California High-Speed Rail Authority

RFP No.: HSR13-57

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

Book I, Part A.1 – Signature Document

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Revision(s)	Date	Description
0	04/02/2014	Initial Release, CP 2-3

STANDARD AGREEMENT
STD 213 (Rev 06/03)

AGREEMENT NUMBER
HSR13-57
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
California High-Speed Rail Authority

CONTRACTOR'S NAME

2. The term of this Agreement is: **See Attachment A, Article 4**

3. The maximum amount of this Agreement is: **See Attachment A, Article 4**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

CONSTRUCTION PACKAGE 2-3 OF THE FIRST CONSTRUCTION SEGMENT OF THE CALIFORNIA HIGH-SPEED RAIL PROGRAM

Attachment A:	Signature Document General Terms	4 Pages
Attachment B:	Prices	1 Page
Attachment C:	Key Personnel, ATCs, and Proposal Commitments	1 Page
Attachment D:	Authorized Representatives Addresses for Notices	1 Page
Attachment E:	Payment Bond	2 Pages
Attachment F:	Performance Bond	3 Pages
Attachment G:	Guaranty	10 Pages
Attachment H:	Davis-Bacon Act Wage Rates	1 Pages
Attachment I:	DRB Agreement Form	7 Pages
Attachment J:	Buy America Certificate	1 Page
Attachment K:	Letter of Assent	1 Page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		**California Department of General Services Use Only**
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME California High-Speed Rail Authority		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Jeffrey Morales		
ADDRESS 770 L Street, Suite 800, Sacramento, CA 95814		☐ Exempt Per:
APPROVED AS TO FORM		
AGENCY NAME California High-Speed Rail Authority		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Thomas Fellenz		

Attachment A: Signature Document General Terms

RECITALS

A. On _____ the California High-Speed Rail Authority (Authority) issued Request for Proposals No. HSR 13-57 (as amended, "RFP") for design and construction of Construction Package No. 2-3 of the First Construction Segment of the California High-Speed Train Project, pursuant to procurement authority granted in Section 185036(a) of the California Public Utilities Code.

B. The Authority's goals for the Project include achieving the design, construction and testing of the Project within the Authority's standards for schedule, budget, quality, sustainability, safety and security, and validation, verification and self-certification while meeting the established criteria for the use of small, disabled and disadvantaged businesses and for environmental compliance and mitigation.

C. The Contract Documents include provisions intended to allow the Authority's goals for the Project to be achieved and to reflect the Contractor's assumption of responsibility, risk, and liability for design of the Project, and a requirement to pay Liquidated Damages in the event of unexcused delay in completion. The RFP required the Proposers to account for such restrictions and requirements in determining the proposed Contract Price.

D. The Authority evaluated proposals in response to the RFP, and has selected the Contractor for award of the Contract based on a determination that its Proposal provided the best value to the Authority, considering the technical and price factors set forth in the RFP.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. Definitions and Acronyms

Refer to Section 1.0 of the General Provisions for definitions of terms and abbreviations used in the Contract Documents.

ARTICLE 2. Contract Documents

The Contract Documents are defined in the "Order of Precedence" clause (Section 2) of the General Provisions (Book I, Part B.2). The Contract Documents shall be deemed to include all provisions required by Law to be inserted in the Contract, whether actually inserted or not.

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ARTICLE 3. Scope of Work

The Contractor shall do all the work and furnish all the materials (except the work and materials expressly stated in the Contract Documents to be performed or furnished by others) necessary to achieve Final Acceptance. The Contractor shall perform the Work in accordance with the Contract Documents.

A general description of the Scope of the Work is set forth in Contract Documents, Book I, Part C.

ARTICLE 4. Contract Time

This Contract shall become effective upon the date of execution by the Authority. The Contractor shall begin the Work on the date set forth in the Notice to Proceed issued by the Authority. See the Special Provisions and the "Notice to Proceed and Prerequisites for Start of Construction" clause (Section 3) of the General Provisions.

The Contractor shall diligently prosecute the Work so as to achieve Substantial Completion by the Substantial Completion Deadline and to achieve Final Acceptance by the Final Acceptance Deadline, as such dates may be extended in accordance with the Contract Documents. Certain Contractor obligations, including its warranty obligations, extend beyond Final Acceptance. See the "Warranty" clause (Section 7.8) of the General Provisions.

ARTICLE 5. Compensation

The Contract Price constitutes full compensation for the Work. The Contract Price, Provisional Sums, and hazardous materials unit prices are set forth in Attachment B. The Contract Price is subject to equitable adjustment as set forth in the Contract Documents.

ARTICLE 6. Alterations and Omissions

The Work identified in the Contract Documents shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the Authority other than the consideration named in the Contract.

The Authority reserves the right, at any time during the progress of the Work, to alter the Scope of Work, or omit any portion of the Work as it may deem reasonably necessary for the public interest, making allowances for additions and deductions with compensation made in accordance with the Contract Documents for the altered or omitted Work, in accordance with the "Changes" clause (Section 17) of the General Provisions.

ARTICLE 7. Payments

As the Work progresses in accordance with the Contract and in a manner that is satisfactory to the Authority, the Authority will make payments to the Contractor for Work completed in accordance with the "Invoicing and Payment" clause (Section 30) of the General Provisions.

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ARTICLE 8. Key Personnel, ATCs, and Proposal Commitments

Key Personnel, ATCs and Proposal Commitments are set forth in Attachment C.

ARTICLE 9. Project Organization and Contacts

Attachment D identifies the initial Authorized Representatives of the Authority and the Contractor. Each party shall have the right to change its Authorized Representative and addresses for notices, upon written notice delivered pursuant to this Article.

All notices and other communications concerning the Contract shall be written in English, shall bear the number assigned to the Contract by the Authority and shall follow the Authority's correspondence format and reference system.

Notices and other communications may be delivered personally, by telegram, by private package delivery, by facsimile, or by regular, certified, or registered mail. A notice to the Authority will be effective only if it is delivered to the Authority's Authorized Representative and other person(s) designated for delivery of notices in Attachment D, and a notice to the Contractor will be effective only if it is delivered to the Contractor's Authorized Representative and other person(s) designated for delivery of notices in Attachment D.

Notices shall be deemed delivered when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by tele-facsimile after 4:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Receipt of notices delivered by tele-facsimile shall be confirmed by telephone. Any technical problem or any failure of any kind preventing the Contractor from delivering notice in accordance with the Contract shall be the sole responsibility of the Contractor.

The Contractor shall copy the Authority on all written correspondence pertaining to the Contract between the Contractor and any Person other than the Contractor's Subcontractors, consultants and attorneys.

ARTICLE 10. Organization

The Contractor represents, warrants and covenants for the benefit of the Authority as follows.

The Contractor is a _____ ,

duly organized and validly existing under the laws of the State of _____ , 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 is composed of:

_____

_____ is a corporation, duly organized and validly existing under the laws of the State of _____, with all requisite power to own its own properties and

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assets and carry on its business as now conducted or proposed to be conducted.

[If applicable insert similar representations, warranties and covenants for each of the Contractor's members.]

The Contractor and each of its members are duly qualified to do business and are 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.

The Contractor's license number and expiration date are _____

ARTICLE 11. Security

A copy of the executed Payment Bond is attached as Attachment E. A copy of the executed Performance Bond is attached as Attachment F. A copy of the executed Guaranty is attached as Attachment G.

ARTICLE 12. Davis-Bacon Act Wage Rates

A copy of the Davis-Bacon Act Wage Rates is attached as Attachment H.

ARTICLE 13. DRB Agreement

A copy of the DRB Agreement form is attached as Attachment I.

ARTICLE 14. Buy America Certificate

A copy of the Buy America Certificate is attached as Attachment J.

ARTICLE 15. Letter of Assent

A copy of the Letter of Assent is attached as Attachment K

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Attachment B: Prices

Contract Price:	**$**
Hazardous Materials Unit Prices per Ton:	$
Class I Hazardous Waste[1]:	$
Class II Hazardous Waste[1]:	$
Cap on Liquidated Damages[2]:	**$**

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[1] See definition in Book I, Part B, General Provisions.
[2] 10% of Contract Price

Attachment C: Key Personnel, ATCs, and Proposal Commitments

[Attach list of Key Personnel and information regarding ATCs and Proposal Commitments]

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Attachment D: Authorized Representatives Addresses for Notices

The Authority's initial Authorized Representative is:

_____

_____

_____

_____

_____

The Contractor's initial Authorized Representative is:

_____

_____

_____

_____

_____

Copies of all notices from the Contractor regarding disputes, termination and default notices shall be delivered to the following persons in addition to the Authority's Authorized Representative:

_____

_____

_____

_____

_____

Copies of all notices from the Authority regarding disputes, termination and default notices shall be delivered to the following persons in addition to the Contractor's Authorized Representative:

_____

_____

_____

_____

_____

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Attachment E: Payment Bond

[THIS FORM OF BOND TO BE REPLACED WITH EXECUTED BOND IN EXECUTED CONTRACT]

Contract No.: _____

Bond No.: _____

WHEREAS, the California High-Speed Rail Authority ("Obligee"), has awarded to

_____, a _____

("Principal"), a Contract for the _____

project dated as of _____, 20 ___ (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing payment of claims as described in Civil Code Section 9550 concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____,

a _____,

and _____,

a _____

(collectively "Co-Sureties"), each an admitted surety insurer in the State of California, are held

and firmly bound unto Obligee in the amount of $ _____

[insert 100 percent of the Contract Price]

(the "Bonded Sum"), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

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

The Contract Documents (as defined in the Contract) are incorporated by reference herein.

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

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

_____

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

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

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this bond to be executed and

delivered as of _____ , 20 ____ .

Principal: _____

By: _____ [Seal]

Its: _____

Co-Surety: _____

By: _____ [Seal]

Its: _____

Co-Surety: _____

By: _____ [Seal]

Its: _____

[ADD APPROPRIATE CO-SURETY ACKNOWLEDGMENTS]

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Attachment F: Performance Bond

[THIS FORM OF BOND TO BE REPLACED WITH EXECUTED BOND IN EXECUTED CONTRACT]

Contract No.: _____

Bond No.: _____

WHEREAS, the California High-Speed Rail Authority ("Obligee"), has awarded to

_____, a _____

("Principal"), a Design-Build Contract for the _____

project dated as of _____, 20 ___(the "Contract"), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____ ,

a _____ ,

and _____ ,

a _____

(collectively "Co-Sureties"), each an admitted surety insurer in the State of California, are held and firmly bound unto Obligee in the amount of $ _____

[insert 50 percent of the Contract Price]

(the "Bonded Sum"), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

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

The Contract Documents (as defined in the Contract) are incorporated by reference herein.

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

The guarantee contained herein shall survive the final completion of the design and construction called for in the Contract Documents with respect to those obligations of Principal which survive such final completion.

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

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

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

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

_____

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

_____

_____

_____

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

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

Principal: _____
By: _____ [SEAL]
Its: _____

Principal: _____
By: _____ [SEAL]
Its: _____

Co-Surety: _____
By: _____ [SEAL]
Its: _____

Co-Surety: _____
By: _____ [SEAL]
Its: _____

[ADD APPROPRIATE CO-SURETY ACKNOWLEDGMENTS]

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Attachment G: Guaranty

[THIS FORM OF GUARANTY TO BE REPLACED WITH EXECUTED GUARANTY IN EXECUTED CONTRACT]

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

by _____,

a _____
("Guarantor"),

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

RECITALS

A. _____
(the "Contractor")

and the Authority are parties to the Authority's Contract No. _____ of even date herewith and the Contract Documents identified therein (collectively, the "Contract") pursuant to which the Contractor has agreed to design and construct the

_____

Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract.

B. Guarantor has agreed to enter into this Guarantee to induce the Authority to:

1. Enter into the Contract; and
2. Consummate the transactions contemplated thereby.

C. The Contractor is a _____
(describe relationship with Guarantor)

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

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

1. Guaranty – Guarantor guarantees to the Authority and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Contractor arising out of, in connection with, under or related to the Contract, including liability for liquidated damages and warranties and including any extended warranty period as specified in the Contract. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

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2. **Unconditional Obligations** – This Guaranty is a guaranty of payment and performance and not of collection. This Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred and, except as provided in the "Permitted Defenses; Contract Amendments" clause of this Guaranty, whether or not enforceable against the Contractor. If any payment made by the Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released or discharged by:

   i. Any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting the Contractor, Guarantor or their respective assets, and

   ii. The existence of any claim or set-off which the Contractor has or Guarantor may have against the Authority, whether in connection with this Guaranty or any unrelated transaction. Provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit.

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

   i. The genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or

   ii. The existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations or this Guaranty.

3. **Independent Obligations** – Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Contractor is joined therein. The Authority may maintain successive actions for other defaults of Guarantor. The Authority's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

   i. Guarantor agrees that the Authority may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or

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collateral and without the necessity of proceeding against the Contractor. Guarantor hereby waives the right to require the Authority to proceed against the Contractor or any other Person, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

ii. Guarantor will continue to be subject to this Guaranty notwithstanding any of the following:

a. Modification, agreement or stipulation between the Contractor and the Authority or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations;

b. Failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; or

c. Release or subordination of any collateral then held by the Authority as security for the performance by the Contractor of the Guaranteed Obligations.

iii. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by the Authority of any remedies which the Authority either now has or may hereafter have with respect thereto under any of the Contract Documents.

4. Liability of Guarantor

The Authority may enforce this Guaranty upon the occurrence of a breach by the Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between the Authority and the Contractor with respect to the existence of such a breach.

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

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

i. With respect to the financial obligations of the Contractor, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations

ii. Settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto,

iii. Request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment of this Guaranty or the Guaranteed Obligations,

iv. Release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter,

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subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations,

v. Enforce and apply any security hereafter held by or for the benefit of the Authority in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that the Authority may have against any such security, as the Authority in its discretion may determine, and

vi. Exercise any other rights available to it under the Contract Documents.

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

i. Any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto;

ii. Any modification, agreement or stipulation between the Contractor and Authority or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto;

iii. The Authority's consent to the change, reorganization or termination of the corporate structure or existence of the Contractor;

iv. Any set-offs or counterclaims that the Contractor may allege or assert against the Authority in respect of the Guaranteed Obligations;

v. Any failure to enforce the Guaranteed Obligations or any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof;

vi. Any waiver by the Authority of the Guaranteed Obligations that is not in writing and signed by the authority's authorized representative or that is made in the context of a bankruptcy or insolvency proceeding in which the Contractor is the debtor, unless otherwise specified in said waiver;

vii. Any release of the Contractor from liability that is not in writing and signed by the Authority's authorized representative or that is made in the context of a bankruptcy or insolvency proceeding in which the Contractor is the debtor, unless otherwise specified in said release; or

viii. Any other act or thing or omission, or delay to do any other act or thing, which may or

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might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

5. Waivers

To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of the following:

i. Any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, the Contractor or any other Person or the failure of the Authority to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person;

ii. Any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;

iii. All notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of the Contractor under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, provided that the foregoing shall not be constructed as a waiver of any defense based on failure to provide required notices to the Contractor;

iv. Any defense based on statutes of limitations other than State of California statutes;

v. Any requirements of diligence or promptness on the part of the Authority;

vi. Any defense based upon any act or omission of the Authority which directly or indirectly results in or aids the discharge or release of the Contractor, Guarantor or any security given or held by the Authority in connection with the Guaranteed Obligations, except with respect to a release of the Contractor from liability that is in writing and signed by the Authority's authorized representative, other than any such release that is made in the context of a bankruptcy or insolvency proceeding in which the Contractor is the debtor, unless otherwise specified in said release; and

vii. Any and all suretyship defenses under applicable law, including, but not limited to, any defense under Sections 2787 through 2855, inclusive, of the California Civil Code.

6. Waiver of Subrogation and Rights of Reimbursement

Until the Guaranteed Obligations have been performed in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of the Authority against the Contractor, or any other security or collateral that the Authority now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

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7. Representations and Warranties

Guarantor represents and warrants that:

i. It is a _____

duly (check one) ☐ organized ☐ formed, validly existing, and in good standing

under the laws of the State of _____
and qualified to do business and is in good standing under the laws of the State of California;

ii. It has all requisite (check one)
- ☐ Corporate
- ☐ Partnership
- ☐ Limited Liability Company power and authority to execute, deliver, and perform this Guaranty;

iii. The execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor;

iv. This Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, subject only to bankruptcy, insolvency or other similar laws affecting creditors' rights generally;

v. Neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under:

a. Check one
- ☐ the certificate of incorporation or by-laws
- ☐ certificate of limited partnership or partnership agreement
- ☐ certificate of formation or limited liability company agreement of Guarantor,

b. Any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or

c. Any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

vi. It now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of the Contractor and the ability of the Contractor to pay and perform the Guaranteed Obligations;

vii. It has reviewed and approved copies of the Contract Documents and is fully informed of the remedies the Authority may pursue, with or without notice to the Contractor or

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any other Person, in the event of default of any of the Guaranteed Obligations; it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the Contractor and will keep itself fully informed as to all aspects of the financial condition of the Contractor, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of the Authority to disclose any matter, fact or thing relating to the business, operations or conditions of the Contractor now known or hereafter known by the Authority;

viii. No consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

ix. There is no pending or, to the best of its knowledge, threatened, action, suit, proceeding, arbitration, litigation, or investigation of or before any governmental authority which challenges the validity or enforceability of this Guaranty.

8. Notices

Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Authority: _____

_____

_____

Attention: _____

Telephone: _____

Telecopy: _____

If to the Guarantor: _____

_____

_____

Attention: _____

Telephone: _____

Telecopy: _____

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

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

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

9. Permitted Defenses; Contract Amendments

Notwithstanding any other provision of this Guaranty to the contrary:

i. Guarantor shall be entitled to the benefit of all defenses (excluding any rights of set-off or counterclaims) available to the Contractor under the Contract except:

   a. Those expressly waived in this Guaranty;

   b. Failure of consideration, lack of authority of the Contractor and any other defense to formation of the Contract; and

   c. Defenses available to the Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors; and

ii. In the event that the Contractor's obligations have been changed by any modification, agreement or stipulation between the Contractor and Authority or their respective successors or assigns, the term "Guaranteed Obligations" as used herein shall mean the Guaranteed Obligations as so changed, except that the Guaranteed Obligations shall be determined without regard to the effect of any such modification, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which the Contractor is the debtor, unless otherwise specified in the modification, agreement or stipulation.

10. General Provisions

Should any one or more of the provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be affected by such determination. The rights of the Authority hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against Guarantor or any other entity with liability for the Guaranteed Obligations or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed and expiration or termination of the Contract. Guarantor agrees to execute, have acknowledged and delivered to the Authority such other and further instruments as may be required by the Authority to effectuate the intent and purpose hereof. No right of action shall accrue on this Guaranty to or for the use of any

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person or entity other than the Authority or its successors and assigns until the Authority's claims have been satisfied in full. All words used herein in the singular shall be deemed to have been used in the plural when the context or construction so require. This Guaranty shall be governed by and be construed in accordance with the laws of the State of California. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and the Authority, but is not assignable by Guarantor without the prior written consent of the Authority, which consent may be granted or withheld in the Authority's sole discretion.

11. No Waiver

Any forbearance or failure to exercise, and any delay by the Authority in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

12. Bankruptcy

The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Contractor or by any defense which the Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. The Authority is not obligated to file any claim relating to the Guaranteed Obligations if the Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of the Authority so to file will not affect Guarantor's obligations under this Guaranty.

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

_____

a _____

By: _____

Name: _____

Title: _____

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Attachment H: Davis-Bacon Act Wage Rates

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Attachment I: DRB Agreement Form

THIS DISPUTES RESOLUTION BOARD AGREEMENT ("DRB Agreement") is made and

entered into this ____day of _____, 20 ____, among California High-Speed Rail Authority, a public entity of the State of California,

_____ a _____,
("Authority") ("Contractor")

and _____
(collectively, the "DRB Members")

with reference to the following facts:

A. Authority and Contractor have entered into a "Contract" regarding

_____.
(identify Authority's Project)
Pursuant to the Contract, Contractor agreed to furnish the design for and to construct the Project.

B. The Contract provides for the establishment and operation of a Disputes Resolution Board (the "DRB") to assist in resolving disputes and claims among Authority, Contractor, and others in respect to the Project.

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

1. Establishment of Disputes Resolution Board

The Disputes Resolution Board (DRB) shall begin operation upon execution of this DRB Agreement by Authority, Contractor, and the first two DRB Members, and shall terminate upon completion of all work required to be performed by the DRB hereunder unless sooner terminated in accordance with this DRB Agreement or applicable law. The DRB shall initially consist of two members, one selected by the Authority and one selected by the Contractor. The first duty of the DRB shall be to select its third member as provided in the "Membership" clause (Section 51.5) of the General Provisions.

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

A. Is not an Affiliate or otherwise have a financial interest in the Contractor, any Subcontractor, the Contract, the Project, the California High Speed Train Project or in the outcome of any dispute decided hereunder, except for payment for serving on the DRB;

B. Has not been previously employed by 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 all Parties, and has not otherwise had financial ties to any Party to the Contract for two years preceding his or her engagement for the DRB;

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C. Has not 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. Has not had substantial prior involvement in the Project or the California High Speed Train Project of a nature which could affect his/her ability to impartially resolve disputes and does not know of any reason why he or she cannot be impartial in rendering decisions;

E. Does not have a conflict of interest as described in the Authority's Organizational Conflict of Interest Policy;

F. Shall not accept employment by the Authority or Contractor or any Affiliate during the term hereof and for as long thereafter as any obligations remain outstanding under the Contract Documents, except as a member of other disputes boards; and

G. Shall not discuss employment, nor make any agreement regarding employment, with the Authority, Contractor, or any Affiliate during the term hereof and for as long thereafter as any obligations remain outstanding under the Contract Documents.

Prior to hearing the first dispute, and thereafter upon request of the Authority or Contractor from time to time, and at least annually, each DRB Member shall provide to the Authority and Contractor a declaration under penalty of perjury affirming that such member meets the qualifications set forth in the "Membership" clause (Section 51.5) of the General Provisions and the "Establishment of DRB" clause hereof, and agrees to be bound by the terms of the Contract Documents. Each DRB Member shall promptly notify the Authority and Contractor if any circumstances are likely to prevent a prompt and fair hearing and decision, or if the member fails to meet such qualifications. Any DRB Member failing at any time to meet such qualifications shall be removed from the DRB.

2. DRB Organization and Responsibilities

The DRB is organized in accordance with the "Disputes Resolution Board" clause (Section 51.3) of the General Provisions for the purposes described therein. The DRB is intended to fairly and impartially consider the disputes under the Contract, Subcontracts thereunder, and other contracts relating to the Project placed before it, and to provide written reasoned decisions for resolution of such disputes. The DRB Members shall perform the services necessary to participate in the DRB's actions in accordance with this DRB Agreement and the Contract.

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

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

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

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

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

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

3. Hearings and Decisions

Each Dispute under the Contract shall be heard by the DRB as provided in the “Disputes” clause (Section 51) of the General Provisions.

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

Upon receipt by the DRB of a notice of appeal, either from the Contractor or the Authority,

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

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

4. Provision of Documents to DRB

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

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

Each DRB Member agrees to execute and deliver a confidentiality agreement as described in the "Availability for Review" clause (Section 25.1) of the General Provisions with respect to copies of Escrowed Proposal Documents (EPDs) that may be provided to the DRB.

5. Expenses

Except as otherwise provided in Section 6 hereof, payment for services rendered by each DRB Member and for their direct, non-salary expenses shall be calculated in accordance with the payment schedule for such DRB Member agreed to among the Authority, the Contractor, and the DRB Member, and shall be paid in accordance with this Section 5.

Invoices for payment for work completed shall be submitted no more often than once per month. Such invoices shall be in a format approved by the Authority and accompanied by a general description of activities performed during this period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the DRB Member together with direct, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts, and miscellaneous supporting data.

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

6. Disputes Involving Other Parties

The parties acknowledge that various third parties may agree that the jurisdiction of the DRB shall extend to disputes affecting such third parties. In general, such disputes shall be heard by the three DRB Members, appointed as described above, in accordance with the terms of the Contract, this DRB Agreement, and the contract between the Authority and such third parties ("Such Third Parties"). However, to the extent that the following rights are provided to Such Third Parties by the Authority, the Parties agree that the membership of the DRB may

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be modified with respect to disputes involving Such Third Parties, as follows:

A. Such Third Party may agree to use the existing DRB with respect to the dispute. This option shall be deemed selected:

   i. Unless Such Third Party delivers written notice to the DRB that it intends to select a qualified consultant/DRB Member with respect to such dispute, which notice is delivered to the DRB Chairperson within seven days after delivery of written notice to Such Third Party describing the dispute and stating that Such Third Party is a necessary party to the dispute resolution procedure, or

   ii. If Such Third Party fails to select a qualified consultant/DRB Member, as described above, within seven days after delivery of notice of intent to select such person, or after notification of the Authority's or Contractor's disapproval of the DRB Member.

B. If Such Third Party elects not to use the existing DRB as provided above, then Such Third Party may:

   i. Select an advisor who shall act as a non-voting consultant to the DRB with respect to the dispute; or

   ii. Select a fourth DRB Member who shall have the right to participate in the selection of a fifth DRB Member and to participate in the decision-making process hereunder with respect to such dispute; or

   iii. With respect to disputes which do not involve the Contractor, appoint a DRB Member who shall replace the DRB Member appointed by the Contractor.

In selecting a non-voting consultant/DRB Member, Such Third Party is encouraged to appoint the same individual for all disputes, so that such individual will have the opportunity to develop expertise and familiarity regarding the Project.

Any non-voting consultant or DRB Member selected by Such Third Party shall be required to meet the qualifications for DRB Members set forth herein, and shall execute and agree to be bound by the terms of this DRB Agreement as to disputes involving Such Third Party. In the event that a fourth member is selected, Such Third Party's selection of the fourth DRB Member shall be subject to the Authority's and Contractor's approval, and the fifth DRB Member shall be selected by a majority vote of the four DRB Members. Disputes regarding appointment of such fifth Member shall be subject to the dispute resolution procedures set forth in the Contract, and shall be decided by the original three DRB Members.

Expenses of the DRB payable by Such Third Party shall be as follows:

- In the event that option 6.A is selected, or if Such Third Party elects to appoint a voting DRB Member, Such Third Party shall share equally the costs and expenses for the DRB determined in accordance with the Contract, including the costs of the two additional DRB Members; and
- In the event that Such Third Party opts to appoint a non-voting consultant, Such Third Party shall be responsible for paying the costs and expenses for the consultant which it appointed, as well as a proportionate share of the costs and expenses of the third DRB

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member, together with a proportionate share of any common costs allocable to the parties to a dispute under the Contract. In determining the amount of any such payment or reimbursement of costs and expenses, the DRB Members are specifically directed to consider the benefit accruing to Such Third Party resulting from the DRB's expertise and familiarity with the Project, and the expenditures previously incurred by the Authority and the Contractor to develop such expertise and familiarity. In such case the Contractor shall be responsible for paying amounts invoiced by the DRB Members for the common costs, and invoicing the other participants for their share of such amounts.

The provisions set forth in this Section 6 shall supersede any provisions to the contrary contained in the Contract.

7. Miscellaneous

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

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

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

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

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

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

DRB MEMBERS

		Address
Signature:	_____	
Printed Name	_____	
		Address
Signature:	_____	
Printed Name:	_____	
		Address
Signature:	_____	
Printed Name:	_____	

CONTRACTOR

Signature: _____
Printed Name: _____
Title: _____

Signature: _____
Printed Name: _____
Title: _____

[EXHIBITS TO BE ADDED]

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Attachment J: Buy America Certificate

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Attachment K: Letter of Assent

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