

**California High-Speed Rail Authority**



**RFP No.: HSR 13-57**

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

**Book II, Part B.2  
Cooperative Agreement  
County of Fresno**



January 29, 2014

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County of Fresno  
Attention: Alan Weaver, Department of Public Works and Planning Director  
2220 Tulare Street, Suite 600  
Fresno, CA 93721

Dear Mr. Weaver:

Enclosed is the fully executed contract document for Contract Number HSR13-54, County of Fresno, which is to assist in the coordination and evaluation of facilities that may require relocation as part of the planning and design process of the High-Speed Rail Project.

We appreciate your patience with this process and thank you for your expeditious handling of this agreement.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Mack".

Andrea Mack  
Contracts Analyst  
916-403-6925

Enclosures: HSR13-54/Agreement No. 13-767 (Cooperative Agreement)

c: Terry Ogle (Contract Manager)

EDMUND G. BROWN JR.  
GOVERNOR



HSR13-54  
(AGREEMENT NO. 13-767)  
EP1329121

**California High-Speed Train Project**



**Cooperative Agreement**

**County of Fresno**

**COOPERATIVE AGREEMENT**

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**COOPERATIVE AGREEMENT**

**THIS AGREEMENT** is entered into and is effective this 1st day of September, 2013 (the "AGREEMENT") through the completion of the initial construction for the HST Project, by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "AUTHORITY", and the County of Fresno, a Political Subdivision of the State of California, whose principal mailing address for purposes of this AGREEMENT is 2220 Tulare St, 6<sup>th</sup> Floor, Fresno, CA 93721, hereinafter referred to as the "LOCAL AGENCY".

**1. RECITALS**

**WHEREAS**, LOCAL AGENCY owns, operates, maintains in the State of California certain facilities defined in the Streets and Highways Code ("S&H Code"), and all such facilities, irrespective of their form, function, or use are hereinafter referred to as "FACILITIES" if and only if they are owned by LOCAL AGENCY. Certain utilities not owned by LOCAL AGENCY may be located within the RIGHT-OF-WAY of LOCAL AGENCY by virtue of Statewide Franchises, Specific Franchise Agreements, Encroachment Permits issued by LOCAL AGENCY, Common Use Agreements, or under the auspices of other legal instrument. Such utility facilities may be operated under regulations of the California Public Utilities (CPUC) and are hereinafter referred to as "UTILITIES" if and only if they are not owned by LOCAL AGENCY; and

**WHEREAS**, AUTHORITY is currently engaging in a program that has various projects under current provisions of Section 2704.04 of the S&H Code and Sections 185033 and 185036 of the Public Utilities Code throughout the State of California identified as the California High Speed Rail Projects hereinafter referred to as the "PROJECT(S)," and from time to time the PROJECTS involve constructing, reconstructing, or otherwise changing an existing improvement or installing a new improvement where FACILITIES of LOCAL AGENCY are located; and

**WHEREAS**, PROJECT(S) may require the protection, relocation, installation, or removal of the FACILITY, or some combination thereof, including any submittal review, inspection, environmental mitigation, certification or other oversight activity, hereinafter referred to as "FACILITY WORK"; and

**WHEREAS**, protection, relocation, installation or removal of FACILITIES may impact UTILITIES; and

**WHEREAS**, AUTHORITY and LOCAL AGENCY desire to enter into an agreement which establishes the contractual terms and conditions applicable to the FACILITY WORK;

**ACCORDINGLY**, AUTHORITY and LOCAL AGENCY hereby agree as follows:

**2. DEFINITIONS**

As used in this AGREEMENT, the following terms have the following meanings:

**2.1 AUTHORITY**

"AUTHORITY" means California High Speed Rail Authority and its authorized representatives.

**2.2 AUTHORITY'S CONTRACTOR**

"AUTHORITY'S CONTRACTOR" means the proposer who is awarded the design and construction of any of the PROJECT(S).

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### 2.3 BETTERMENT WORK AT LOCAL AGENCY'S REQUEST

"BETTERMENT" means any improvement FACILITIES, expressly requested by LOCAL AGENCY pursuant to a fully executed TASK ORDER that is not otherwise required in accordance with the terms and definitions in this AGREEMENT.

BETTERMENT shall not include those differences in cost caused by changes in design or manufacturing standards, availability of materials, regulatory requirements or any upgrading required by LOCAL AGENCY'S standard specifications, standards of practice, or construction methods applied to comparable facilities constructed by or for the LOCAL AGENCY at its own expense, which are in effect as of the date of execution of the specific TASK ORDER for that FACILITY WORK. Additionally, LOCAL AGENCY Special Conditions included in Appendix D are not considered BETTERMENTS.

### 2.4 DIRECTOR

"DIRECTOR" means LOCAL AGENCY'S Director of the Department of Public Works and Planning or his Designee.

### 2.5 UTILITY

"UTILITY" refers to any pole, pole line, pipeline, conduit, cable, aqueduct, or other structure used for public or privately owned utility services, or used by a mutual organization supplying water or telephone services to its members. "UTILITY" shall not include any facilities owned by LOCAL AGENCY.

### 2.6 FACILITY PLANS

"FACILITY PLANS" means those plans that have been prepared to a level of design where the impact on LOCAL AGENCY'S FACILITIES can be identified and the nature and extent of the FACILITY WORK can be determined. FACILITY PLANS shall include a preliminary FACILITY WORK design concept which was created by AUTHORITY'S CONTRACTOR.

### 2.7 FACILITY WORK

"FACILITY WORK" means those activities related to the RELOCATION of a LOCAL AGENCY'S FACILITY.

### 2.8 HAZARDOUS MATERIAL

"HAZARDOUS MATERIAL(S)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

### 2.9 NOTICE TO PROCEED

"NOTICE TO PROCEED" means a formal written notice to begin FACILITY WORK.

### 2.10 OWNER

"OWNER" means the individual, agency, or other entity with ownership of a UTILITY, facility, or property right which is not owned by LOCAL AGENCY.

### 2.11 PARTIES

"PARTIES" refers to the AUTHORITY AND LOCAL AGENCY, collectively.

### 2.12 PROJECT(S)

"PROJECT" refers to the project or series of projects undertaken by the California High Speed Rail Authority to build high speed train infrastructure within the State of California.

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### 2.13 RELOCATION

"RELOCATION" means removal, relocation, reconstruction, protection or any other rearrangement of FACILITIES as ordered and approved by both AUTHORITY and LOCAL AGENCY to accommodate AUTHORITY'S PROJECT(S). RELOCATION shall include, but not be limited to: preparation of relocation plans or drawings by AUTHORITY sufficiently engineered to allow construction of the ordered RELOCATION by AUTHORITY'S CONTRACTOR. RELOCATION shall also include preparation of a detailed estimate by LOCAL AGENCY at AUTHORITY'S expense of the actual cost that will be incurred by LOCAL AGENCY in its review of the ordered RELOCATION, and submission of same by LOCAL AGENCY to AUTHORITY for approval, which approval shall not unreasonably be withheld.

### 2.14 RIGHT-OF-WAY OF LOCAL AGENCY

"RIGHT-OF-WAY OF LOCAL AGENCY" means any property right held by LOCAL AGENCY in the form of either a recorded or fully executed deed or other property right including prescriptive rights for the FACILITY.

### 2.15 TASK ORDER

"TASK ORDER" means a work order or agreement executed by AUTHORITY, AUTHORITY'S CONTRACTOR, and LOCAL AGENCY detailing FACILITY WORK specific to a particular FACILITY'S RELOCATION.

### 2.16 UNFORESEEN WORK

"UNFORESEEN WORK" means any new and extra work found essential to the satisfactory completion of the PROJECT(S) and not covered by any of the various TASK ORDERS for which there is a bid price or by combination of such items.

### 2.17 WASTED WORK

"WASTED WORK" means FACILITY WORK rendered useless or unnecessary as a result of AUTHORITY'S cancellation and/or changes in the scope of work as agreed to by both PARTIES.

## 3. WORK TO BE DONE

### 3.1 FACILITY WORK

In general, the FACILITY WORK will involve the RELOCATION, along with design; preparation of the necessary environmental documentation, including performance of all environmental studies which may be required; engineering; planning; inspection; acquisition of necessary rights-of-way; permitting; testing and certifying; compliance with commitments and conditions set forth in the environmental documentation as further described in the following paragraph; coordination with regulatory agencies and any miscellaneous related work. FACILITY WORK specific to a particular RELOCATION shall be detailed in a subsequently executed TASK ORDER

Compliance with commitments and conditions set forth in the environmental documentation shall include, but is not necessarily limited to: obtaining all necessary permits; ensuring that the operations of AUTHORITY'S CONTRACTOR comply with the mitigation measures and permit requirements; preparing, to the extent required by the permits and approved mitigation measures, re-vegetation plans and any other plans for restoration of the natural environment and obtaining written approval thereof by the associated regulatory agency; payment of any in-lieu fees required as mitigation measures; and the performance, documentation, and reporting regarding any required re-vegetation or other environmental restoration or mitigation work. The AUTHORITY'S responsibility for such mitigation

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shall not cease until all mitigation, monitoring, and reporting has been completed in accordance with the associated requirements and the permitting agency has issued written notice of such completion to AUTHORITY and a copy thereof has been provided to DIRECTOR. AUTHORITY'S responsibility for such mitigation shall survive termination of this AGREEMENT and until such time as all written notices of completion from regulatory agencies have been obtained by AUTHORITY and accepted in writing by DIRECTOR.

### 3.2 TASK ORDERS

FACILITY WORK specific to a particular FACILITY'S RELOCATION shall be detailed in a TASK ORDER executed by AUTHORITY, AUTHORITY'S CONTRACTOR and LOCAL AGENCY. The TASK ORDER will set forth among other things, the agreements between the PARTIES regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the FACILITY WORK for a specific FACILITY. Format of a TASK ORDER and its content shall be mutually agreed upon by AUTHORITY, AUTHORITY'S CONTRACTOR and LOCAL AGENCY.

### 3.3 BETTERMENT WORK AT LOCAL AGENCY'S REQUEST

Any work considered BETTERMENT, as defined herein, made at LOCAL AGENCY'S request shall be agreed upon in advance by the PARTIES and detailed in a TASK ORDER, along with costs and allocation of responsibility for such costs. Compliance by AUTHORITY and AUTHORITY'S CONTRACTOR with LOCAL AGENCY Special Conditions included in Appendix D will not be considered BETTERMENT for the purposes of this AGREEMENT.

### 3.4 UNFORESEEN WORK

If UNFORESEEN WORK arises during the performance of the FACILITY WORK, it shall be performed under the TASK ORDER that is applicable to the FACILITY WORK in connection with which it arose. If the UNFORESEEN WORK does not arise in connection with any FACILITY WORK, it shall be treated as a separate phase or segment of the PROJECT(s) under this AGREEMENT. AUTHORITY reserves the right to make the final determination as to whether any UNFORESEEN WORK must be performed and LOCAL AGENCY shall be obligated to comply with AUTHORITY'S determination; provided, however, that such determination by AUTHORITY shall obligate AUTHORITY to compensate LOCAL AGENCY for all actual costs LOCAL AGENCY incurs as a result of such determination by AUTHORITY and actions associated therewith. Furthermore, all UNFORESEEN WORK shall be performed at the expense of the AUTHORITY'S CONTRACTOR.

### 3.5 UTILITY WORK

If performance of FACILITY WORK impacts UTILITIES, AUTHORITY shall perform or cause to be performed protection, relocation, installation or removal of UTILITIES. If UTILITIES are installed or relocated into RIGHT-OF-WAY OF LOCAL AGENCY, said installation or relocation will be made in compliance with LOCAL AGENCY standards.

## 4. LIABILITY FOR WORK

### 4.1 AUTHORITY'S EXPENSE

Unless LOCAL AGENCY agrees otherwise herein, or in a subsequent TASK ORDER, FACILITY WORK will be performed at AUTHORITY'S expense.

### 4.2 LOCAL AGENCY'S EXPENSE

FACILITY WORK will be performed at LOCAL AGENCY'S expense where work is mutually

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determined herein to be BETTERMENT and LOCAL AGENCY agrees to be responsible for such expense in the associated TASK ORDER.

### 4.3 SHARED EXPENSE

The FACILITY WORK will be performed at the shared expense of AUTHORITY and LOCAL AGENCY in circumstances where AUTHORITY and LOCAL AGENCY agree in advance to do so. The proportion of the FACILITY WORK expense to be borne by AUTHORITY and LOCAL AGENCY shall be detailed in the Task Order for that FACILITY WORK.

### 4.4 AUTHORITY'S CONTRACTOR CLAIMS

In the event AUTHORITY'S CONTRACTOR provides a notice of intent to make a claim against AUTHORITY relating to FACILITY WORK, AUTHORITY will, in accordance with AUTHORITY'S procedure, notify LOCAL AGENCY of the notice of intent and LOCAL AGENCY will cooperate with AUTHORITY, at AUTHORITY'S expense, in analyzing and resolving the claim within a reasonable time; provided, however that AUTHORITY shall not cause LOCAL AGENCY to become a party to any such claim.

### 4.5 DISPUTES

The AUTHORITY and the LOCAL AGENCY agree that, as a general principle, the PARTIES shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the PROJECT impacting FACILITIES a hierarchy of individuals within each PARTY'S organization to whom issues may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the PROJECT and the FACILITY WORK.

In the event the LOCAL AGENCY disagrees with a determination or direction made by the AUTHORITY in connection with the FACILITY WORK, the LOCAL AGENCY shall provide prompt written notice of its objection to AUTHORITY, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve such potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either PARTY'S request. If, within 14 days after the mutually agreed upon conclusion of such partnering, Appendix E, between the AUTHORITY and LOCAL AGENCY, the dispute persists, then the LOCAL AGENCY may request a written statement of the AUTHORITY concerning its decision. The request shall state clearly, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The AUTHORITY shall reduce its decision to writing and provide notice of such decision, including a copy thereof, to the LOCAL AGENCY. The decision of the AUTHORITY shall be final and conclusive unless, on or before the 28th day from the date of receipt of such decision, the LOCAL AGENCY appeals such decision by written notice to the AUTHORITY.

In connection with any appeal of the AUTHORITY'S decision, the LOCAL AGENCY shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The AUTHORITY shall then, within two weeks from the date of the hearing, or if no hearing is requested, from the date of LOCAL AGENCY'S notice of appeal, either issue a modified decision, or such prior decision shall be deemed affirmed. If the dispute still remains after such decision, then either PARTY may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In the event either PARTY, within the timeframe specified above, elects to refer a dispute to binding

## COOPERATIVE AGREEMENT

arbitration, then within 30 days after such election to arbitrate, the PARTIES will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the PARTIES cannot agree on a panel of three arbitrators, then each PARTY shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the PARTIES and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.

At all times during the course of the dispute resolution process, the LOCAL AGENCY shall continue with or permit the continuance of the FACILITY WORK as directed, in a diligent manner, and without delay; shall conform to any of the AUTHORITY'S responses, decisions, or orders; and shall be governed by all applicable provisions of this AGREEMENT. Records of the FACILITY WORK shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this AGREEMENT irrespective of the ultimate outcome of any dispute.

### 5. PAYMENT FOR WORK

#### 5.1 PAYMENT FOR THE COST OF FACILITY WORK

To the extent, the FACILITY WORK is at AUTHORITY'S expense, then AUTHORITY shall pay or cause payment to be made to LOCAL AGENCY the amounts as established for the FACILITY WORK performed by LOCAL AGENCY. At the AUTHORITY'S option such payments may be delegated to AUTHORITY'S CONTRACTOR to make directly to LOCAL AGENCY; in such circumstances, LOCAL AGENCY agrees to AUTHORITY'S delegation to AUTHORITY'S CONTRACTOR the responsibility to reimburse LOCAL AGENCY; provided, however, that such agreement shall not be construed as LOCAL AGENCY'S waiver of any of its rights it may have under law to seek reimbursement from AUTHORITY in the event that AUTHORITY'S CONTRACTOR fails to timely provide such reimbursement to LOCAL AGENCY in accordance with the terms of this AGREEMENT and any TASK ORDER pertaining to the FACILITY WORK in question.

To the extent, the FACILITY WORK is at LOCAL AGENCY'S expense and is performed by AUTHORITY or AUTHORITY'S CONTRACTOR, then LOCAL AGENCY shall pay or cause payment to be made to AUTHORITY or AUTHORITY'S CONTRACTOR the amounts as established pursuant to this AGREEMENT for FACILITY WORK whether performed by AUTHORITY or AUTHORITY'S CONTRACTOR, less any credits as may be due LOCAL AGENCY. At the AUTHORITY'S option such payments may be made to AUTHORITY'S CONTRACTOR directly by LOCAL AGENCY; in such circumstances, LOCAL AGENCY agrees to AUTHORITY'S CONTRACTOR collection of payment directly from LOCAL AGENCY where LOCAL AGENCY has cost responsibility for RELOCATIONS and/or for BETTERMENTS.

### 6. PERFORMANCE OF WORK

#### 6.1 AUTHORITY'S CONTRACTOR PERFORMS WORK

The FACILITY WORK is to be performed by AUTHORITY or AUTHORITY'S CONTRACTOR, and LOCAL AGENCY shall have access to all phases of the FACILITY WORK for the purpose of inspection to ensure that the work is in accordance with the TASK ORDER. The extent to which LOCAL AGENCY may perform such inspection shall be determined by DIRECTOR, and any such inspections which may be performed shall not be construed as acceptance of the FACILITY WORK by LOCAL AGENCY nor shall such inspections relieve AUTHORITY'S CONTRACTOR of its

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responsibility to ensure that work is constructed in accordance with the approved plans and specifications. LOCAL AGENCY shall be compensated for its actual expenses incurred in performing such inspections to the extent agreed in the relevant TASK ORDER.

Upon AUTHORITY'S written NOTICE TO PROCEED, LOCAL AGENCY shall consider AUTHORITY'S CONTRACTOR as acting on behalf of AUTHORITY on particular matters pertaining to PROJECT that are specifically identified in said Notice and shall treat AUTHORITY'S CONTRACTOR'S direction on those identified matters as if they were given by AUTHORITY.

AUTHORITY'S CONTRACTOR shall diligently undertake, or cause to be undertaken, the FACILITY WORK as specified in the TASK ORDER for that specific FACILITY WORK. The party responsible for performing the FACILITY WORK will also be responsible for costs incurred by the LOCAL AGENCY caused by delays in completing the FACILITY WORK in accordance with the schedule and/or timeline specified in the TASK ORDER for that specific FACILITY WORK. The costs of delay may be predetermined in the form of liquidated damages in the TASK ORDER. Costs may include, but shall not be limited to, reasonable costs incurred by the general public associated with extended use of detours, loss of use of facility, detouring, signage, advertisement, and degradation of local roads used for purpose of detouring traffic and/or transporting construction materials.

### 6.2 STAKEHOLDER COLLABORATION

In signing this AGREEMENT, LOCAL AGENCY agrees to collaborate with AUTHORITY, AUTHORITY'S CONTRACTOR, and any other third-party entities, the solicitation of whose participation in such collaboration shall be the sole responsibility of AUTHORITY or AUTHORITY'S CONTRACTOR, affected by the PROJECT(S), including regulatory agencies, other local agencies, and public and private utility owners, hereinafter collectively referred to as STAKEHOLDERS, to identify collaborative methods for resolving issues that may arise as part of the PROJECT and/or FACILITY WORK in an effort to achieve a quality PROJECT(S) that meets the requirements of the LOCAL AGENCY as well as the PROJECT SCHEDULE and budget.

STAKEHOLDERS will be requested by AUTHORITY to attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the PROJECT(S). During the initial workshop, AUTHORITY shall request that STAKEHOLDERS develop procedures and agreements (including TASK ORDERS) as specified in Appendix E. "STAKEHOLDER COLLABORATION," included herein, to facilitate the collaborative relationship and aid in identifying and resolving issues as they arise throughout the PROJECT(S).

Reimbursement to LOCAL AGENCY for its actual cost to prepare for and participate in the initial workshop and subsequent stakeholder meetings shall be made by AUTHORITY or AUTHORITY'S CONTRACTOR.

**COOPERATIVE AGREEMENT**

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

**AUTHORITY:**

  
\_\_\_\_\_  
Jeff Morales  
Chief Executive Officer

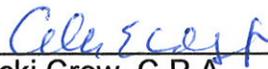
**COUNTY OF FRESNO:**

  
\_\_\_\_\_  
Henry Perea, Chairman  
County Board of Supervisors

**APPROVED AS TO LEGAL  
FORM**

  
\_\_\_\_\_  
for Kevin B. Briggs, County Counsel

**APPROVED AS TO  
ACCOUNTING FORM**

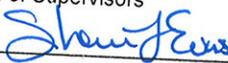
  
\_\_\_\_\_  
Vicki Crow, C.P.A.  
Auditor-Controller/Treasurer-Tax  
Collector

**RECOMMENDED BY  
Alan Weaver, Director  
Department of Public Works and  
Planning**

  
\_\_\_\_\_

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By   
\_\_\_\_\_  
Deputy

**COOPERATIVE AGREEMENT**

**APPENDIX A**

**GENERAL CONDITIONS**

**1. DEFAULT**

In the event that LOCAL AGENCY materially breaches this AGREEMENT, then in addition to any other remedies which are otherwise provided for in this AGREEMENT or by law or equity, AUTHORITY may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by AUTHORITY.
- B. Perform any work with its own forces or through subcontractors and seek repayment for the cost thereof.

In the event that AUTHORITY materially breaches this AGREEMENT, then in addition to any other remedies which are otherwise provided for in the AGREEMENT or by law or equity, LOCAL AGENCY may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by LOCAL AGENCY.
- B. Perform any work with its own forces or through subcontractors and seek repayment for the cost thereof.

Termination of this AGREEMENT shall not relieve either PARTY from any obligations it has pursuant to other agreements or TASK ORDERS between the PARTIES, nor from any statutory obligations that either PARTY may have with regard to the subject matter hereof, nor from any obligations under this AGREEMENT which are expressly identified as surviving termination hereof.

LOCAL AGENCY shall allow reasonable access to AUTHORITY to all public documents, papers, letters, or other material that is made or received by LOCAL AGENCY in conjunction with this AGREEMENT, provided, however, that AUTHORITY shall not be afforded access to documents subject to attorney-client privilege. Furthermore, access to documents considered to be interim work product may be granted or denied at the discretion of DIRECTOR. Should LOCAL AGENCY fail to allow such reasonable access, AUTHORITY shall notice LOCAL AGENCY in writing of specific documents previously requested and not provided, and DIRECTOR shall have five working days to provide such specific documents or to respond in writing as to why such documents are unavailable.

If AUTHORITY'S project which precipitated this AGREEMENT is canceled or modified so as to eliminate the necessity of work by LOCAL AGENCY, AUTHORITY will notify LOCAL AGENCY in writing, and AUTHORITY reserves the right to terminate this Agreement.

Notwithstanding any dispute, the PARTIES agree that they will continue their respective performances required hereunder, including paying undisputed billings, and such continuation of efforts and payment of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power (a) of any PARTY under this AGREEMENT or any other agreement or TASK ORDER(S) executed pursuant hereto, or (b) otherwise available pursuant to applicable law. The PARTIES acknowledge and agree that delays in RELOCATIONS may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the PROJECT. Consequently, the PARTIES

**COOPERATIVE AGREEMENT**

shall be entitled to specific performance.

**2. INDEMNIFICATION**

Each PARTY shall hold harmless, and indemnify the other PARTY and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either PARTY or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either PARTY'S obligations under this AGREEMENT or under any TASK ORDER executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the PARTIES indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified PARTY.

**3. FORCE MAJEURE**

Neither the LOCAL AGENCY nor the AUTHORITY shall be liable to the other for any failure to perform under this AGREEMENT to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed to the LOCAL AGENCY by the AUTHORITY or the AUTHORITY'S CONTRACTOR;
- 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; or
- 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 LOCAL AGENCY employee or consultant.

The foregoing events shall relieve a PARTY of liability only if the PARTY'S failure to perform as a result of such event is beyond its control and not due to an act or omission of a LOCAL AGENCY employee or consultant or the AUTHORITY and could not have been avoided by due diligence or use of reasonable efforts and the PARTY claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration;
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible; and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the LOCAL AGENCY agrees, if requested by the AUTHORITY, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the AUTHORITY agrees to reimburse the LOCAL AGENCY for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. 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;
- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;

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C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a LOCAL AGENCY employee or consultant); and

D. All other matters not caused by or beyond the control of the AUTHORITY or a LOCAL AGENCY employee or consultant and not listed in the definition of Force Majeure above.

### 4. LOCAL AGENCY'S FACILITIES AND RIGHT-OF-WAY

LOCAL AGENCY'S FACILITIES shall at all times remain the property of LOCAL AGENCY and shall be properly protected and maintained by LOCAL AGENCY, provided, however, that LOCAL AGENCY shall not be required to protect LOCAL AGENCY'S FACILITIES during RELOCATION thereof by AUTHORITY'S CONTRACTOR and shall not be required to provide maintenance of such FACILITIES during construction thereof except to the extent that need for such maintenance is not, directly or indirectly, precipitated by actions of AUTHORITY or AUTHORITY'S CONTRACTOR.

Whenever LOCAL AGENCY'S affected FACILITIES will remain within AUTHORITY'S right-of-way, AUTHORITY and LOCAL AGENCY shall jointly execute an agreement for common use of the subject area.

Whenever LOCAL AGENCY'S affected FACILITIES are to be relocated from the existing RIGHT-OF-WAY of LOCAL AGENCY to a new location that falls outside such existing RIGHT-OF-WAY of LOCAL AGENCY, AUTHORITY shall convey or cause to be conveyed a new right-of-way for such relocated FACILITIES; provided, however, that, in the event that compliance with LOCAL AGENCY Special Conditions and design standards dictates that right-of-way in excess of that which previously existed is required, AUTHORITY shall perfect LOCAL AGENCY'S perfected existing right-of-way.

For such RELOCATIONS, AUTHORITY shall issue, or cause to be issued, to LOCAL AGENCY, without charge to LOCAL AGENCY or credit to AUTHORITY, appropriate replacement rights in the new location mutually acceptable to both AUTHORITY and LOCAL AGENCY for those rights previously held by LOCAL AGENCY in its existing right-of-way. In consideration for these replacement rights being issued by AUTHORITY, LOCAL AGENCY shall subsequently convey to AUTHORITY, or its nominee, within AUTHORITY'S right-of-way, all of its corresponding right, title and interest within LOCAL AGENCY'S existing private right-of way so vacated.

### 5. AGREEMENT FINAL EXPRESSION OF THE PARTIES

This AGREEMENT constitutes the complete and final expression of the PARTIES with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the PARTIES understand and agree that AUTHORITY will have written policies and procedures which shall be applicable as written at the time of the execution of this contract. Copies of AUTHORITY policies and procedures will be provided to LOCAL AGENCY as soon as practicable after they become available. This AGREEMENT cannot be modified except by an instrument, in writing, signed by each of the parties.

### 6. GOVERNING LAW AND VENUE

This AGREEMENT shall be governed by the laws of the State of California. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

Venue for any action shall lie exclusively in Sacramento County, California.

### 7. NOTICES

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or

**COOPERATIVE AGREEMENT**

express mail and for time calculations purposes shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. LOCAL AGENCY shall have a continuing obligation to notify AUTHORITY of the appropriate persons for notices to be sent pursuant to this AGREEMENT. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to LOCAL AGENCY:  
LOCAL AGENCY Name: County of Fresno, Department of Public Works  
and Planning  
Person in Charge: Alan Weaver, Director  
Address: 2220 Tulare Street, Suite 600  
Fresno, CA 93721

If to CALIFORNIA HIGH SPEED RAIL AUTHORITY:  
Person in Charge: Tom Fellenz, Chief Counsel  
Address: 770 L Street, Suite 800  
Sacramento, CA 95814

**8. WASTED WORK**

AUTHORITY will pay, in its entirety, that portion of the cost of the FACILITY WORK constituting WASTED WORK.

**9. HAZARDOUS MATERIAL**

Upon discovery of Hazardous Material in connection with the FACILITY WORK, both LOCAL AGENCY and AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action.

A. AUTHORITY will pay, in its entirety, those costs for additional necessary effort undertaken within AUTHORITY'S right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that FACILITY WORK.

B. AUTHORITY will pay, in its entirety those costs for additional necessary efforts undertaken within the area of the replacement property right located outside AUTHORITY'S right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material.

C. Each party to this AGREEMENT retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other PARTY or third parties in accordance with existing law.

**10. SUCCESSORS AND ASSIGNS**

This AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties.

**11. STATE AND FEDERAL FUNDS**

No state funds or resources are allocated or encumbered as against this AGREEMENT and AUTHORITY'S obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the encumbrance of funds under a subsequently executed Task Order.

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**12. ADDITIONAL AUTHORITY PROVISIONS:**

The provisions included in Appendix Care hereby incorporated in and are integral to this AGREEMENT, and LOCAL AGENCY shall ensure full compliance with these provisions to the extent they apply to this AGREEMENT and subsequent Task Orders.

**COOPERATIVE AGREEMENT**

**APPENDIX B**

**DESIGN BUILD PROCEDURES**

**1. PERFORMANCE OF THE FACILITY WORK**

The method of performance to be utilized in the design and construction of the FACILITY WORK, as described below, will be specified in the executed TASK ORDER for the particular FACILITY WORK contemplated.

The LOCAL AGENCY agrees to (a) the AUTHORITY'S delegation to the AUTHORITY'S CONTRACTOR for the responsibility to reimburse LOCAL AGENCY, and (b) the AUTHORITY'S CONTRACTOR'S collection of reimbursement directly from LOCAL AGENCY'S having cost responsibility for RELOCATIONS and/or for BETTERMENTS.

AUTHORITY'S CONTRACTOR performs all design and construction services for the FACILITY WORK.

A. At such time as AUTHORITY'S CONTRACTOR has local FACILITY PLANS prepared to a level where the impact on LOCAL AGENCY'S FACILITIES and the nature and extent of the FACILITY WORK can be determined, AUTHORITY'S CONTRACTOR will provide a copy of the local FACILITY PLANS to LOCAL AGENCY. The local FACILITY PLANS shall include a preliminary FACILITY WORK design concept which was created by AUTHORITY'S CONTRACTOR and in accordance with Appendix D-LOCAL AGENCY special conditions of AGREEMENT.

B. LOCAL AGENCY shall have fifteen (15) work days from receipt of the local FACILITY PLANS to review them, and provide comments to AUTHORITY'S CONTRACTOR and AUTHORITY. LOCAL AGENCY may also provide any applicable technical provisions and standard drawings along with its comments.

C. AUTHORITY'S CONTRACTOR shall provide plans and specifications at the 30%, 60%, and 90% development phase and/or any other development milestones agreed upon by PARTIES for review and comments. Time for review shall not commence until said milestones have been accepted by LOCAL AGENCY. Reviews shall address the items in accordance to Constructability Review Checklist in Appendix F.

D. At such time as AUTHORITY'S CONTRACTOR has prepared final local FACILITY PLANS, including the FACILITY WORK, AUTHORITY will provide a copy thereof to LOCAL AGENCY. The final local FACILITY PLANS shall incorporate the comments of LOCAL AGENCY. Detailed list of final method of inclusion of LOCAL AGENCY'S comments shall be provided to LOCAL AGENCY by AUTHORITY.

E. LOCAL AGENCY shall have fifteen (15) work days from receipt of the final local FACILITY PLANS to review them and provide final comments to AUTHORITY'S CONTRACTOR. If LOCAL AGENCY'S comments are not fully addressed or incorporated, LOCAL AGENCY shall return final FACILITY PLANS for corrections and shall not be considered as final FACILITY PLANS by the AUTHORITY or the AUTHORITY'S CONTRACTOR.

**COOPERATIVE AGREEMENT**

F. AUTHORITY'S CONTRACTOR shall make final corrections to the local FACILITY PLANS and provide a copy to LOCAL AGENCY. This section shall not apply until paragraph E of this Appendix is satisfied.

G. AUTHORITY'S CONTRACTOR shall perform the construction services for the FACILITY WORK in accordance with the local FACILITY PLANS.

H. Deviations from AUTHORITY'S CONTRACTOR'S local FACILITY PLAN whether initiated by AUTHORITY, AUTHORITY'S CONTRACTOR or LOCAL AGENCY, must be agreed upon by AUTHORITY, AUTHORITY'S CONTRACTOR and LOCAL AGENCY and memorialized in an Amendment to the TASK ORDER for the original FACILITY WORK. No deviation from the Original FACILITY WORK shall commence without a fully executed Amendment.

I. LOCAL AGENCY shall be entitled to have a reasonable number of representatives on the site of PROJECT to verify that the FACILITY WORK is being properly performed by AUTHORITY'S CONTRACTOR.

J. Upon completion of the FACILITY WORK, LOCAL AGENCY agrees to accept and maintain FACILITIES as constructed, subject to additional maintenance agreements between the PARTIES.

K. The process established above shall apply separately to each phase or segment of PROJECT, as established in accordance with the agreement between AUTHORITY'S CONTRACTOR and AUTHORITY.

L. AUTHORITY'S CONTRACTOR shall provide LOCAL AGENCY with as-built drawings of the FACILITY WORK outside AUTHORITY'S right-of-way. The as-built drawings shall be in the format provided for in the TASK ORDER for that particular FACILITY WORK.

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**APPENDIX C**

**ARRA AND AUTHORITY PROVISIONS**

- A. Supplemental Terms and Conditions for Agreements Using Federal Funds
- B. GTC-610
- C. AUTHORITY'S Terms and Conditions

**DEFINITIONS**

As used in this Appendix C, the following terms have the following meanings:

“Agreement” includes AGREEMENT

“Contractor” means the LOCAL AGENCY.

“State” includes AUTHORITY.

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**(A) SUPPLEMENTAL TERMS AND CONDITIONS FOR AGREEMENTS USING FEDERAL FUNDS**

**1. FEDERAL REQUIREMENTS**

The Contractor understands that the AUTHORITY has received Federal funding from the Federal Railroad Administration (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 will 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.

Notwithstanding anything to the contrary contained in this AGREEMENT, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. The Contractor shall not 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.

**2. COMPLIANCE WITH FEDERAL REQUIREMENTS**

The Contractor's failure to comply with Federal Requirements shall constitute a breach of this AGREEMENT.

**3. FEDERAL STANDARDS**

The Contractor agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48 inclusive, whichever may be applicable, and with applicable supplementary U.S. Department of Transportation (U.S. DOT) or FRA directives or regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Contractor's technical specifications and requirements.

**4. FEDERAL LOBBYING ACTIVITIES CERTIFICATION**

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

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

## COOPERATIVE AGREEMENT

- (B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (C) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (D) The Contractor also agrees that by signing this document, it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

### 5. DEBARMENT AND SUSPENSION

This AGREEMENT is a covered transaction for purposes of 2 C.F.R. 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" at <http://epls.gov/>. 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.

### 6. 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 AGREEMENT, 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

## COOPERATIVE AGREEMENT

conducted by the Contractor or subcontractor.

### 7. SAFETY OVERSIGHT

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

### 8. ENVIRONMENTAL PROTECTION

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

- (A) **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.* 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 Environmental Protection Agency Regional Office.
- (B) **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.
- (C) **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.*)
- (D) **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 any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this AGREEMENT is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.
- (E) **Environmental Protection:** The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*
- (F) **Incorporation of Provisions:** The Contractor shall include the above provisions (1) through (6) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with federal assistance provided by the FRA.

### 9. CIVIL RIGHTS

The following requirements apply to this AGREEMENT:

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(A) **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; 42 U.S.C. § 12132; 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 AGREEMENT. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

(B) **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this AGREEMENT:

- i. 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: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.
- ii. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, 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.
- iii. 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 of 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-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

## COOPERATIVE AGREEMENT

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.

### 10. CARGO PREFERENCE

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 the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (B) To furnish within 20 Working Days following the date of loading for shipments originating within the United States, or within 30 Working Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the first bullet of this clause above. This bill-of-lading shall be furnished to 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, Washington, D.C. 20590, marked with appropriate identification of the Project.
- (C) To include these requirements in all subcontracts issued pursuant to this AGREEMENT when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 11. PROPERTY, EQUIPMENT AND SUPPLIES

- (A) Contractor agrees that Project property, equipment, and supplies shall be used for the Project activity for the duration of its useful life, as determined by FRA. Should the Contractor unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Contractor agrees that FRA may require the Contractor to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The Contractor further agrees to notify the AUTHORITY when any Project property or equipment is withdrawn from use in the Project activity.
- (B) Contractor agrees to comply with the property standards of 49 C.F.R. §§ 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued.
- (C) Contractor agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- (D) The Contractor agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section.
- (E) Contractor agrees that FRA may:

## COOPERATIVE AGREEMENT

- i. Require the Contractor to transfer title to any property, equipment, or supplies financed with FRA assistance, as permitted by 49 C.F.R. §§ 19.30 through 19.37 inclusive.
- ii. Direct the disposition of property or equipment financed with FRA assistance as set forth by 49 C.F.R. §§ 19.30 through 19.37 inclusive.

(F) If any Project property, equipment, or supplies are not used for the Project for the duration of its useful life, as determined by FRA, whether planned withdrawal, misuse or casualty loss, the Contractor agrees to notify the AUTHORITY immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 19.30 through 19.37 inclusive.

(G) Unless expressly authorized in writing by the AUTHORITY, the Contractor agrees to refrain from:

- i. Executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect AUTHORITY or FRA interest in any Property or equipment; or
- ii. Obligating itself in any manner to any third party with respect to Project property or equipment.

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

### 12. FLOOD HAZARDS

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

### 13. ARRA FUNDED PROJECT

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

### 14. ENFORCEABILITY

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 allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

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### 15. LABOR PROVISIONS

49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this AGREEMENT shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, U.S.C., and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. 231 *et seq.*), the Railway Labor Act (43 U.S.C. 151 *et seq.*), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*). To the extent required by 49 U.S.C. 24405(b) and other laws referenced above, the Contractor shall reflect these provisions in its agreements funded in whole or in part by this AGREEMENT with entities operating rail services over such rail infrastructure.

### 16. LABOR PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the applicable protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836. with respect to employees affected by actions taken in connection with the Project. The Contractor also agrees to include the applicable protective arrangements established by the U.S. DOL under 45 U.S.C. 836 in its arrangements with entities operating rail services over rail infrastructure constructed as part of this AGREEMENT.

### 17. PROHIBITION ON USE OF ARRA FUNDS

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this AGREEMENT may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

### 18. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS

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

### 19. 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 rights-of-way 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 are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Contractor will comply with the provisions of 40 U.S.C 3141 *et seq.*

## COOPERATIVE AGREEMENT

### 20. INSPECTION OF RECORDS

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their 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:

- (A) Examine any records that directly pertain to, and involve transactions relating to, this AGREEMENT; and
- (B) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

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.

### 21. WHISTLEBLOWER PROTECTION

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- (A) Gross mismanagement of a contract relating to ARRA funds;
- (B) A gross waste of ARRA funds;
- (C) A substantial and specific danger to the 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.

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 the ARRA.

### 22. FALSE CLAIMS ACT

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 committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

### 23. REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the AUTHORITY with the following information if

**COOPERATIVE AGREEMENT**

requested in writing:

- (A) The total amount of ARRA funds received by Contractor during the Reporting Period;
- (B) The amount of ARRA funds that were expended or obligated during the Reporting Period;
- (C) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
  - i. The name of the project or activity;
  - ii. A description of the project activity;
  - iii. An evaluation of the completion status of the project or activity; and
  - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- (D) For any contracts equal to or greater than \$25,000:
  - i. The name of the entity receiving the contract;
  - ii. The amount of the contract;
  - iii. The transaction type;
  - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
  - v. The Program source;
  - vi. An award title descriptive of the purpose of each funding action;
  - vii. The location of the entity receiving the contract;
  - viii. The primary location of the contract, including the city, state, congressional district and county;
  - ix. The DUNS number, or name and zip code for the entity headquarters;
  - x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
  - xi. The names and total compensation of the five most highly compensated officers of the company if received:
    - a. 80% or more of its annual gross revenues in Federal awards;
    - b. \$25,000,000 or more in annual gross revenue from Federal awards; and,

**COOPERATIVE AGREEMENT**

- c. 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 contract 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 Contractor that the information contained in the report is accurate.
- (F) Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and federal instruction 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](http://www.FederalRegister.gov). The additional requirements will be added to this AGREEMENT(s).

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### (B) GTC 610

#### GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS),

## COOPERATIVE AGREEMENT

mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

12. TIMELINESS: Time is of the essence in this Agreement.

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

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

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

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

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

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

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

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

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

**COOPERATIVE AGREEMENT**

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

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

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

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

20. LOSS LEADER:

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

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### (C) AUTHORITY TERMS AND CONDITIONS

Special Terms and Conditions

#### 1. EARLY TERMINATION

- (A) **Termination:** The AUTHORITY reserves the right to terminate this AGREEMENT immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the AUTHORITY.
- (B) **Termination Issues For Subcontractors, Suppliers, And Service Providers:** The Contractor shall notify any subcontractor and service or supply vendor providing services under this AGREEMENT of the early termination date of this AGREEMENT. Failure to notify any subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this AGREEMENT, except those specifically agreed to in the termination notice to the Contractor.
- (C) **Cost Principles Under Early Termination:** Termination settlement expenses will be reimbursed in accordance with 48 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (D) **Contractor Claims Against This Agreement Under Early Termination:** The Contractor agrees to release the AUTHORITY from any and all further claims for services performed arising out of this AGREEMENT or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs for performance and early termination of this AGREEMENT.

#### 2. NON-DISCRIMINATION

This section regarding non-discrimination is in addition to GTC 610 and any Federal Requirements.

- (A) During the performance of this agreement, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (e.g. cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave. Contractors and subcontractors shall insure the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Contractor and subcontractors shall comply with the provision of the Fair Employment and Housing Act (Government Code, Section 12900 *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. 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.

**COOPERATIVE AGREEMENT**

(B) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all sub-agreements to perform work under this clause.

(C) The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

**3. RETENTION OF RECORD/AUDITS**

(A) For the purpose of determining compliance with Public Contract Code Section 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable, and other matters connected with the performance of the AGREEMENT pursuant to Government Code Section 8546.7, the Contractor, subcontractors, and the AUTHORITY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the AGREEMENT, including but not limited to, the costs of administering the AGREEMENT. All parties shall make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of expiration under this AGREEMENT. The AUTHORITY, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the AGREEMENT for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

(B) Any subagreement in excess of \$25,000, entered into as a result of this AGREEMENT, shall contain all the provisions of this clause.

**4. DEBARMENT AND SUSPENSION CERTIFICATION**

(A) The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:

- i. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- ii. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
- iii. Does not have a proposed debarment pending; and,
- iv. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

(B) Any exceptions to this certification must be disclosed to the AUTHORITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder

## COOPERATIVE AGREEMENT

responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

### 5. OWNERSHIP OF DATA

- (A) Upon completion of all work under this AGREEMENT, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this AGREEMENT will automatically be vested in the AUTHORITY and no further agreement will be necessary to transfer ownership to the AUTHORITY. The Contractor shall furnish the AUTHORITY all necessary copies of data needed to complete the review and approval process.
- (B) It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this AGREEMENT has been entered into.
- (C) The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the AUTHORITY of the machine readable information and data provided by the Contractor under this AGREEMENT; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the AUTHORITY of the project documentation on other projects, for additions to this Project, or for the completion of this Project by others, except for such use as may be authorized, in writing, by the Contractor.
- (D) Any sub agreement in excess of \$25,000, entered into as a result of this AGREEMENT, shall contain all of the provisions of this clause.

### 6. CONFIDENTIALITY OF DATA

Subject to the requirements and limitations of the California Public Records Act:

- (A) All financial, statistical, personal, technical, or other data and information relative to the AUTHORITY'S operations, which is designated confidential by the AUTHORITY and made available to the Contractor in order to carry out this AGREEMENT, shall be protected by the Contractor from unauthorized use and disclosure.
- (B) The Contractor shall protect all Authority data from loss and disaster and shall have a data disaster recovery plan in place.

### 7. CONFLICT OF INTEREST

- (A) During the term of this AGREEMENT, the Contractor shall disclose any financial, business, or other relationship with the AUTHORITY that may have an impact upon the outcome of this AGREEMENT or any ensuing AUTHORITY construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing AUTHORITY construction project.
- (B) The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

## COOPERATIVE AGREEMENT

(C) The Contractor and its employees, and all its subcontractors and employees, shall comply with the AUTHORITY'S Conflict of Interest Policy.

(D) Any subagreement in excess of \$25,000, entered into as a result of this AGREEMENT, shall contain all of the provisions of this clause.

### 8. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The Contractor certifies that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised by or paid to any AUTHORITY agency employee. For breach or violation of this warranty, the AUTHORITY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

### 9. STATE PREVAILING WAGES RATES

The work called for in this contract may involve, in whole or in part, a "public work," as that term is defined in Labor Code sections 1720 et seq., and one or more employees of the Contractor or of one or more of the Contractor's subcontractors may perform work to which federal and state prevailing wage laws, laws concerning apprentices, and other pertinent laws may apply. It is the obligation of the Contractor to determine whether these laws apply to any of the work to be done pursuant to this Contract.

To the extent that any of the work done pursuant to this Contract, including work done pursuant to any subcontracts, falls within the definition of "public work" as set forth in Labor Code sections 1720 et seq., and involves "workers," as that term is defined in Labor Code section 1723, the following provisions apply.

- (A) The Contractor shall comply with all obligations imposed on contractors by Labor Code section 1776. Any subcontracts will contain a provision requiring subcontractors to comply with all obligations imposed on subcontractors by Labor Code section 1776.
- (B) The Contractor agrees to comply with the provisions of Labor Code section 1775, as it exists now and as it may be amended from time to time during the duration of this AGREEMENT.
- (C) Copies of Labor Code sections 1771, 1775, 1776, 1777.5, 1813, and 1815 are attached hereto as Attachment 4. To the extent these sections describe the obligations of a contractor or subcontractor engaged in a public work, those obligations are made a part of this AGREEMENT as though fully set forth. Any contract executed between the Contractor and a subcontractor shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815, and shall provide that the subcontractor shall comply with the provisions of those sections.
- (D) 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

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during which the worker is required or permitted to work more than 8 hours in anyone calendar day and 40 hours in anyone calendar week in violation of the provisions of this article.

- (E) In accordance with the provisions of Section 3700 of the Labor Code, the Contractor will be required to secure the payment of compensation to his employees.
- (F) To the extent the Contractor or any subcontractor employs apprentices or employs workers in any apprenticeable craft or trade, it shall be the responsibility of the Contractor to see to it that the Contractor and the subcontractors comply with Labor Code section 1777.5, as it now exists and as it may be amended from time to time during the duration of this AGREEMENT.

### 10. FEDERAL PREVAILING WAGES

The work herein proposed may be financed in whole or in part with Federal funds. To the extent it is so financed, all of the statutes, rules, and regulations promulgated by the Federal government which are applicable to work financed in whole or in part with Federal funds will be applicable to work performed pursuant to this contract. To the extent the work is financed in whole or in part with Federal funds, the following provisions will take effect:

#### (A) Federal Requirements

- i. Federal Requirements for Federal-Aid Construction Projects provisions may apply to this AGREEMENT and, to the extent they apply, are made a part of the AGREEMENT.
- ii. The current Federal Prevailing Wage Determinations issued under the Davis-Bacon and related Acts shall apply to this AGREEMENT and are made a part of the AGREEMENT.

- (B) 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 Contract Manager.

If there is any conflict between the State prevailing wages and the Federal prevailing wages, the higher rate shall be paid. Any subagreement entered into as a result of this AGREEMENT shall contain all of the provisions of this clause. In the event Federal funds are used to finance, in whole or in part, the work done pursuant to this AGREEMENT, or any subcontracts, the parties agree to amend this AGREEMENT to include any provisions to the extent such provisions are required to be included in the AGREEMENT by Federal laws or regulations.

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**APPENDIX D**

**LOCAL AGENCY SPECIAL CONDITIONS**

**1. DESIGN STANDARDS**

AUTHORITY'S CONTRACTOR shall conform to the following FACILITY WORK standards and criteria:

- (A) Design Speed for FACILITY WORK shall be agreed upon in future overcrossing agreements to be executed by the PARTIES for the following roads that are to remain open: E. Lincoln Ave, E. Adams Ave, E. South Ave, E. Manning Ave, E. Floral Ave, E. Nebraska Ave, E. Mountain View Ave, S. Chestnut Ave (South), S. Clovis Ave, E. Elkhorn Ave, S. Fowler Ave, E. Davis Ave, and E. Conejo Ave.
- (B) The following roads will be closed: E. Malaga Ave., E. Jefferson Ave., E. Sumner Ave., E. Dinuba Ave., E. Rose Ave., S. Chestnut Ave., E. Kamm Ave., S. Peach Ave., E. Clarkson Ave., S. Clovis Ave., E. Davis Ave., and E. Barrett Ave.
- (C) Whether E. Springfield Ave. and E. Clayton Ave. will remain open or closed will be later determined by the Parties in a written agreement.
- (D) Current California Department of Transportation standards shall apply as related to above selected Design Speed.
- (E) Deviations from standards as defined in this Appendix D whether advisory or mandatory must be approved by DIRECTOR within 15 working days of receipt, prior to completion of 30% plans. Approval of one deviation does not constitute approval to any other deviation from those same standards.
- (F) Crossings shall remain opened to the greatest extent possible during the construction of FACILITY WORK, and at no time shall two consecutive crossings be closed.
- (G) Traffic management, haul routes, and detouring plans must be approved by DIRECTOR, within 15 working days of receipt, prior to closing any crossing.
- (H) Shoulder widths determined pursuant to Current California Department of Transportation standards shall be increased as necessary to ensure compliance with San Joaquin Valley Air Pollution Control District Rule 8061.
- (I) If public traffic is proposed to be conveyed through active construction sites, not less than one lane with a minimum width of 12 feet shall be available for safe conveyance of public traffic at all times when construction operations are actively ongoing, and not less than two lanes, each with a minimum width of not less than 12 feet shall be available for safe conveyance of public traffic at all times when construction operations are not actively ongoing. While under reversing, one-way traffic control, public traffic shall not be delayed in excess of fifteen minutes.
- (J) If public traffic is proposed to be conveyed via off-site detour routes, AUTHORITY'S CONTRACTOR shall prepare an analysis of the cost to the public to use the detour route for the intended duration of the closure as compared to the additional cost associated with routing public traffic through the active construction site. Such proposal and analysis shall be subject to review and approval or rejection by DIRECTOR, within 15 working days of receipt. In cases where it is inherently unsafe or impracticable to convey traffic through active construction sites, AUTHORITY'S CONTRACTOR shall so inform DIRECTOR and DIRECTOR may waive the requirement for an analysis of cost to the public.
- (K) All off-site detours shall utilize only public roads which are paved and centerline-striped and in good repair suitable for the volume of traffic anticipated.
- (L) Design and construction for storm water mitigation shall be the responsibility of the AUTHORITY'S

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CONTRACTOR and shall not become the responsibility of the LOCAL AGENCY. Concentration or collection of storm water shall be avoided if possible. In areas or overcrossings where concentration and collection of storm water is not avoidable, AUTHORITY'S CONTRACTOR shall construct storage facilities such as ponds and ditches, unless other arrangements are made with Fresno Metropolitan Flood Control District or otherwise agreed in writing by LOCAL AGENCY as to a specific storage facility, maintenance of all such storm water storage facilities shall become the responsibility of the AUTHORITY or its designee.

- (M) Embankment for overcrossings shall be designed in such a way to mitigate erosion by implementing hardscape techniques or flattening of the slopes.
- (N) An overcrossing agreement will be approved and executed prior to submittal of 60% FACILITY PLANS to LOCAL AGENCY.
- (O) A maintenance agreement covering all FACILITY WORK will be approved and executed prior to opening any overcrossing to public traffic. The Maintenance Agreement will delineate the final ownership and maintenance responsibilities between LOCAL AGENCY and AUTHORITY, or designee, for all FACILITY WORK.

### 2. EXISTING CONDITIONS

AUTHORITY'S CONTRACTOR, prior to the beginning of any construction in relationship to AUTHORITY WORK or FACILITY WORK shall document the condition of all of LOCAL AGENCY'S facilities which will or may be impacted, either temporarily or permanently, including but not limited to potential detour routes and haul routes. AUTHORITY'S CONTRACTOR shall thereafter provide such documentation and allow adequate time for LOCAL AGENCY review and verification thereof. Neither AUTHORITY WORK nor FACILITY WORK shall commence until DIRECTOR has issued written concurrence to AUTHORITY regarding AUTHORITY'S CONTRACTOR documentation.

At the completion of construction of any/all AUTHORITY WORK or FACILITY WORK, FACILITIES which are not otherwise reconstructed or improved as FACILITY WORK and which are impacted as a result of AUTHORITY WORK or FACILITY WORK shall be brought back to a state of repair at least equal to that originally documented by AUTHORITY'S CONTRACTOR and concurred with by DIRECTOR. DIRECTOR has final approval of remediation work required for returning LOCAL FACILITIES to their original state of repair.

### 3. SCHEDULE

AUTHORITY'S CONTRACTOR shall diligently undertake, or cause to be undertaken, the FACILITY WORK as specified in the TASK ORDER for that specific FACILITY WORK. The party responsible for performing the FACILITY WORK will also be responsible for costs incurred by the LOCAL AGENCY caused by delays in completing the FACILITY WORK in accordance with the schedule and/or timeline specified in the TASK ORDER for that specific FACILITY WORK. The costs of delays may be predetermined in the form of liquidated damages in the TASK ORDER. Costs may include, but shall not be limited to, reasonable costs incurred by the general public associated with extended use of detours, loss of use of facility, and detouring, signage, advertisement, and degradation of local roads used for purpose of detouring traffic and/or transporting construction materials.

### 4. LOCAL AGENCY'S FACILITIES

FACILITIES shall at all times remain the property of LOCAL AGENCY and shall be properly protected and maintained by LOCAL AGENCY; provided, however, that LOCAL AGENCY shall not be required

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to protect FACILITIES during RELOCATION thereof by AUTHORITY'S CONTRACTOR and shall not be required to provide maintenance of such facilities during construction thereof except to the extent that need for such maintenance is not, directly or indirectly, precipitated by actions of AUTHORITY or AUTHORITY'S CONTRACTOR.

**5. TRAFFIC**

Furthermore, for determination of current traffic volumes, the Fresno Council of Governments' traffic model ("COG Model") in effect as of the date of execution of the TASK ORDER pertaining to construction of such FACILITIES shall be used. Design Traffic Volumes shall be those current traffic volumes contained in or interpolated from said COG Model, projected to reflect the anticipated traffic volumes upon completion of construction of all FACILITIES impacted by AUTHORITY'S PROJECT. Such projections shall be provided by AUTHORITY'S CONTRACTOR and shall account for any increased traffic volumes likely to occur as a result of modifications to FACILITIES and/or otherwise resulting from AUTHORITY'S PROJECT. Such projections shall be subject to approval by DIRECTOR, which approval shall not be unreasonably withheld.

Improvements which, provided that they are required by application of the projected traffic volumes as described in the preceding paragraph to the Design Standards described in Appendix F of this AGREEMENT, shall not be considered BETTERMENTS include, but shall not be limited to: increases in lane and shoulder width; addition of paved shoulders or other shoulder treatments to comply with local air district rules; correction of vertical or horizontal profiles not meeting current Design Standards; the replacement or extension of existing structures to provide appropriate clear width; increased roadway structural sections, installation of bridge or culvert approach treatments, retrofit or reconstruction of existing traffic signals, installation of new traffic signals where such installation is warranted based on traffic volumes projected as described herein; and, all ancillary work precipitated by such improvements.

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APPENDIX E – STAKEHOLDER COLLABORATION

In order to accomplish PROJECT(S) through the most effective means available, PARTIES will collaborate as agreed to in Section 6.2 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the STAKEHOLDERS to resolve issues that may arise during the performance of FACILITY WORK.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the PROJECT(S), the STAKEHOLDERS agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the PROJECT:

- A. “*Issues Resolution Ladder*” (IRS) – a hierarchy of those individuals within the PROJECT including the STAKEHOLDERS and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. “*Stakeholder Collaboration Implementation Plan*”– the intention of this plan is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the FACILITY WORK to be addressed by the STAKEHOLDERS.
- C. “*Stakeholder Charter*” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the collaborative vision, goals and relationship. The charter will be signed by all STAKEHOLDERS.

STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the stakeholder relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve PROJECT issues.



**COOPERATIVE AGREEMENT**

**UNIT: DESIGN**

*I certify that a thorough and complete constructability review has been performed by my staff:*

\_\_\_\_\_  
Signature of Functional Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Reviewer

\_\_\_\_\_  
Date

**PS&E Milestone**

	<b>Key Constructability Issues</b>	<b>30%</b>	<b>60%</b>	<b>90%</b>
	<b><u>DESIGN</u></b>			
1	Preliminary structures studies performed			
2	Conflicts with ongoing projects identified			
3	Identification and avoidance of section 4(f) properties			
4	Non Project utilities identified			
5	Railroad involvement identified			
6	Geometric Approval Drawings completed			
7	Typical cross sections developed			
8	Adequate access for residents & businesses in areas under construction			
9	Project materials recommendations for:			
	Embankment foundations and settlement estimates			
	Slope Design			
	Structural Section			
	Subsurface/groundwater control			
10	Consistency between roadway and structure plans			
11	Construction area signs			
12	Grading plans			
13	Schedule of all utility relocations			
14	Signing and pavement delineation plans			
15	Traffic signal plans included			
16	Stage construction developed and adequately shown on plans			
17	Storm Water Pollution Prevention Plan (SWPPP) issues addressed			

## COOPERATIVE AGREEMENT

18	Necessary construction details covered in project plans			
19	Work shown on plans is adequately described in Std Specs or SSPs			
20	Specifications for traffic handling & lane closures are included			
21	All items of work shown on Plans specified in SSPs and match pay items in Engineers Estimate. Description and unit of measure are consistent in PS&E.			
22	Standard Plans Lists are complete and accurate.			
23	First Layout sheet contains legends, symbols abbreviations not shown on Standard Plans. All necessary exist facilities shown in dropout.			
24	Construction Details are complete.			
25	Summary of Quantities are tabulated & summarized correctly.			
26	Log of Test Borings included for all retaining walls.			
27	Number of working days sufficient for the type of work.			
28	Liquidated damages calculated per projects complexity.			
29	Lane closure charts are included.			
30	Specifications for traffic handling & lane closures are included			
31	SSPs specify all work to be done in Plans & contract pay items.			
32	All SSPs have necessary measurement and payment clauses.			
33	All SSPs related to obstructions (including high risk facilities) are incl.			
34	All non-project utilities have been relocated			
35	Railroad clauses provided.			
36	Supplemental Funds for miscellaneous items included.			
37	All necessary municipal agency permits to construct identified/acquired			
38	Required construction windows identified and impacts included in design and specifications			
39	Proposed "work-arounds," if needed, are clearly defined			
40	Utility Plans complete & high risk utilities identified & located on plans including relocations.			
41	Reviewed and approved preliminary drainage calculations			

## COOPERATIVE AGREEMENT

42	Preliminary drainage plans			
43	Maintainable facility with sufficient right of way and/or drainage easements			
44	Utilization of correct erosion factors for slope soil loss, stream aggradation/degradation outlet velocities			
45	Drainage mitigation measures proposed			
46	Are water quality (surface groundwater) impacts anticipated and mitigated (detention and/or retention ponds required)			
47	Are dewatering systems needed			
48	Flow diversion/connection approved by appropriate agencies			
49	Drainage for construction staging reviewed			
50	Drainage interface with adjoining projects or future projects			
51	Drainage plans, profiles and details are sufficient including special designs for large underground structures			
52	Bridge and/or pumping plant plans included			
53	Erosion Control plans complete and sufficient			
54	Pipe jacking method appropriate for given site conditions			
55	Materials report recommendations for backfilling adequate			
56	Channel lining adequate for conditions and availability of source			
57	Ultimate drainage basin design protects private property and roadway against flooding			
58	Minimum diversion of natural stream flow			
59	SAG points of depressed sections of alignment designed for 10-year storm			
60	Upstream and downstream effect on run-off is addressed			
61	Drainage is consistent with roadway and structure plans			
62	Drainage quantity estimates accurate			
63	Drainage specifications adequate			
64	Floodplain issues resolved (i.e., impact on base flood elevation)			
65	Computability of project with future projects			
66	Drainage profiles included as required.			
67	Previous suggestions/corrections addressed			

**COOPERATIVE AGREEMENT**

	<b>RIGHT-OF-WAY</b>			
68	Identify right of way needs			
69	Right-of-way boundaries include all roadway facilities			
70	All appraisals, acquisitions, and relocation assistance procedures/ processes are conducted in accordance with Federal/State regulations			
71	Right of way acquisitions started			
72	Temporary construction easements identified and complete			
73	All utilities have Joint Use or Common Use agreements			
74	Railroad agreements contain necessary language with regard to insurance, maintenance, construction, costs, and clearance issues			
75	All easements are reviewed before granting			
76	Right of way summary traverses			
77	All right-of-way has been acquired & certified			
78	Previous suggestions/corrections addressed			
	<b>ENVIRONMENTAL</b>			
79	Are all required mitigation measures in the environmental document addressed			
80	Are all permit requirements satisfied and permit receipt progressing on schedule			
81	Are Environmental Sensitive Areas (ESA) included on design plans and included in the SSPs			
82	Is there a list of recommendations and commitments for permit requirements including schedules and commitments provided by the permitting agency			
83	Is an environmental reevaluation required or needed			
84	All environmental permit requirements determined and requests issued			
85	Mitigation monitoring program established and feasible			
86	Construction staging areas identified and studied			
87	Environmental construction windows identified			
88	Previous suggestions/corrections addressed			

\* Fill in shaded cells with:  
 C = Comment  
 NC = No Comment  
 NA = Not Applicable



**COOPERATIVE AGREEMENT**

	PVI's, etc.			
27	Horizontal alignment with bearings, stationing, curve information (alignment)			
28	Defined right of way with drawings and/or descriptions tied to design horizontal control system.			
29	Sufficient typical sections (no undefined variables) and construction details to control entire project.			
30	Superelevation diagrams if applicable.			
31	Finished grade listing for all points shown on typical sections at a 50' interval.			
32	Previous suggestions/corrections addressed			
	<b>MATLS&amp;GEOTECH</b>			
33	Party responsible for construction testing identified			
34	Project Materials Report recommendations followed for:			
	Structural Section Design			
	Slope Design			
	Embankment foundations & settlement estimates			
	Subsurface/ground water control			
	Earthwork			
	Seismic Design Criteria			
35	Construction testing method and required specifications identified			
36	Geotechnical Baseline Info (if appropriate)			
37	Materials handout provided (when applicable)			
38	Test methods comply with Calif. Test Methods or ASTM or AASHTO alternative			
39	Previous suggestions/corrections addressed			

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