of the Site arise solely from permission granted by the Authority under the Contract, except as identified in Section 59.2.1.

The Authority will provide the Contractor with regular updates regarding the status of the acquisition process for parcels for which access has not been provided. The Authority will provide written notification to the Contractor of the availability of each identified parcel and notify the Contractor of any access restrictions that may be applicable.

The Authority will provide access to the real property identified in the ROW Acquisition Plan by the deadlines provided therein. If the Authority fails to provide access in accordance with the deadlines in the ROW Acquisition Plan or at any time determines that it will be unable to provide access to a parcel(s) in accordance with the deadlines in the ROW Acquisition Plan, the Authority may notify the Contractor of the revised projected date(s) for delivery of access. Upon such notice, or in the absence of such notice, upon the failure to provide access on the deadline specified on the ROW Acquisition Plan, the Contractor shall:

a. Take immediate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and re-sequencing the Work so as to minimize or avoid any delay to the Project; and

b. Provide the Authority written notice within five Working Days after receipt of such notice or upon the Authority's failure to meet the schedule in the ROW Acquisition Plan whether the Authority's failure to provide access will result in a delay to a Completion Deadline.

Failure to provide such notice shall bar the Contractor from asserting a delay under this clause. The Contractor shall work proactively with the Authority to resolve ROW acquisition changes and to adjust its construction schedule to accommodate these changes.

Any land the Authority acquires that is not identified in the ROW Acquisition Plan for the Project is available for the Contractor's use only upon approval by the Authority and at its sole discretion. The Contractor shall first notify the Authority, in writing, of its planned use for the property and obtain permission from the Authority to enter and use the land as allowed.

59.1.1 The Authority's Role

Except as set forth in the "Eminent Domain" clause (Section 59.4.2), the Authority shall be responsible for all phases of the acquisition of the identified ROW.

The Authority shall implement the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended) (Uniform Act) and it's implementing regulations, 49 C.F.R. Part 24, as appropriate.

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59.2 Administrative Requirements

59.2.1 Permit to Enter

The Contractor, if authorized by the Authority, can pursue early access to ROW shown in the ROW Acquisition Plan independently of the Authority where no Authority contact has been made. In all other cases where previous contact (i.e., a NODA) has been made the Contractor will provide to the Authority a list of properties it needs to perform such geotechnical borings and environmental surveys.

The Contractor shall make diligent efforts to obtain the cooperation of property owners as necessary for the Project. The Contractor may request the Authority's assistance to resolve a dispute. The Contractor shall include in such request evidence satisfactory to the Authority showing that the Contractor has made diligent efforts to obtain the property owners cooperation or to otherwise resolve the dispute, but that such efforts have not succeeded. The Authority may elect whether or not to provide the requested assistance.

Where the Authority has secured permits to enter for any properties during the ROW acquisition process, those permits and restrictions of access will be transmitted to the Contractor. The Contractor shall perform the duties required of the Authority such as notification as required in the permit. Payments to property owners for required permits secured by the Authority will be the responsibility of the Authority.

59.2.2 Meeting and Reporting Requirements

The Contractor shall conduct ROW progress and coordination meetings with the Authority, affected Governmental Persons, and other required groups, monthly or as agreed to by the Authority and the Contractor.

If directed by the Authority, the Contractor shall prepare all necessary exhibits, displays, agendas (sent to all participants one week prior to scheduled meetings), and meeting minutes (entered and uploaded to the Authority's CMS web portal or equivalent within five Working Days of the meeting).

The Contractor shall enter and upload a monthly report to the Authority's CMS web portal or equivalent detailing the Contractor ROW activities including location and use of TCEs.

The Contractor shall prepare all electronic drawings in accordance with the standards set forth in the CADD Manual.

59.3 Not Used

59.4 Acquisition Activities

59.4.1 Temporary Construction Easements

Contractor shall identify and reimburse the Authority for the payment to the property owners for the TCEs, subject to the Uniform Act required to construct the work. The Authority shall acquire those TCEs subject to the Uniform Act within the timeframes detailed below from the

acceptance of a complete request from the Contractor. For each TCE the Contractor shall provide an appraisal map that meets Authority standards, title report, start, and finish time of the TCE and any Environmental Re-Examination Process(es).

TCEs that are external to the Environmental Footprint shall be reviewed in accordance with the Authority's Environmental Re-Examination Process(es) by the Contractor at the Contractor's cost in coordination with the Authority.

The Authority will acquire the requested TCEs within the following timeframes but no sooner than the adjoining or nearest fee acquisition in the ROW Acquisition Plan:

a. Unoccupied = 6 months from Contractor request or date of fee acquisition (whichever is latest);

b. Occupied = 12 months from Contractor request or date of fee acquisition (whichever is latest); and

c. Any TCE that requires condemnation will be acquired within 9 months from the date that resolution of necessity is adopted by the Public Works Board. Should the Public Works Board not adopt the resolution of necessity then the Contractor may proceed to acquire the TCE for its own convenience.

The Contractor may acquire TCEs that are not subject to Uniform Act at the Contractor's cost.

59.4.2 Eminent Domain Activity

The Contractor shall provide the following items related to eminent domain activity:

a. Materials and exhibits for hearings, trials and other proceedings as required;

b. Engineering testimony, for parcels in condemnation as required; and

c. All other items to demonstrate need as requested by the Authority to support eminent domain activities.

59.4.3 Identification of Additional ROW

If the Contractor determines additional temporary or permanent ROW is necessary to design and construct the Project, the Contractor shall prepare and submit a request to the Authority for consideration. This request shall identify the additional ROW sought, along with a justification for its necessity, and shall include drawings depicting proposed geometric designs, construction limits and cross-sections. The Authority shall review the request and if the Authority determines that the additional ROW is necessary to construct the Project (that is, it is not possible for the Contractor to comply with the Contract without acquiring such ROW), the Authority will acquire the ROW. Schedule implications shall be included in the Contractor's schedule updates. The Contractor shall prepare the right-of-way requirements map to be used by the Authority's right-of-way engineering service to produce appraisal maps, which the Contractor shall certify as sufficient.

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If additional ROW is necessary as a result of an Authority-Directed Change, the additional ROW costs will be addressed in the Change Order for the Authority-Directed Change.

The Contractor may request additional ROW as part of a VECP, in which case the additional ROW costs will be addressed as part of the VECP. In this case, the Contractor will be required to prepare an appraisal map that meets Authority standards, title report, and any additional completed environmental approval documentation to allow Authority to proceed with the acquisition.

If an approved VECP requires a TCE that is not identified in the ROW Acquisition Plan and the Contractor fails to obtain the TCE, then the original Contract requirements will apply. If the Contractor fails to implement a VECP, then the costs incurred by the Authority related to the VECP shall be reimbursed by the Contractor.

The Authority will require up to 24 months from the Authority's approval of the appraisal map that meets Authority standards, title report, and any additional completed environmental approval documentation from the Contractor, to acquire any additional ROW not identified in the ROW Acquisition Plan (regardless of cause).

59.4.4 Not Used

59.5 Acquisition Activities Related to Relocations for Third Party Facilities

Acquisition responsibility for ROW for Third Party Facilities, as between the Authority and the Third Party, is identified in the applicable Cooperative Agreement, if any. If not so identified, the Authority shall initially be deemed responsible.

60.0 Representations, Warranties and Covenants

The Contractor represents, warrants, and covenants for the benefit of the Authority as follows.

60.1 Feasibility of Performance

The Contractor has evaluated the feasibility of performing the Work within the time specified herein and for the Contract Price, and has reasonable grounds for believing and does believe that such performance by the applicable Completion Deadlines and for the Contract Price is feasible and practicable.

60.2 Review of Site Information

The Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed the boring logs provided by the Authority, inspected and examined the Site and surrounding locations, and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project, to the extent the Contractor deemed necessary for submittal of its Proposal. The Contractor acknowledges that it is responsible for obtaining any additional information that has not been provided. As a result of such review, inspection, examination and other activities, the Contractor is familiar with, and accepts the physical requirements of the

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Work and the risk allocations associated with such Work as set forth in the Contract Documents. The Contractor acknowledges and agrees that changes in conditions at the Site may occur after the Proposal Deadline, and that the Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under the Contract. Before commencing any Work on a particular aspect of the Project, the Contractor shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work, which may have an impact on such Work. The Contractor shall be responsible for ensuring that the design documents accurately depict all governing and adjoining dimensions and conditions.

60.3 Governmental Approvals

The Contractor has no reason to believe that any Governmental Approval required to be obtained by the Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. For any Governmental Approvals required to be obtained by the Contractor, the Contractor shall, subject to Authority review and approval, prepare all information analyses and materials, and otherwise undertake all efforts to obtain such Governmental Approvals, including execution and delivery of appropriate applications and other documentation in a form approved by the Authority. The Authority shall reasonably cooperate with the Contractor in obtaining any such Governmental Approvals. The Contractor shall assist the Authority in obtaining any Governmental Approvals that the Authority may be obligated to obtain, including providing information requested by the Authority and participating in meetings regarding such Governmental Approvals.

60.4 Organization

The Contractor and each of its members, if any, is duly organized and validly existing under the laws of the state in which it was formed, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Contractor and each of its members, if any, is duly qualified to do business and is in good standing in the State and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

60.5 Authorization

The execution, delivery, and performance of the Contract have been duly authorized by all necessary actions of the Contractor, and, if applicable, of each member of the Contractor, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person or any Guarantor is a party or, by which its properties and assets may be bound or affected.

60.6 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor, enforceable in accordance with its terms. Each Guaranty (if any) constitutes the legal, valid, and binding obligation of the Guarantor, enforceable in accordance with its terms.

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60.7 Employment Violations

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

60.8 Ineligible Contractors and Subcontractors

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

60.9 Tax Delinquency

Consistent with Public Contract Code section 10295.4, at the time of Contract award, the name of the Contractor and each of its members, if any, does not appear on either list of the 500 largest tax delinquencies created pursuant to Revenue and Taxation Code sections 7063 and 19195.

61.0 Miscellaneous

61.1 Standard for Approvals

In all cases where approvals, acceptances, or consents are required to be provided by the Authority or the Contractor hereunder, such approvals, acceptances, or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

61.2 Effect of Oversight, Reviews, Tests, Acceptances and Approvals

The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, assessments, reviews, tests, inspections, acceptances, SONOs, statements of objection, approvals, or by any failure of any Person to take such action. The oversight, spot checks, assessments, reviews, tests, inspections, acceptances, SONOs, statements of objection, and approvals do not constitute final acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. The Authority may reject or require the Contractor to remedy any Non-Conforming Work and/or identify additional Work, which must be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous oversight, spot checks, assessments, reviews, tests, inspections, acceptances, SONOs, statements of objection, or approvals were conducted by any Person. The Authority's approval of design documents for construction as described in the Contract Documents shall constitute approval of the design by the Authority for purposes of Government Code section 830.6, but shall not be deemed to relieve the Contractor of liability for the design.

61.3 No Estoppel

The Authority shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that the work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate, or certificate, or payment made in accordance therewith, the Authority shall not be precluded or estopped from recovering from the Contractor and its surety(s) hereunder, such damages as the Authority may sustain by reason of the Contractor's failure to comply or to have complied with the terms of the Contract Documents.

61.4 Computation of Periods

In computing any period of time established under the Contract Documents, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a non-Working Day, in which event the period shall run to the end of the next Working Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, shall be required to be performed as specified, even though the date in question may fall on a non-Working Day.

61.5 Interpretation

In the Contract Documents, where appropriate:

a. The singular includes the plural and vice versa;

b. References to "days" contained in the Contract Documents shall mean calendar days unless otherwise specified;

c. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation;

d. The words "including," "includes," and "include" shall be deemed to be followed by the words "without limitation";

e. Words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular clause, provision or section;

f. Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;

g. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities;

h. Words of any gender used herein include each other gender where appropriate; headings and organization within sections are for convenience only;

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i. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive; and

j. Unless otherwise specified, references to clauses and sections include all sub-clauses and sub-sections and references to clauses, paragraphs, sections, appendices, attachments, and exhibits are to the document which contains such references.

In sentences using the imperative, unless otherwise specifically stated, the subject "the Contractor" is implied and it is understood the Contractor shall perform such work, comply with the requirements of, furnish such material, or take such action. References to Contract Documents and Reference Materials refer to such named documents, whether or not the specific Book or other location is identified.

The Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the Contract Documents and to bring to the Authority's attention any conflicts or ambiguities contained therein. The Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person that prepared them, and shall be considered as drafted by both Parties. The Authority's final answers to the Requests for Information (RFIs) posted during the RFP process for the Contract shall in no event be deemed part of the Contract Documents. Such final answers shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

61.6 Amendments

The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

61.7 Waiver

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

No act, delay, or omission done, suffered, or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations

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under the Contract Documents. No custom or practice between the Parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

61.8 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of the Authority and the Contractor and their permitted successors, assigns and legal representatives.

The Contractor shall not assign the whole or any part of this Contract, or any money due or to become due hereunder, without the prior written consent of the Authority.

The Authority may assign without the Contractor's consent all or any portion of the Contract, payment and performance bonds hereunder or Guaranty to any Person that succeeds to the governmental powers and authority of the Authority.

61.9 Survival

The dispute resolution provisions contained in the "Dispute Resolution" clause (Section 51.0) and all other provisions, which by their inherent character should survive termination of the Contract, shall survive the termination of the Contract.

61.10 Third-Party Beneficiary

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the Parties to the Contract Documents, with respect to such third parties, shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Authority and a Subcontractor or any other Person except the Contractor.

61.11 Independent Contractor

The Contractor shall, at all times, be an independent contractor. The Contractor shall be fully responsible for all acts and omissions of all Contractor-Related Entity and their employees, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of the Contractor and the Authority by virtue of this Contract. No provision of this Contract shall be for the benefit of any party other than the Authority and the Contractor.

61.12 Joint and Several Liability

If the Contractor is a joint-venture, each joint venture member shall be jointly and severally liable hereunder.

61.13 Mineral Rights

Except as otherwise expressly provided herein, nothing in this Contract shall confer upon the Contractor any right to minerals or other real property interests in Project ROW. Contractor acknowledges and agrees any mineral deposits or other valuable resources located on the Project ROW do not become the property of the Contractor. Should any mineral deposits or other valuable resources be discovered during the performance of the Work, the Contractor shall promptly notify the Authority in writing.

61.14 Publicity Releases

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Work, which the Contractor or any of its Subcontractors desires to make for purposes of publication in whole or in part, shall be subject to written approval by the Authority prior to release.

61.15 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State, without regard to conflict of law principles. Venue for any arbitration action shall lie exclusively in Sacramento County, California.

61.16 Severability

If any provision of this Contract, or the application thereof to any Person or circumstances, is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other Persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable Law. The Parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion.

61.17 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter.