



AGENDA ITEM NO.

IA

COUNCIL MEETING

05/09/13

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

May 9, 2013

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department

SUBJECT: APPROVE AMENDMENTS TO TWO AGREEMENTS WITH THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY (CHSRA) RELATED TO DEVELOPMENT OF A MASTER COOPERATIVE AGREEMENT AND AN ARCHITECTURAL SERVICES CONTRACT (COUNCIL DISTRICTS 1, 2 & 3)

RECOMMENDATIONS

It is recommended that the Council take the following actions:

1. Approve a First Amendment, in substantially the form presented, to an Agreement with the California High-Speed Rail Authority for the development of a Cooperative Agreement and authorize the Public Works Director or his designee to sign the amendment.
2. Authorize the Public Works Director to negotiate and enter into a Second Amendment to the agreement related to the development of a Master Cooperative Agreement, for the purpose of increasing the amount of the Agreement by an additional \$200,000.
3. Approve a First Amendment to an agreement with the California High-Speed Rail Authority for specific architectural services in the development of guidelines and recommendations for the appearance of new elevated structures, walls, fencing, lighting and landscaping constructed with the project and authorize the Public Works Director or his designee to sign the amendment, in substantially the form presented, on behalf of the City of Fresno.

EXECUTIVE SUMMARY

The City has entered into two agreements with the California High-Speed Rail Authority which now require amendments. The first agreement was to reimburse the City for staff costs incurred in development of a Cooperative Agreement with the California High-Speed Rail Authority. The purpose of the proposed amendment is to allow for the retroactive payment for staff hours that were, requested by CHSRA that preceded the authorization date in the agreement, to extend the contract end date, by eleven (11) months from June 30, 2013 to May 31, 2014, and to make other modifications so that Federal funds may be used to reimburse the City. A subsequent amendment will be negotiated to increase the existing agreement by \$200,000 to provide funding for reimbursement of City incurred costs; approval of the recommendation action by the Council will authorize the Public Works Director to negotiate and enter into this Second Amendment on behalf of the City.

REPORT TO THE CITY COUNCIL

Approve First Amendments to Two Agreements with the CHSRA

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The second agreement funded the City's hiring of the architectural consultant Zimmer Gunsul Frasca (ZGF) to develop recommended urban design concepts for the appearance for new bridges, walls, sidewalks, fencing, railings, lighting, and landscaping that will be constructed by the Authority's Contractor. The purpose of the proposed amendment is to allow for the retroactive payment of a late submitted subcontract, extend the contract end date from June 30, 2013 to December 31, 2013, and make other modifications so that Federal funds may be utilized to reimburse the City. No additional funding is being included in the amendment as all the work requested of ZGF Architects, which totals \$99,550, will be completed under the contract amount of \$150,000 provided for in the agreement.

BACKGROUND

AMENDMENT FOR COOPERATIVE AGREEMENT

On May 3, 2012, the Council approved a Memorandum of Understanding with the California High-Speed Rail Authority to develop a Cooperative Agreement between the CHSRA and the City of Fresno. The Agreement memorialized the design, construction and maintenance responsibilities for facilities to be constructed, modified or relocated as part of the project. The CHSRA also agreed to reimburse the City for costs incurred in developing the agreement up to \$296,000. Tasks generally include verification of existing rights-of-way, review of proposed designs for conformance to City standards, analysis of utility-HSR conflicts, analysis and verification of utility easements and pre-plan check activities along the HSR corridor. The current amendment will extend the contract life by eleven (11) months and will allow completion of the contracted services. A subsequent amendment will be negotiated for an additional \$200,000 which will ensure full reimbursement to the City of Fresno.

AMENDMENT FOR ARCHITECTURAL SERVICES AGREEMENT

On June 14, 2012, the Council approved a Memorandum of Understanding for \$150,000 with the CHSRA to provide CHSRA funding to the City for Urban Design and Architectural Review Services with ZGF Architects. An initial contract was approved for \$49,660 and on December 13, 2012 the Council, Amended the contract to allow for additional analysis and support services. Council approved an amendment with ZGF increasing the contract for architectural services to \$99,550. The current amendment extending the contract by six (6) months will allow for completion of the contracted services. The High Speed Rail project encompasses property in Districts 1, 2 and 3.

FISCAL IMPACT

There will be no impact to the General Fund or any City operating funds associated with the recommended action. All City costs for services provided under the existing agreements, including the proposed amendments, will be paid for by the CHSRA project funding. The resulting amounts of the two agreements will be \$496,000 for the development of the Master Cooperative Agreement and \$150,000 for the architectural design review agreement, both of which are fully funded by the California High-Speed Rail Authority. The High-Speed Rail project encompasses property in Council Districts 1, 2 & 3.

Attachments:

- (1) First Amendment to Agreement for Development of a Cooperative Agreement
- (2) First Amendment to Agreement for Architectural Services Contract

STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 15 Pages

AGREEMENT NUMBER HSR11-29	AMENDMENT NUMBER 1
REGISTRATION NUMBER	

- This Agreement is entered into between the State Agency and Contractor named below:
 STATE AGENCY'S NAME
 California High-Speed Rail Authority
 CONTRACTOR'S NAME
 City of Fresno
- The term of this Agreement is May 13, 2012 through May 31, 2014
- The maximum amount of this Agreement after this amendment is: \$296,000.00
 Two Hundred Ninety-six Thousand Dollars
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 The purpose of this amendment is allow for the retroactive payment of a late submitted contract, extend the contract end date from June 30, 2013 to December 31, 2013, and make other corrections so that Federal funds may be utilized to pay Contractor. May 4
 - Delete "or upon DGS approval, whichever is later" on paragraph 2. 4
 - Change the term of the agreement from June 30, 2013 to May 31, 2013.
 - Exhibit A, Section I.A. – Delete "The Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Authority's Contract Manager."
 - Exhibit B Section B.3. – Delete the entire paragraph.
 - Exhibit C Section 1 – Delete "Contractor may not commence performance until such approval has been obtained."
 - Exhibit D Section A.3. – Delete the second sentence.
 - Exhibit E – Additional Federal flow down provisions that did not exist previously. "Exhibit E Supplemental Terms and Conditions for Contracts Using Federal Funds" replaces the previous Exhibit E Supplemental Terms and Conditions for Contracts Using ARRA Funds.

All other terms and conditions shall remain the same.

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) City of Fresno		
BY (Authorized Signature) <u>[Signature]</u>	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Scott Mozier, P.E., City Engineer/Assitant Director		
ADDRESS City of Fresno, Public Works Department 2600 Fresno Street, 4 th Floor, Fresno, CA 93721-3623		
STATE OF CALIFORNIA		
AGENCY NAME California High-Speed Rail Authority		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) <u>[Signature]</u>	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Jeff Morales, Chief Executive Officer		
ADDRESS 770 L Street, Suite 800 Sacramento, CA 95814		

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EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

A. FUNDING REQUIREMENTS

1. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for pursuing work under this contract, this Agreement shall be of no further force and effect. In this event, the AUTHORITY shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provision of this Agreement.
2. 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.
3. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Agreement, the AUTHORITY shall have the option to either cancel this Agreement with no liability occurring to the AUTHORITY or Contractor, or offer an Agreement Amendment to the Contractor to reflect the reduced amount.

B. COMPENSATION, INVOICING AND PAYMENT

1. The total amount payable by the AUTHORITY, for this Agreement shall not exceed \$296,000.00. It is understood and agreed this total is an estimate, and the actual amount of work requested by the AUTHORITY may be less.
2. Any changes in scope requested by the AUTHORITY or work required beyond expectations may result in additional time to complete the Study and shall be billed accordingly and proceeded with as outlined. At any time the Contractor determines the Study is expected to cost more than \$296,000.00, the CONTRACTOR shall promptly notify the AUTHORITY and provide an estimate of any additional costs. Upon receipt of such notice, the AUTHORITY shall either: (a) request the CONTRACTOR to terminate the Study, or (b) amend the agreement.
3. Invoices shall include the Agreement Number, include actual hours worked (by individual positions), actual costs for salaries/benefits, travel and other direct and indirect costs (by individual), with accompanying receipts and other documentation to support travel/other direct costs.

March 5, 2013

EXHIBIT C
GENERAL TERMS AND CONDITIONS

GTC 610

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.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

March 5, 2013

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

A. AMENDMENT (CHANGE IN TERMS)

1. 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 agreement is binding on any of the parties.
2. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the AUTHORITY's Contract Manager.
3. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the AUTHORITY's Contract Manager.

B. DISPUTES

1. The Contractor shall continue with the responsibilities under this Agreement during any work dispute. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the Chief Executive Officer.
2. In the event of a dispute, the Contractor shall file a "Notice of Dispute" with the California High-Speed Rail Authority and the Chief Executive Officer within ten (10) days of discovery of the problem. Within ten (10) days, the Chief Executive Officer shall meet with the Project Manager for purposes of resolving the dispute. The decision of the Chief Executive Officer shall be final.
3. Neither the pendency of a dispute nor its consideration by the Chief Executive Officer will excuse the Contractor from full and timely performance in accordance with the terms of this Agreement.

C. TERMINATION

This section regarding termination is in addition to GTC 610.

1. The AUTHORITY reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS

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 STANDARDS

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

4. FEDERAL LOBBYING ACTIVITIES CERTIFICATION

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

- 1) 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

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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.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) 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.
- 4) The Contractor also agrees that by signing this document, it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

5. DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of 2 C.F.R. 1200. As such, the Contractor is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Contractor must verify that the subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" at <http://epls.gov/>. The Contractor shall obtain appropriate certifications from each such subcontractor and provide such certifications to the Authority.

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The Contractor shall include a term or condition in the contract documents for each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor will review the "Excluded Parties Listing System," will obtain certifications from lower tier subcontractors, and will include a similar term or condition in each of its lower-tier covered transactions.

6. SITE VISITS

The Contractor agrees that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and for other reasons. If any site visit is made by FRA on the premises of the Contractor or any of its subcontractors under this Agreement, the Contractor shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Contractor or subcontractor.

7. SAFETY OVERSIGHT

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

8. ENVIRONMENTAL PROTECTION

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

- 1) **Clean Air:** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate Environmental Protection Agency Regional Office.
- 2) **Clean Water:** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.

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- 3) **Energy Conservation:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6421 *et seq.*)
- 4) **Agreement Not To Use Violating Facilities:** The Contractor agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Contractor shall promptly notify the Authority if the Contractor any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.
- 5) **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.*
- 6) **Incorporation of Provisions:** The Contractor shall include the above provisions (1) through (6) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with federal assistance provided by the FRA.

9. CIVIL RIGHTS

The following requirements apply to this Agreement:

- 1) **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended; 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990; 42 U.S.C. § 12132; and 49 U.S.C. § 306, the Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Agreement. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.
- 2) **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this Agreement:
 - a. Race, Color, Religion, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all

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applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," including 41 C.F.R 60 *et seq.* (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

- b. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.
- c. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

The Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, and to comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

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The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FRA, modified only if necessary to identify the affected parties.

10. CARGO PREFERENCE

The Contractor agrees to the following:

- 1) To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- 2) To furnish within 20 Working Days following the date of loading for shipments originating within the United States, or within 30 Working Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the first bullet of this clause above. This bill-of-lading shall be furnished to the Authority (through the Contractor in the case of a subcontractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the Project.
- 3) To include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

11. PROPERTY, EQUIPMENT AND SUPPLIES

- 1) Contractor agrees that Project property, equipment, and supplies shall be used for the Project activity for the duration of its useful life, as determined by FRA. Should the Contractor unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Contractor agrees that FRA may require the Contractor to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The Contractor further agrees to notify the Authority when any Project property or equipment is withdrawn from use in the Project activity.

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- 2) Contractor agrees to comply with the property standards of 49 C.F.R. §§ 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued.
- 3) Contractor agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- 4) The Contractor agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section.
- 5) Contractor agrees that FRA may:
 - a. Require the Contractor to transfer title to any property, equipment, or supplies financed with FRA assistance, as permitted by 49 C.F.R. §§ 19.30 through 19.37 inclusive.
 - b. Direct the disposition of property or equipment financed with FRA assistance as set forth by 49 C.F.R. §§ 19.30 through 19.37 inclusive.
- 6) If any Project property, equipment, or supplies are not used for the Project for the duration of its useful life, as determined by FRA, whether planned withdrawal, misuse or casualty loss, the Contractor agrees to notify the Authority immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 19.30 through 19.37 inclusive.
- 7) Unless expressly authorized in writing by the Authority, the Contractor agrees to refrain from:
 - a. executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect Authority or FRA interest in any Property or equipment; or
 - b. obligating itself in any manner to any third party with respect to Project property or equipment.

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

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12. FLOOD HAZARDS

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

13. ARRA FUNDED PROJECT

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

14. ENFORCEABILITY

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

15. LABOR PROVISIONS

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

16. LABOR PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the applicable protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836. with respect to employees affected by actions taken in connection with the Project. The Contractor also agrees to include the applicable protective arrangements established by the

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U.S. DOL under 45 U.S.C. 836 in its arrangements with entities operating rail services over rail infrastructure constructed as part of this Agreement.

17. PROHIBITION ON USE OF ARRA FUNDS

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

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

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

19. WAGE RATE REQUIREMENTS

Payment of prevailing wages on the Project is required by 49 U.S.C. 24405(c)(2) and ARRA section 1606. For Project components that use or would use rights-of-way owned by a railroad, the Contractor shall comply with the Provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Contractor will comply with the provisions of 40 U.S.C 3141 *et seq.*

20. INSPECTION OF RECORDS

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 8) Examine any records that directly pertain to, and involve transactions relating to, this Agreement; and

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS

- 9) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded work.

21. WHISTLEBLOWER PROTECTION

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

- 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 contract) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

22. FALSE CLAIMS ACT

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
FUNDS

23. REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the Authority with the following information on a monthly (quarterly) basis:

- 1) The total amount of ARRA funds received by Contractor during the Reporting Period;
- 2) The amount of ARRA funds that were expended or obligated during the Reporting Period;
- 3) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - a. The name of the project or activity;
 - b. A description of the project activity;
 - c. An evaluation of the completion status of the project or activity; and
 - d. An estimate of the number of jobs created and/or retained by the project or activity;
- 4) For any contracts equal to or greater than \$25,000:
 - a. The name of the entity receiving the contract;
 - b. The amount of the contract;
 - c. The transaction type;
 - d. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - e. The Program source;
 - f. An award title descriptive of the purpose of each funding action;
 - g. The location of the entity receiving the contract;
 - h. The primary location of the contract, including the city, state, congressional district and county;
 - i. The DUNS number, or name and zip code for the entity headquarters;

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
FUNDS

- j. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- k. The names and total compensation of the five most highly compensated officers of the company if received:
 - i. 80% or more of its annual gross revenues in Federal awards;
 - ii. \$25,000,000 or more in annual gross revenue from Federal awards and;
 - iii. If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986;
- 5) 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.
- 6) 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 Agreement(s).

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STANDARD AGREEMENT AMENDMENT

STD. 213 A (Rev 6/03)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 15 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
HSR11-48	1
REGISTRATION NUMBER	

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

STATE AGENCY'S NAME

California High-Speed Rail Authority

CONTRACTOR'S NAME

City of Fresno

2. The term of this

Agreement is May 13, 2012 through December 31, 20133. The maximum amount of this \$150,000Agreement after this amendment is: One Hundred Fifty Thousand Dollars

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

The purpose of this amendment is allow for the retroactive payment of a late submitted contract, extend the contract end date from June 30, 2013 to December 31, 2013, and make other corrections so that Federal funds may be utilized to pay Contractor.

- A. Delete "or upon DGS approval, whichever is later" on paragraph 2.
- B. Change the term of the agreement from June 30, 2013 to December 31, 2013.
- C. Exhibit A, Section I.A. – Delete "The Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Authority's Contract Manager."
- D. Exhibit B Section B.1. and B.2. – Change \$296,000.00 to \$150,000.
- E. Exhibit B Section B.3. – Delete the entire paragraph.
- F. Exhibit C Section 1 – Delete "Contractor may not commence performance until such approval has been obtained."
- G. Exhibit D Section A.3. – Delete the second sentence.
- H. Exhibit E – Additional Federal flow down provisions that did not exist previously. "Exhibit E Supplemental Terms and Conditions for Contracts Using Federal Funds" replaces the previous Exhibit E Supplemental Terms and Conditions for Contracts Using ARRA Funds.

All other terms and conditions shall remain the same.

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
City of Fresno		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
<i>ES</i>		
PRINTED NAME AND TITLE OF PERSON SIGNING		
Scott Mozier, P.E., City Engineer/Assitant Director		
ADDRESS		
City of Fresno, Public Works Department 2600 Fresno Street, 4 th Floor, Fresno, CA 93721-3623		
STATE OF CALIFORNIA		
AGENCY NAME		
California High-Speed Rail Authority		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
<i>ES</i>		
PRINTED NAME AND TITLE OF PERSON SIGNING		
Jeff Morales, Chief Executive Officer		
ADDRESS		
770 L Street, Suite 800 Sacramento, CA 95814		
		<input type="checkbox"/> Exempt per:

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EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

A. FUNDING REQUIREMENTS

1. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for pursuing work under this contract, this Agreement shall be of no further force and effect. In this event, the AUTHORITY shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provision of this Agreement.
2. 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.
3. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Agreement, the AUTHORITY shall have the option to either cancel this Agreement with no liability occurring to the AUTHORITY or Contractor, or offer an Agreement Amendment to the Contractor to reflect the reduced amount.

B. COMPENSATION, INVOICING AND PAYMENT

1. The total amount payable by the AUTHORITY, for this Agreement shall not exceed \$150,000.00. It is understood and agreed this total is an estimate, and the actual amount of work requested by the AUTHORITY may be less.
2. Any changes in scope requested by the AUTHORITY or work required beyond expectations may result in additional time to complete the Study and shall be billed accordingly and proceeded with as outlined. At any time the Contractor determines the Study is expected to cost more than \$150,000.00, the CONTRACTOR shall promptly notify the AUTHORITY and provide an estimate of any additional costs. Upon receipt of such notice, the AUTHORITY shall either: (a) request the CONTRACTOR to terminate the Study, or (b) amend the agreement.
3. Invoices shall include the Agreement Number, include actual hours worked (by individual positions), actual costs for salaries/benefits, travel and other direct and indirect costs (by individual), with accompanying receipts and other documentation to support travel/other direct costs.

March 5, 2013

EXHIBIT C
GENERAL TERMS AND CONDITIONS

GTC 610

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.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

March 5, 2013

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

A. AMENDMENT (CHANGE IN TERMS)

1. 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 agreement is binding on any of the parties.
2. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the AUTHORITY's Contract Manager.
3. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the AUTHORITY's Contract Manager.

B. DISPUTES

1. The Contractor shall continue with the responsibilities under this Agreement during any work dispute. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the Chief Executive Officer.
2. In the event of a dispute, the Contractor shall file a "Notice of Dispute" with the California High-Speed Rail Authority and the Chief Executive Officer within ten (10) days of discovery of the problem. Within ten (10) days, the Chief Executive Officer shall meet with the Project Manager for purposes of resolving the dispute. The decision of the Chief Executive Officer shall be final.
3. Neither the pendency of a dispute nor its consideration by the Chief Executive Officer will excuse the Contractor from full and timely performance in accordance with the terms of this Agreement.

C. TERMINATION

This section regarding termination is in addition to GTC 610.

1. The AUTHORITY reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the AUTHORITY.
2. The AUTHORITY may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor

March 5, 2013

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
FUNDS

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 STANDARDS

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

4. FEDERAL LOBBYING ACTIVITIES CERTIFICATION

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

- 1) 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

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS

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.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) 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.
- 4) The Contractor also agrees that by signing this document, it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

5. DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of 2 C.F.R. 1200. As such, the Contractor is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Contractor must verify that the subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" at <http://epls.gov/>. The Contractor shall obtain appropriate certifications from each such subcontractor and provide such certifications to the Authority.

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
FUNDS

The Contractor shall include a term or condition in the contract documents for each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor will review the "Excluded Parties Listing System," will obtain certifications from lower tier subcontractors, and will include a similar term or condition in each of its lower-tier covered transactions.

6. SITE VISITS

The Contractor agrees that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and for other reasons. If any site visit is made by FRA on the premises of the Contractor or any of its subcontractors under this Agreement, the Contractor shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Contractor or subcontractor.

7. SAFETY OVERSIGHT

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

8. ENVIRONMENTAL PROTECTION

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

- 1) **Clean Air:** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate Environmental Protection Agency Regional Office.
- 2) **Clean Water:** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Authority, and understands and agrees that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.

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SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
FUNDS

- 3) **Energy Conservation:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6421 *et seq.*)
- 4) **Agreement Not To Use Violating Facilities:** The Contractor agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Contractor shall promptly notify the Authority if the Contractor any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.
- 5) **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.*
- 6) **Incorporation of Provisions:** The Contractor shall include the above provisions (1) through (6) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with federal assistance provided by the FRA.

9. CIVIL RIGHTS

The following requirements apply to this Agreement:

- 1) **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended; 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990; 42 U.S.C. § 12132; and 49 U.S.C. § 306, the Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Agreement. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.
- 2) **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this Agreement:
 - a. Race, Color, Religion, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
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applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," including 41 C.F.R 60 *et seq.* (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

- b. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.
- c. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

The Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, and to comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FRA, modified only if necessary to identify the affected parties.

10. CARGO PREFERENCE

The Contractor agrees to the following:

- 1) To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- 2) To furnish within 20 Working Days following the date of loading for shipments originating within the United States, or within 30 Working Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the first bullet of this clause above. This bill-of-lading shall be furnished to the Authority (through the Contractor in the case of a subcontractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the Project.
- 3) To include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

11. PROPERTY, EQUIPMENT AND SUPPLIES

- 1) Contractor agrees that Project property, equipment, and supplies shall be used for the Project activity for the duration of its useful life, as determined by FRA. Should the Contractor unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Contractor agrees that FRA may require the Contractor to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The Contractor further agrees to notify the Authority when any Project property or equipment is withdrawn from use in the Project activity.

EXHIBIT E
SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
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- 2) Contractor agrees to comply with the property standards of 49 C.F.R. §§ 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued.
- 3) Contractor agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- 4) The Contractor agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section.
- 5) Contractor agrees that FRA may:
 - a. Require the Contractor to transfer title to any property, equipment, or supplies financed with FRA assistance, as permitted by 49 C.F.R. §§ 19.30 through 19.37 inclusive.
 - b. Direct the disposition of property or equipment financed with FRA assistance as set forth by 49 C.F.R. §§ 19.30 through 19.37 inclusive.
- 6) If any Project property, equipment, or supplies are not used for the Project for the duration of its useful life, as determined by FRA, whether planned withdrawal, misuse or casualty loss, the Contractor agrees to notify the Authority immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 19.30 through 19.37 inclusive.
- 7) Unless expressly authorized in writing by the Authority, the Contractor agrees to refrain from:
 - a. executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect Authority or FRA interest in any Property or equipment; or
 - b. obligating itself in any manner to any third party with respect to Project property or equipment.

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

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SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL
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12. FLOOD HAZARDS

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

13. ARRA FUNDED PROJECT

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

14. ENFORCEABILITY

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

15. LABOR PROVISIONS

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

16. LABOR PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the applicable protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836. with respect to employees affected by actions taken in connection with the Project. The Contractor also agrees to include the applicable protective arrangements established by the

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U.S. DOL under 45 U.S.C. 836 in its arrangements with entities operating rail services over rail infrastructure constructed as part of this Agreement.

17. PROHIBITION ON USE OF ARRA FUNDS

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

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

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

19. WAGE RATE REQUIREMENTS

Payment of prevailing wages on the Project is required by 49 U.S.C. 24405(c)(2) and ARRA section 1606. For Project components that use or would use rights-of-way owned by a railroad, the Contractor shall comply with the Provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Contractor will comply with the provisions of 40 U.S.C 3141 *et seq.*

20. INSPECTION OF RECORDS

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 8) Examine any records that directly pertain to, and involve transactions relating to, this Agreement; and

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- 9) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded work.

21. WHISTLEBLOWER PROTECTION

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

- 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 contract) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

22. FALSE CLAIMS ACT

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

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23. REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the Authority with the following information on a monthly (quarterly) basis:

- 1) The total amount of ARRA funds received by Contractor during the Reporting Period;
- 2) The amount of ARRA funds that were expended or obligated during the Reporting Period;
- 3) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - a. The name of the project or activity;
 - b. A description of the project activity;
 - c. An evaluation of the completion status of the project or activity; and
 - d. An estimate of the number of jobs created and/or retained by the project or activity;
- 4) For any contracts equal to or greater than \$25,000:
 - a. The name of the entity receiving the contract;
 - b. The amount of the contract;
 - c. The transaction type;
 - d. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - e. The Program source;
 - f. An award title descriptive of the purpose of each funding action;
 - g. The location of the entity receiving the contract;
 - h. The primary location of the contract, including the city, state, congressional district and county;
 - i. The DUNS number, or name and zip code for the entity headquarters;

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- j. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- k. The names and total compensation of the five most highly compensated officers of the company if received:
 - i. 80% or more of its annual gross revenues in Federal awards;
 - ii. \$25,000,000 or more in annual gross revenue from Federal awards and;
 - iii. If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986;
- 5) 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.
- 6) 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 Agreement(s).

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