

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

| |
|------------------------------|
| Agreement Number HSR1_-xx |
| Registration Number |

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

STATE AGENCY'S NAME

California High-Speed Rail Authority

CONTRACTOR'S NAME

County of San Benito

2. The term of this Month Date, 201_ through Month Date, 201_
Agreement is:

3. The maximum amount \$xxxxx.xx
of this Agreement is: xxxxx Dollars and xx Cents

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

| | |
|---|----------|
| Exhibit A – Scope of Work | 3 pages |
| Exhibit B – Budget Detail and Payment Provisions | 3 pages |
| Exhibit C – General Terms and Conditions | 3 pages |
| Exhibit D – Special Terms and Conditions | 4 pages |
| Exhibit E – Supplemental Terms And Conditions For Contracts Using Federal Funds | 10 pages |
| Attachment 1 –Budget | 1 page |
| Attachment 2 – Board Resolution | __ pages |

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

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

County of San Benito

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Brent Barnes, Public Works Director

ADDRESS

2301 Technology Parkway
Hollister, CA 95023

STATE OF CALIFORNIA

AGENCY NAME

California High-Speed Rail Authority

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Scott Jarvis, Chief Engineer

ADDRESS

770 L Street, Suite 620 MS 2
Sacramento, CA 95814

**California Department of General Services
Use Only**

☒ Exempt per: Public Utilities Code Section
185036

DRAFT

**EXHIBIT A
SCOPE OF WORK**

1. BACKGROUND AND PURPOSE

- A. The California High-Speed Rail Authority (Authority) is responsible for the planning, design, construction, and operation of the first high-speed rail system in the nation (Project). The California high-speed rail system will connect the mega-regions of the State, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands. By 2029, high-speed rail will run from San Francisco to the Los Angeles basin in under three hours at speeds of over 200 miles per hour. The system will eventually extend to Sacramento and San Diego, totaling 800 miles with up to 24 stations. In addition, the Authority is working with regional partners to implement a statewide rail modernization plan that will invest billions of dollars in local and regional rail lines to meet the State's 21st century transportation needs.
- B. This Agreement (Agreement) is between the Authority, an agency of the State of California, and the County of San Benito (Contractor), a political subdivision of the State of California.
- C. To facilitate the construction of the high-speed rail system, the Authority requires Contractor to perform the work as described in Section 2 of this Exhibit (Work).
- D. All inquiries regarding this Agreement will be directed to the project representatives identified below:

| AUTHORITY | CONTRACTOR |
|-----------------------|--|
| Contract Manager: TBD | Project Manager: Brent Barnes |
| Address: | Address: 2301 Technology Parkway Hollister, CA 95023 |
| Phone: | Phone: 831-636-4170 ext. 266 |
| Fax: | Fax: 831-636-4176 |
| Email: | Email: Bbarnes@cosb.us |

The Contract Managers may be changed without amendment with written notification.

2. SCOPE OF WORK, TASKS, DELIVERABLES, AND SCHEDULE

- A. The Authority shall provide the Contractor a Notice to Proceed for the Work under this Agreement from the Authority's Contract Manager, a proposed alignment, segment number(s) and any other information about the Project segment(s) to assist the Contractor in the investigation of its existing facilities for conflicts with the Project's proposed alignment. The Notice to Proceed may specify work based on Tasks as outlined below.
- B. Contractor will be reimbursed for its actual, direct, and necessary expenses in its performance of the following:

| | <u>Task</u> | <u>Description</u> | <u>Deliverable</u> | <u>Schedule</u> |
|----|-----------------------|---------------------------|---------------------------|------------------------|
| 1. | Technical/Engineering | Staff time to review | Comments on | Through December |

EXHIBIT A
SCOPE OF WORK

| | <u>Task</u> | <u>Description</u> | <u>Deliverable</u> | <u>Schedule</u> |
|-----|--------------------------------------|---|--|---|
| | Review Support | technical/preliminary engineering documents. | technical/preliminary engineering documents. | 31, 2017 |
| 2. | Technical/Engineering Review Support | Staff time for identifying existing conflicts. | Report identifying any conflicts. | Through December 31, 2017 |
| 3. | Technical/Engineering Review Support | Staff time for coordination with the Authority and its representatives. | Participation in coordination activities. | Through December 31, 2017 |
| 4. | Agreement Development | Staff time for cooperative agreement review. | Participation in meetings and review of draft contract and other documents. | Through December 31, 2017 |
| 5. | Agreement Development | Staff time for task order/utility agreement template review. | Participation in meetings and review of draft contract and other documents. | Through December 31, 2017 |
| 6. | Agreement Development | Staff time for right-of-way transfer agreement review. | Participation in meetings and review of draft contract and other documents. | Through July 31, 2018 |
| 7. | Agreement Development | Staff time for grade separation agreement review. | Participation in meetings and review of draft contract and other documents. | Through December 31, 2017 |
| 8. | Agreement Development | Staff time for ownership and maintenance agreement review. | Participation in meetings and review of draft contract and other documents. | Through July 31, 2018 |
| 9. | Agreement Development | Attorney time for legal review. | Legal review of documents and meeting with Authority attorneys. | Through July 31, 2018 |
| 10. | Agreement Development | Staff and attorney time for preparation of board of directors materials and reports. | Materials and reports for board of directors. | Through July 31, 2018 |
| 11. | Right-of-way Support | Staff time for property rights research. | Reports detailing property rights. | December 1, 2017 through expiration or termination of the Agreement |
| 12. | Right-of-way Support | Staff and attorney time for abandonment, vacation, or legal transfer of right-of-way. | Abandonment, vacation, or legal transfer of right-of-way and supporting documentation. | July 1, 2018 through expiration or termination of the Agreement. |
| 13. | Right-of-way Support | Staff and attorney time for preparation of board of directors materials and reports. | Presentations to board of directors, if any. | July 1, 2018 through expiration or termination of the Agreement. |

EXHIBIT A SCOPE OF WORK

Contractor staff and attorney time will be reimbursed at the hourly rates set forth in the Budget. Contractor acknowledges that “staff time” does not include time for subcontractors, vendors, and outside counsel. Subcontractor, vendors, and attorney time shall only be reimbursed if specifically included above and in the Budget.

- C. Additionally, Contractor will be reimbursed the actual costs incurred for (i) audited fringe and overhead rates, and (ii) other direct costs limited to (a) travel; (b) approved subcontractors; and (c) vendors.
- D. Contractor acknowledges the following costs shall not be reimbursed: (i) reviewing and/or providing comments on environmental documents (including, but not limited to, environmental impact statements and environmental impact reports); (ii) attending meetings, unless at the request of the Authority; (iii) acquisition of real property, which shall be handled through the property acquisition process; (iv) coordination for design and construction activities, which shall be handled through task orders/utility agreements; (v) preliminary and/or final designs, which shall be handled through task orders/utility agreements; (vi) construction, materials, or inspection, which shall be handled through task orders/utility agreement; and (vii) maintenance, which shall be handled through the ownership and maintenance agreement or construction and maintenance agreement, as appropriate.

3. SCHEDULE OF SERVICES

Performance of the work described in Section 2 shall commence upon receipt of Notice to Proceed.

Unless terminated as provided herein, the Work shall continue until earlier of (i) completion of the Work or (ii) expiration of the term.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. FUNDING REQUIREMENTS

- A. This Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the Work identified in Exhibit A. In this event, the Authority shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provision of this Agreement.
- B. After execution or commencement of this Agreement, if funding for any fiscal year is reduced or deleted by the Budget Act for purposes of the Work, the Authority shall have the option to either: 1) cancel this Agreement with no further liability occurring to the Authority; or 2) offer an Agreement amendment to the Contractor to reflect the reduced amount.
- C. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this Project. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.

2. COMPENSATION, INVOICING, AND PAYMENT

- A. The maximum amount of this Agreement is an estimate, and the actual amount of work requested by the Authority may be less. No payment shall be made in advance of services rendered.
- B. Contractor shall not be entitled to payment for work performed prior to receipt of Notice to Proceed from the Authority's Contract Manager. No Work shall begin before that time.

Invoices shall include the Agreement Number, date prepared, and billing period, actual hours worked (by individual name and position), actual costs for salaries (by position), and fringe, overhead and other direct costs. Contractor shall not be paid for claimed costs or expenses not identified on the Attachment 1 –Budget.

- C. For services satisfactorily rendered and approved by the Contract Manager and upon receipt and approval of the invoices, the Authority shall reimburse the Contractor for actual costs incurred. Provide 1 original and 2 copies, as set forth below, of the invoice for payment. Invoices shall be submitted no more than monthly in arrears to:

(1 original and 1 copy)
Financial Operations Section
California High-Speed Rail Authority
770 L Street, Suite 620 MS 3
Sacramento, CA 95814

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

AND

(1 copy)

TBD

- D. The following certification shall be included on each invoice and signed by the authorized official of the Contractor:

“I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, included but not limited to a Government Entity contract, subcontract, or other procurement method.”

- E. The Authority will accept computer generated or electronically transmitted invoices. The date of “invoice receipt” shall be the date the Authority receives the paper copy.
- F. Payments shall be made to the Contractor for undisputed invoices. If the Authority disputes an invoice it shall notify the Contractor within 15 working days of receipt of the invoice and pay undisputed portions of the invoice in accordance with the Agreement. The invoice may be disputed if additional evidence is required to determine the invoice’s validity, deliverables for the billing period have not been received and approved, inaccuracies of the invoice, or does not otherwise comply with the terms of this Agreement.
- G. Positions listed in the Budget, included as Attachment 1, may be changed without an amendment to the Agreement. A request for change must be in writing, on Contractor’s letterhead, and identify the position and rate that is added or removed. There shall be no change in the positions without written approval by the Authority’s Contract Manager.
- H. There shall be no change in the rate of position without prior written approval by the Authority’s Contract Manager. A request for change must be in writing, on Contractor’s letterhead and identify the reason for rate change.

3. COST PRINCIPLES

Contractor’s performance shall be governed by and in compliance with the following administrative and cost principles:

- A. If Contractor is governmental entity, then Contractor shall comply with Title 49 Code of Federal Regulations, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- B. If Contractor is a for-profit organization, then Contractor shall comply with Title 49 Code of Federal Regulations, Part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations (49 C.F.R. Part 19) and Title 48 Code of Federal Regulations, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*
- C. If Contractor is a non-profit organization, then Contractor shall comply with 49 C.F.R. Part 19 and OMB Circular A-122, Cost Principles for Nonprofit Organizations.
- D. If Contractor is an educational institution, then Contractor shall comply with 49 C.F.R. Part 19 and OMB Circular A-21, Cost Principles for Education Institutions.
- E. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions of this clause.

The identified circulars and regulations are hereby incorporated into this Agreement by reference as if fully set out herein.

If any costs for which payment has been made to the Contractor are determined by subsequent audit to be unallowable under the applicable administrative and cost principles referenced above, then the unallowable costs are subject to repayment by the Contractor to the Authority.

4. TRAVEL

- A. The Contractor shall be reimbursed for approved travel and per diem expenses using the same rates provided to non-represented state employees. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates at the following website: <http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>.
- B. Travel expenses are computed from the Contractor's approved office location. Travel to the Contractor's approved office from other locations is not reimbursed under this Agreement unless specifically authorized.
- C. The Contractor must retain documentation of travel expense in its financial records. The documentation must be listed by trip and include dates and times for departure and return.

5. CONTINGENT FEE

The Contractor certifies, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, with the exception of bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

business. For breach or violation of this certification, the Authority has the right to annul this Agreement without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

EXHIBIT C

GENERAL TERMS AND CONDITIONS AND CONTRACTOR CERTIFICATIONS

1. GENERAL TERMS AND CONDITIONS

A. 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.

B. 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.

C. 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.

D. AUDIT. Contractor agrees that the Authority, the Department of General Services, the State Auditor, 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.)

E. 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.

F. DISPUTES. Contractor shall continue with the responsibilities under this Agreement during any dispute.

G. TERMINATION FOR CAUSE. The Authority 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 Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority 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.

H. 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.

EXHIBIT C**GENERAL TERMS AND CONDITIONS AND CONTRACTOR CERTIFICATIONS**

I. 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.

J. TIMELINESS. Time is of the essence in this Agreement.

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

L. 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.

2. CONTRACTOR CERTIFICATIONS

A. STATEMENT OF COMPLIANCE. Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103.)

B. 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:

i. 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.

ii. Establish a Drug-Free Awareness Program to inform employees about:

1) the dangers of drug abuse in the workplace;

EXHIBIT C

GENERAL TERMS AND CONDITIONS AND CONTRACTOR CERTIFICATIONS

- 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.

iii. 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.)

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

1. EARLY TERMINATION

- A. This Agreement may be terminated at any time by mutual agreement of the parties in writing.
- B. Termination for Convenience. The Authority reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- C. Notice of Termination 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 by the Authority in writing.
- D. Contractor Claims After Early Termination. The Contractor shall 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 for costs actually incurred for work performed prior to receipt of the notice of termination and actual costs incurred as a result of termination.

2. PURCHASE OF EQUIPMENT

No equipment is approved for purchase.

3. SUBCONTRACTING

- A. Upon prior approval of the Authority, Contractor may subcontract a portion of the Work. Attachment 1 –Budget shall identify the rates for any approved subcontractor. Any substitution of a subcontractor shall be approved in writing by the Authority's Contract Manager prior to such substituted subcontractor performing work. Unless specifically noted otherwise, any subcontract in excess of \$25,000 shall contain all the applicable provisions stipulated in this Agreement.
- B. This Agreement shall not create a contractual relationship between the Authority and any approved subcontractor. A subcontract shall not relieve the Contractor of performance of its duties hereunder. Contractor shall be responsible for the any and all acts and omissions of its subcontractors and their employees.
- C. Contractor's obligation to pay its subcontractors is independent of the Authority's obligation to pay the Contractor.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

4. 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, electronic documents, 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. All calculations, drawings and specifications, whether in hard copy, and electronic or machine readable form, are intended for one-time use in the construction of the Project.
- 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 any data provided by the Contractor under this Agreement. 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 subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

5. CONFIDENTIALITY OF DATA

- 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 Authority and the Contractor agree to protect designated confidential or privileged information intended by the Authority and Contractor to remain so protected, while facilitating the sharing of information as part of both parties' efforts. Use of data files constitutes agreement on the part of the Contractor to maintain confidentiality if exempt under the California Public Records Act, subject to Government Code Section 6254.5(e). Confidential information shall not be shared with third parties without consultation and approval from the Authority.
- C. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel, including subcontractors, affiliates, and vendors, involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative Committee.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

- D. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- E. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of the Confidentiality of Data clause.

6. PUBLIC RECORDS; CONFLICTS OF INTEREST

- A. This Agreement shall not limit nor infringe on either parties duty to comply with the California Public Records Act, Government Code Section 6250 *et seq.*
- B. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Organizational Conflict of Interest Policy.
- C. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

7. STOP WORK

- A. The Authority's Contract Manager may, at any time, by written notice to the Contractor require the Contractor to stop all or any part of the work tasks in this Agreement.
- B. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- C. The Contractor shall resume the stopped work only upon receipt of written instruction from the Authority's Contract Manager canceling the stop work order. An equitable adjustment shall be made by the Authority based upon a written request by the Contractor for an equitable adjustment. Such adjustment request must be made by the Contractor within 30 days from the date of receipt of the stop work notice.

8. SETTLEMENT OF DISPUTES

The parties agree to use their best efforts to resolve disputes concerning a question of fact arising under this Agreement in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

9. HEADINGS

The headings appearing in this contract have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

10. WAIVER

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

Failure to enforce any provision of this Agreement shall not operate as a waiver of that or any other provision or any subsequent breach of this Agreement.

EXHIBIT E**SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS**

All terms in Exhibit E must be included in all subcontracts and lower-tier subcontracts regardless of amount expended, unless otherwise noted.

1. FEDERAL REQUIREMENTS

The Contractor understands that the Authority has received Federal funding from the Federal Rail 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 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.
- 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

EXHIBIT E**SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS**

Contractor shall complete and submit Standard Form LLL, "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 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.

4. 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 each subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" at <http://www.sam.gov/portal/public/SAM/>. The Contractor shall obtain appropriate certifications from each such subcontractor and provide such certifications to the Authority.

The Contractor's signature affixed herein shall also 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:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Have not had one or more public transactions (federal, state, and local) terminated within the preceding three years for cause or default;
3. Has not been convicted within the preceding three years of any of the offenses listed in Title 2 Code of Federal Regulations Section 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period; and

EXHIBIT E**SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS**

4. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses listed in Title 2 Code of Federal Regulations Section 180.800.

Should the Contractor or any subcontractor become excluded or disqualified as defined in this section during the life of the Agreement, the Contractor shall immediately inform the Authority of this exclusion or disqualification. 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.

5. SITE VISITS

The Contractor acknowledges 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 conducted by the Contractor or subcontractor.

6. SAFETY OVERSIGHT

To the extent applicable, the Contractor shall 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.

7. 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 shall 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 shall report each violation to the Authority, and acknowledges 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 shall 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 shall report each violation to the Authority, and acknowledges that the Authority

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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 will 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 will not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Contractor shall promptly notify the Authority if the Contractor or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this 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 (A) through (F) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with federal assistance provided by the FRA.

8. CIVIL RIGHTS

The following requirements apply to this Agreement:

- 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 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 will 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 will 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

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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 will 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 will 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 will refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor will 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 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. Further, in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor will comply with the requirements of U.S. Department of Transportation, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Contractor will comply with any implementing requirements FRA may issue.

The Contractor will 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 will comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

The Contractor also will 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.

EXHIBIT E**SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS****9. 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.

10. ENFORCEABILITY

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.

11. PROHIBITION ON USE OF ARRA FUNDS

Contractor will 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.

12. ACCESS AND INSPECTION OF RECORDS

- A. In accordance with ARRA Sections 902, 1514, and 1515, the Contractor 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:
 - i. Access and reproduce any books, documents, papers and records of the Contractor that directly pertain to, and involve transactions relating to, this Agreement for the purposes of making audits, examinations, excerpts and transcriptions; and
 - ii. Interview any officer or employee of the Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA.
- B. Pursuant to Title 49 Code of Federal Regulation Section 18.26(i)(11), Title 49 Code of Federal Regulations Section 19.26, or OMB Circular A-133 Compliance Supplement, (whichever applicable), the Contractor will maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor will maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. The Contractor

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shall notify the Authority not less than six months prior to disposal of any books, records, accounts and reports required under this Agreement.

- C. The Contractor will comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, Title 5 United States Code Section 552(a).

The Contractor shall include this provision in all lower-tier subcontracts.

13. WHISTLEBLOWER PROTECTION

Contractor 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. 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 contractor) awarded or issued relating to ARRA funds.

Contractor 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.

14. FRAUD AND FALSE CLAIMS ACT

Contractor shall promptly notify the Authority 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.

The Contractor will include the above paragraphs in each subcontract financed in whole or in part with Federal assistance provided by the FRA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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Contractor will, if requested by the Authority in writing, to provide the Authority with the following information:

- A. The total amount of funds received by the Contractor during the time period defined in the Authority's request;
- B. The amount of funds actually expended or obligated during the time period requested;
- C. A detailed list of all projects or activities for which funds were expended or obligated, including:

The name of the project or activity;

- i. A description of the project activity;
- ii. An evaluation of the completion status of the project or activity; and
- iii. An estimate of the number of jobs created and/or retained by the project or activity.

- D. For any contracts or subcontracts 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, if known;
- v. The location of the entity receiving the contract;
- vi. The primary location of the contract, including city, state, congressional district, and county;
- vii. The DUNS number, or name and zip code for the entity headquarters, if known;
- viii. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- ix. The names and total compensation of the five most highly compensated officers of the company if received:

- 80% or more of its annual gross revenues in Federal awards;
- \$25,000,000 or more in annual gross revenue from Federal awards and;
- 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. Any other information reasonably requested by the State of California or required by state or federal law or regulation.

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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 Agreement by amendment.

16. REPRINTS OF PUBLICATIONS

Whenever an employee of a Contractor-Related Entity writes an article regarding the Project or otherwise resulting from work under this Agreement that is published in a scientific, technical, or professional journal or publication, the Contractor shall ensure that the Authority is sent two reprints of the publication, clearly referenced with the appropriate identifying information.

An acknowledgment of FRA support and a disclaimer must appear in any publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

“This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement FR-HSR-0009-10-01-05, dated December 5, 2012. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT.”

17. 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.

18. LABOR PROTECTIVE ARRANGEMENTS

The Contractor will 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 will 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.