

10 Level 3 Communications, LLC

- Cooperative Agreement
- Bore Log at Dry Creek Canal
- Marked up March 2012 Utility Exhibits
- Cooperative Agreement
- Task Order No. 1 (Fiber)

ADDENDUM 7



California High-Speed Train Project



Cooperative Agreement

Level 3 Communications, LLC



Table of Contents

PARTIES..... **1**

RECITALS **1**

1 DEFINITIONS..... **1**

 1.1 Authority’s Contractor 1

 1.2 Authority Designated Holiday 2

 1.3 Betterment 2

 1.4 Days 2

 1.5 Facility 2

 1.6 Facility Work..... 3

 1.7 Hazardous Material..... 3

 1.8 Notice to Proceed..... 3

 1.9 Party..... 3

 1.10 Relocation 3

 1.11 Right of Way of Utility Owner 4

 1.12 Service Line 4

 1.13 Task Order 4

 1.14 Unforeseen Work 4

 1.15 Utility 4

 1.16 Wasted Work 5

 1.17 Working Days 5

2 WORK TO BE COMPLETED..... **6**

 2.1 Facility Work..... 6

 2.2 Task Orders..... 6

 2.3 Betterment Work at the Utility Owner’s Request 6

 2.4 Unforeseen Work 6

3 LIABILITY FOR WORK **6**

 3.1 Prior Rights 6

 3.2 Authority’s Expense 6

 3.3 Utility Owner’s Expense 7

 3.4 Shared Expense 7

 3.5 Claims by the Authority’s Contractor 7

 3.6 Disputes..... 7



4 PERFORMANCE OF WORK 9

4.1 General 9

4.2 Utility Owner Performs Facility Work 9

4.3 Authority's Contractor Performs Work 10

4.4 Insurance 10

4.5 Stakeholder Collaboration 11

5 PAYMENT FOR WORK 12

5.1 Cost of Facility Work 12

5.2 Payment for the Cost of Facility Work 12

5.3 Invoicing Procedures 13

6 GENERAL CONDITIONS 13

6.1 Deactivated Facilities 13

6.2 Default 14

6.3 Indemnification 15

6.4 Force Majeure 16

6.5 Utility Owner’s Facility and Right of Way 17

6.6 Agreement Final Expression of the Parties 18

6.7 Severability 19

6.8 Governing Law and Venue 19

6.9 Notices 19

6.10 Wasted Work 20

6.11 Hazardous Material 20

6.12 Successors and Assigns 21

6.13 Third Parties 21

6.14 State Funds 21

6.15 American Recovery and Reinvestment Act and the Authority 21

List of Appendices

- Appendix A: Design-Build Procedures
- Appendix B: ARRA and Authority Provisions
- Appendix C: Stakeholder Collaboration



Financial Project ID:		Federal Project ID:	
County:		AUTHORITY Document No:	

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Cooperative Agreement"), 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

Level 3 Communications, LLC,
a Delaware Limited Liability Corporation whose principal mailing address is 1025 Eldorado Boulevard, Broomfield, CO 80021, hereinafter referred to as the "Utility Owner".

RECITALS

WHEREAS, the Utility Owner owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission and are located on a public road or publicly owned rail corridor; and

WHEREAS, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Utility Owner's Facilities; and

WHEREAS, the Authority and the Utility Owner desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Utility Owner's Facilities.

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Utility Owner agree as follows:

1 DEFINITIONS

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

1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person, other than ~~the California Department of Transportation~~, an agency of the State of California or a municipality, hereinafter referred to as "Caltrans", and Fresno, a city in



~~Fresno County, California, hereinafter referred to as "City of Fresno"~~^[A1], that enters into a contract with the Authority for the performance of Facility Work, as defined herein.

1.2 Authority Designated Holiday

"Authority Designated Holiday" means New Year's Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

~~1.1 BETTERMENT~~

~~"BETTERMENT" means the difference in cost between the intended relocation of UTILITY OWNER's FACILITY as proposed and submitted by UTILITY OWNER and the cost of any upgrades to the FACILITY not attributable to the AUTHORITY's PROJECT(s) and made solely for the benefit, and at the election of UTILITY OWNER.~~

1.3 Betterment

~~"Betterment" means any improvement to the Utility Owner's Facilities that is requested by Utility Owner and is required to be provided by the Authority pursuant to any fully executed Task Order, as defined herein, that identifies such improvements as Betterment.~~^[A2]

"Betterment" means the difference in cost between the intended relocation of the Utility Owner's Facilities as proposed and submitted by the Utility owner and the cost of any upgrades to the Facility not attributable to the HST Project and made solely for the benefit and at the election of the Utility owner.

Betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirement, or any upgrading required by any applicable standard specifications, standards of practice and construction methods applied to comparable Facilities constructed by or for the Utility Owner at its own expense, which are in effect as of the date of execution of the Cooperative Agreement^[A3] Task Order.

1.4 Days

"Days" means calendar days, unless otherwise stated.

1.5 Facility

"Facility" or "Facilities" means any Utility, as defined herein, or any publicly owned and operated road, street, bridge, or grade separation.



1.6 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction of the HST Project associated with Relocation of Utilities.

1.7 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.8 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by a Notice to Owner or otherwise) by another agency of the State of California or a municipality ~~Caltrans and/or City of Fresno, directly or indirectly,~~ is specifically excluded from the definition of HST Project.^[A4]

1.9 Notice to Proceed

“Notice to Proceed” means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.

1.10 Party

“Party” refers to the Authority or the Utility Owner, as the context may require and “Parties” means the Authority and the Utility Owner, collectively.

1.11 Relocation

“Relocation” means alteration, removal, relocation, replacement, reconstruction, support, protection,^[A5] including provision of temporary facilities as necessary, of any and all of the Utility Owner’s Facilities that is necessary in order to accommodate or permit construction of the HST Project.



1.12 Right-of-way of Utility Owner

“Right-of-way of Utility Owner” means a property right held by the Utility Owner in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Utility Owner for the Facility to be located in a defined area of real property, or a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement.

1.13 Service Line

“Service Line” means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Utility Owner’s Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

1.14 Task Order

“Task Order” means a work order or agreement among the Authority, the Authority’s Contractor, and the Utility Owner, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.

1.15 Unforeseen Work

“Unforeseen Work” means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.

1.16 Utility

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



protection of facilities to accommodate the HST Project, the term “Utility” or “utility” specifically excludes (a) storm water facilities that provide drainage solely for the HST Project right-of-way, and (b) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.17 Utility Owner G&A Costs

“Utility Owner G&A Costs” means general and administrative costs incurred by the Utility Owner for staff time expended to perform tasks and obligations necessary to effectuate the Relocation of a Facility, including, without limitation, the exchange and review of documentation; attendance at meetings, whether internal or with the other Party or other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts or other affected third parties; procurement of and coordination with Contractors; coordination and interfacing of Utility Owner’s Relocation schedule with the Authority’s design and construction schedules; cooperation with one another’s staff or contractors or with other Project stakeholders (including other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts); preparation, negotiation, and execution of Task Orders and Task Order exhibits; review of legal descriptions of property affected by any Relocation; review and acceptance of Relocation plans; acceptance of construction of Relocation, and connecting the Relocated Utility to Utility Owner’s network; provided that Utility Owner G&A Costs shall be 30% of the construction cost for the relevant Relocation where the Utility Owner is the party responsible for performance of such Relocation and shall be 10% of the construction cost for the relevant Relocation where the Authority is the party responsible for performance of such Relocation^[A6], in each case calculated by multiplying the applicable percentage by the estimated lump sum or not to exceed estimated costs of the construction of Relocation shown on the Utility Owner’s cost estimate attached to the executed Task Order.

1.18 Wasted Work

“Wasted Work” means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority’s cancellation and/or changes in the scope of work as agreed to by both Parties. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.19 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.



2 WORK TO BE COMPLETED

2.1 Facility Work

Facility Work specific to a particular Facility's Relocation shall be detailed in a subsequently executed Task Order.

2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority's Contractor and the Utility Owner. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by the Authority's Contractor.

2.3 Betterment Work at the Utility Owner's Request

Any work considered Betterment made at the Utility Owner'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.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose in connection with. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Utility Owner shall be obligated to comply with the Authority's determination.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by statute, superior rights, prescriptive rights or by permit, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the Utility Owner, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the Utility Owner's Facility is located.

3.2 Authority's Expense

Unless the Utility Owner agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights that the costs for such work shall be borne by the Authority.



3.3 Utility Owner's Expense

Facility Work will be performed at the Utility Owner's expense where:

- A. Facility Work is mutually determined herein to be a Betterment as defined in Section 1.3;
- B. The Utility Owner is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the Utility Owner; or
- D. The Utility Owner agrees hereto.

3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the Utility Owner in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Utility Owner of the claim and the Utility Owner will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Utility Owner and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Utility Owner under this Agreement, the Authority may withhold reimbursement to the Utility Owner until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.6 Disputes

The Authority and the Utility Owner agree that, as a general principle, the Parties shall attempt to resolve any and all disputes arising under this Agreement through a collaborative partnering process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the Utility Owner disagrees with a determination or matter made by the Authority, the Utility Owner shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the Parties shall attempt to resolve such dispute through the partnering process, which may include escalation with the Authority at the Authority's discretion. If, within 14 days after conclusion of such partnering, the dispute persists, then the Utility Owner shall request a written statement of the Authority concerning its decision. The Authority shall reduce its decision to writing and mail or otherwise furnish a copy thereof to



the Utility Owner. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the Utility Owner mails or otherwise furnishes a written appeal addressed to the Authority. The Authority shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. 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 connection with any appeal of the Authority's decision, the Utility Owner shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the Utility Owner shall continue with or permit the continuance of the 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 the Agreement. Records of the 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.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such request, 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.

If it is determined, on appeal, that the Authority's interpretation of the Agreement, direction to the Utility Owner, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under the Agreement, the Utility Owner's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the Utility Owner with respect to the disputed matter (crediting the Authority for any corresponding reduction in the Utility Owner's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.



4 PERFORMANCE OF WORK

4.1 General

All Facility Work (design and construction phases) or portion thereof may be performed by the Utility Owner, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

4.2 Utility Owner Performs Facility Work

When all or a portion of the utility work is to be performed by the Utility Owner, the Utility Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Utility Owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest, responsive, and qualified bidder within the Utility Owner approved vendor list, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, Utility Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Utility Owner agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Utility Owner in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The Utility Owner shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Utility Owner is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Utility Owner shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The Utility Owner shall verify compliance with these requirements in the administration of its contracts referenced above.



4.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Utility Owner shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Utility Owner shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

4.4 Insurance^[A7]

The Utility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Utility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Utility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the ~~-(a) AUTHORITY'S CONTRACTOR~~ Parties, construction contractor, design contractors and design/build contractors shall provide evidence of at least~~7~~:

- A. ~~1~~ Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations~~7~~, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- B. ~~2~~ Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of \$2,000,000 per accident.



- C. ~~(3)~~ Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of \$1,000,000 per accident.
- D. ~~(4)~~ If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. ~~(b) Endorsements and Waivers.~~ Insurance policies required to be provided by ~~C~~ contractor hereunder shall contain or be endorsed to contain the following provisions:
1. ~~(1)~~ Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
 2. ~~(2)~~ Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Utility Owner and the Authority shall be transmitted directly by the insurer to the Utility Owner and the Authority. The Utility Owner recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controller insurance program.

4.5 Stakeholder Collaboration

In signing this Agreement, the Utility Owner agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," included herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.



UTILITY OWNER shall be reimbursed for the cost of participation in the initial workshop and subsequent stakeholder meetings. Reimbursement to the Utility Owner for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made, at the Authority's discretion by either the Authority or the Authority's Contractor.

Subject to the requirements of the Public Information Act, no statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5 PAYMENT FOR WORK

5.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with Utility Owner G&A Costs, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:

- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility, the Authority shall be entitled to credits for the amount of any betterment to the utility Facility resulting from such relocation.
- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Utility Owner.
- C. Eligible Utility Owner costs shall exclude those prohibited under Title 23 C.F.R. Part 645, Subpart A. Utility Owner agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Utility Owner in the amounts as established for Facility Work performed by the Utility Owner, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Utility Owner may be delegated to the Authority's Contractor; in such circumstances, the Utility Owner agrees to the Authority's delegation of responsibility to the Authority's Contractor the responsibility to make reimbursement payments to the Utility Owner; provided, however, that if Authority's Contractor fails to timely make any required payments, responsibility for such payments will be remanded to Authority.



If Facility Work is at the Utility Owner's expense and is performed by the Authority or the Authority's Contractor, the Utility Owner shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work less the credits as determined. At the Authority's discretion, the Authority's Contractor is authorized to accept such payment from the Utility Owner; in such circumstances, the Utility Owner agrees to the Authority's Contractor collection of reimbursement directly from Utility Owner; provided, however, that if Utility Owner fails to timely make any required payments, responsibility for such collection will be remanded to Authority.

5.3 Invoicing Procedures

The Utility Owner will invoice the Authority's Contractor in accordance with the invoicing procedures of the Authority's Contractor.

6 GENERAL CONDITIONS

6.1 Deactivated Facilities

With the exception of empty conduit, the Utility Owner's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Utility Owner acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the Utility Owner to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Utility Owner. In the event of a breach of this Agreement by the Utility Owner, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Utility Owner shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Utility Owner to use due care in its dealings with others. The Utility Owner shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Utility Owner shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.



- E. The Utility Owner shall remove the Deactivated Facilities upon ninety (90) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Utility Owner and without any right of the Utility Owner to object or make any claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been Deactivated. In the event that the Utility Owner fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Utility Owner's sole expense.
- F. Except as otherwise provided, the Utility Owner agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the Utility Owner. The Utility Owner shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way, except where such removal is eligible for reimbursement as provided above. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.
- G. Where empty conduit abandoned within AUTHORITY's right of way requires removal in the future as provided for in Paragraph E, UTILITY OWNER shall be responsible for removing such conduit at AUTHORITY's expense.^[A8]

6.2 Default

In the event that the Utility Owner breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by Law, the Authority may exercise one or more of the following options:

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

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, the Utility



Owner may pursue a claim for damages suffered.

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.

The Authority may unilaterally cancel this Agreement for refusal by the Utility Owner to allow access to all public documents, papers, letters, or other material that is made or received by the Utility Owner in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Utility Owner, the Authority will notify the Utility Owner in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or 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 HST Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

6.3 Indemnification^[A9]

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.

When the Authority receives a notice of claim for damages that may have been caused by the



Utility Owner in the performance of services required under this Agreement, the Authority will immediately forward the claim to the Utility Owner. The Utility Owner and the Authority will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the Utility Owner in the defense of the claim or to require the Utility Owner to defend the Authority in such claim as described in this section. The Authority's failure to notify the Utility Owner of a claim shall not release the Utility Owner from any of the requirements of this section.

The Utility Owner's obligation to defend and indemnify shall not be excused because of the Utility Owner's inability to evaluate liability or because the Utility Owner evaluates liability and determines the Utility Owner is not liable or determines the Authority is solely negligent. Only a final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the Utility Owner. The Utility Owner shall pay all costs and fees related to this obligation and its enforcement by Authority, but shall be reimbursed a pro rata portion upon a final adjudication or judgment finding Authority ~~solely~~ negligent. The Authority's delay in notifying the Utility Owner of a claim shall not release the Utility Owner of the above duty to defend.

6.4 Force Majeure^[A10]

Neither the Utility Owner 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 in the Contract;
- 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 Utility Owner related entity.

Provided that it is beyond its control and not due to an act or omission of the Utility Owner related entity 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 Utility owner 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 Utility Owner 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;
- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Utility Owner related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Utility Owner related entity and not listed in the definition of Force Majeure above.

[The Force Majeure exclusions above, do not apply when the Utility Owner is responsible for performing Facility Work.](#)

6.5 Utility Owner's Facility and Right-of-way

The Utility Owner's Facilities shall at all times remain the property of and be properly protected and maintained by the Utility Owner.

Whenever the Utility Owner's affected Facilities will remain within the Authority's right-of-way, the Authority and the Utility Owner shall jointly execute an agreement for common use of the subject area.

Whenever the Utility Owner's affected Facilities are to be relocated from the existing right-of-way of the Utility Owner to a new location that falls outside such existing right-of-way of the Utility Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities as will correspond to the existing right-of-way of the Utility Owner. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Utility Owner, without charge to the Utility Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Utility Owner for those



rights previously held by the Utility Owner in its existing right-of-way. In discharge of the Authority's obligations under this Paragraph, in the event that the new location falls within the right-of-way under the jurisdiction of the Authority, the Authority and the Utility Owner shall jointly execute an agreement for joint use. In consideration for these replacement rights being issued by the Authority, the Utility Owner shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the Utility Owner's existing right-of-way so vacated.

If the existing Right-of-way of Utility Owner includes fee title, the Authority shall acquire from the Utility Owner, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Utility Owner those remaining property rights appropriate for the placement and operation of the Utility Owner's Facilities in the Right-of-way of Utility Owner.

Upon completion of Facility Work by the Authority, the new Facilities shall become the property of the Utility Owner, and the Utility Owner shall have the same rights in the new location that it had in the old location.

6.6 Applicability

This agreement applies to the Relocation of Utility Owner's Facilities to accommodate or permit construction of the HST Project. ~~Caltrans~~Another State Agency or Municipality may perform construction activities ~~for roadway improvements~~ adjacent to the HST Project. Any Facility Work related to ~~Caltrans~~these construction activities is specifically excluded from the terms and conditions of this Cooperative Agreement.

6.6.7 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 the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award; provided, however, that where the terms of the AUTHORITY'S general policies and procedures conflict with the specific terms of this Agreement, the terms of this Agreement shall apply.^[A11] Copies of the Authority policies and procedures will be provided to the Utility Owner as soon as practicable after they become available. The Authority shall pay for any damages suffered by or costs incurred by the Utility Owner for activities that may be required as a result of the Authority's policies and procedures. Such activities will be set forth in the Task Order specific to that Facility Work. This Agreement cannot be modified except by an instrument, in writing, signed by each of the Parties.



6.76.8 Severability

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.86.9 Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

6.96.10 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and 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, in which case service is effective on the date of actual receipt. The Utility Owner shall have a continuing obligation to notify the 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 UTILITY OWNER:

Utility Owner Name: LEVEL 3 COMMUNICATIONS, LLC

Person in Charge: John Trujillo, Relocation Project Manager

Address: 1025 Eldorado Boulevard
Broomfield, CO 80021

with a copy to:

Utility Owner Name: LEVEL 3 COMMUNICATIONS, LLC

Person in Charge: Attn: General Counsel

Address: 1025 Eldorado Boulevard
Broomfield, CO 80021

If to AUTHORITY:

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800
Sacramento, CA 95814

~~6.106.11~~ Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility’s Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

~~6.116.12~~ Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the Utility Owner and the Authority’s Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Utility Owner shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.



- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the 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, unless such conditions are attributable to the Utility Owner's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."
- 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.

6.126.13 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties.

6.136.14 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

6.146.15 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.156.16 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Utility Owner shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year first written.



UTILITY OWNER:

Signature

Date

Dan Neppel

Typed Name

Vice President, OSP Engineering and Construction Management

Typed Title

Approval by the California High Speed Rail Authority

Signature

Date:

Typed Name

Typed Title

AUTHORITY Legal Review

Signature

Date:

Typed Name

AUTHORITY Legal Counsel

Typed Title



Appendix A: Design-Build Procedures

1. INITIAL COORDINATION

- A. The Utility Owner shall advise the Authority in writing of the place and the name and telephone number of a contact person for the Utility Owner who has charge over the Facility Work and will serve as the primary contact for the Utility Owner on all related issues.
- B. The Authority will compile information from the Utility Owner that will illustrate the nature and locations of the Utility Owner's existing Facilities. The Authority will present this information on a series of drawings and tables that will be used to determine conflicts with the HST Project.
- C. The Utility Owner will furnish markups to the Authority of their existing and proposed Facilities within 20 working days.
- D. The Authority will prepare preliminary design plans that indicate which utilities are to be relocated and conceptual arrangements of the relocated utilities.
- E. The Utility Owner will verify, to the best of their ability, the correctness and completeness of the plans prepared by the Authority.
- F. These plans will form the basis of subsequent design to be performed by the Utility Owner, the Authority or the Authority's Contractor, as such; the Utility Owner shall take sole and full responsibility for the accuracy of their depicted Facilities.

2. 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 Utility Owner agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the Utility Owner, and (b) the Authority's Contractor's collection of reimbursement directly from the Utility Owner having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work will be in accord with the following Method:

The Authority's Contractor performs all design and construction services for the Facility Work with the exception of disconnecting, pulling and terminating new wire/cable.



- A. At such time as the Authority's Contractor has plans prepared to a level where the impact on the Utility Owner's Facilities and the nature and extent of the Facility Work can be determined, hereinafter referred to as "Facility Plans", the Authority's Contractor will provide a copy of the Facility Plans to the Utility Owner in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the Utility Owner's standards.
- B. The Utility Owner shall have twenty (20) working days from receipt of the Facility Plans to review them and provide comments to the Authority's Contractor and the Authority. Failure to respond within the time period allowed shall be deemed as an approval.
- C. The Authority's Contractor shall provide plans and specifications at the 30%, 60% and 90% development phase and/or any other agreed upon development milestones by the Authority, the Authority's Contractor, and the Utility Owner for review and comments. Time for review shall not commence until said milestones have been accepted by the Utility Owner.
- D. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the Utility Owner. The final Facility Plans shall incorporate the comments of the Utility Owner. Detailed list of final method of inclusion of the Utility Owner's comments shall be provided to the Utility Owner by the Authority's Contractor.
- E. The Utility Owner shall have twenty (20) work days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the Utility Owner's comments are not fully addressed or incorporated, the Utility Owner shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.
- F. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the Utility Owner. This section shall not apply until paragraph 2.E of Appendix A is satisfied.
- G. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans. Utility Owner shall install and terminate fiber optic cable within the Facility Work provided by the Authority's Contractor.
- H. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the Utility Owner, must be agreed upon by all parties 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. The Utility Owner shall be entitled to have representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The Utility Owner's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
- J. Upon completion of the Facility Work, the Utility Owner agrees to accept ownership and maintenance of the constructed Facilities and receipt of as-built drawings in AUTOCAD as well as GIS if applicable.
- K. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
- L. The Authority's Contractor shall provide the Utility Owner with as-built drawings of Facility Work. The as-built drawings shall be in AUTOCAD and PDF format as well as GIS if applicable for that particular Facility Work.



Appendix B: ARRA and Authority Provisions

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Utility Owner only to the extent that the Utility Owner would be subject to these provisions. The Utility Owner is not a contractor.-



SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS^[A12]**1. ARRA FUNDED PROJECT:**

Funding for this contract 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 contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

2. 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.

3. PROHIBITION ON USE OF ARRA FUNDS:

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

4. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with the United States obligations under international agreements. The contractor understands that these requirements may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

5. WAGE RATE REQUIREMENTS:

In accordance with ARRA, Section 1605, the Contractor assures that it and its sub-recipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subconsultants on project funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the



United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

6. 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 or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of 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.

7. 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:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) 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.

8. 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.

9. 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 awarding state agency with the following information on a monthly (quarterly) basis:

- 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 expending 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:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) 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.

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. The additional requirements will be added to this contract(s).



CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)		Federal ID Number
By (Authorized Signature)		
Printed Name and Title of Person Signing		
Date Executed	Executed in the County of	

CONTRACTOR CERTIFICATION CLAUSES**1. STATEMENT OF COMPLIANCE:**

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:



- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.

5. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.



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; provided, however, that Utility Owner may assign the Agreement to an entity that is controlled by, controls, or is under common control with Utility Owner, or to any entity that succeeds to substantially all of the assets of Utility Owner.

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, except to the extent caused by the gross negligence or willful misconduct of the State, or any of its agents or representatives.

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. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall 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.

10. 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.

11. TIMELINESS:

Time is of the essence in this Agreement.

12. 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.

13. GOVERNING LAW:

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

14. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



15. UNENFORCEABLE PROVISION:

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

16. 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).)



Appendix C: Stakeholder Collaboration

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 "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 HST Project 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 HST Project:

- A. **"Issues Resolution Ladder" (IRL)** – a hierarchy of those individuals within the HST 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 Implementation Plan" (SIP)** – the intention of the SIP 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 stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.

STAKEHOLDER MEETINGS



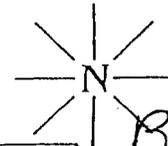
The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.

DRAFT





AS-BUILT DOCUMENTATION
OSP Field Construction

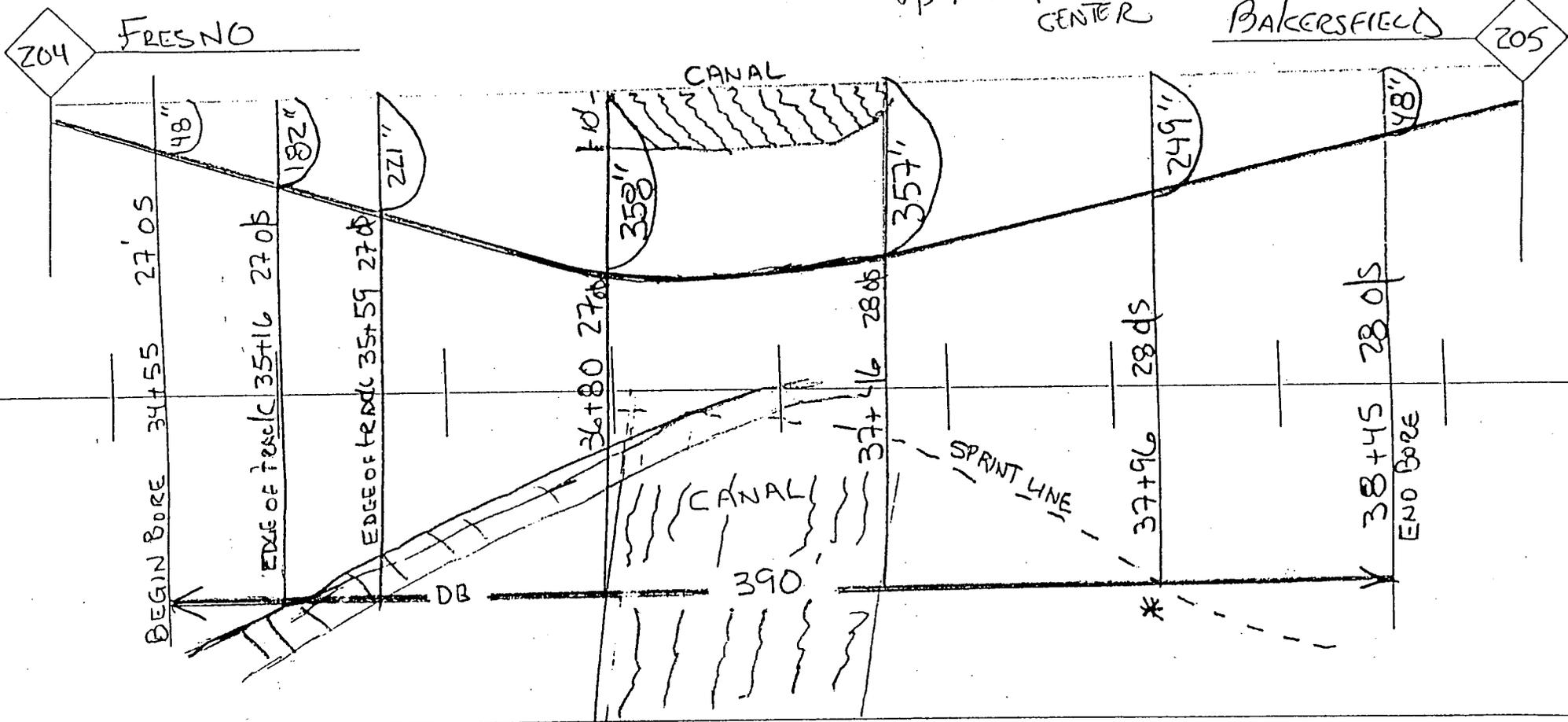


B008351

B08351

Sheet 1 of 1	Dated 5-17-00	Project # 5467	Date 5-17-00
W.O. #	Span CANAL	Title	To

MP/SHT # NOT TO SCALE * SPRINT LINE 7' TO BOTTOM CANAL 10' TO BOTTOM 0/5 FROM ~~SPRINT~~ OF RAIL # CENTER BAKERSFIELD MP/SHT

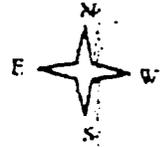


Materials used: _____

Construction Contractor	Posted By
Inspector	Engineering Company
Inspection City	Date

B08351

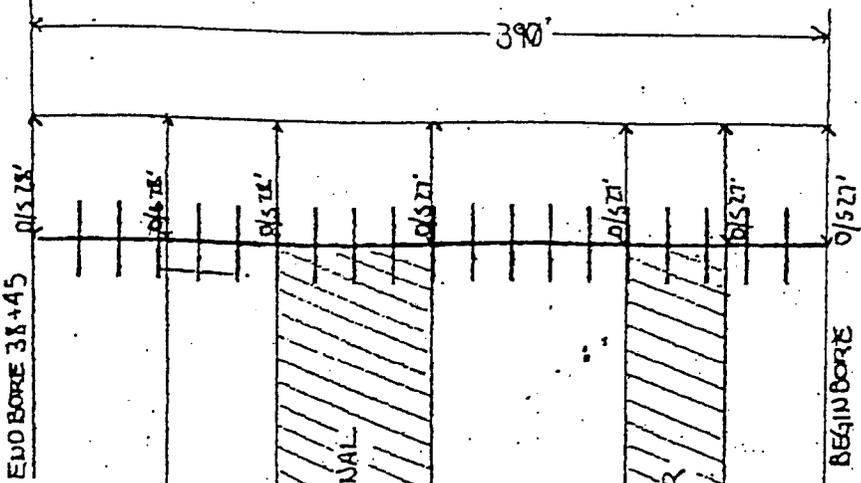
PROFILE INFORMATION
(Inspector to Fill Out)



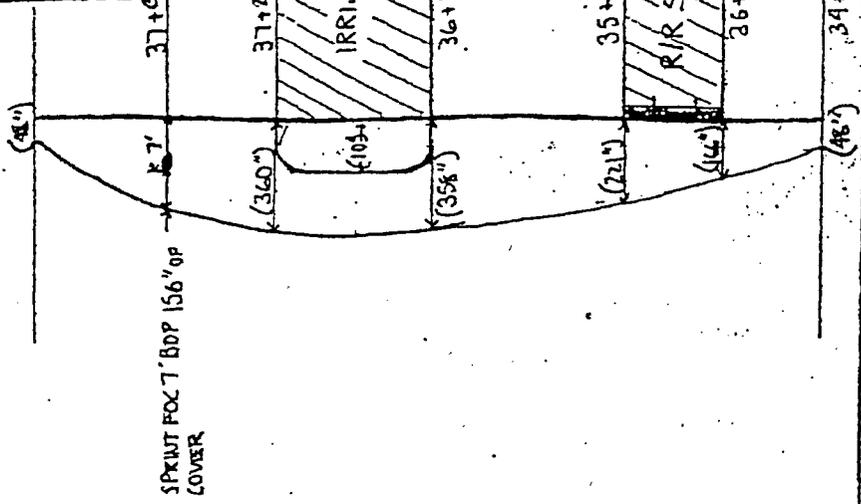
Date: 5-16-08

Road Arroyo Gas Line(s) Electric Line(s) (FOC) (RR Track(s)) River Creek
 Burn Other (Specify): (1) IRR CANAL

TOP PLAN



SIDE PROFILE



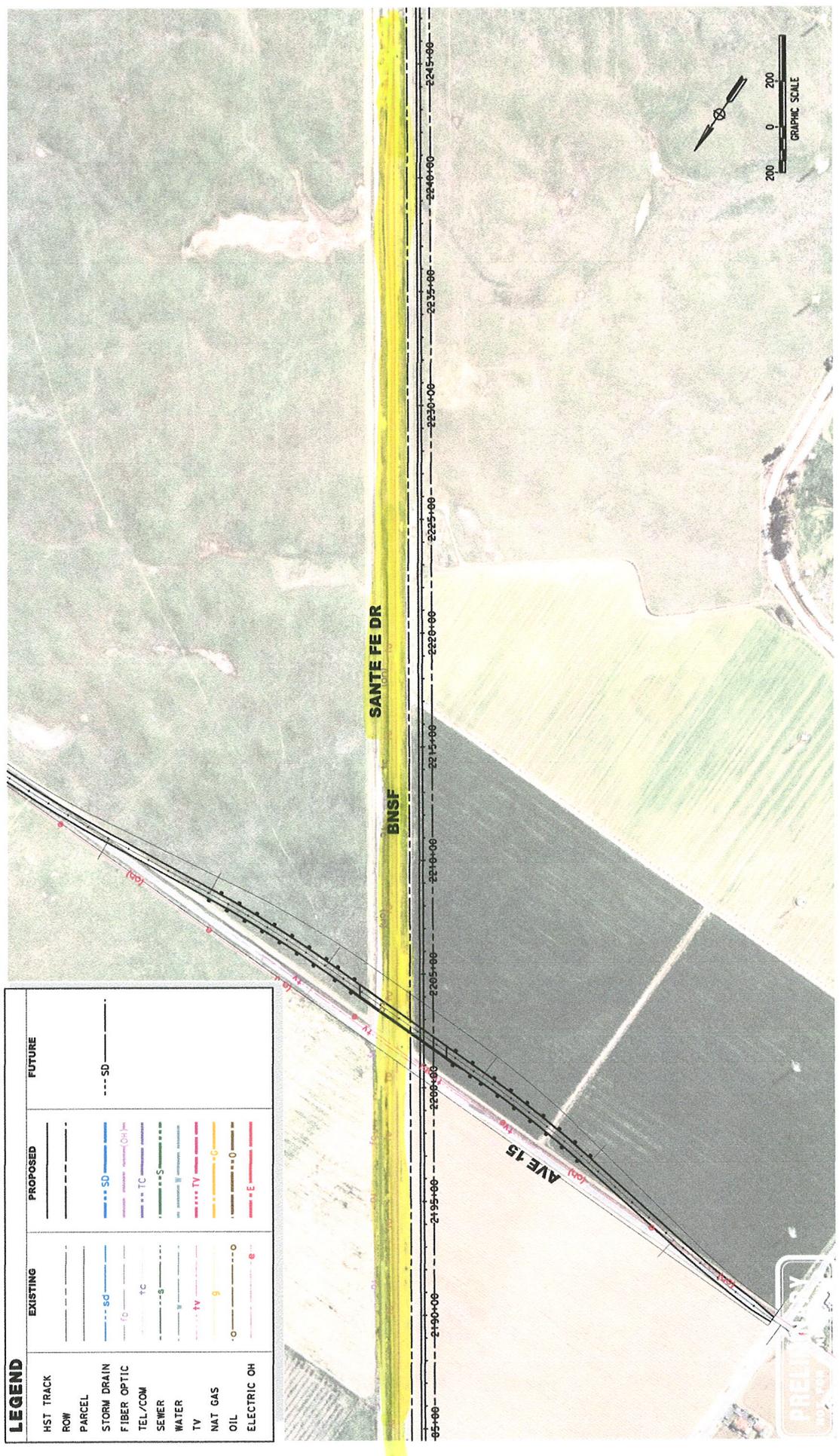
***STEM LISTINGS SOUTH TO NORTH**

# Stem	Pitch%	Depth	OV	9th
1	-32	59'	28'	38+45
2	-32	112'	28'	
3	-32	183'	28'	
4	-36	241'	28'	37+46
5	-28	307'	28'	
6	-20	344'	28'	
7	-12	357'	28'	37+46
8	-4	360'	28'	
9	+1	WATER		
10	+3	WATER		
11	+4	WATER		
12	+5	WATER		36+80
13	+5	356'	27'	
14	+10	338'	27'	
15	+12	317'	27'	
16	+12	299'	27'	
17	+10	280'	27'	
18	+12	265'	27'	
19	+12	256'	27'	
20	+14	238'	27'	
21	+12	221'	27'	35+59
22	+12	202'	27'	
23	+12	182'	27'	35+46
24	+12	152'	27'	
25	+10	130'	27'	
26	+12	110'	27'	
27	+18	84'	27'	34+65
28	+24	40'	27'	

BORE SUMMARY

Soil Conditions: Dir / Cobble / Rock
 Begin Bore (Sta.): 34+55
 Bore Pay Length: 390'
 Casing Type: N/A
 Duct Pipe Size: 1 1/2"
 Subcontractor: ASI
 Rig #: AZ
 Owner: ASI

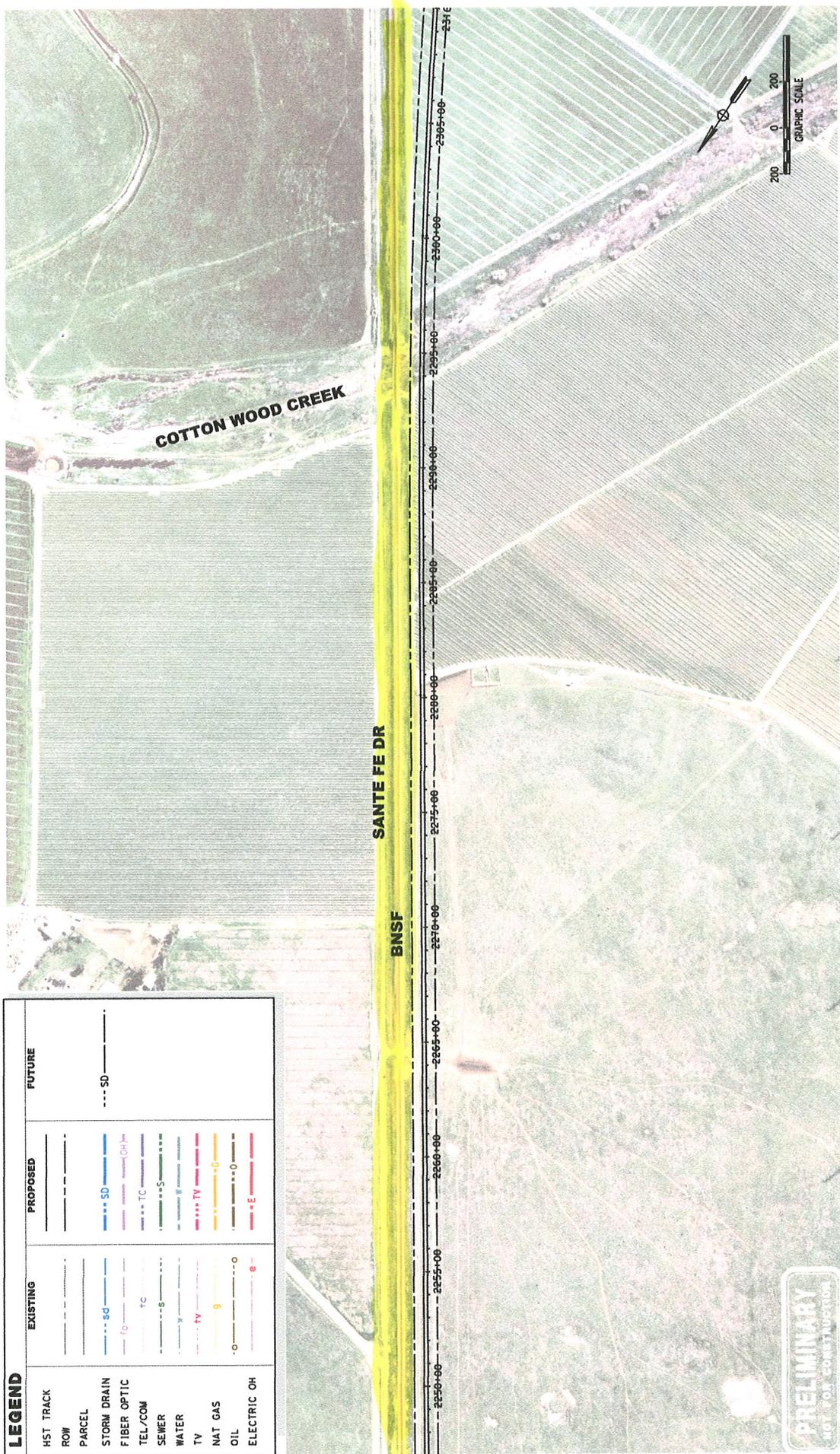
Job #: LEVEL THREE IRRIGATION CANAL FRESNO
 End Bore (Sta.): 38+45
 Proofing Pay Length: 390'
 Casing Pay Length: N/A
 # of Ducts: 12
 Foreman Signature: [Signature]
 Inspector Signature: [Signature]



	EXISTING	PROPOSED	FUTURE
HST TRACK	---	---	---
ROW	---	---	---
PARCEL	---	---	---
STORM DRAIN	---	---	---
FIBER OPTIC	---	---	---
TEL/COM	---	---	---
SEWER	---	---	---
WATER	---	---	---
TV	---	---	---
NAT GAS	---	---	---
OIL	---	---	---
ELECTRIC OH	---	---	---

\\nas01\proj\2012\3-14-12\9 PM CAHSR_TBL_CHSR_HST_Colour.plt T:\1\32598 Calif High Speed Rail\CAD\Exhibits\Package 1\5\Fig-Maps\Fig\orig\m1-fles-wflr-EXHIBIT3-EXH-UT-003.dgn

	EXISTING	PROPOSED	FUTURE
HST TRACK	—	—	—
ROW	—	—	—
PARCEL	—	—	—
STORM DRAIN	---SD---	---SD---	---SD---
FIBER OPTIC	---FO---	---FO---	---FO---
TEL/COM	---TC---	---TC---	---TC---
SEWER	---S---	---S---	---S---
WATER	---W---	---W---	---W---
TV	---TV---	---TV---	---TV---
NAT GAS	---G---	---G---	---G---
OIL	---O---	---O---	---O---
ELECTRIC OH	---E---	---E---	---E---



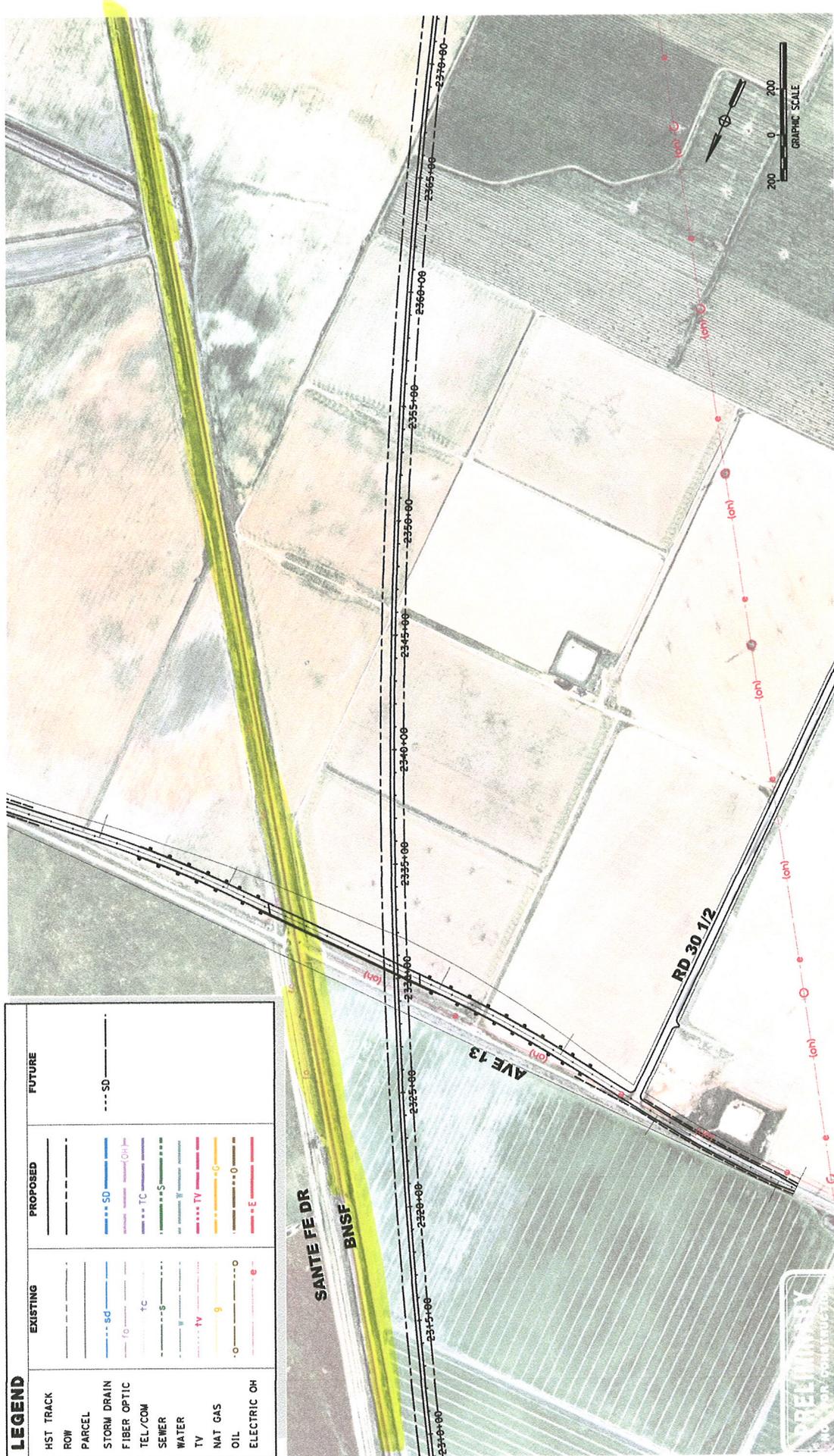
PRELIMINARY
NOT FOR CONSTRUCTION

MARCH 2012



CALIFORNIA
HIGH-SPEED RAIL AUTHORITY

CALIFORNIA HIGH-SPEED TRAIN PROJECT
UTILITY EXHIBIT
HYBRID ALTERNATIVE
COUNTY OF MADERA
SHEET 4 OF 25

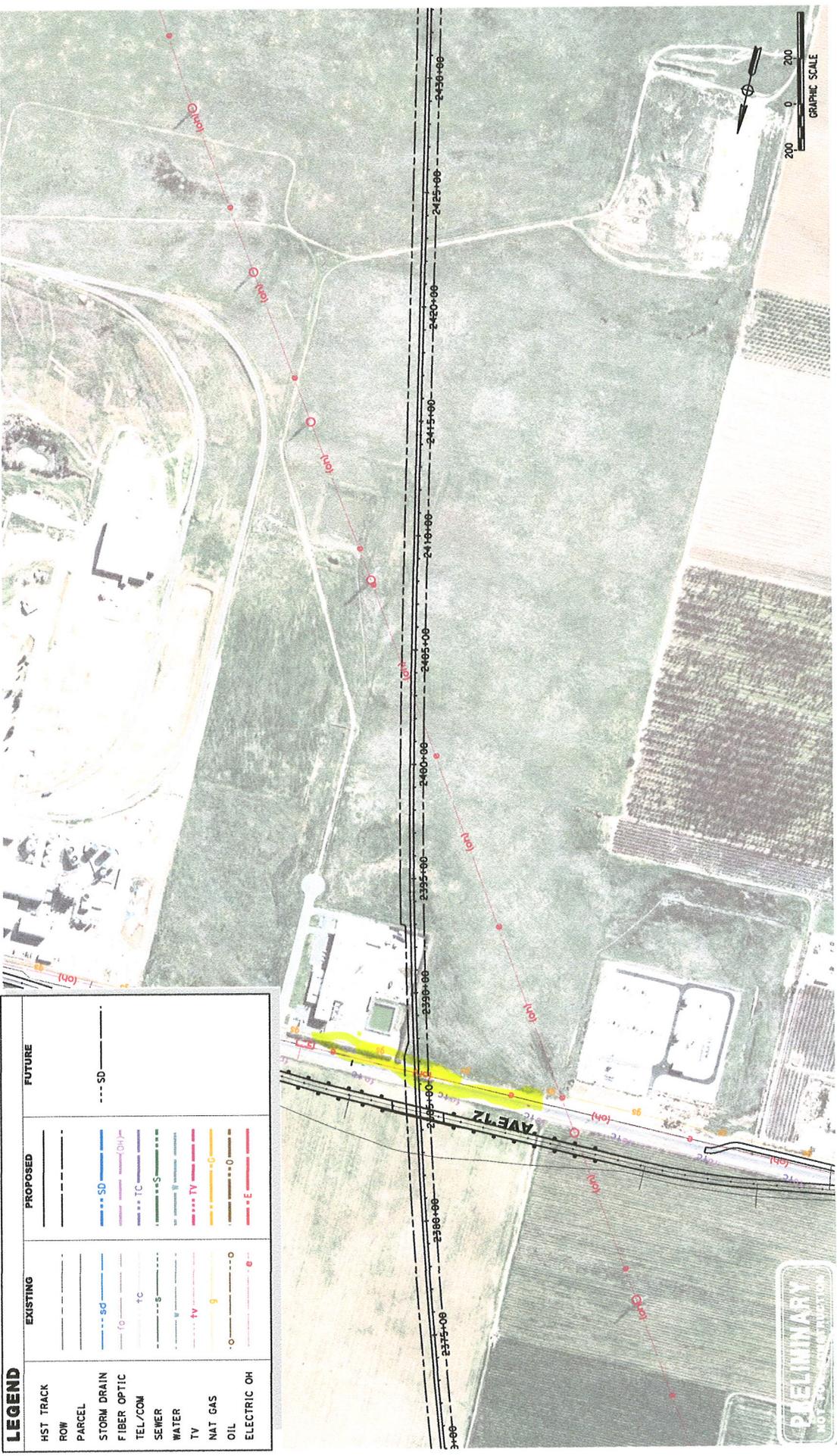


	EXISTING	PROPOSED	FUTURE
HST TRACK	---	---	---
ROW	---	---	---
PARCEL	---	---	---
STORM DRAIN	---	---	---
FIBER OPTIC	---	---	---
TEL/COM	---	---	---
SEWER	---	---	---
WATER	---	---	---
NAT GAS	---	---	---
OIL	---	---	---
ELECTRIC OH	---	---	---

MARCH 2012



Time WARNED



	EXISTING	PROPOSED	FUTURE
HST TRACK	---	---	---
ROW	---	---	---
PARCEL	---	---	---
STORM DRAIN	---	---	---
FIBER OPTIC	---	---	---
TEL/COM	---	---	---
SEWER	---	---	---
WATER	---	---	---
TV	---	---	---
NAT GAS	---	---	---
OIL	---	---	---
ELECTRIC OH	---	---	---

CALIFORNIA HIGH-SPEED TRAIN PROJECT
 UTILITY EXHIBIT
 HYBRID ALTERNATIVE
 COUNTY OF MADERA
 SHEET 6 OF 25

CALIFORNIA
 HIGH-SPEED RAIL AUTHORITY

MARCH 2012

	EXISTING	PROPOSED	FUTURE
HST TRACK	---	---	---
ROW	---	---	---
PARCEL	---	---	---
STORM DRAIN	SD	SD	SD
FIBER OPTIC	FO	TC	TC
TEL/COM	TC	TC	TC
SEWER	S	S	S
WATER	W	W	W
TV	TV	TV	TV
NAT GAS	G	G	G
OIL	O	O	O
ELECTRIC OH	E	E	E



CALIFORNIA HIGH-SPEED TRAIN PROJECT
 UTILITY EXHIBIT
 HYBRID ALTERNATIVE
 COUNTY OF MADERA
 SHEET 7 OF 25



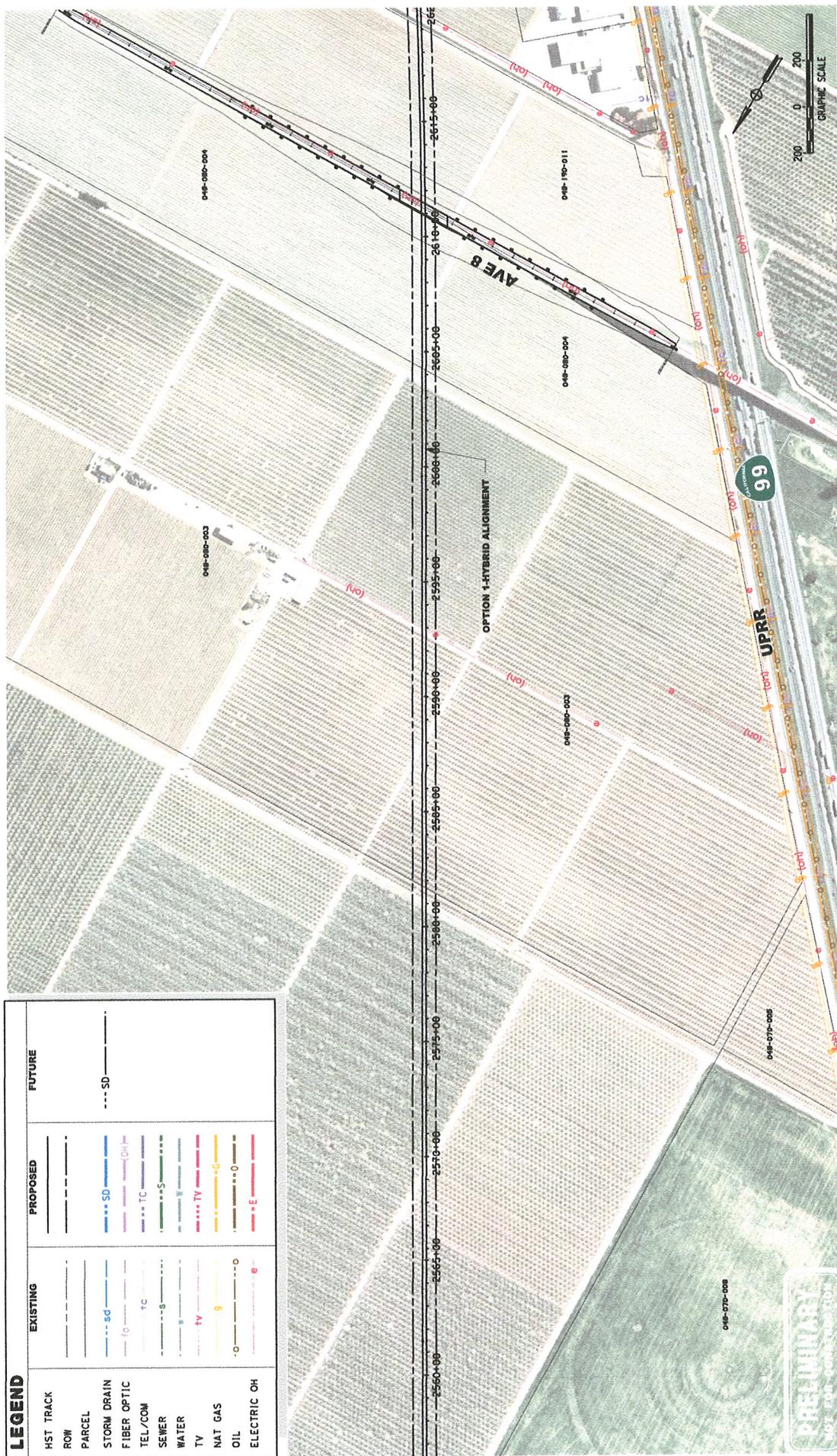
MARCH 2012

	EXISTING	PROPOSED	FUTURE
HST TRACK	—	—	—
ROW	—	—	—
PARCEL	—	—	—
STORM DRAIN	—	—	—
FIBER OPTIC	—	—	—
TEL/COM	—	—	—
SEWER	—	—	—
WATER	—	—	—
TV	—	—	—
NAT GAS	—	—	—
OIL	—	—	—
ELECTRIC OH	—	—	—



CALIFORNIA HIGH-SPEED TRAIN PROJECT
 UTILITY EXHIBIT
 HYBRID ALTERNATIVE
 COUNTY OF MADERA
 SHEET 8 OF 25



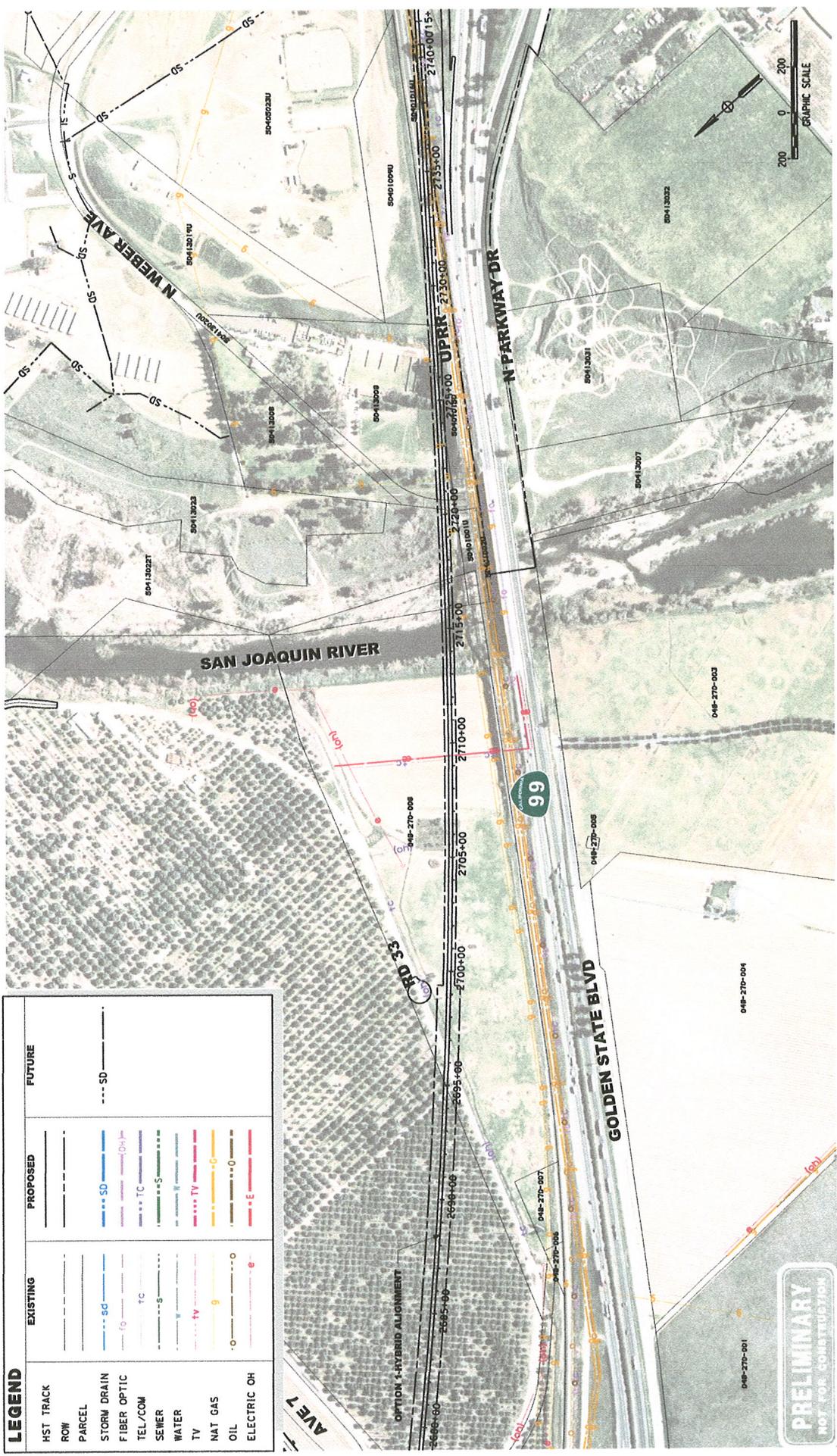


	EXISTING	PROPOSED	FUTURE
HST TRACK	---	---	---
ROW	---	---	---
PARCEL	---	---	---
STORM DRAIN	---	---	---
FIBER OPTIC	---	---	---
TEL/COM	---	---	---
SEWER	---	---	---
WATER	---	---	---
TV	---	---	---
NAT GAS	---	---	---
OIL	---	---	---
ELECTRIC OH	---	---	---

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LEGEND		EXISTING	PROPOSED	FUTURE
HST TRACK		—	—	—
ROW		—	—	—
PARCEL		—	—	—
STORM DRAIN		—	—	—
FIBER OPTIC		—	—	—
TEL/COM		—	—	—
SEWER		—	—	—
WATER		—	—	—
TV		—	—	—
NAT GAS		—	—	—
OIL		—	—	—
ELECTRIC OH		—	—	—

PRELIMINARY
NOT FOR CONSTRUCTION

MARCH 2012



CALIFORNIA
HIGH-SPEED RAIL AUTHORITY

CALIFORNIA HIGH-SPEED TRAIN PROJECT
UTILITY EXHIBIT
HYBRID ALTERNATIVE
COUNTY OF MADERA AND CITY OF FRESNO
SHEET 11 OF 25