



CALIFORNIA

High-Speed Rail Authority

RFP No.: HSR25-89

Request for Proposals for Track and Systems Construction Contract

TSCC AGREEMENT

RFP No.: HSR25-89 ADDENDUM 2 1/27/2026 RFP

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CALIFORNIA HIGH SPEED RAIL AUTHORITY
TRACK AND SYSTEMS CONSTRUCTION CONTRACT (TSCC)

ADDENDUM #2 VERSION: JANUARY 27, 2026

TSCC AGREEMENT



Table of Contents

1.	DEFINITIONS, INTERPRETATION AND MISCELLANEOUS	1
1.1	Definitions	1
1.2	Interpretation.....	29
1.3	Resolution of Ambiguities and Order of Precedence	30
1.4	Order of Precedence of Project Plans	31
1.5	Reference Documents	31
2.	OVERVIEW; NATURE OF AGREEMENT	31
2.1	Overview.....	31
2.2	Nature of Agreement.....	32
3.	TERM	32
3.1	Term	32
4.	TSCC CONTRACTOR’S ROLE AND INTEREST	33
4.1	Nature of TSCC Contractor’s Role	33
5.	REPRESENTATIONS AND WARRANTIES	33
5.1	TSCC Contractor’s Representations and Warranties	33
5.2	Authority Representations and Warranties	36
6.	FUNDING PROGRAMS	36
7.	PERFORMANCE AND PAYMENT BONDS; GUARANTY	37
7.1	Bonds	37
7.2	Eligible Surety; Replacement Bonds; Increase in Bonds	38
7.3	No Relief of Liability	39
7.4	Guaranty.....	39
8.	PERSONNEL	39
8.1	Designation of Representatives	39
8.2	Authority Representative.....	39
8.3	TSCC Contractor Representative.....	40
8.4	Key Personnel for the Work	40
8.5	Key Personnel Liquidated Damages	40
9.	MEETINGS; SUBMITTALS; PROJECT PLANS; RELIANCE ON REVIEW AND INSPECTION	41
9.1	Meetings	41
9.2	Submittals.....	42



9.3	Project Plans.....	42
9.4	No Obligation to Review.....	42
9.5	Covering of Work	43
9.6	Inspections and Tests by TSCC Contractor	44
10.	PLANNING AND DESIGN	44
10.1	Scope of Work and TSCC Contractor’s Proposal Extracts	44
10.2	Commencement of Work for any Package	44
10.3	Design Work General Obligations	45
10.4	Requirements for Design Work Milestone Submittals.....	46
10.5	Baseline Schedule	46
10.6	Recovery Schedule.....	47
10.7	Reserved	48
10.8	Insufficient Schedule Progress.....	48
10.9	Package NTP and Approvals	48
10.10	TSCC Contractor Acknowledgements and Warranties Regarding each Package Approval.....	49
10.11	Failure to Achieve Package Milestone, Package Approval.....	50
10.12	Early Works Packages.....	51
10.13	Completion of Design Work prior to Construction.....	51
10.14	Availability.....	51
10.15	Cost Control.....	52
10.16	Constructability	52
11.	GOVERNMENTAL APPROVALS	52
11.1	Authority-Provided Approvals.....	52
11.2	Governmental Approvals Generally	52
11.3	New Approvals.....	53
12.	CEQA AND NEPA: ENVIRONMENTAL REVIEW PROCESS AND ENVIRONMENTAL COMPLIANCE	53
12.1	Respective Roles of Parties	53
12.2	Rights and Responsibilities	54
12.3	General Requirements.....	54
13.	ACCESS; DIFFERING SITE CONDITIONS; HAZARDOUS MATERIALS; RIGHT OF WAY	55
13.1	Access to Site	55
13.2	TSCC Contractor’s Obligation to Provide Access to the Authority	56
13.3	Process to Follow upon Discovery of Certain Site Conditions	56
13.4	Differing Site Conditions.....	57
13.5	Hazardous Materials	57
13.6	Hazardous Materials Generator	58
13.7	Project Right of Way	59
13.8	Other Conditions Impacting Site.....	61
14.	GENERAL OBLIGATIONS APPLICABLE TO THE WORK.....	61



14.1	General Obligations and Warranty with respect to the Work	61
14.2	Suspension by the Authority	61
14.3	Conditions Applicable to Construction Work.....	62
14.4	Maintenance Responsibilities During Construction Work	62
14.5	Cooperation with Interfacing Contractors, Utility Owners and Project Stakeholders.....	63
14.6	Coordination and Interface Management	64
14.7	Coordination with Interfacing Contractors	64
14.8	Survey	65
14.9	Safety	65
14.10	Authority-Provided Materials; Equipment or Other Work	66
14.11	Clean Up.....	67
14.12	Necessary Protection.....	67
14.13	Authority Right to Act	67
14.14	Access Hours.....	67
14.15	Title and Risk of Loss.....	68
14.16	Utilities	69
14.17	General Obligations Regarding Utility Work	69
14.18	Relocations	70
14.19	Bonds and Insurance Increase Regarding Utilities.....	70
14.20	Betterments	71
14.21	Project Risks Generally.....	71
15.	DEFECTS AND WARRANTY.....	71
15.1	Defects	71
15.2	Correction of Defect or Change Order.....	72
15.3	Claim for Correction of Defect.....	72
15.4	Determining Change Order Amount.....	72
15.5	Defects Discovered during Warranty Period.....	72
15.6	Warranty Period; Extension of Warranty Period	72
15.7	Common Law Rights Not Affected	74
15.8	Title.....	74
16.	LIFECYCLE OBJECTIVES AND QUALITY REQUIREMENTS.....	74
16.1	Objectives	74
16.2	Consultation.....	74
17.	SUBCONTRACTORS AND SUBCONTRACTS; SMALL BUSINESS	75
17.1	Restrictions on Subcontractors	75
17.2	Subcontracts.....	75
17.3	Listed Subcontractors; Substitution of Subcontractors	76
17.4	Subcontract Requirements.....	76
17.5	Other Requirements.....	79
17.6	Systems Provider.....	80
17.7	Small Business	80
18.	EQUAL EMPLOYMENT OPPORTUNITIES; LABOR; PREVAILING WAGE.....	80



18.1	Equal Employment Opportunity.....	80
18.2	Labor Standards	81
18.3	Labor Code Requirements	82
18.4	Prevailing Wages.....	83
18.5	Work under Approved Subcontract Agreements Not to be Varied.....	83
19.	PROGRESS; STARTUP, COMMISSIONING AND ACCEPTANCE TESTING; COMPLETION.....	84
19.1	Progress and Time for Completion.....	84
19.2	Design Interface Inputs	84
19.3	Design Interface Input Disputes	84
19.4	Package Scope Closeout.....	84
19.5	Authority Representative to Inspect Work for Package Scope Closeout.....	84
19.6	Certificate of Package Scope Closeout.....	85
19.7	TSCC Contractor to Notify of Interim Substantial Completion	86
19.8	Authority Representative to Inspect Interim Substantial Completion.....	86
19.9	Base Project Final Acceptance Work	87
19.10	TSCC Contractor to Notify of Base Project Final Acceptance	87
19.11	Authority Representative to Inspect	87
19.12	TSCC Contractor to Notify of Extended Project Substantial Completion	87
19.13	Authority Representative to Inspect Extended Project Substantial Completion.....	87
19.14	Base Project Final Acceptance Work.....	88
19.15	TSCC Contractor to Notify of Extended Project Final Acceptance.....	88
19.16	Authority Representative to Inspect	89
19.17	Liquidated Damages and Indemnity for Delay	89
20.	PAYMENTS TO TSCC CONTRACTOR	90
20.1	Development of Final Package Prices.....	90
20.2	Payment of Final Package Prices	91
20.3	Taxes.....	91
20.4	Payment for Bonds and Insurance, Tariffs	91
20.5	Allowance Items and Allowance Values.....	92
20.6	Contingencies in Subcontracted Work	93
20.7	Calculation of General Requirements Costs.....	94
20.8	Unit Costs	94
20.9	Incentives for Construction Work	94
20.10	Invoices	95
20.11	Payment by Authority.....	96
20.12	Final Invoice and Notice of Payment.....	96
20.13	Interest.....	98
20.14	Correction of Payment Statements	98
20.15	Deductions, Exclusions and Limitations on Payment	98
20.16	Payment to Subcontractors.....	101
20.17	Disputes.....	102
21.	GENERAL PROVISIONS APPLYING TO RELIEF EVENTS	102
21.1	Sole Entitlement.....	102



21.2	Mitigation	102
21.3	Deductions for Relief Events	102
22.	RELIEF EVENTS	103
22.1	Notice	103
22.2	Delay in Notification	104
22.3	Relief Events Impacting the Work before Base Project Final Acceptance or Extended Project Final Acceptance	105
22.4	Relief Due to Force Majeure Event During the Term	106
22.5	Change in Project Standards during the Term	106
22.6	Extension of Time in Approved Subcontract Agreements.....	106
23.	CHANGE ORDERS.....	107
23.1	Change Order Price Request.....	107
23.2	Authority Change Orders and Directive Letters	107
23.3	Valuation of Change Order	108
23.4	Change Orders and Directive Letters Generally	108
23.5	Omissions.....	109
23.6	TSCC Contractor Change Order Request.....	109
23.7	Authority Representative's Determination	109
23.8	TSCC Contractor Change Order Request Approved by Authority Representative.....	110
24.	DOCUMENTS AND RECORDS	110
24.1	Maintenance and Access	110
24.2	Public Records Act.....	113
24.3	Ownership of Documents.....	113
24.4	Intellectual Property	114
24.5	IP Escrow	117
24.6	Escrowed Proposal Documents.	118
25.	INSURANCE	120
25.1	TSCC Contractor Insurance Obligations	120
26.	LIMITATION OF LIABILITY; INDEMNITY; CONSEQUENTIAL DAMAGES	121
26.1	Limitation of Liability.....	121
26.2	Indemnifications by TSCC Contractor	121
26.3	Responsibility of the Authority for Certain Hazardous Materials	123
26.4	No Effect on Other Rights	123
26.5	CERCLA Agreement.....	123
26.6	Notification of Third Party Claim.....	123
26.7	Defense and Indemnification Procedures.....	123
26.8	Consequential Damages.....	125
27.	TSCC CONTRACTOR DEFAULT; TERMINATION	126



27.1	Preservation of Rights.....	126
27.2	TSCC Contractor Default	126
27.3	Notice and Opportunity to Cure.....	128
27.4	Right to Terminate Upon Default Termination Event	128
27.5	Consequences upon Termination for Default Termination Event.....	129
27.6	Right to Stop Work for Failure by Authority to Make Undisputed Payment	129
27.7	Conversion to Termination for Convenience	130
28.	TERMINATION FOR CONVENIENCE	130
29.	TRANSITION UPON TERMINATION / EXPIRATION DATE	130
30.	DISPUTE RESOLUTION.....	131
30.1	Informal Dispute Resolution Process Overview.....	131
30.2	Dispute Statement	132
30.3	Partnering Process and Request for Decision	132
30.4	Arbitration	133
30.5	Limitation on Relief through Arbitration	134
30.6	Matters Ineligible for Arbitration.....	134
30.7	Additional Requirements for Subcontractor Demands.....	134
30.8	Waiver	136
30.9	Consolidation of Arbitrations and Joinder of Parties	136
30.10	Government Claims Act Compliance.....	136
31.	NOTICES	136
31.1	Notice of Change Order	136
31.2	Continuing Events.....	137
31.3	Delay in Notices.....	137
31.4	Other Provisions Unaffected	137
31.5	Notices.....	137
31.6	Communications	138
32.	MISCELLANEOUS	138
32.1	Standard for Governmental Approvals	138
32.2	Entire Agreement; Amendments	138
32.3	Waiver	138
32.4	Independent Contractor; No Joint Venture or Partnership	139
32.5	Successors and Assigns	139
32.6	Survival.....	139
32.7	Limitation on Third Party Beneficiaries	140
32.8	Governing Law; Venue	140
32.9	Severability	140
32.10	Further Assurances.....	140
32.11	Counterparts	140
32.12	Cumulative Rights; Liability	141
32.13	Costs	141
32.14	Assignment	141
32.15	Novation	141



32.16 Possessory Interest Tax..... 142
32.17 Publicity 142



TSCC AGREEMENT SCHEDULES	
Schedule 1	Safety, Security, and RAM Requirements
Schedule 2	Technical Management of Requirements, Certification and Assurance
Schedule 3	System Engineering, Testing, and Commissioning Requirements
Schedule 4	Digital Engineering Requirements
Schedule 5	Systems Technical Specifications
Schedule 6	Track and OCS Design, Drawings, and Specifications
Schedule 7	Technical Submittals
Schedule 8	Environmental Requirements
Schedule 9	Sustainability Requirements
Schedule 10	Design Criteria Manual
Schedule 11	Permits, Licenses, Approvals and Agreements
Schedule 12	Third Party Contracts
Schedule 13	Package Specific Information Schedule
Schedule 14	Right of Way
Schedule 15	Railroad Agreements
Schedule 16	Scope of Work
Schedule 17	Key Individuals
Schedule 18	Table of Rates and Prices
Schedule 19	TSCC Contractor Proposal Extracts
Schedule 20	Form of Performance Bond
Schedule 21	Form of Payment Bond
Schedule 22	Form of Guaranty
Schedule 23	Final Package Price Schedule
Schedule 24	TSCC Contractor's Proposal Schedule



Schedule 25	Insurance Requirements
Schedule 26	Federal and State Requirements
Schedule 27	Subcontractor Identification Form
Schedule 28	Build America, Buy America
Schedule 29	Iran Contracting Act of 2010
Schedule 30	Non-Collusion Affidavit
Schedule 31	Federal Prevailing Wage Rate
Schedule 32	Executive Order N-6-22 Certification
Schedule 33	Quality Requirements
Schedule 34	Intellectual Property Certification
Schedule 35	Communication and Public Engagement Protocol
Schedule 36	Community Benefits Agreement
Schedule 37	Project Controls Requirements
Schedule 38	Authority Purchase Agreements Index
Schedule 39	Small Business Goals and Program Plan
Schedule 40	Information Technology
Schedule 41	Systems Provider Procurement Requirements
Schedule 42	Handover of Existing Facilities
Schedule 43	Contract Closeout Requirements
Schedule 44	Guideway Sound Wall Specifications
Schedule 45	Document Control Scope of Work



TSCC AGREEMENT

This TSCC Agreement (“**Agreement**”) is made and entered into as of _____ (“**Effective Date**”), by and between the California High Speed Rail Authority (“**Authority**”), and _____ (“**TSCC Contractor**”).

RECITALS

- A. The Authority is responsible for the planning, design, construction and operation of the first high-speed rail system in the nation (the “**HSR System**”).
- B. The Authority has been authorized by its Board of Directors (the “**Board**”) pursuant to section 185036(a) of the California Public Utilities Code and Resolution #HSRA 19-11 to design and build the track and overhead contact systems (“**OCS**”) for the 171-mile early operating segment of the HSR System, as well as the design, construction and testing for the traction power system, train control system, telecommunications systems, security, and Supervisory Control and Data Acquisition (“**SCADA**”) systems (the “**Project**”).
- C. On November 20, 2025, the Authority approved and authorized the issuance of a Request for Proposals (as amended, “**RFP**”) for the Project.
- D. As part of the RFP, the Authority received **[insert number]** proposals on **[insert date]**
- E. An RFP evaluation committee determined that TSCC Contractor’s Proposal best met the criteria contained in the RFP, and the Authority subsequently recommended that this Agreement be awarded to TSCC Contractor. On **[insert date]**, the Board accepted the recommendation to award this Agreement to TSCC Contractor.
- F. TSCC Contractor has experience providing environmental, design, construction, testing, and commissioning services of the type sought by the Authority on projects similar to the Project.
- G. The Authority desires to engage TSCC Contractor to deliver the Project, and TSCC Contractor desires to be so engaged, on the terms and conditions specified in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS, INTERPRETATION AND MISCELLANEOUS

1.1 Definitions

Unless the context otherwise requires, definitions for certain capitalized acronyms, abbreviations and terms used in this Agreement have the meanings given in this Section 1.1.

ASCE	American Society of Civil Engineers
ASTM	American Society for Testing and Materials
AT	Auto-Transformer
BIM	Building Information Modeling
BODR	Basis of Design Report
CA MUTCD	California Manual on Uniform Traffic Control Devices
CCR	California Code of Regulations



CEQA	California Environmental Quality Act, California Public Resources Code § 21000 et seq., as it may be amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CMMS	Computerized Maintenance Management System
CPL	Contractor's Pollution Liability
CPM	Critical Path Method
CVFPB	Central Valley Flood Protection Board
CWR	Continuously Welded Rail
DCM	Design Criteria Manual
DIR	California Department of Industrial Relations
DLSE	Division of Labor Standards Enforcement
ETCS	European Train Control System
EPA	United States Environmental Protection Agency
FAA	Federal Aviation Administration
FAT	Factory Acceptance Testing
FEMA	Federal Emergency Management Agency
GBR	Geotechnical Baseline Report
GDIR	Geotechnical Data and Interpretive Report
GIS	Geographic Information System
HAZ	Hazardous Substance Removal
IP	Intellectual Property
ISO	Insurance Services Office, Inc.
IT	Information Technology
JAMS	Judicial Arbitration and Mediation Services, Inc.
LEG	London Engineering Group
NEPA	National Environmental Policy Act, 42 U.S.C. §4321 et seq., as it may be amended
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
OCC	Operational Control Center
OCS	Overhead Contact System
OSHA	Occupational Safety and Health Administration
PCO	Potential Change Order
PDF	Portable Document Format
PG&E	Pacific Gas & Electric
PLC	Programmable Logic Controller
PSR	Project Status Report
QA	Quality Assurance
QC	Quality Control
QMP	Quality Management Plan
RFI	Request for Information



RFP	Request for Proposals
RPL	Railroad Protective Liability
SAT	Site Acceptance Testing
SCADA	Supervisory Control and Data Acquisition
SOP	Standard Operating Procedure
TPSS	Traction Power Substations
TM	Technical Memorandum
TSI	Technical Specification for Interoperability
UAV	Unmanned Aircraft Vehicles
USA	Underground Service Alert
USB	Universal Serial Bus
USACE	U.S. Army Corps of Engineers
WBS	Work Breakdown Structure
WHD	Wage and Hour Division

Acceptance Test(ing) means those inspections, commissioning activities and tests described in Schedule 3 (System Engineering, Testing, and Commissioning Requirements) to be completed for Interim Substantial Completion for the Base Project or Extended Project Substantial Completion for the Extended Project.

Access-Controlled Right of Way means the right of way on real property (which term is inclusive of all estates and permanent interests in real property) owned by the Authority or otherwise obtained by the Authority that is cleared and available for use for the Project as shown in the Authority-Provided Design Documents.

Access Point means the point of access for each Access-Controlled Right of Way identified in []. **[Note to Proposers: Details of Access Points to be provided.]**

Actual Knowledge means facts and information actually known to the Authority, TSCC Contractor, the Authority Representative or the TSCC Contractor Representative (in each case, as applicable), after due consultation with other personnel of such Person (or in the case of TSCC Contractor, each TSCC-Related Entity).

Additional Property means real property or interests therein on which the permanent Project facilities will be designed and constructed that are outside of the Project Right of Way.

Affiliate means (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, TSCC Contractor or any of its members, partners, or shareholders holding a 10% or greater interest in TSCC Contractor; and (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by (i) TSCC Contractor, (ii) any of TSCC Contractor's members, partners or 10% or greater shareholders, or (iii) any Affiliate of TSCC Contractor under subsection (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. All Work performed by Affiliates shall be deemed performed by TSCC Contractor.

Agreement means the contractual relationship between the Parties:

- (a) upon the Effective Date, constituted by:
 - (i) the body of this TSCC Agreement;



- (ii) all Schedules of this TSCC Agreement, other than the Package Specific Information for any Package for which NTP has not been issued;
- (b) if Package Approval is obtained, for such Package constituted by:
 - (i) the documents referred to in subsection (a) of this definition, except to the extent the Package Specific Information for such Package supersedes a previous Package Specific Information;
 - (ii) the applicable Package Specific Information included with NTP for such Package; and
 - (iii) all other documents, if any, specified in the Package Specific Information for such Package upon execution of the applicable Package Amendment.

Allowance Item means all work and/or goods described as allowance items in the applicable Package Specific Information.

Allowance Value means the sum of money referred to in the applicable Package Specific Information which is included in the Final Package Cost, including the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with each applicable Allowance Item.

Applicable Law means any statute, law, code, regulation, ordinance, rule, judgment, common law, writ, injunction, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project Assets or any temporary or permanent Relocation being performed by a Utility Owner, whether now or hereafter in effect. "Applicable Law" includes any Environmental Law and excludes any Governmental Approval.

Approved Subcontract Agreement means an agreement which is entered into by TSCC Contractor with a Subcontractor on the terms which have been approved in writing by Authority.

Authority has the meaning given in the introductory paragraph to this Agreement.

Authority Representative means the person specified in the Package Specific Information for Package 1 or their replacement made in accordance with Section 8.2.4.

Authority-Caused Delay means any of the following events that have a material and direct impact on the performance of the Work:

- (a) any Change Order issued by the Authority to TSCC Contractor in accordance with Section 23.2.1;
- (b) the Authority's failure to provide timely access to the Site in accordance with Section 13.1;
- (c) the Authority's failure to fulfill any express obligation in accordance with this Agreement;
- (d) provided that (i) TSCC Contractor complied with the requirements of Section 14.10.1 to request the Authority-Provided Materials with sufficient time for delivery, and (ii) by no fault of TSCC Contractor, a delay in the delivery or availability of the Authority-Provided Materials;
- (e) the Authority's failure or inability to provide responses to Submittals and matters for which an affirmative response by the Authority is required, within the time periods indicated in Schedule 7 (Technical Submittals); provided, however, that the foregoing shall not apply where any Authority failure to act is deemed disapproval under the Submittal Requirements;



- (f) any order of the Authority to suspend for convenience exceeding 24 hours in total for a single suspension or 96 cumulative hours in total across multiple suspensions under (or deemed under) Section 14.2 for which limits shall apply separately to each Package;
- (g) any fraud, criminal conduct, willful misconduct or grossly negligent act or omission of the Authority or breach of Applicable Laws by the Authority;
- (h) the Authority's failure to issue the initial Notice to Proceed ("**NTP**") within 30 days after the Effective Date following the satisfaction of all conditions to such issuance;
- (i) provided Package Approval is granted for any particular Package, the Authority's failure to issue NTP for such Package within 30 days after the Date of Package Approval for such Package following the satisfaction of all conditions to such issuance; or
- (j) except as set out in Section 9.5, uncovering, removing and restoring Work under Section 9.6.2.

Authority-Observed Holiday means federal or State of California holidays, which can be found at the U.S. Office of Personnel Management and California Department of Human Resources websites, respectively.

Authority-Provided Approvals means:

- (a) USFWS NMFS Section 7 Biological Opinion, as amended;
- (b) CA SHPO Section 106 Programmatic Agreement Memorandum of Agreement and Treatment Plans;
- (c) FRA Air Quality General Conformity Determination;
- (d) FRA Section 4(f)/Section 6(f) Determination;
- (e) SJVAPCD Indirect Source Review;
- (f) SJVAPCD Voluntary Emissions Reduction Agreement;
- (g) SWRCB Section 401 – State Water Quality Certification, as amended;
- (h) SWRCB Section 402 – Post Development (Operations Phase) NPDES MS4 Stormwater Discharge Permit;
- (i) USACE Section 404 Clean Water Act Individual Permit, as amended, or Nationwide Permits;
- (j) USACE Preliminary Section 408 Determination;
- (k) CDFW Section 1602 Master Streambed Alteration Agreement, as amended; and
- (l) CDFW Section 2081 Incidental Take Permit, as amended.

Authority-Provided Design Certification has the meaning given in Section 19.2.

Authority-Provided Design Documents means:

- (a) the design and related documents prepared by the Track/OCS Design Services Consultant for CP 1, CP 2-3, and CP 4 included as Schedule 6 (Track and OCS Design, Drawings, and Specification);



- (b) the Design Criteria Manual; and
- (c) other design-related documents that the Authority Representative determines are necessary for:
 - (i) TSCC Contractor to establish the Scope of Work and to prepare any Package Price Proposal; and
 - (ii) Package Approval to be achieved.

Authority-Provided Materials means those materials provided by the Authority for incorporation into the Work identified in the Authority Purchase Agreements.

Authority-Provided Quantity means, with respect to each Unit Cost, the corresponding quantity of the relevant Work unit specified by the Authority in the Table of Rates and Prices or Package Price Request, as applicable.

Authority Purchase Agreements means the orders or agreements executed by the Authority and suppliers to provide certain Authority-Provided Materials, as indexed in Schedule 38.

Base Project means the initial 119 miles of the HSR System to be constructed by TSCC Contractor pursuant to this Agreement under Package 1, Package 2, Package 3, Package 4, Package 5, Package 6, and Package 7.

Base Project Final Acceptance means the point in time when all of the conditions for Final Acceptance of the Base Project in Schedule 3 (System Engineering, Testing, and Commissioning Requirements) have been achieved.

Base Project Final Acceptance Date means the date on which Base Project Final Acceptance occurs.

Base Project Final Acceptance Deadline means the date specified for Base Project Final Acceptance in the Package Specific Information, as amended in accordance with this Agreement.

Base Project Final Acceptance Period means the period of time beginning on the calendar day immediately following the Date of Interim Substantial Completion and ending on the Base Project Final Acceptance Date. Unless otherwise indicated in the Certificate of Interim Substantial Completion, the Base Project Final Acceptance Period is intended to be 90 days.

Base Project Final Acceptance Work means all Work TSCC Contractor is required to perform during the Base Project Final Acceptance Period to achieve Base Project Final Acceptance, including in connection with the Full Systems Test.

Baseline Schedule has the meaning provided in Schedule 37 (Project Controls Requirements).

Betterment means any upgrading of a Utility subject to Relocation that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, level of service, efficiency, duration or function of such Utility facility over that which was provided by the existing Utility facility, but in such cases, excluding the following:

- (a) upgrades necessary for the Project's safe and effective construction;
- (b) replacement devices or materials that meet equivalent standards although they are not identical;
- (c) replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- (d) upgrades required by Applicable Laws, excluding any Applicable Laws that fall within the definition of Utility Standards for such Utility Owner; and



- (e) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase).

Board means the Authority's Board of Directors.

Bonds means each of the Performance Bonds and Payment Bonds required for any Package or Early Works Package, or all of them (as applicable).

Bond and Insurance Costs means, with respect to each Package, the actual costs payable by TSCC Contractor for performance bonds, payment bonds, and insurance policies obtained specifically for such Package. For avoidance of doubt, the cost of corporate insurance policies that are not obtained for a specific Package are excluded from this definition and may be compensable to TSCC Contractor as a part of the TSCC Contractor Fee.

Books and Records means any and all reasonably available documents, books, records, papers or other information of any TSCC-Related Entity or Affiliate relating to the Project Assets or the Work's cost or pricing, including:

- (a) all Design Documents and Construction Documents (including drawings, specifications, Submittals, Subcontracts, invoices, schedules, cost models, meeting minutes, budgets, forecasts and Change Orders);
- (b) all budgets, certificates, claims, correspondence, daily time sheet and supervisor's daily reports, data (including test data), cost accounting data, documents, expert analyses, facts, files, information, investigations, materials, notices, payroll documents, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tax returns and information, tests, test results, vehicular traffic information, or operational information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by any TSCC-Related Entity in connection with the Project Assets;
- (c) union agreements;
- (d) insurance, welfare and benefits records;
- (e) payroll registers;
- (f) earnings records;
- (g) payroll tax forms;
- (h) material invoices and requisitions;
- (i) material cost distribution work sheet;
- (j) equipment records (list of company equipment, rates, etc.);
- (k) Subcontractor (including supplier) invoices;
- (l) Subcontractors' and agents' payment certificates;
- (m) canceled checks;
- (n) job cost report;



- (o) job payroll ledger;
- (p) general ledger;
- (q) cash disbursements journal;
- (r) project schedules, including the Baseline Schedule;
- (s) all documents that relate to each and every Claim and Dispute, together with all documents that support the amount of damages as to each Claim or Dispute;
- (t) work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, and Subcontractors, and all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
- (u) emails;
- (v) network servers, data storage devices, and backup tapes/media;
- (w) letters and correspondence; and
- (x) with respect to all of the above, any information that is stored electronically or on computer-related media.

For purposes of the requirements of this Agreement to maintain Books and Records, the term “Books and Records” includes documents or information that are subject to the attorney-client privilege, but for purposes of requirements of this Agreement to provide access to Books and Records, the term specifically excludes documents or information that are subject to the attorney-client privilege.

CEQA/NEPA Approval means the Environmental Approvals for CEQA and NEPA (as applicable), which are developed in connection with the Environmental Review Process and which are adopted or certified by the Board. This also includes re-examinations prepared and approved by the Authority to account for changes to the project footprint, project design, or environmental impacts that are anticipated to result from construction and operation of the Project.

CEQA EIR/EIS means the following:

- (a) The Merced to Fresno California High-Speed Train Project Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) approved by the Board on May 3, 2012 and the Record of Decision (ROD) issued by FRA on September 18, 2012;
- (b) The Fresno to Bakersfield California High-Speed Train Project Final EIR/EIS approved by the Board on May 7, 2014 and the ROD issued by FRA on June 27, 2014; the Supplemental EIR certified by the Board on October 16, 2018; the Supplemental EIS and Supplemental ROD issued by the Authority on October 31, 2019; and
- (c) The Merced to Fresno Central Valley Wye Final Supplemental EIR/EIS approved by the Board on September 10, 2020 and the Supplemental ROD issued by the Authority on September 16, 2020.
- (d) Re-examinations prepared for CP 1, CP 2/3 and CP 4.

Certificate of Base Project Final Acceptance means a notice under Section 19.11.1(a) issued by the Authority Representative stating Base Project Final Acceptance has been achieved.



Certificate of Extended Project Final Acceptance means a notice under Section 19.16.1(a) issued by the Authority Representative stating Extended Project Final Acceptance has been achieved.

Certificate of Extended Project Substantial Completion means a notice under Section 19.13.2(a) issued by the Authority Representative stating Extended Project Substantial Completion of the Extended Project has been achieved.

Certificate of Interim Substantial Completion means a notice under Section 19.8.2(a) issued by the Authority Representative stating Interim Substantial Completion of the Base Project has been achieved.

Change means any acceleration, addition, decrease, omission, deletion, removal or modification from or to the Work.

Change in Law means the enactment, adoption, modification, repeal or other change in any Applicable Law that occurs after the applicable Setting Date, including:

- (a) any change in the judicial or administrative interpretation of any Applicable Law,
- (b) adoption of any new Applicable Law; or
- (c) any change in Applicable Law related to sales tax on materials that are permanently incorporated in the Work,

provided such enactment, adoption, modification, repeal or other change is (i) materially inconsistent with Applicable Laws in effect on the applicable Setting Date and (ii) (x) requires a material modification in the design of the Project, or (y) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources or artifacts, but excluding:

- (a) any change in or new Applicable Law which was passed or adopted but not yet effective as of the applicable Setting Date;
- (b) a change in any Applicable Law relating to taxes, except as provided in subsection (c) of this definition;
- (c) a change in Applicable Law which was not in force at the applicable Setting Date but which is substantially the same as an Applicable Law in force before the applicable Setting Date; or
- (d) a change in the way an Applicable Law is applied or interpreted as a result of:
 - (i) the failure of any TSCC-Related Entity to comply with any Applicable Law or any Governmental Approval; or
 - (ii) any act or omission of any TSCC-Related Entity or any TSCC Contractor Default.

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of TSCC Contractor or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of TSCC Contractor may constitute a Change of Control of TSCC Contractor if such shareholder, member, partner or joint venture member possesses the power to direct, control or cause the direction or control of the management of TSCC Contractor. Notwithstanding the foregoing, the following shall not constitute a Change of Control:



- (a) a change in possession of the power to direct or control the management of TSCC Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of TSCC Contractor, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency;
- (b) an upstream reorganization or transfer of direct or indirect interests in TSCC Contractor so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of TSCC Contractor;
- (c) a transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls TSCC Contractor; or
- (d) the exercise of minority veto or voting rights (whether provided by Applicable Laws, by TSCC Contractor's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of TSCC Contractor, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, the Authority has previously received copies of such agreements.

Change Order means a written order issued by the Authority in accordance with Section 23.2.1 which directs TSCC Contractor to make Changes to the Work.

Change Order Price Request has the meaning given in Section 23.1.1.

Claim means any claim, proceeding, action, cause of action, demand (including any demand under Section 30), judgment, investigation or suit (including by way of contribution or indemnity) made:

- (a) in connection with this Agreement or the Project Assets; or
- (b) under Applicable Laws or in equity,

whether for specific performance, restitution, payment of money (including damages), an extension of time, or any other form of relief. TSCC Contractor's submission of a request for Change Order is not a Claim.

Compensable Event means any Relief Event other than a Force Majeure Event.

Completion means, with respect to an Early Works Package, all of the conditions provided in an Authority notice under Section 10.12 have been achieved.

Completion Deadline means the date specified for Completion of an Early Works Package in an Authority notice under Section 10.12, as amended in accordance with this Agreement.

Consequential Damages means special, indirect, or incidental damages that do not flow directly and immediately from an injurious act but that result indirectly from an action or failure to act, such as revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, loss of bonding capacity, lost opportunity, claims of taxpayers and other indirect damage.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the Project in accordance with this Agreement.



Construction Work means all Work to build or construct, rehabilitate, upgrade, make, form, manufacture, furnish, install, supply, deliver, landscape, equip, test and commission any structure, building, or other improvement to real property included in the Project, but excluding:

- (a) Mobilization Work;
- (b) Design Work, including professional environmental services and similar professional and consulting services;
- (c) preparing and processing applications for Governmental Approvals; and
- (d) coordinating with adjacent property owners and Utility Owners.

CP 1 means the portion of the HSR System's first construction segment currently bounded by Avenue 19 in the County of Madera to the north, and by East American Avenue in the County of Fresno to the south.

CP 2-3 means the portion of the HSR System's first construction segment currently bounded by East American Avenue in the County of Fresno to the north, and a point approximately one mile north of the Tulare/Kern County line in the County of Tulare to the south.

CP 4 means the portion of the HSR System's first construction section currently bounded by a point approximately one mile north of the Tulare/Kern County line in the County of Tulare to the north, and Poplar Avenue in the County of Kern to the south.

Critical Path has the meaning provided in Schedule 37 (Project Controls Requirements).

Date of Completion means the date of Completion of an Early Works Package.

Date of Package Approval has the meaning given in Section 10.9.3(a).

Default Notice has the meaning given in Section 27.3.2.

Default Termination Event has the meaning given in Section 27.4.

Defect means:

- (a) any error, omission, inconsistency, inaccuracy, deficiency or other defect; and
- (b) any aspect of the Work that (i) does not comply with the requirements of this Agreement or (ii) is inconsistent or incompatible with its age, function, performance and use (in each case, as contemplated by this Agreement) when properly maintained in accordance with Good Industry Practice, any manufacturer's requirements and the requirements described in this Agreement.

Design Criteria Manual means the Authority's Design Criteria Manual.

Design Documents means all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and Submittals developed by TSCC Contractor as necessary for design of each Package of the Project in accordance with this Agreement, in each case, irrespective as to whether such documents are required by this Agreement or are prepared or used by TSCC Contractor in the Design Work. Design Documents include the Final Design Documents.

Design Work means all Work of design, engineering, architecture and other professional services for the Project required by TSCC Contractor, or TSCC Contractor's review of Authority-Provided Design Documents, as described in the Scope of Work for any specific Package, including all design and construction work not encompassed within the definition of Construction Work or Mobilization Work.



Developed Intellectual Property means Intellectual Property that is authored, created, invented or reduced to practice under or for the purposes of the Agreement or the Project, whether or not such Intellectual Property is incorporated into the Project Intellectual Property but excluding any adaptation, continuation or derivative work that constitutes TSCC Contractor IP.

Differing Site Condition means:

- (a) subsurface or latent physical conditions (including Utilities and Existing Facilities) encountered at or near the Site that differ materially from those reasonably assumed by TSCC Contractor based on information disclosed in, or reasonably inferred from, the RFP or Reference Documents provided by the Authority or, for systems Work, as would reasonably be discovered during preliminary design activities;
- (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in this Agreement including:
 - (i) the discovery at, near or on the Site of any archaeological, paleontological, biological or cultural resource; and
 - (ii) the discovery at, near or on the Site of any species listed as threatened or endangered under the federal or State Endangered Species Act, except to the extent that any Authority-Provided Approval provides for mitigation measures to be undertaken with respect thereto (regardless of whether the species is listed as threatened or endangered as of the Effective Date),

unless the existence of such differing site condition was:

- (w) in the case of Work performed for Package 1, known to TSCC Contractor before the Effective Date or that would have become known to TSCC Contractor by undertaking a Reasonable Investigation before the Proposal due date;
- (x) in the case of Work performed between any NTP for any Package and Package Scope Closeout for such Package, known to TSCC Contractor before the Date of Package Approval for such Package or that TSCC Contractor could have discovered by performing a Site Investigation before the date of such Package Approval;
- (y) in the case of Work performed as part of an Early Works Package, known to TSCC Contractor before the Authority's issuance of NTP for that Early Works Package or that TSCC Contractor could have discovered by performing a Site Investigation before issuance of that NTP; or
- (z) in the case of a Utility, documented by or recorded with the USA DigAlert of Southern California.

The definition of "Differing Site Condition" excludes Hazardous Materials.

Direct Costs means, with respect to each Package, all costs that will be incurred and paid by TSCC Contractor in the performance of the Work, excluding the Bond and Insurance Costs and TSCC Contractor Fee applicable to such Package.

Directive Letter means a letter issued in accordance with Section 23.2.

Dispute means a disagreement between the Parties as to the merits, amounts, or remedy arising out of an issue in controversy, including a disagreement regarding a Claim.

Early Termination Date has the meaning given in Section 3.1.1.



Early Works Package means a Package of the Work created in accordance with Section 10.12.

Effective Date means the date on which this Agreement has been fully executed and delivered by the Authority and TSCC Contractor and specified on the cover page to this Agreement.

Eligible Surety means a Surety that is registered with the California State Insurance Commissioner; appears on the current Authorized Insurance List in the State of California published by the Office of the Insurance Commissioner; and has an A.M. Best's Rating Service classification of "A-XIV" or better, or otherwise approved by the Authority in its sole discretion. .

Emergency means any event which:

- (a) without limiting paragraph (b), causes serious personal injury and prevents or materially delays or disrupts the performance of the Work by TSCC Contractor;
- (b) results in a declaration of emergency by a local, State or federal authority authorized to make emergency declaration, in the Fresno, Tulare, or Kern County areas;
- (c) poses a serious risk to health or safety or the environment;
- (d) materially impacts the ability of the Authority to perform the HSR System operations; or
- (e) causes material property damage to the Project Assets.

Environmental Approval means all Governmental Approvals arising from or required by any Environmental Law in connection with construction, use or operation of the Project, including approvals and permits required in connection with the Environmental Review Process.

Environmental Law means (1) all Applicable Laws applicable to the Project Assets now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to generation, production, emissions, discharges, storage, use, handling, transportation, treatment, disposal, remediation, releases or threatened releases of Hazardous Materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances, or materials into the environment including into the air, surface water or ground water or onto land, and (2) any requirements and standards that pertain to the protection of the environment, or to the management of Hazardous Materials or generation, production, emissions, storage, use, handling, transportation, treatment, disposal, remediation, discharges, releases or threatened releases of Hazardous Materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances or materials into the environment, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, identified in any Governmental Approval, or other criteria and guidelines promulgated, pursuant to Applicable Laws applicable to the Project Assets, as each of the foregoing have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

- (a) the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport or handling of Hazardous Materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances or materials;
- (b) the protection of public health, public welfare, public safety or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air);
- (c) protection or control of air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (d) releases of Hazardous Materials;



- (e) protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, parks and recreation lands, cultural, historical, archeological, and paleontological resources and natural resources;
- (f) the operation and closure of underground or aboveground storage tanks;
- (g) health and safety of employees and other persons with respect to Hazardous Materials; or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances or materials; and
- (h) notification, documentation and record keeping requirements relating to the foregoing.

Environmental Review Process means the Project's environmental review and permitting processes to evaluate, avoid, minimize and mitigate Project effects, including as required under Governmental Approvals and all other Environmental Laws. These processes may be concurrent, sequential or overlapping.

Existing Facilities means existing civil infrastructure which is subject to the requirements of Schedule 42 (Handover of Existing Facilities).

Expiration Date means the applicable date of this Agreement's expiration or earlier termination in accordance with Section 3.

Extended General Conditions Costs has the meaning given in Section 20.7.3.

Extended Project means all portions of the Project other than the Base Project which may be constructed by TSCC Contractor pursuant to this Agreement under any or all of Optional Package 8, Optional Package 9 and/or Optional Package 10.

Extended Project Final Acceptance means the point in time when all of the conditions for Final Acceptance of the Extended Project in [Schedule 3 (System Engineering, Testing, and Commissioning Requirements)] have been achieved.

Extended Project Final Acceptance Date means the date on which Extended Project Final Acceptance occurs.

Extended Project Final Acceptance Deadline means the date specified for Extended Project Final Acceptance in the Package Specific Information, as amended in accordance with this Agreement.

Extended Project Final Acceptance Period means the period of time beginning on the calendar day immediately following the Date of Extended Project Substantial Completion and ending on the Extended Project Final Acceptance Date. Unless otherwise indicated in the Certificate of Extended Project Substantial Completion, the Extended Project Final Acceptance Period is intended to be 90 days.

Extended Project Final Acceptance Work means all Work TSCC Contractor is required to perform during the Extended Project Final Acceptance Period to achieve Extended Project Final Acceptance, including in connection with the Full Systems Test.

Final Design Documents means the complete final construction plans (including plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details and diagrams) and specifications needed for performance of Construction Work, including all Submittals required under the Scope of Work to be part of the Final Design Documents or the Project's final design. The Final Design Documents shall be prepared and updated by TSCC Contractor in accordance with this Agreement.

Final Package Price means, with respect to each Package, the final, maximum price the Authority agrees to pay to TSCC Contractor for all Work to be completed under the Package in accordance with Section 20.1.

Float has the meaning provided in Schedule 37 (Project Controls Requirements).



Force Majeure Event means any event listed in subsections (a) through (g) below, subject to the exclusions listed in subsections (i) through (v) below, which has a material, adverse and direct impact on TSCC Contractor's obligations under this Agreement:

- (a) any earthquake in excess of a magnitude of 3.5 on the Richter scale as measured by USGS, tornado, hurricane, uncontrolled fire in an area of combustible vegetation, tidal wave, lightning, one in a 100-year flood or other natural disaster;
- (b) any epidemic or pandemic, or stay at home or shelter in place order as declared by a local, State or federal authority authorized to make emergency declaration, in the Fresno, Tulare, or Kern County area or outside of that area if it directly impacts the supply chain for necessary materials or equipment or labor obligations;
- (c) any war, civil war, invasion, blockade, embargo, violent act of foreign enemy, armed conflict or act of terrorism, excluding the conflict between Russia and Ukraine which began with Russia invading Ukraine in February 2022;
- (d) any act of riot, insurrection, sabotage or civil commotion;
- (e) issuance of a temporary restraining order or other form of injunction by a court that prohibits the performance of a material portion of the Work;
- (f) the suspension, termination, interruption, denial or failure to obtain, failure to maintain or non-renewal of the Authority-Provided Approvals, except if it arises from any act or omission of any TSCC-Related Entity or TSCC Contractor Fault, including the failure by any TSCC-Related Entity to locate or design the Project or perform the Work in accordance with any Governmental Approval; and
- (g) any strike, lockout or other dispute generally affecting the construction industry in the State, but excluding any strike, lockout or similar dispute that is specific to the Project or any TSCC-Related Entity or that is caused in whole or in part by TSCC Contractor;

excluding:

- (i) any physical destruction or damage, or delays to the Work which occur by action of the elements or weather events, except as specified in subsection (a);
- (ii) except as provided in subsections (c) and (d), malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of subsections (a) through (g);
- (iv) the presence at, near or on the Site of any Hazardous Material, including any substance disclosed to TSCC Contractor and any substance contained in any structure required to be demolished in whole or in part or relocated as part of the Work; and
- (v) any matters not caused by the Authority or beyond the control of the Authority or any other matter not listed in subsections (a) through (g).

Funding Programs has the meaning given in Section 6.3.1.

General Requirements Costs means the portion of the Direct Costs (a) listed under the heading "General Requirements Costs" in the Table of Rates and Prices in effect on the Effective Date for Packages 1A, 1B, and



2B, and (b) proposed by TSCC Contractor as "General Requirements Costs" in the applicable Package Price Proposal for all other Packages, to extent agreed by the Parties and set forth in the applicable Package Specific Information in accordance with Section 10.9.

Good Industry Practice means:

- (a) in the case of all Work, other than Design Work, the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced constructor, supplier or other contractor seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals and engaging in the same type of undertaking under circumstances similar to the Project and conditions similar to those within the same geographic area as the Site; and
- (b) in the case of Design Work, the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a professional designer or engineer seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals and engaging in the same type of undertaking under circumstances similar to the Project and conditions similar to those within the same geographic area as the Site.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, mitigation agreement, agreement or memoranda of agreement/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, required by or with any Governmental Entity in order to perform the Work, but excluding (a) any such approvals relating to the work to be performed by Interfacing Contractors as specifically described in this Agreement, and (b) any such approvals required by or with a Governmental Entity in its capacity as a Utility Owner. Governmental Approvals include Environmental Approvals, Major Approvals, Authority-Provided Approvals and New Approvals.

Governmental Entity means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than the Authority.

Guarantor means each Person providing a guaranty as described in Section 7.4, which at the Effective Date is the person specified in the initial Package Specific Information. ***[Note to Proposers: Use of Guarantor subject to requirements under the Instructions to Proposer. Provisions may be deleted if not required.]***

Guaranty means a guaranty agreement provided by the Guarantor as described in Section 7.4, substantially in the form of Schedule 22 (Form of Guaranty). ***[Note to Proposers: Use of Guarantor subject to requirements under the Instructions to Proposer. Provisions may be deleted if not required.]***

Hazardous Material includes hazardous substances and hazardous waste and means:

- (a) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code § 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code § 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code § 25249.5 et seq.; Health and Safety Code § 25280 et seq.; the California Hazardous Waste Management Act, Health and Safety Code § 25170.1 et seq.; Health and Safety Code § 25501 et seq.; or the California Porter-Cologne Water Quality Control Act, Water Code § 13000 et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution,



- code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;
- (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
 - (c) notwithstanding Health and Safety Code § 25317, any petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles;
 - (d) any asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground); and
 - (e) any other substances, product, waste or material defined, or to be treated or handled, as a Hazardous Materials pursuant to provisions of this Agreement.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Project, including investigation, timely notice to the Authority, removal and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stockpiling, storage, backfilling in place, asphalt batching, recycling, treatment, clean up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and permitted under Applicable Laws.

Health and Safety Plan means the plan developed by TSCC Contractor in accordance with Schedule 1 (Safety, Security, and RAM Requirements).

HSR System has the meaning given in Recital A to this Agreement.

Incentive means the incentive (if any) to which TSCC Contractor may become entitled as calculated in accordance with Section 20.9.

Indemnified Parties means: (a) the Authority, the Authority Representative, or each of them (as applicable); and (b) each of their respective officers, trustees, directors, board members, employees, representatives, authorized volunteers, representatives, agents, consultants or all of them (as applicable). ***[Note to Proposers: Additional parties may need to be included or removed here depending on funding arrangements]***

Insurance Requirements has the meaning given in Section 25.10.

Intellectual Property (IP) or IP Material means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade names, trade dress, trade secrets and trade secret rights, designs (registered and unregistered) and design rights, utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project or its design data. Intellectual Property is distinguished from physical, digital or mechanical embodiments of such Intellectual Property, including Construction Documents, Design Documents, Submittals, physical construction and equipment itself and from data, sketches, charts, calculations, drawings, plans, depictions, specifications, layouts, depictions, manuals, electronic files, artwork, correspondence, and other documentation that disclose Intellectual Property.



Interface Management Plan means the plan developed by TSCC Contract in accordance with Schedule 3 (System Engineering, Testing, and Commissioning Requirements).

Interfacing Contractor means any contractor, tradesperson or other Person engaged by the Authority to do work, other than a TSCC-Related Entity.

Interim Substantial Completion means all of the conditions with respect to the Base Project provided in Schedule 3 (System Engineering, Testing, and Commissioning Requirements) have been achieved.

Interim Substantial Completion Deadline means January 1, 2032.

Key Personnel means the individuals: (a) listed in any Package Specific Information; and (b) approved by the Authority from time to time to fill one of those listed positions. A "**Key Person**" is any individual within this definition.

Known or Suspected Hazardous Materials means Hazardous Materials that are known or reasonably suspected to exist as of the applicable Setting Date from information or analysis contained or referenced in the Reference Documents, or Hazardous Materials that would have become known to TSCC Contractor as follows:

- (a) in the case of Work performed for Package 1, by undertaking Reasonable Investigation or such other investigations required in accordance with Good Industry Practice before the Proposal due date;
- (b) in the case of Work performed between any Package Approval Deadline and Package Scope Closeout, by undertaking Reasonable Investigation or such other investigations required in accordance with Good Industry Practice before the date of the applicable Package Approval; or
- (c) in the case of Work performed as part of an Early Works Package, known to TSCC Contractor before the Authority's issuance of NTP for that Early Works Package or that TSCC Contractor could have discovered by performing Reasonable Investigation or such other investigations required in accordance with Good Industry Practice before that NTP.

Lien means any pledge, lien, hypothecation, security interest, mortgage, deed of trust or other charge, encumbrance or restriction on title or property interest of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Lifecycle Cost will follow a System Development Life Cycle Model, the TSCC Contractor will follow the EN 50126 V-lifecycle model, in compliance with the INCOSE Systems Engineering Handbook and adjusted to meet the FRA requirements to demonstrate readiness for revenue operations.

Lifecycle Objectives are defined in the RAM Management Plan (PLAN-1033), which is a Project Plan covering the complete life cycle as described in the System Engineering Plan and System Development Life Cycle.

Listed Subcontractor means each of the Subcontractors specified in Schedule 27 (Subcontractor Identification Form).

Losses includes any loss, damage, injury, compensation, debt, obligation, charge, liability, cost, expense (including attorneys' fees, accountants' fees, expert witness fees and expenses, including those incurred in connection with the enforcement of any provision of this Agreement), deductibles or increased premiums, fee, charge, demand, investigation, proceeding, action, suit, judgment, penalty, fine or third party Claims, whether actual, prospective or contingent and whether or not currently ascertainable. Losses include injury to or death of



persons, damage or loss of property, harm or damage to natural resources, and loss of or damage to valuable papers and records.

Lump Sum Price means a firm, fixed-price, expressed as an all-inclusive stipulated sum, payable as full compensation for the relevant Package or portion Work, inclusive of all Direct Costs, Bond and Insurance Costs, and the TSCC Contractor Fee, as applicable.

Major Approval means each Governmental Approval specified in any Package Specific Information.

Major Approval Deadline means the time period and deadline for TSCC Contractor to secure each Major Approval specified in any Package Specific Information. Each such time period:

- (a) begins on the date the first complete and fully compliant Major Approval request is submitted to the applicable Governmental Entity and ends on the date its final approval is received; and
- (b) includes any Governmental Entity comment requirements and timely TSCC Contractor resubmissions.

Major Approval Delay means a delay to the Work resulting from the failure to obtain a Major Approval by the applicable Major Approval Deadline where that delay is not due to a change to the Project Technical Requirements, TSCC Contractor's design, any act or omission by a TSCC-Related Entity or any TSCC Contractor Fault (including any failure to provide the Authority with an updated Baseline Schedule or to perform the Work in accordance with the Baseline Schedule).

Major Subcontract means a Subcontract with a Major Subcontractor.

Major Subcontractor means any Subcontractor with a Subcontract or Subcontracts in excess of \$1 million.

Maximum Fee Percentage means 16%, which is the maximum aggregate markup percentage permissible for the sum of the TSCC Contractor Fee and all Subcontractor Fees of Subcontractors at any tier.

Milestone means any Package Milestones listed in any Package Specific Information for such Package, or all of them (as applicable).

Milestone Deadline means each Package Milestone Deadline, the Interim Substantial Completion Deadline for the Base Project, the Extended Project Substantial Completion Deadline for the Extended Project, the Completion Deadline for an Early Works Package or all of them (as applicable).

Mobilization Work means the mobilization work described in Schedule 16 (Scope of Work).

New Approval means: (a) a new Governmental Approval of the same type as an Authority-Provided Approval or CEQA/NEPA Approval; (b) a revision, modification, or amendment to an Authority-Provided Approval or CEQA/NEPA Approval.

Non-Operational Right of Way means the Authority owned rights of way shown in Schedule 14 (Right of Way).

Notice to Proceed (NTP) means the Authority's issuance to TSCC Contractor of a written notice to proceed with the Work for any Package (as applicable).

Open Book Basis means providing the Authority all Books and Records and underlying assumptions, price quotes and data associated with pricing or compensation (whether of TSCC Contractor or the Authority) or their adjustments, including assumptions as to work costs, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, insurance



rates, bonding rates, letter of credit fees, overhead, profit, and other items reasonably required by the Authority to satisfy itself as to the validity and reasonableness of the amount.

Optional Package 8 means the construction, long lead items, testing, and commissioning for track, OCS, traction power, train control, telecommunications systems, and SCADA systems for the Merced Extension described in Section 2.8 of the Scope of Work.

Optional Package 9 means the construction, long lead items, testing, and commissioning for track, OCS, traction power, train control, telecommunications systems, and SCADA systems for the Bakersfield Extension described in Section 2.9 of the Scope of Work.

Optional Package 10 means the potential additional construction, procurement of long lead items, testing, and commissioning for track, OCS, traction power, train control, telecommunications systems, and SCADA systems for the High-Desert Corridor.

Package means any package of Work, including any Optional Package, to be performed by TSCC Contractor under this Agreement following issuance of the applicable NTP for such Package.

Package 1 means, collectively, (a) certain Mobilization Work, procurement of long lead materials and equipment for construction of Packages 2 through 4; and (b) the systems preliminary Design Work and procurement of the Systems Provider; in each case as described in Section 2.1 of the Scope of Work.

Package 2 means the civil, track, and OCS construction of the CP 4 geographical area as described in Section 2.2 of the Scope of Work. Package 2 may be divided into Package 2A and 2B at the Authority's discretion.

Package 3 means, the civil, track, and OCS construction of the CP 2-3 geographical area described in Section 2.3 of the Scope of Work. Package 3 may be divided into Package 3A for the southern portion of CP 2-3 and Package 3B for the northern portion of CP 2-3 at the Authority's discretion.

Package 4 means the civil, track, and OCS construction of the CP 1 geographical area described in Section 2.4 of the Scope of Work.

Package 5 means the mobilization of TSCC Contractor's traction power, train control, telecommunications systems, and SCADA systems installation and testing teams, including the Systems Provider, and procurement of long lead materials and equipment for systems Work described in Section 2.5 of the Scope of Work.

Package 6 means the construction, testing, and commissioning of the train control, telecommunications, and SCADA systems described in Section 2.6 of the Scope of Work.

Package 7 means the construction, testing, and commissioning of the traction power system described in Section 2.7 of the Scope of Work.

Package Amendment means the amendment, including the Package Specific Information, Scope of Work, Schedule 25 (Insurance Requirements), Authority-approved Final Package Price Proposal, Baseline Schedule and all other documents necessary to amend this Agreement to include any particular Package.

Package Approval means, for any particular Package, the Authority has issued written notice to TSCC Contractor under Section 10.9.3 that all of the following conditions have been satisfied or any unsatisfied conditions have been waived:

- (a) the Final Package Price Proposal has been approved by the Authority as required by Section 20.1;
- (b) the Baseline Schedule has been approved by the Authority Representative;



- (c) TSCC Contractor has finalized all Project Plans required to be completed as a condition of Package Approval;
- (d) the proposed Package Specific Information has been prepared and agreed in accordance with Section 10.9.3;
- (e) the Authority has closed all financing or obtained all funding for the Work for such Package;
- (f) all Governmental Approvals required for the Work for such Package have been obtained;
- (g) if required, approval from the Authority Board for the Work for such Package has been obtained; and
- (h) TSCC Contractor has otherwise complied with all of its obligations under this Agreement to the extent applicable before the date of Package Approval and issuance of NTP for such Package.

Package Approval Deadline means the date specified for Package Approval for any particular Package in any Package Specific Information, as amended in accordance with this Agreement.

Package Milestone means, for any particular Package, each milestone specified in the Package Specific Information. If any Early Works Package is created in accordance with Section 10.12, Completion of that Early Works Package and any other milestones agreed by the Parties shall each be deemed a Milestone.

Package Milestone Deadline means:

- (a) each date specified in the applicable Package Specific Information for a Package Milestone; and
- (b) each date or period of time approved by the Authority and specified in the Package Specific Information for an Early Works Package,

as updated in accordance with this Agreement.

Package Price Request has the meaning given in Section 20.1.

Package Scope Closeout means, for any Package, all conditions to Package Scope Closeout listed in the Package Specific Information for such Package have been achieved.

Package Specific Information means the Package Specific Information attachment, the form of which is set forth in Schedule 13 (Package Specific Information Schedule), for each Package approved by the Authority under this Agreement and attached to this Agreement as part of the applicable Package Amendment for such Package, or all of them (as applicable).

Parties means the Authority and TSCC Contractor, and **Party** means each of them (as applicable) and includes its permitted successors and assigns.

Payment Bond means the Payment Bond required for any Package, or all of them (as applicable).

Performance Bond means the Performance Bond required for any Package, or all of them (as applicable).

Person means any individual, corporation, joint venture, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

Potential Change Order Log means the log of potential changes in scope, budget, or schedule prepared and maintained by TSCC Contractor in accordance with the Scope of Work, as updated in accordance with this Agreement.



Project Assets means, following issuance of NTP for any Package, any deliverables and components of such deliverables required under the Scope of Work for such Package, the Site, and the Work for such Package.

Project Facilities means the entire physical infrastructure and capital improvements of the Project to be designed, constructed, commissioned, and completed by TSCC Contractor on the Site in accordance with the Agreement.

Project Goals means the following goals for the Project:

- (a) The TSCC provides for the track, OCS and systems construction on the Central Valley's EOS, that in conjunction with other contracts (i.e. trainsets, stations and power delivery) will demonstrate tangible delivery within a constrained funding environment in order to deliver high speed rail operations in the Central Valley with testing and trial running of the service across the 119-mile CVS expected by 2030 and revenue service initiation for the Merced to Bakersfield segment by December 31, 2033.

Project Intellectual Property means Intellectual Property created, used, applied or reduced to practice in connection with the Project Assets or the Project.

Project Plans means the following plans, as may be updated in accordance with this Agreement:

- (a) any plans listed in any Package Specific Information for any Package for which NTP has been issued by the Authority; and
- (b) any additional plans specified in the Scope of Work to be prepared by TSCC Contractor.

Project Right of Way (ROW) means the Access-Controlled Right of Way and the Non-Operational Right of Way.

Project Standards means the standards, terms, conditions, methods, techniques and practices listed in any Package Specific Information, together with any additional standards and specifications applicable to the Work and established by express reference contained in one of the documents listed in this Agreement.

Project Technical Requirements means the mandatory technical requirements for the Project, as such may be updated in accordance with this Agreement. Subject to Section 10.9.4, the Project Technical Requirements will be attached as Schedules 1 through 10, Schedule 38, Schedule 41 and Schedule 42.

Proposal means TSCC Contractor's proposal submitted in response to the RFP for this Project, as modified and supplemented with the Authority's approval before the Effective Date.

Proposal Schedule means the project schedule that TSCC Contractor submitted with its Proposal, attached to this Agreement as Schedule 24 (TSCC Contractor's Proposal Schedule).

Protection in Place means any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection in Place, while temporarily moving power lines to another location after cutting them would not be. The term Protection in Place includes both temporary measures and permanent installations meeting the foregoing definition.

Public Records Act has the meaning given in Section 24.2.1.



Quality Requirements means to comply with all requirements in Schedule 33 (Quality Requirements) and any other quality requirements in this Agreement.

Reasonable Investigation means the following activities by appropriate, qualified professionals:

- (a) visit and visual, non-intrusive inspection of the Site and adjacent locations including inspection to identify the presence of other facilities, such as barriers, railing, structures, manholes or identifying markers;
- (b) review and analysis of all Reference Documents and online map tools;
- (c) review and analysis of the Authority-Provided Approvals and all other Governmental Approvals;
- (d) reasonable inquiry with Utility Owners, including request for and review of plans provided by Utility Owners;
- (e) review and analysis of Applicable Laws with respect to the Work and Project Assets; and
- (f) other non-intrusive activities in accordance with Good Industry Practice that are sufficient to familiarize TSCC Contractor with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, biological, paleontological and cultural resources, and threatened or endangered species, affecting the Site or surrounding locations,

provided that none of those activities requires conducting field studies, geotechnical investigations or original research of private records not contained or referenced in the Reference Documents.

Recovery Schedule means a schedule and accompanying narrative report prepared by TSCC Contractor in accordance with Section 10.6, which demonstrates TSCC Contractor's proposed plan to regain lost schedule progress and achieve any impacted Milestone by the applicable Milestone Deadline.

Reference Documents means all drawings, reports, studies, data, documents, or other information (a) provided or made available by the Authority to any TSCC-Related Entity or (b) obtained from or through any other sources before the Setting Date, including the Project's RFP and all documents and information provided with the Project's RFP.

Relief Event means each of the following events:

- (a) a Change Order requested by TSCC Contractor and approved by the Authority in accordance with Sections 23.6 and 23.7;
- (b) an Authority-Caused Delay;
- (c) a Change in Law;
- (d) a Force Majeure Event;
- (e) subject to Section 13.4, a Differing Site Condition;
- (f) performance of Hazardous Materials Management by TSCC Contractor resulting from either:
 - (i) Unknown Hazardous Materials; or
 - (ii) any spill of Hazardous Material by a third party who is not acting in a capacity, on behalf, or under the authority or permission of a TSCC-Related Entity which (A) is required to be



reported to a Governmental Entity and (B) renders use of a construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;

- (g) subject to TSCC Contractor complying with its obligations to coordinate with Interfacing Contractors as described in this Agreement, any act or omission of any Interfacing Contractor which materially and adversely directly affects TSCC Contractor's obligations under this Agreement; and
- (h) a Major Approval Delay.

Relief Event Notice has the meaning given in Section 22.1.1.

Relocation means each removal, relocation, adjustment, construction, reconstruction, abandonment, temporary relocation, and provision of temporary services of any Utility facility that is necessary in order to accommodate or permit construction of the Project.

Request for Proposals (RFP) has the meaning given in Recital C to this Agreement.

Retainage has the meaning given in Section 20.15.1(a).

Schedule of Deliverables means the schedule of deliverables in the Scope of Work.

Scope of Work means the scope of work for any Package attached to this Agreement as Schedule 16 (Scope of Work) as updated as part of any Package Amendment for any Package, or all of them (as applicable).

Setting Date means (as applicable) each of the following:

- (a) for the Package 1 Work, the date which is 10 days before the Proposal Due Date; and
- (b) for any Package Amendment, the date which is 1 day before the Final Package Price Proposal due date.

Site means, for any Package, the site(s) and alignment(s) where Work will be performed as described in this Agreement, including the Technical Requirements, Authority-Provided Design Documents and Design Documents.

Site Investigation means TSCC Contractor's Reasonable Investigation before the Proposal due date or any Final Package Price Proposal due date and its investigation of the Site in accordance with the Scope of Work and Good Industry Practice.

Source Code means individually each, and collectively all, of the computer programs developed for, incorporated in, or required by the Project or Work, including as to each such program, the processes and routines used in the processing of data, the object code, interfaces to be provided under this Agreement by TSCC Contractor, and update(s) or upgrade(s).

Source Code Documentation means in any physical or digital medium, (a) human-readable copy of the Source Code and related materials generated in preparing the Source Code, including programmer notes, flow charts, logic diagrams, and listings, (b) information and user manuals sufficient to enable a person skilled in the applicable art to operate, maintain, and support the Source Code for its intended purposes, and (c) all of TSCC Contractor's training course materials, system specifications and technical manuals, and all other user instructions regarding the capabilities, operation, and use of the Source Code including, but not limited to, online help screens contained in the Project or Work, and for subsections (a) through (c), any revisions, supplements, or updates thereto. For the avoidance of doubt, Source Code Documentation includes software written in programming languages, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable



code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code Documentation includes all Change Orders and other documents relating to additions, substitutions, updates, upgrades and corrections made to the foregoing items.

State means the state of California.

Subcontract means an agreement between TSCC Contractor and one or more third parties providing for that third party to perform any part of the Work or provide any services, materials, equipment, labor or supplies for any part of the Work, or any such agreement between a third party and its lower tier subcontractor at any tier.

Subcontractor means any Person with a Subcontract.

Subcontractor Fee means, with respect to any Work under any Package performed by a Subcontractor at any tier, the amount equal to the mark-up percentage applied by the Subcontractor to the Direct Costs of the Work performed by it as compensation for overhead and profit, including the following:

- (a) all costs related to the Subcontractor home (or main), branch and regional office general & administrative (G&A) work and support staff who provide corporate management oversight, corporate accounting, corporate safety, corporate quality control, corporate administration, corporate information technology, legal services, corporate payroll and benefit accounting/administration (this item should be based on actual and audited records of home office costs);
- (b) Subcontractor's profit margin applied to any Work within its scope, whether self-performed or performed by any of its subcontractors at any tier; and
- (c) Subcontractor's costs of capital and interest for funding of the Work;

in each case, without contingencies, applied to all cost categories including labor, equipment, materials, and its subcontractor costs.

Submittal means any document, work product, or other written or electronic end product or item that TSCC Contractor must prepare and deliver, submit or resubmit to the Authority in accordance with this Agreement.

Submittal Requirements means the submittal requirements described in Schedule 7 (Technical Submittals) which contain uniform terms and procedures applicable to Submittals.

Substitute Tariff Material means a material or product that: (a) is functionally and technically equivalent to the originally specified Tariff Material, (b) is compliant with Applicable Laws, Governmental Approvals and the requirements of the Agreement, (c) can be procured within the necessary timeframes to avoid delay to the Baseline Schedule, and (d) is manufactured in a country not subject to the applicable Tariff Event, including a country subject to a smaller Tariff.

Supplier means any Person not performing work at or on the Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to TSCC Contractor or to any Subcontractor in connection with the performance of the Work. Persons that merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.



Surety means each properly licensed surety company, insurance company or other Person approved by the California State Insurance Commissioner to do business in the State and approved by the Authority, which has issued a Payment Bond or a Performance Bond in accordance with this Agreement.

Systems Provider means the entity that will provide the Systems OEM for the Project.

Table of Rates and Prices means the tables of rates and prices specified in Schedule 18 (Table of Rates and Prices), as may be updated in accordance with this Agreement.

Tariff means a new federal tariff imposed after the applicable Setting Date by the United States on the importation of Tariff Material.

Tariff Event means, for any Package (a) the implementation, taking effect after the Date of Package Approval for such Package, of a new Tariff; or (b) modification or elimination, taking effect after the Date of Package Approval for such Package, of an existing Tariff. A Tariff that is in effect or has been announced as of the Date of Package Approval (whether or not yet implemented) shall not be considered a Tariff Event unless it is later modified or eliminated.

Tariff Material means the imported materials and supplies identified as "Tariff Material" in the Table of Rates and Prices or in the Package Price Proposal in any Package Specific Information.

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, revenues or act, business, status or transaction of TSCC Contractor, including any interest, penalty or addition to such amounts, and including utility rates or rents, in all cases whether disputed or undisputed.

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to Intellectual Property, equipment, mechanism, operational technology, or to any related documentation, in each case made in accordance with the Scope of Work, that accomplish incidental, performance, structural, or functional improvements. Technology Enhancements specifically includes modifications, updates, or revisions made to software or any related documentation that correct errors or support new models of input-output devices with which the software is designed to operate.

Temporary Right of Way means the temporary real property interests and rights available or to be made available to TSCC Contractor by Authority for the performance of the Work.

Term has the meaning given in [Section 3.1](#).

Third Party IP means Intellectual Property owned, or sufficiently licensed to, a Person that is (a) not a party to this Agreement, (b) unrelated to TSCC Contractor or (c) unrelated to the Authority.

Track/OCS Design Services Consultant means the entity selected by the Authority to prepare the Authority-Provided Design Documents for this Agreement.

TSCC Contractor means [].

TSCC Contractor Default has the meaning given in [Section 27.2](#).



TSCC Contractor Fault means any breach of this Agreement, negligence, gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional misconduct, breach of Applicable Law or any other negligent act or omission by any TSCC-Related Entity.

TSCC Contractor Fee means, with respect to the Work under any Package, the aggregate amount equal to (a) []%¹ of the Direct Costs of any Design Work self-performed by TSCC Contractor, (b) []% of the Direct Costs of any Design Work performed by a Subcontractor, (c) []% of the Direct Costs of all other Work self-performed by TSCC Contractor, and (d) []% of the Direct Costs of all other Work performed by a Subcontractor, which are the maximum aggregate markup percentages that may be applied directly by TSCC Contractor throughout the Term as compensation for overhead and profit on its performance, oversight, and administration of such Work, as applicable, inclusive of the following:

- (a) all costs related to TSCC Contractor home (or main), branch and regional office G&A work and support staff who provide corporate management oversight, corporate accounting, corporate safety, corporate quality control, corporate administration, corporate information technology, legal services, corporate payroll and benefit accounting/ administration (this item should be based on actual and audited records of home office costs);
- (b) TSCC Contractor's profit margin applied to any Work, whether self-performed or performed by any Subcontractor at any tier; and
- (c) TSCC Contractor's costs of capital and interest for funding of the Work;

in each case, without contingencies, applied to all cost categories including labor, equipment, materials, and Subcontractor costs.

TSCC Contractor Hazardous Materials Release means:

- (a) any spill or release, threatened spill or release, or exacerbation of any existing release or condition of Hazardous Materials attributable to any act or omission of any TSCC-Related Entity or any TSCC Contractor Fault; or
- (b) any Known or Suspected Hazardous Materials that TSCC Contractor could have avoided by commercially reasonable design modifications or construction techniques.

TSCC Contractor IP means Intellectual Property that is: (a) owned by TSCC Contractor before the Effective Date; and (b) developed by TSCC Contractor wholly independently of this Agreement.

TSCC Contractor Representative means the Key Person specified in the initial Package Specific Information or their approved replacement made in accordance with Section 8.4.

TSCC Contractor's Proposal Extracts means the document based on the TSCC Contractor's Proposal attached to this Agreement as Schedule 19 (TSCC Contractor Proposal Extracts).

TSCC Contractor's Delay Rate has the meaning given in Section 20.7.

TSCC-Related Entity means TSCC Contractor, Subcontractors and any other Persons performing any of the Work, any other Persons for whom TSCC Contractor may be legally or contractually responsible and the affiliates, employees, agents, representatives, shareholders, directors, members, managers, partners and officers of any of the foregoing.

¹ All percentages to be filled in with percentages proposed by TSCC Contractor in its Price Proposal.



Unit Cost means, with respect to Packages 2B, 3A, 3B, and 4, the cost, fee, rate or other price payable on a per unit or quantity basis for TSCC Contractor's completion of the Work or portion thereof under the Package. The initial Unit Costs for Package 2B shall be the amounts set forth in the Table of Rates and Prices as of the Effective Date. Unit Costs may be adjusted or developed in accordance with Section 20.1 of the Agreement.

Unknown Hazardous Materials means Hazardous Materials in, on or under the Site, as of the date the Authority provides access to the Site, excluding;

- (a) Known or Suspected Hazardous Materials;
- (b) Hazardous Materials resulting from a TSCC Contractor Hazardous Materials Release;
- (c) asbestos or asbestos-containing materials (other than mineral asbestos naturally occurring in the ground) on or in the Site or any other materials not falling within the definition of Hazardous Materials that are encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Site;
- (d) quantities of Hazardous Materials that do not trigger a reporting requirement under Applicable Law; or
- (e) any Hazardous Materials on or affecting property outside of the Site, except to the extent such work is legally required to be taken with Hazardous Materials Management required within the Site.

Useful Life means, for any element of the Work, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until that element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

Utility or **utility** means a privately, publicly, or cooperatively owned line, facility or system (including municipal and government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system and any fire or police signal system as well as streetlights. The necessary appurtenances to each utility facility shall be considered part of such utility.

Utility Agreement means any agreement, as the same may be amended from time to time, between the Authority and a Utility Owner, providing specific details for a Relocation. A document is a Utility Agreement if it meets the foregoing definition, without regard to the title or form of the document.

Utility Interruption means any one or more Utilities external to the boundaries of the Site are not available during the Term (either at all or in the necessary quantity) for use for any reason other than (i) an act or omission of any TSCC-Related Entity; (ii) any TSCC Contractor Fault; or (iii) because of a dispute between TSCC Contractor and the relevant Utilities provider regardless of why that dispute is initiated or by whom or the likely result of the dispute.

Utility Owner means any private entity or public body (including city, county, state, public corporation, or public district) that owns and/or operates a Utility, including cooperative Utilities.

Utility Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities constructed by the Utility Owner (or for the Utility Owner by its contractors) at its own expense and that are comparable to the utilities subject to Relocation for the Project. Such Utility Standards may or may not all be incorporated into documents issued by the Utility Owner, and shall include those processes, procedures, policies and practices that are industry-standard in California for each particular type of Utility. For any Utility Owner that is also a Governmental Entity, its Utility Standards shall include all such requirements that are imposed by any Applicable Law issued by such Utility Owner.



Utility Work means all of the following Work necessary for construction of the Project, including any necessary coordination with Utility Owners and property owners, providing design, performing construction, and obtaining and complying with all required Governmental Approvals:

- (a) Protection in Place of any Utility;
- (b) all work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.);
- (c) re-striping or re-paving of streets or reconstruction of curbs, gutters and sidewalks;
- (d) reinstallation of signage or replacement of traffic signals or adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;
- (e) traffic control for any Relocation;
- (f) potholing, electronic detection, surveying and any other methods used to determine Utility locations and other material information concerning utilities;
- (g) any Relocation (including temporary Relocations);
- (h) any Betterment required by a Utility Owner; and
- (i) any other Work described in the Scope of Work pertaining to a Utility.

Work means all of the work, thing, tasks services and obligations which TSCC Contractor is, or may be, required to do to comply with its obligations under this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires, each of the following rules of interpretation shall apply:

- (a) this Agreement shall be construed simply, as a whole, in accordance with the fair meaning of the language used and not strictly for or against any Party;
- (b) any word (including any defined term) in the singular includes the plural and vice versa, and any word denoting gender includes all genders;
- (c) the captions of the Sections, subsections, Tasks and subtasks in this Agreement are for convenience only and are not to be treated or construed as part of this Agreement;
- (d) a reference to a Section, subsection, Task or subtask is a reference to the Section, subsection, Task or subtask in the body of this Agreement, the Schedule or the Appendix in which the reference appears, unless otherwise stated;
- (e) a reference to any Governmental Entity includes any public agency succeeding to the powers and authority of that Governmental Entity;
- (f) the terms “hereto,” “hereby,” “hereof,” “herein,” “hereunder,” “under this Agreement” and any similar terms refer to this Agreement;
- (g) a reference to an agreement (including this Agreement), document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;



- (h) on plans, working drawings and standard plans, calculated dimensions take precedence over scaled dimensions;
- (i) a reference to a right includes any benefit, remedy, discretion, authority or power associated with such right;
- (j) a reference to "\$" is to U.S. dollars, and all monetary amounts and obligations in this Agreement are expressed and payable in U.S. dollars;
- (k) unless otherwise expressly provided in this Agreement, the term "may," when used in the context of a power or right exercisable by the Authority or the Authority Representative, means the Authority or the Authority Representative is able to exercise that right or power in its sole and unfettered discretion and has no obligation to TSCC Contractor to do so;
- (l) a reference to a "day" is a reference to a working day, which is a day other than (i) a Saturday or Sunday or (ii) an Authority-Observed Holiday; provided that requirements contained in this Agreement relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-working day, shall be performed as specified, even though the date in question may fall on a non-working day;
- (m) a reference to time is a reference to Pacific Time;
- (n) the words "include," "including," "includes" and any variants of those words, will be read as if followed by the words "without limitation";
- (o) the meaning of "or" will be that of the inclusive "or," that is meaning one, some, or all of a number of possibilities;
- (p) unless otherwise expressly stated in this Agreement, words that have well-known technical or construction industry meanings are used in this Agreement in accordance with such recognized meaning;
- (q) a reference to any legislation (including any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant legislation) or a provision within it includes any legislation or provision which amends, extends, consolidates or replaces such legislation or provision; and
- (r) if this Agreement requires calculation of an amount payable to a Party, there must be no double counting in calculating that amount.

1.3 Resolution of Ambiguities and Order of Precedence

1.3.1 If there is any ambiguity, discrepancy or inconsistency in or between either:

- (a) the documents which make up this Agreement; or
- (b) this Agreement and the most-recently Authority-approved version of any Design Documents, Project Standards or other Project document,

the higher standard, quality or quantum will prevail, unless the Authority, in its sole discretion, directs that a lesser standard, quality or quantum applies. If that higher standard, quality or quantum does not resolve the ambiguity, discrepancy or inconsistency, the order of precedence specified in the applicable Package Specific Information will apply.



1.3.2 References to the Project Standards governing the Work shall mean the most recent edition, revision, amendment or supplement in effect on the Setting Date.

1.3.3 If TSCC Contractor discovers any ambiguity, discrepancy, inconsistency or other conflict within the Agreement, it shall promptly give notice in writing to the Authority. Within 14 days after receipt of that notice by the Authority, the Authority Representative shall instruct TSCC Contractor as to the course it must adopt and TSCC Contractor shall comply with that instruction. TSCC Contractor shall not proceed with any Work affected by a reported ambiguity, discrepancy, inconsistency or conflict until the issue is resolved in accordance with this Agreement.

1.4 Order of Precedence of Project Plans

1.4.1 In the event of any conflict, ambiguity or inconsistency between the approved Project Plans and this Agreement, this Agreement will prevail to the extent of any conflict, ambiguity or inconsistency.

1.4.2 In the event of any conflict, ambiguity or inconsistency between the approved Project Plans and the Project Technical Requirements, the Project Technical Requirements will prevail to the extent of any conflict, ambiguity or inconsistency.

1.4.3 If the approved Project Plans include a greater or higher requirement, standard, quality, level of service, quantum or scope than otherwise required by this Agreement or the Project Technical Requirements, then TSCC Contractor's obligations under this Agreement will include compliance with that greater or higher requirement, standard, quality, level of service, quantum or scope.

1.5 Reference Documents

1.5.1 Subject to Section 1.5.2, TSCC acknowledges and agrees that:

- (a) The Authority has provided the Reference Documents to TSCC Contractor for information only;
- (b) The Authority does not represent, warrant or guarantee the accuracy or completeness of the Reference Documents or that such information is in conformity with the requirements of this Agreement, Governmental Approvals or Applicable Laws;
- (c) The Authority shall not be responsible or liable in any respect for any Losses or a Claim by a TSCC-Related Entity by reason of any reliance or use of the Reference Documents; and
- (d) TSCC Contractor shall conduct all studies, analyses and investigations it deems advisable to verify or supplement the Reference Documents.

1.5.2 Except as otherwise expressly provided in this Agreement, where this Agreement cites any Reference Document to define the requirements of this Agreement, the cited portion of the applicable Reference Document shall (a) be deemed incorporated into this Agreement to the extent it is so cited and (b) have the same order of priority as the part of this Agreement where the citation is made.

2. OVERVIEW; NATURE OF AGREEMENT

2.1 Overview

2.1.1 TSCC Contractor shall be responsible for providing construction services for the track and OCS on the 119-mile early operating segment of the HSR System, as well as design,



construction and testing services for high-speed rail systems including the traction power system, train control system, telecommunications systems, and security and SCADA systems. The Base Project is divided into seven separate Packages which will each have separate pricing agreed between the Parties prior to approval and issuance of NTP for such Package. The Authority will not issue NTP for any Package until such Package is approved by Authority, including the Final Package Price. See Schedule 16 (Scope of Work) for more detail regarding the Scope of Work and the Project.

2.1.2 In addition to the Base Project, Authority may approve additional Work extending the Base Project into a 171-mile operating segment and additional segment of the HSR System in the High Desert Corridor. The Extended Project is divided into three Optional Packages which will each also have a separate pricing agreed between the Parties. The Authority will not issue an NTP for any Optional Package until the particular Optional Package is authorized by the Authority and the Final Package Price is agreed. It is anticipated that the Optional Packages would not be approved until after Interim Substantial Completion for the Base Project, and additional details on the Scope of Work for the Extended Project will be provided if and when they are developed.

2.2 Nature of Agreement

2.2.1 The Parties wish to fully embrace the principles of collaboration and best practices in the performance of the Work and agree to employ the following techniques to maximize the benefits of this Agreement:

- (a) proceed on the basis of trust and good faith and create a culture of open and honest communication;
- (b) attempt to resolve disputes efficiently, in good faith and at the earliest possible stage of dispute resolution;
- (c) establish a cooperative and collaborative environment where all parties (including the Authority, TSCC Contractor and Subcontractors) have the opportunity to contribute their best efforts for the benefit of the HSR System as a whole, rather than to the benefit of individual parties;
- (d) integrate and coordinate between the design and construction teams (including the Authority, TSCC Contractor, the Track/OCS Design Services Consultant, Interfacing Contractors, Major Subcontractors, key specialty contractors and trade partners) as early as possible into the design and construction process;
- (e) utilize lean construction methods efficiently and effectively; and
- (f) maximize the value of Work delivered for each Final Package Price for each Package.

3. TERM

3.1 Term

3.1.1 Except as expressly provided in Section 32.6, this Agreement shall take effect on the Effective Date and shall remain in effect until expiration of the Warranty Period or earlier termination (the "Early Termination Date").



4. TSCC CONTRACTOR'S ROLE AND INTEREST

4.1 Nature of TSCC Contractor's Role

4.1.1 The Parties acknowledge and agree that:

- (a) TSCC Contractor is not the legal or equitable owner or lessee of the Project Assets for any purpose;
- (b) TSCC Contractor's rights under this Agreement:
 - (i) are limited to the contract rights constituting intangible personal property, including TSCC Contractor's non-exclusive license to enter the Site under Section 13.1; and
 - (ii) are derived solely from its status as an independent contractor under this Agreement, and not as tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property;
- (c) TSCC Contractor payments are for performance of the Work by TSCC Contractor, and are not payments in the nature of rent, fees with respect to real property, or purchase price of real property; and
- (d) TSCC Contractor has no profit interest in the Project Assets or right to use the Project Assets for its own account and has no right to control and manage the Project Assets separate and apart from the Authority's policies, ordinances, codes, rules, and regulations.
- (e) No provision of this Agreement conferring sole discretion upon the Authority or the Authority Representative gives TSCC Contractor any rights (including any right to make a Claim arising out of the exercise or failure to exercise that sole discretion).
- (f) The exercise or failure to exercise the Authority's sole discretion is not capable of being the subject of a Dispute and is not otherwise subject to review or challenge.

4.1.2 Notwithstanding anything to the contrary in the Project documents, TSCC Contractor shall not make any commitments on the Authority's behalf or execute agreements in the name of or on behalf of the Authority.

5. REPRESENTATIONS AND WARRANTIES

5.1 TSCC Contractor's Representations and Warranties

5.1.1 By executing this Agreement, TSCC Contractor represents and warrants to the Authority as follows:

- (a) all Work will be performed by or under the supervision of Persons who hold all necessary and valid authority, licenses, registrations, certifications, professional ability and skills to perform the Work in the State, by personnel who:
 - (i) are careful, skilled, experienced and competent in their respective trades or professions;
 - (ii) are professionally qualified to perform the Work in accordance with this Agreement; and
 - (iii) shall assume professional responsibility for the accuracy and completeness of the Work in accordance with this Agreement;



- (b) the Work will comply with the requirements of this Agreement;
- (c) TSCC Contractor has, in accordance with Good Industry Practice, performed Reasonable Investigation regarding the Project, reviewed and analyzed all information provided in the Agreement, including all Schedules, and Reference Documents, evaluated the constraints affecting the Work, and has reasonable grounds for believing and does believe that the Work can be completed within such constraints for the applicable Final Package Price amount proposed to the Authority;
- (d) TSCC Contractor has evaluated the feasibility of performing and completing the Work in accordance with the applicable Milestone Deadlines and for the applicable Final Package Price amount proposed to the Authority, and has reasonable grounds for believing and does believe, subject to the express terms of this Agreement, that such performance is feasible and practicable;
- (e) TSCC Contractor will use all commercially reasonable efforts to ensure that it achieves: (i) completion of each Package for which NTP is issued so as not to exceed the applicable Final Package Price; and (ii) each Milestone of each Package for which NTP has been issued by the applicable Milestone Deadline;
- (f) TSCC Contractor familiarized itself with the requirements of Applicable Laws and the conditions of any Governmental Approvals required in connection with the Project and has no reason to believe that any Governmental Approvals required to be obtained by TSCC Contractor will not be granted in due course and remain in effect so as to enable the Work to proceed in accordance with this Agreement;
- (g) TSCC Contractor will keep the Authority fully and regularly informed as to all matters affecting or relating to the Project Assets, including any matter which may change or which has changed:
 - (i) the nature, scope or timing of the Work; or
 - (ii) the reasonably possible levels of material expenditure by the Authority under this Agreement;
- (h) neither TSCC Contractor nor the Key Personnel nor any principal of TSCC Contractor or the Key Personnel is presently in arrears in payment of any taxes, permit fees or other statutory, regulatory or judicially required payments to the State related to the performance of any State contracts, or presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into, or otherwise participating in, this Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Section 5.1.1(h), the term "principal" means an officer, director, owner, partner, Key Person, employee, or other person in each case with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of TSCC Contractor or any Key Person;
- (i) TSCC Contractor is a **[corporation][limited liability company][joint venture]** duly authorized and validly existing under the laws of the State and authorized to do business in the State, and TSCC Contractor will remain duly qualified and in good standing throughout the term of this Agreement and for as long as any obligations remain outstanding under this Agreement;
- (j) each TSCC-Related Entity doing business in the State is duly qualified to do business and is in good standing in the State and will remain duly qualified and in good standing during the performance of its applicable portion of the Work and for as long as any of its obligations remain outstanding under this Agreement;



- (k) the execution and delivery of this Agreement and TSCC Contractor's performance of this Agreement have each been duly authorized by all necessary action of TSCC Contractor's governing body and each person executing this Agreement has been duly authorized to execute and deliver this Agreement on behalf of TSCC Contractor;
- (l) no default under, violation of or conflict with TSCC Contractor's governing instruments or any agreement, judgment or decree to which TSCC Contractor is a party or is bound will result from (i) TSCC Contractor's execution and delivery of this Agreement or (ii) TSCC Contractor's performance of its obligations under this Agreement;
- (m) this Agreement has been duly executed and delivered by TSCC Contractor and will not result in a TSCC Contractor Default or violation under this Agreement or any judgment, decree, indenture, loan, credit agreement or other material agreement or instrument to which TSCC Contractor is a party or by which its properties and assets may be bound or affected;
- (n) no TSCC Contractor Default has occurred or is continuing and no event has occurred that, with the giving of notice or passage of time or both, would constitute a TSCC Contractor Default;
- (o) there is no action, suit, proceeding, litigation, or investigation pending or to TSCC Contractor's knowledge threatened against TSCC Contractor that individually or in the aggregate either: (i) challenge TSCC Contractor's authority to execute, deliver or perform or the validity or enforceability of any of this Agreement or which challenges the authority of the TSCC Contractor Representative executing this Agreement; or (ii) could reasonably be expected to result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of TSCC Contractor or in any impairment of its ability to perform the Work;
- (p) no organizational conflicts of interest exist with respect to TSCC Contractor and any Subcontractor and there have been no organizational changes to TSCC Contractor or any Subcontractor specified in TSCC Contractor's Proposal, which have not been approved in writing by the Authority. For the purposes of this Section 5.1.1(p), "organizational conflicts of interest" means any organizational conflicts of interest as described in the Authority's Conflict of Interest Policy or under Section 3.7 (Organizational Conflicts of Interest) of the RFP;
- (q) TSCC Contractor has not, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and TSCC Contractor has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears in this Agreement;
- (r) TSCC Contractor owns or will own good and marketable title and sufficient rights to all Intellectual Property, materials, equipment, tools and supplies to be furnished under this Agreement, free and clear of all Liens, royalties, fees or other charges of any kind or nature. TSCC Contractor warrants that all such Intellectual Property, materials, equipment, tools and supplies will be delivered free of any claim by a third party for infringement of any Intellectual Property or ownership right;
- (s) at any time a Guaranty is required to be in place pursuant to this Agreement, the applicable Guarantor is duly organized, validly existing and in good standing under the laws of the state of its organization, will remain in good standing in the state of its organization for as long as any obligations guaranteed by such Guarantor remain outstanding under this Agreement, and has all requisite power and all required licenses to carry on its present and proposed obligations under this Agreement;
- (t) at any time a Guaranty is required to be in place pursuant to this Agreement, all required approvals have been obtained with respect to the execution, delivery and performance of such Guaranty, and performance of such Guaranty will not result in a breach of or default under the applicable



Guarantor's organizational documents, or any indenture, loan or credit agreement or other agreement or instrument to which the applicable Guarantor is a party or by which its properties and assets may be bound or affected; and

- (u) each Guaranty has been duly authorized by all necessary corporate action, has been duly executed and delivered by each Guarantor, and constitutes the legal, valid and binding obligations of such Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity. ***[Note to Proposers: Guarantor representations and warranties to be removed if Guaranty is not required]***

5.2 Authority Representations and Warranties

5.2.1 The Authority represents and warrants to TSCC Contractor that:

- (a) the Authority has the requisite power, authority and capacity to perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed by the Authority;
- (b) this Agreement has been duly authorized, executed, and delivered by the Authority and constitutes a legal, valid, and binding obligation of the Authority, enforceable against the Authority in accordance with its terms; and
- (c) there is no action, suit, proceeding or litigation pending and served on the Authority which challenges the Authority's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement to which the Authority is a party, or which challenges the authority of the Authority official executing this Agreement.

6. FUNDING PROGRAMS

6.1 Budget Contingency

- 6.1.1 It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years, if applicable, covered under this Agreement does not appropriate sufficient funds for the Scope of Work identified in Schedule 16 (Scope of Work). In this event, Authority shall have no liability to pay any funds whatsoever to TSCC Contractor or to furnish any other considerations under this Agreement and TSCC Contractor shall not be obligated to perform any provision of this Agreement.
- 6.1.2 After execution or commencement of this Agreement, if the funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Project, Authority shall have the option to either (a) cancel this Agreement with no further liability occurring to the Authority, or (b) offer an amendment to the Agreement to reflect the reduced amount.
- 6.1.3 This Agreement is valid and enforceable only if sufficient funds are made available to the State of California by the U.S. 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 United States of America or California State Legislature during the Term that affects the provisions, terms, or funding of this Agreement in any manner.

6.2 Termination Due to Budget Contingency



- 6.2.1** TSCC Contractor is not obligated to perform Work, and correspondingly, is not entitled to any compensation for Work performed for which appropriated funds are no longer available. Authority is not bound by the terms hereof or obligated to make any payment hereunder for Work performed for which funds are not available to the Authority except for duly authorized Work for a Package for which NTP has been issued.
- 6.2.2** In the event that non-appropriation of funds results in stoppage of Work, TSCC Contractor agrees to resume performance of the Work without any modification to the terms and conditions hereof, provided that an appropriation therefor is approved within 120 days after the start of the fiscal year in question. Any such work stoppage shall be considered a suspension by Authority under Section 14.2. If funds are not appropriated before expiration of such 120-day period, the Agreement shall be deemed to have been terminated for convenience under Section 28.
- 6.2.3** Notwithstanding anything to the contrary contained in this Section 6.2, if the Agreement is terminated due to non-appropriation of funds, TSCC Contractor shall be entitled to compensation only for Work performed authorized under a Package for which NTP has been issued.

6.3 Funding Sources

- 6.3.1** *[Note to Proposers: Funding sources for the Project remain under consideration by the Authority and the below provisions and Schedule 26 (Federal and State Requirements), may be further amended by way of Addendum.]* TSCC Contractor acknowledges that (a) the Project is anticipated to be paid for with funds received through the Passenger Rail Investment and Improvement Act or other State or federal financing, funding or grant programs (together "**Funding Programs**"), and (b) applications to receive those funds have been approved as of, or may be approved after, the Effective Date.
- 6.3.2** TSCC Contractor shall provide or cause to be provided such information, documentation and administrative assistance as the Authority may request, and shall take such actions and execute such documents as are required to be in TSCC Contractor's name (including any amendments required to this Agreement), to enable the Authority to meet all requirements of the Funding Programs.
- 6.3.3** TSCC Contractor shall comply with all terms provided in Schedule 26 (Federal and State Requirements).

7. PERFORMANCE AND PAYMENT BONDS; GUARANTY

7.1 Bonds

- 7.1.1** As a condition precedent to Package Approval for any Package, TSCC Contractor shall provide to the Authority:
- (a) a performance bond in the amount specified in the applicable Package Specific Information and in the form of Schedule 20 (Form of Performance Bond) or in an alternative stand-alone form approved by the Authority, in its sole discretion ("**Performance Bond**"); and
- (b) a payment bond in the amount specified in the applicable Package Specific Information and in the form of Schedule 21 (Form of Payment Bond) or in an alternative stand-alone form approved by the Authority, in its sole discretion ("**Payment Bond**"),



(together, the “**Bonds**”).

7.1.2 The Authority will release:

- (a) (i) 90% of the amount of the Performance Bond for a particular Package upon Package Scope Closeout for such Package, provided that the Authority has received a replacement Performance Bond in the amount of 10% of the existing Performance Bond for such Package, and (ii) the remaining Performance Bond upon (1) Base Project Final Acceptance for the Base Project and (2) Extended Project Final Acceptance for the Extended Project, provided TSCC Contractor is not in default under this Agreement and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under this Agreement;
- (b) (i) 90% of the amount of the Payment Bond for a particular Package upon Package Scope Closeout for such Package, provided that the Authority has received a replacement Payment Bond in the amount of 10% of the existing Payment Bond for such Package, and (ii) the remaining Payment Bond upon (1) Base Project Final Acceptance for the Base Project and (2) Extended Project Final Acceptance for the Extended Project, provided TSCC Contractor is not in default under this Agreement, and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under this Agreement and either: (x) TSCC Contractor has delivered to the Authority (1) evidence, satisfactory to the Authority, that all persons eligible to file a Claim against the Payment Bond have been fully paid, and (2) unconditional releases of Liens and stop payment notices from all Subcontractors who filed a preliminary notice of a Claim against the Payment Bond; or (y) the statutory period for Subcontractors to file a claim against the Payment Bond has expired and no Claims have been filed.

7.2 Eligible Surety; Replacement Bonds; Increase in Bonds

7.2.1 Each Bond required under this Agreement shall be issued by an Eligible Surety, unless otherwise approved by the Authority, in its sole discretion.

7.2.2 If any Bond previously provided becomes ineffective, or if the Eligible Surety that provided the Bond no longer meets the requirements of this Agreement, TSCC Contractor shall provide a replacement Bond in the same form issued by an Eligible Surety. TSCC Contractor shall provide immediate notice to the Authority both: (i) before such Bond is rendered ineffective or before such Bond's surety is no longer an Eligible Surety, if TSCC Contractor has Actual Knowledge that either of the foregoing may occur; and (ii) immediately after such occurrence, but in no case later than two days thereafter.

7.2.3 If any Final Package Price is increased in connection with a Change Order, the Authority may require a corresponding proportionate increase in the amount of any Bond, a new Bond, or alternative security to cover such Change Order.

7.2.4 If TSCC Contractor has failed to procure any replacement Bond in the amount and by the date required under this Agreement, the Authority shall be entitled to deduct the value of the Bond from payments owing to TSCC Contractor under this Agreement, and hold the cash as security for performance of TSCC Contractor's obligations under this Agreement. Such amounts will be released by the Authority to TSCC Contractor upon receipt by the Authority of a replacement Bond which satisfies the requirements of this Agreement or upon achievement of Base Project Final Acceptance for the Base Project or Extended Project Final Acceptance for the Extended Project.

7.2.5 Upon receipt by the Authority of a replacement Bond which satisfies the requirements of this provision, the Authority will immediately surrender the security for performance of TSCC Contractor's obligations under this Agreement that has been replaced to the



issuing financial institution. No interest shall accrue or be payable on such amount released.

7.3 No Relief of Liability

Notwithstanding any other provision of this Agreement, performance by a Surety of any of TSCC Contractor's obligations shall not relieve TSCC Contractor of any of its outstanding or unperformed obligations under this Agreement.

7.4 Guaranty

7.4.1 Each Guarantor shall provide and maintain a guaranty, in the form of Schedule 22 (Form of Guaranty), in full force and effect throughout the term of this Agreement. As a condition to NTP for any Package, each Guarantor shall provide a reaffirmation of guaranty, in the form of Appendix 1 (Reaffirmation of Guaranty) to Schedule 22. ***[Note to Proposers: Subject to confirming if a Guaranty is required by the ITP]***

7.4.2 TSCC Contractor shall periodically report to the Authority regarding the financial capacity of each Guarantor, which reports shall be made no less frequently than quarterly or upon any adverse change to such financial capacity.

7.4.3 If, at any point during the course of this Agreement, any Guarantor's financial capacity is materially negatively affected, as determined by the Authority in its good faith discretion, the Authority may require, and TSCC Contractor shall provide, one or more additional guarantees so that the combined financial capacity of the Guarantor and the additional guarantors provides equivalent security to the Authority as the guaranty provided as of the Effective Date. Each such guaranty shall be substantially in the form provided in Schedule 22 (Form of Guaranty), together with appropriate evidence of authorization, execution, delivery and validity of such guarantee.

7.4.4 The guaranty described above assures TSCC Contractor's obligations under this Agreement and shall be maintained in full force and effect throughout the term of the Agreement and for so long as TSCC Contractor has any obligations under the Agreement, including those obligations expressly surviving termination of the Agreement as provided in Section 32.6.

8. PERSONNEL

8.1 Designation of Representatives

8.1.1 The Authority and TSCC Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to this Agreement.

8.1.2 The initial designations for the Authority Representative and TSCC Representative are specified in the Package Specific Information (Package 1).

8.2 Authority Representative

8.2.1 The Authority Representative will give directions and carry out all other functions of the Authority Representative under this Agreement.

8.2.2 TSCC Contractor shall comply with any direction by the Authority Representative given or purported to be given under a provision of this Agreement.



8.2.3 Except where this Agreement provides otherwise, the Authority Representative may give a direction orally but will as soon as practicable confirm that direction in writing.

8.2.4 The Authority may, by notice to TSCC Contractor, at any time, replace the Authority Representative or appoint persons to exercise any of the Authority Representative's functions under this Agreement. The initial designations for exercise of the Authority Representative's functions are specified in the Package Specific Information (Package 1).

8.3 TSCC Contractor Representative

8.3.1 TSCC Contractor shall ensure the TSCC Contractor Representative is present at the Site at all times reasonably necessary to ensure that TSCC is complying with its obligations under this Agreement.

8.3.2 TSCC Contractor will be deemed to have received any direction given to the TSCC Contractor Representative.

8.3.3 TSCC Contractor may replace the TSCC Contractor Representative in accordance with Section 8.4 of this Agreement.

8.4 Key Personnel for the Work

TSCC Contractor shall:

- (a) employ and utilize the Key Personnel in the jobs and for the time periods specified in the Agreement;
- (b) subject to Section 8.4(c), not replace any Key Person without the Authority Representative's prior written approval; and
- (c) if any Key Person resigns from TSCC Contractor's employment, is unavailable due to leave of absence, death, injury, illness, parental leave, disability, promotion, retirement, termination, replacement for-cause or is otherwise unavailable, replace such person with a person of at least equivalent experience, ability and expertise, who is approved, in writing, by the Authority Representative (in its sole discretion) prior to such replacement.

8.5 Key Personnel Liquidated Damages

8.5.1 If any person filling a Key Person's role is not available for, or actively involved in, the performance of the Work as required in Section 8.4, as determined by the Authority in its good faith discretion, then:

- (a) TSCC Contractor acknowledges that the Authority and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to the Authority in such event; and
- (b) the Authority may, in its sole discretion, impose upon TSCC Contractor a liquidated damages amount as follows, for each position held by such person, as deemed compensation to the Authority for such damages:



POSITION	LIQUIDATED DAMAGES AMOUNT
[]	\$[]
[]	\$[]
[]	\$[]
[]	\$[]
[]	\$[]
[]	\$[]
Any other individual proposed to perform a key role under the Proposal (and set forth in the applicable Package Specific Information)	\$[]

- (c) For each position listed above, the Authority may, in its sole discretion, impose upon TSCC Contractor an additional liquidated amount equal to the corresponding amount specified in Section 8.5.1(b) for each six-month period where that position is vacant or not being fulfilled in accordance with this Agreement (including failures for the individual to be at the Site, as required by this Agreement), as determined by the Authority. Additionally, the Authority may impose upon TSCC Contractor a liquidated amount of \$[] in the same manner for any other individual proposed to perform a key role under the Proposal and as set forth in the applicable Package Specific Information. Any liquidated amount imposed under this Section 8.5.1(c) will be payable from TSCC Contractor to the Authority for each six-month period where such individual’s position is vacant or not being fulfilled in accordance with this Agreement, as determined by the Authority.

8.5.2 TSCC Contractor is not liable for liquidated damages under Section 8.5.1 if:

- (a) TSCC Contractor removes or replaces any individual filling a Key Person’s role at the direction of the Authority; or
- (b) the individual filling a Key Person’s role is unavailable due to leave of absence, death, injury, illness, parental leave, disability, retirement or no longer being employed by the applicable TSCC-Related Entity; provided that moving to an Affiliate or a Subcontractor is not considered grounds for avoiding liquidated damages,

provided that, in either scenario above, TSCC Contractor promptly proposes to the Authority a satisfactory replacement for such individual for review and approval within 20 days of unavailability, and the Authority (in its sole discretion) approves that replacement.

9. MEETINGS; SUBMITTALS; PROJECT PLANS; RELIANCE ON REVIEW AND INSPECTION

9.1 Meetings

9.1.1 TSCC Contractor acknowledges that the Project’s delivery is part of the larger HSR System and will require coordination with Interfacing Contractors, Governmental Entities, and Utility Owners to complete the Project and integrate it with the other elements of the HSR System.

9.1.2 TSCC Contractor shall:

- (a) meet with the Authority Representative and any other Person specified by the Authority Representative at the intervals specified in the Scope of Work;



- (b) at such meetings, discuss the following:
 - (i) topics specified in the Scope of Work;
 - (ii) topics covered or to be covered in any Project status or update report;
 - (iii) issues relevant to the progress or performance of any portion of the Work or development or submission of any Submittal; and
 - (iv) any other matters that the Authority Representative may require.

9.1.3 Before each progress meeting, the TSCC Contractor Representative shall prepare and issue an agenda for the meeting, and after each such meeting, the TSCC Contractor Representative shall prepare and issue minutes of that meeting to the Authority; provided that the Authority may (in its sole discretion) designate another Person to prepare and issue agendas and/or minutes.

9.2 Submittals

TSCC Contractor shall prepare, submit, update and maintain all Submittals in accordance with the requirements of this Agreement, including the Submittal Requirements.

9.3 Project Plans

Without limiting any of the Submittal Requirements, TSCC Contractor shall:

- (a) prepare, submit, update and maintain Project Plans in accordance with this Agreement, including the Scope of Work and the Submittal Requirements; and
- (b) perform the Work in accordance with the then current approved versions of the Project Plans.

9.4 No Obligation to Review

9.4.1 TSCC Contractor acknowledges and agrees that the Authority's rights under this Agreement to review, comment on, approve, disapprove, monitor, inspect, test, accept, or carry out any other act of the Authority in connection with any Submittal or the Project Assets exist solely for the benefit and protection of the Authority.

9.4.2 Except as expressly set out in this Agreement, the Authority does not assume or owe any duty of care to TSCC Contractor to:

- (a) review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other act or omission of the Authority in connection with any Submittal or the Project Assets; or
- (b) inspect or review the Project Assets for Defects or any other nonconformance with this Agreement.

9.4.3 No inspection, test, monitoring, acceptance or approval by the Authority and no failure of the Authority to review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other act or omission in connection with any Submittal or the Project Assets shall:

- (a) relieve TSCC Contractor from, or alter or affect, its liabilities, obligations or responsibilities, whether under this Agreement or under Applicable Laws, including its obligations to perform the



Work in accordance with this Agreement, or any of its warranty or indemnity obligations under this Agreement;

- (b) prejudice the Authority's rights against TSCC Contractor, whether under this Agreement or under Applicable Laws;
- (c) be deemed or construed as any kind of representation or warranty, express or implied by the Authority, or be relied upon by TSCC Contractor in determining whether TSCC Contractor has satisfied the requirements of this Agreement;
- (d) be asserted by TSCC Contractor against the Authority as a defense, legal or equitable, to TSCC Contractor's obligation to satisfy the requirements of this Agreement; or
- (e) preclude or estop the Authority from asserting or showing that the Work or materials do not comply with this Agreement or recovering from TSCC Contractor and its Surety(ies) such damages as the Authority may sustain in connection with TSCC Contractor's failure to comply or to have complied with this Agreement.

9.4.4 Notwithstanding Sections 9.4.1 through 9.4.3, TSCC Contractor may rely on written notices that the Authority gives under this Agreement for purposes of confirming the Authority's approval or consent to an event or matter, but without prejudice to any of the Authority's other rights and remedies under this Agreement.

9.4.5 The Authority shall reasonably endeavor to notify TSCC Contractor if the Authority does not intend to review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other Authority act in connection with a Submittal or the Project Assets.

9.5 Covering of Work

9.5.1 Before covering any part of the Work, TSCC Contractor shall provide written notice to the Authority Representative. After receipt of such notice, the Authority Representative shall have 10 days to notify TSCC Contractor that inspection and/or testing of such part of the Project Assets is required before it is covered. If the Authority Representative provides such notice, TSCC Contractor shall provide the Authority and any other Persons designated by the Authority a full and adequate opportunity to inspect and test such part of the Project Assets before it is covered. Notwithstanding the foregoing, at all times during the term of this Agreement, TSCC Contractor shall remove or uncover such portions of the finished or covered Project Assets as directed by the Authority Representative for inspection and/or testing by the Authority and any other Persons designated by the Authority.

- (a) If, after such inspection and/or testing, the Project Assets exposed or examined are found to not be in accordance with this Agreement:
 - (i) TSCC Contractor shall rebuild, repair, replace or otherwise restore the Project Assets in accordance with this Agreement; and
 - (ii) recovery of any delay occasioned by such examination shall be at TSCC Contractor's cost.
- (b) If the required notice and opportunity to inspect and test is provided to the Authority, and after such inspection and/or testing the Project Assets exposed or examined are found to be in accordance with this Agreement, Section 9.6.2 shall apply.



9.5.2 If TSCC Contractor fails to provide the notice and opportunity to inspect and test required under Section 9.5.1, then the Authority may order any Work done or materials used to be uncovered, removed, repaired, restored or replaced by the Authority at TSCC Contractor's cost and without an entitlement to a Claim, even if the Work proves to be in compliance with this Agreement after uncovering.

9.6 Inspections and Tests by TSCC Contractor

9.6.1 TSCC Contractor shall carry out all inspections and tests of the Project Assets required by this Agreement or as directed by the Authority Representative.

9.6.2 If the Authority Representative directs TSCC Contractor to carry out an inspection or test of the Project Assets which:

(a) either:

(i) is not otherwise required by this Agreement; or

(ii) does not relate to a Defect for which the Authority Representative gave an instruction in accordance with Section 15.1, and

(b) the results of the inspection or test show the Project Asset is in accordance with this Agreement,

then, the applicable Final Package Price shall be increased pursuant to a Change Order in an amount of the extra Direct Costs reasonably incurred by TSCC Contractor that arose directly from the Authority Representative's inspection or test, as determined by the Authority Representative in accordance with Section 23.3.

10. PLANNING AND DESIGN

10.1 Scope of Work and TSCC Contractor's Proposal Extracts

10.1.1 TSCC Contractor:

(a) warrants that the TSCC Contractor's Proposal Extracts complies with the Scope of Work and all other requirements under this Agreement;

(b) warrants that its preparation of the Design Documents in accordance with the Scope of Work and the TSCC Contractor's Proposal Extracts will ensure that the Design Documents comply with the requirements of this Agreement; and

(c) acknowledges that the Scope of Work and the TSCC Contractor's Proposal Extracts:

(i) do not limit TSCC Contractor's obligations under this Agreement or otherwise under any Applicable Law or Governmental Approval; and

(ii) may require updating and refining throughout the performance of the Work to reflect any Change Order or to the extent that the Scope of Work or the TSCC Contractor's Proposal Extracts do not reflect all tasks and other things to be done or provided to perform the Work in accordance with this Agreement.

10.2 Commencement of Work for any Package

10.2.1 TSCC Contractor shall not commence any Work for any Package until the Authority has issued NTP for such Package.



10.2.2 TSCC Contractor acknowledges and agrees that:

- (a) The Authority has no obligation to issue NTP for any Package; and
- (b) unless and until NTP for any Package is issued, the Authority has no liability to TSCC Contractor under this Agreement for any Work under such Package.

10.2.3 Subject to Section 10.2.2(a), the Authority shall issue NTP for a Package upon satisfaction of the applicable conditions in the Package Specific Information for such Package.

10.2.4 Upon the Authority's issuance of NTP for any Package, TSCC Contractor shall:

- (a) commence to plan and perform the Work for such Package in consultation with the Authority and in accordance with this Agreement;
- (b) provide the Authority with all assistance it may reasonably require in connection with the Work before the Package Approval Deadline for any subsequent Packages; and
- (c) take all necessary steps to achieve:
 - (i) the Package Milestones by the relevant Package Milestone Deadlines; and
 - (ii) any Package Approval before the applicable Package Approval Deadline.

10.3 Design Work General Obligations

10.3.1 During any Package with Design Work, TSCC Contractor shall engage and work in a collaborative, efficient and coordinated manner with the Authority to:

- (a) for any Package for which TSCC Contractor is responsible for Design Documents, develop the Design Work for the Project in accordance with Project Standards, including the Design Criteria Manual and other applicable Project Technical Requirements, carry out design review activities and prepare all relevant Design Documents and other Submittals in accordance with this Agreement, the Scope of Work and as otherwise specified by the Authority in writing;
- (b) for all Packages, including those for which Authority will provide Authority-Provided Design Documents, carry out other pre-construction services described in the Scope of Work, including review and comment on any Authority-Provided Design Documents, and prepare all relevant Submittals in accordance with this Agreement and as otherwise specified by the Authority in writing;
- (c) prepare and submit to the Authority all applicable documentation required to demonstrate achievement of each Package Milestone no later than the applicable Package Milestone Deadline and otherwise in accordance with the Scope of Work;
- (d) update Authority estimates and forecasts regarding the Project, provide data to the Authority to reflect real time information and provide all pricing, estimates and other data on an Open Book Basis in a format otherwise acceptable to the Authority;
- (e) implement a controls system approved by the Authority and capable of being broken down and reported in several different work breakdown structures (in accordance with Schedule 37 (Project Controls Requirements)), including organizing the financial data by cost element codes, subcontracts, vendors, construction packages, etc.;



- (f) coordinate the development of the Final Package Price for each Package with the development of the Design Documents and Scope of Work;
- (g) obtain required inputs regarding the Project's design and functionality, as well as other major Project elements and to develop the Scope of Work; and
- (h) undertake such risk reduction studies and actions as are required by the Scope of Work or as are necessary, in accordance with Good Industry Practice, for the comprehensive, safe and accurate planning, scoping, design, costing and programming of the Work.

10.4 Requirements for Design Work Milestone Submittals

10.4.1 Each Submittal tied to a Milestone during any Package with Design Work shall take into account:

- (a) the Authority's proposed budget for the Project;
- (b) the Project Goals;
- (c) the Authority's desire to reduce the cost and time to complete the Project, while obtaining a high-quality project that meets the Lifecycle Objectives and Quality Requirements;
- (d) all opportunities for cost savings in accordance with Good Industry Practice without derogating from the achievement of the other requirements of this Agreement; and
- (e) any other relevant considerations, which the Authority Representative may from time to time specify to TSCC Contractor in writing.

10.5 Baseline Schedule

10.5.1 TSCC Contractor shall undertake and complete the Work in accordance with the Baseline Schedule. The Baseline Schedule shall be developed in accordance with Schedule 37 (Project Controls Requirements).

10.5.2 TSCC Contractor shall:

- (a) provide on a monthly basis a Baseline Schedule submittal in accordance with the requirements of Schedule 37 (Project Controls Requirements) and that is subject to review and acceptance by the Authority for compliance with the requirements of Schedule 37 (Project Controls Requirements);
- (b) include all applicable Milestones and Milestone Deadlines in each Baseline Schedule, and include any other major Project milestones the Authority may require from time-to-time;
- (c) include sufficient time to obtain each Governmental Approval (including sufficient time to account for application, revision, resubmission, public review, and final approval) in each Baseline Schedule before TSCC Contractor is required to commence the applicable Work;
- (d) include a 12-month rolling cash flow schedule related to costs and expenses for the Work; and
- (e) update the Baseline Schedule as required in Section 10.5.2(a) and in accordance with the submittal requirements of Schedule 7 (Technical Submittals) and Schedule 37 (Project Controls Requirements). Any revision that alters logic, durations, milestones, or completion dates shall require the Authority's prior written approval.



- 10.5.3** TSCC Contractor's failure to incorporate all elements of the Work required for the performance of this Agreement or any other inaccuracy in the Baseline Schedule shall not excuse TSCC Contractor from performing all Work (and all portions of the Work) within the applicable times specified under this Agreement.
- 10.5.4** The Authority may rely on the Baseline Schedule in planning and conducting ongoing operations and other work at the Site or with respect to the HSR System.
- 10.5.5** If TSCC Contractor fails to timely provide the Authority with any updated or accurate Baseline Schedule when due, the Authority may withhold any progress payment otherwise due to TSCC Contractor until the Authority receives that updated and accurate Baseline Schedule. Once the Authority has approved the Baseline Schedule, TSCC Contractor may submit an invoice for, and will be entitled to payment of, the amount previously withheld under this Section 10.5.5. Any failure or delay in the submittal or approval of a Baseline Schedule shall not result in any time extension or increase in any Final Package Price.
- 10.5.6** The Authority has no obligation to accept any Baseline Schedule that provides Milestone Deadlines that differ from the Proposal Schedule or any previously approved Baseline Schedule (as applicable).
- 10.5.7** The Project shall be undertaken and completed in accordance with the Baseline Schedule established and revised in accordance with the requirements of Schedule 7 (Technical Submittals) and Schedule 37 (Project Controls Requirements). The Baseline Schedule shall take into account all access restraints, limitations of operations and other work restrictions set forth in the Agreement, and TSCC Contractor shall perform the Work in accordance with such access restraints, limitations of operations and other work restrictions. The Baseline Schedule shall be used by TSCC Contractor and the Authority for planning and monitoring the progress of the Work and as the basis for determining the amount of progress payments to be made to TSCC Contractor in accordance with Section 20.

The Authority's approval of a Baseline Schedule shall not:

- (a) imply the Authority's acceptance of any particular construction methods, or relieve TSCC Contractor from its responsibility to provide sufficient materials, equipment and labor to guarantee completion of the Project (or any portion thereof) in accordance with this Agreement;
- (b) attest to the validity of assumptions, activities, relationships, sequences, resource allocations or any other aspect of the applicable Baseline Schedule;
- (c) imply that TSCC Contractor is entitled to any Change Order extending a Milestone Deadline or adjusting any Final Package Price or portion thereof; or
- (d) modify this Agreement.

10.5.8 The Authority and TSCC Contractor mutually agree that time is of the essence with respect to the dates and times specified in the Agreement.

10.6 Recovery Schedule

10.6.1 Without limiting TSCC Contractor's obligations to update the Baseline Schedule in accordance with the Scope of Work and Schedule 37 (Project Controls Requirements), TSCC Contractor shall prepare and submit a Recovery Schedule to the Authority for



approval in accordance with Section 4.7.4 of Schedule 37 (Project Controls Requirements).

10.6.2 Within twenty days after the Authority's receipt of a Recovery Schedule, the Authority shall notify TSCC Contractor whether the Recovery Schedule is approved or rejected. Within seven days after the Authority's rejection of a Recovery Schedule, TSCC Contractor shall resubmit a revised Recovery Schedule incorporating the Authority's comments.

10.6.3 Within seven days after the Authority's approval of a Recovery Schedule, TSCC Contractor shall incorporate and fully include that Recovery Schedule into the Baseline Schedule, and perform the Work to achieve the Recovery Schedule.

10.6.4 If:

- (a) TSCC Contractor fails to provide the Authority with an acceptable Recovery Schedule; and
- (b) The delay does not relate to a Relief Event,

then, within 30 calendar days after TSCC Contractor's receipt of written notice of its failure to obtain the Authority's approval of a Recovery Schedule, the Authority may withhold up to 10% from each progress payment owing to TSCC Contractor thereafter until TSCC Contractor obtains the Authority's approval of a Recovery Schedule.

All costs incurred by TSCC Contractor in preparing, implementing and achieving a Recovery Schedule shall be borne by TSCC Contractor, shall not entitle TSCC Contractor to a Change Order, and shall not relieve TSCC Contractor from the assessment of liquidated damages.

10.7 Reserved

10.8 Insufficient Schedule Progress

10.8.1 Subject to TSCC Contractor's rights and remedies, TSCC Contractor's failure or refusal to comply with the requirements specified this Agreement shall be reasonable evidence that TSCC Contractor is not prosecuting the Work with due diligence as required by the Agreement. In such event, the Authority may:

- (a) require a Recovery Schedule in accordance with Section 10.6;
- (b) employ additional force and equipment as may be necessary to complete the Work or such part thereof within the time specified in the Baseline Schedule, or at the earliest possible date thereafter, and charge the expense thereof to TSCC Contractor, provided that TSCC Contractor fails to cure its failure or refusal to comply within five (5) days after receiving written notice from the Authority of such failure or refusal; and/or
- (c) exercise any other rights and remedies available to the Authority under the Agreement.

10.9 Package NTP and Approvals

10.9.1 By no later than each applicable Package Approval Deadline:

- (a) the Parties shall negotiate in good faith to seek to reach an agreement on all details to be included in each Package Specific Information to be attached to the Agreement through a Package



Amendment for such Package, including the Final Package Price and other information in the applicable Package Price Proposal which will be agreed in accordance with Section 20.1 and inserted into the Package Specific Information once approved by the Authority; and

- (b) TSCC Contractor shall prepare a proposed Package Specific Information attachment to this Agreement as described in Section 20.1 setting out the details agreed pursuant to Section 10.9.1(a) and submit the proposed Package Specific Information to the Authority for review and approval in accordance with the Submittal Requirements and Section 20.1.

10.9.2 Subject to Section 10.9.1(a), upon review of the applicable Package Specific Information and other Submittals, the Authority Representative shall have sole discretion to determine if Package Approval for such Package has been achieved.

10.9.3 If the Authority Representative determines that applicable Package Approval is achieved, then:

- (a) the Authority will issue a written notice to TSCC Contractor stating the date upon which such Package Approval was achieved ("**Date of Package Approval**");
- (b) the Authority shall seek the Board's approval of the Package Amendment to this Agreement for such Package, if required; and subject to TSCC Contractor providing the conditions precedent to NTP in the applicable Package Specific Information to the Authority's satisfaction, the Parties shall attach the Package Specific Information for such Package to the Agreement ("**Package Amendment**") and from that point in time references to "Agreement" will be references to the Agreement with the applicable Package Specific Information attached, under which TSCC Contractor will complete the Work for such Package in addition to any previously issued Package.

10.9.4 If the Authority determines that Package Approval will not be provided, then the Authority will issue a written notice to TSCC Contractor stating that such Package Approval has not occurred and Section 10.11 shall apply.

10.10 TSCC Contractor Acknowledgements and Warranties Regarding each Package Approval

10.10.1 TSCC Contractor acknowledges and agrees that:

- (a) unless directed otherwise by Change Order, TSCC Contractor may not proceed with the Work for any Package unless and until Package Approval for such Package has occurred and the applicable NTP has been issued; and
- (b) neither the Authority nor the Authority Representative is required to exercise its discretion to determine any Package Approval for TSCC Contractor's benefit.

10.10.2 By executing any Package Amendment:

- (a) TSCC Contractor acknowledges its participation in the development of the applicable Scope of Work; and
- (b) TSCC Contractor represents and warrants to the Authority, as follows:
- (i) the representations and warranties in Section 5.1.1 are remade and confirmed as of the date of the applicable Package Amendment, and such representations and warranties continue to apply;
 - (ii) the Scope of Work for the applicable Package adequately defines the Work for that Package and complies with all other requirements under this Agreement, except to the



extent that the Authority has consented to modify any such requirement through a Change Order;

- (iii) in accordance with Good Industry Practice and the applicable Scope of Work, TSCC Contractor has: (A) reviewed and analyzed all information provided in the Schedules and Reference Documents regarding the Work for that Package; (B) evaluated the constraints affecting such Work; (C) reviewed and analyzed all information developed during the prior Packages; and (D) reasonable grounds for believing and does believe such Work's performance in accordance with this Agreement (including the applicable Scope of Work) will not exceed the Final Package Price applicable to that Package and can be completed within the Baseline Schedule;
- (iv) TSCC Contractor has familiarized itself with the requirements of Applicable Laws and the conditions of any Governmental Approvals required in connection with the applicable Package and has no reason to believe that any Governmental Approval required to be obtained by TSCC Contractor will not be granted in due course and remain in effect so as to enable the Work to proceed in accordance with this Agreement and the Baseline Schedule;
- (v) subject to any Relief Event, TSCC Contractor shall achieve: (A) completion of the Work for the applicable Package so as not to exceed its Final Package Price; and (B) each Milestone by the applicable Milestone Deadline; and
- (vi) except as provided in this Agreement, if the Work for the applicable Package cannot be completed for its agreed Final Package Price, any additional costs shall be TSCC Contractor's responsibility and TSCC Contractor assumes liability for such costs without reimbursement by the Authority.

10.11 Failure to Achieve Package Milestone, Package Approval

10.11.1 If, due to no breach of TSCC Contractor's obligations under this Agreement:

- (a) any Package Milestone is not achieved within 20 calendar days after the applicable Package Milestone Deadline; or
- (b) any Package Approval is not achieved within 20 calendar days after the applicable Package Approval Deadline;

then, subject to Section 10.11.2 and upon the Authority's notice to that effect, the Authority may (i) terminate this Agreement for convenience under Section 28 and the terms applicable to a termination for convenience shall apply, including as provided in Section 29; provided that in the event of a termination for convenience before any Package Approval, the Authority's maximum liability to TSCC Contractor shall be the aggregate sum of the Final Package Prices for any previously issued Packages; or (ii) advance any or all other Packages previously approved or yet to be approved.

10.11.2 If, due to a breach of TSCC Contractor's obligations under this Agreement,

- (a) any Package Milestone is not achieved by the applicable Package Milestone Deadline; or
- (b) any Package Approval is not achieved by the applicable Package Approval Deadline;

then, the Authority may terminate this Agreement under Section 27.4 and the terms applicable to a Default Termination Event shall apply, including as provided in Section 29.



10.12 Early Works Packages

The Authority may, in its sole discretion, allow work to be performed in Early Works Packages and provide written notice to TSCC Contractor of that Early Works Package, in which case:

- (a) each such part of the Work will be an Early Works Package as specified in the notice;
- (b) the Milestone Deadline(s), conditions to Completion, Completion Deadline, liquidated damages under Section 19.12, Final Package Price, insurance requirements under Schedule 25 (Insurance Requirements), and Bonds and Insurance Costs will be:
 - (i) as agreed by the Parties; or
 - (ii) to the extent not agreed by the date stated in the notice, as determined by the Authority, and, in each case, recorded by the Authority in the applicable Package Specific Information; and
- (c) such other conditions specified by the Authority in its notice and the applicable Package Specific Information will apply.

10.13 Completion of Design Work prior to Construction

10.13.1 After the Authority issues NTP for any Package which includes Construction Work, if any, TSCC Contractor shall:

- (a) complete the Design Work in accordance with the Scope of Work for such Package and the other requirements of this Agreement;
- (b) prepare all required Design Documents and Submittals in accordance with the Scope of Work for such Package and the other requirements of this Agreement;
- (c) coordinate the work of its Subcontractors, including by providing and directing all necessary personnel to administer, supervise, inspect, coordinate and control the Subcontractors in a manner and at a rate of progress so that TSCC Contractor satisfies its obligations under this Agreement; and
- (d) submit any Design Documents it prepares to the Authority Representative for review and approval in accordance with the Baseline Schedule and the Submittal Requirements.

10.13.2 For Packages under which TSCC Contractor is responsible for preparation of Design Documents, TSCC Contractor shall not commence construction of any part of the Work contemplated under the Design Documents, unless the Authority Representative has had the number of days specified in the Submittal Requirements to review the Design Documents and has not rejected that documentation.

10.14 Availability

TSCC Contractor shall keep available on the Site, and any area off-Site where the Work is being carried out, for the use of the Authority Representative, the Authority or anyone else acting on behalf of the Authority one complete set of each Scope of Work, all Design Documents and all other Books and Records directed in writing by the Authority Representative.



10.15 Cost Control

TSCC Contractor shall complete each Package so that the amounts payable to TSCC Contractor under Section 20 do not exceed the applicable Final Package Price.

10.16 Constructability

TSCC Contractor shall attend such design and other meetings as required by the Authority Representative to assist the Authority in preparing the Authority-Provided Design Documents and to advise upon:

- (a) constructability issues;
- (b) the choice and availability of materials to be incorporated in the Work;
- (c) equipment and/or packaging of the Work to advance construction;
- (d) quantity calculations to verify quantities specified by the Authority; and
- (e) the sufficiency and completeness of the Authority-Provided Design Documents.

11. GOVERNMENTAL APPROVALS

11.1 Authority-Provided Approvals

11.1.1 The Authority will obtain the Authority-Provided Approvals.

11.1.2 Any Authority-Provided Approvals, as obtained or procured, will be included in or provided as Reference Documents, but shall not form part of this Agreement except as further described in Section 11.2(b).

11.2 Governmental Approvals Generally

11.2.1 TSCC Contractor shall:

- (a) timely apply for, obtain and maintain all Governmental Approvals, other than the Authority-Provided Approvals;
- (b) remain informed of all terms and conditions of, and comply with, all Governmental Approvals, including the Authority-Provided Approvals, in performing the Work;
- (c) provide or cause to be provided such information, documentation, and administrative assistance as the Authority may request, and shall take such actions and execute such applications as are required to be in TSCC Contractor's name, to enable the Authority to obtain, maintain or renew the Authority-Provided Approvals;
- (d) except as otherwise provided in Section 12, undertake all efforts to obtain any Governmental Approvals, including Major Approvals, that must be formally issued in the Authority's name (other than the Authority-Provided Approvals), including execution and delivery of appropriate applications and other documentation in a form approved by the Authority; and
- (e) promptly give the Authority Representative copies of all documents (including all Governmental Approvals and other notices) that any Governmental Entity having jurisdiction over the Project Assets issues to TSCC Contractor.



11.2.2 The Authority shall, to the extent the Authority is reasonably able, cooperate with TSCC Contractor and provide or cause to be provided such information, documentation, and administrative assistance as TSCC Contractor may reasonably request to obtain Governmental Approvals in connection with the Work.

11.2.3 The Authority is not obligated to: (a) exercise its legal rights in order to avoid or eliminate the requirement to obtain any Governmental Approvals; or (b) grant Governmental Approvals for which it is the authorizing entity. The Authority will apply its usual procedures and criteria in considering applications from TSCC Contractor for such Governmental Approvals.

11.3 New Approvals

11.3.1 The Authority shall obtain any New Approval required for any Authority-Provided Approval necessitated by a Relief Event, notwithstanding anything to the contrary in Section 11.3.2.

11.3.2 If TSCC Contractor desires to adopt any design, construction or maintenance approach that would require a New Approval, TSCC Contractor may submit a request that the Authority obtain the New Approval in accordance with Section 23.6, and the Authority will consider that request in accordance with Section 23.7. TSCC Contractor agrees that the Authority may condition its approval of that request on: (a) TSCC Contractor bearing the risk that any associated environmental reevaluation is not (or is not timely) completed and any associated New Approval is not (or is not timely) granted, issued, approved or obtained; (b) TSCC Contractor bearing the risk of any conditions or mitigation requirement set forth in such New Approval; and (c) TSCC Contractor forfeiting any increase in the applicable Final Package Price or any extension of a Milestone Deadline resulting from a delay associated with the New Approval.

11.3.3 If the Authority approves TSCC Contractor's request under Section 11.3.2 in its sole discretion:

- (a) prior to Package Approval for any Package, this Agreement shall be amended to reflect such change as part of the Package Amendment;
- (b) after Package Approval for such Package, the Authority shall issue a Change Order.

12. CEQA AND NEPA: ENVIRONMENTAL REVIEW PROCESS AND ENVIRONMENTAL COMPLIANCE

12.1 Respective Roles of Parties

12.1.1 The Authority will coordinate with each applicable Governmental Entity on the Environmental Review Process required for CEQA Approval and NEPA Approval, which includes obtaining CEQA Approval and NEPA Approval, as applicable.

12.1.2 As further described in the Scope of Work, TSCC Contractor shall provide services with respect to the Project for the Authority's independent evaluation and consideration in connection with the Environmental Review Process required for CEQA Approval or NEPA Approval, as applicable, including development of proposed avoidance/mitigation measures for Packages; provided such TSCC Contractor services shall exclude analysis of the Project's effects or alternatives.



12.1.3 TSCC Contractor shall not prepare the CEQA or NEPA analysis of environmental impacts of the Project or any alternatives for purposes of the Environmental Review Process required for CEQA Approval or NEPA Approval, as applicable.

12.1.4 This Agreement does not commit Authority to pursue any Packages, and the Parties acknowledge and agree that no such work shall be authorized or undertaken in a manner inconsistent with the Environmental Review Process or, as applicable, unless and until CEQA/NEPA Approvals and/or any New Approvals have been obtained.

12.2 Rights and Responsibilities

12.2.1 Performance by either Party of its obligations under this Agreement shall not limit:

- (a) the Authority's independent evaluation and sole discretion when conducting the Environmental Review Process required for CEQA Approval and NEPA Approval (as applicable); or
- (b) the Authority's sole discretion to withhold any Package Approval under Section 10.7.

12.2.2 TSCC Contractor acknowledges and agrees that the Authority retains:

- (a) sole discretion, exclusive control and decision-making authority over the description of the Project and any identification or evaluation of alternatives or mitigation measures for the purposes of CEQA and NEPA; and
- (b) sole discretion over whether to accept any of the Project Assets and Submittals for purposes of the Environmental Review Process.

12.2.3 Nothing contained in this Agreement commits, or shall be construed to commit, the Authority to any Project alternative, modification, or mitigation regarding the Project (including a no-build alternative) before the Authority approves the Project, alternative, modification or mitigation.

12.2.4 TSCC Contractor shall have no right or obligation to perform, and shall not perform, any services that would violate conflict of interest rules under CEQA and NEPA regarding the preparation, review, revision and decisions on scope and content of the CEQA EIR/EIS or any New Approval. All references in this Agreement to TSCC Contractor's involvement with the Environmental Review Process or development of the CEQA EIR/EIS or any New Approval shall be subject to the limitation in the preceding sentence.

12.3 General Requirements

12.3.1 TSCC Contractor shall plan, design, construct, and implement the Project in accordance with the Environmental Approvals all Environmental Laws. The Developer shall comply with Schedule 8 (Environmental Requirements) which includes Environmental Approvals and environmental commitments made in accordance therewith.

12.3.2 TSCC Contractor shall conduct the Work such that no action or inaction on the part of TSCC Contractor shall result in non-compliance with Environmental Approvals, including Environmental Laws and including avoidance and mitigation measures, as described in the Environmental Approvals.

12.3.3 The Authority must Approve any proposed changes to avoidance/mitigation measures prior to implementation.



13. ACCESS; DIFFERING SITE CONDITIONS; HAZARDOUS MATERIALS; RIGHT OF WAY**13.1 Access to Site**

13.1.1 The Authority shall furnish the Site for specified purposes by the later of the date specified in the Baseline Schedule to perform applicable Work and the following dates:

- (a) portions of the Site required for Design Work on and after NTP for any Package with Design Work for the purposes of conducting any inspections, surveys, tests, or investigation necessary for the development of the Project; and
- (b) portions of the Site required for Construction Work on and after the date specified in the Package Specific Information for such Package;

provided, however, that the Authority may, in its sole discretion, make a portion of the Site available at any time before the applicable dates above, subject to any terms and conditions specified by the Authority.

13.1.2 Where TSCC Contractor requires access to the Site prior to NTP for any applicable Package, TSCC Contractor shall provide at least 72 hours' notice to the Authority and shall:

- (a) comply with the Authority's reasonable safety and security procedures and request the Authority's directions as to access to and occupancy of the Site; and
- (b) leave the Site accessed by TSCC Contractor in the same or better condition than the condition existing at the time TSCC Contractor accessed such areas.

13.1.3 TSCC Contractor shall:

- (a) obtain and maintain any permits and rights of entry required to perform the Construction Work, as described in Section 13.7;
- (b) pay all permit fees and comply with all requirements of Governmental Approvals and Applicable Laws in connection with its operations on the Site, including obtaining necessary approvals of plans and specifications as required from Authority or any Governmental Entity;
- (c) obtain access to any areas outside of the Site to which access is required to perform any portion of the Work; and
- (d) cooperate with the Authority and take all other steps possible to mitigate the impact of any delay associated with the Authority's inability to furnish the Site by the applicable dates specified in Section 13.1.1.

13.1.4 The Authority has no obligations or responsibilities with respect to the acquisition, maintenance or disposition of the property rights and interests described in Section 13.1.3, and TSCC Contractor shall cause the documentation of any such property right or interest to contain the grantor's express acknowledgment that the Authority has no liability with respect to that acquisition, maintenance or disposition.

13.1.5 The Authority is not required to provide TSCC Contractor exclusive access to the Site or any other property, except as otherwise provided by the Authority in the form of an advance written approval, which approval may be withheld in the Authority's good faith discretion.



13.2 TSCC Contractor's Obligation to Provide Access to the Authority

In carrying out the Work, TSCC Contractor shall:

- (a) at all reasonable times, give the Authority, the Authority Representative, Interfacing Contractors, Utility Owners and any person authorized by the Authority or the Authority Representative access to the Project Assets or any off-Site area where the Work is being performed;
- (b) provide the Authority and the Authority Representative with every reasonable facility necessary for the supervision, examination, inspection and testing of the Project Assets; and
- (c) answer all questions of, cooperate with and do everything reasonably necessary to assist the Authority Representative or anyone else acting on behalf of the Authority in performing the obligations under this Agreement or otherwise developing the HSR System.

13.3 Process to Follow upon Discovery of Certain Site Conditions

13.3.1 Notification to Authority

- (a) If TSCC Contractor discovers or becomes aware of on the Site, (1) any Hazardous Materials required or which may be required to be removed or treated in accordance with this Agreement or Applicable Laws, (2) any Differing Site Conditions, or (3) any other protected resources that may affect the Work, then TSCC Contractor shall:
 - (i) Immediately notify the Authority by telephone or in person (in not to exceed one hour from discovery), to be followed promptly by written notice within 48 hours of discovery; and
 - (ii) except where TSCC Contractor is required to take immediate action under this Agreement or Applicable Laws, stop Work in the affected portion of the Site and secure the area unless the materials are Known or Suspected Hazardous Materials, in which case Section 13.5.2 will apply.
- (b) TSCC Contractor's notice under Section 13.3.1(a)(i) shall:
 - (i) specify the nature and specific location of the discovery; and
 - (ii) advise the Authority of any obligation to notify Governmental Entities under Applicable Laws or Governmental Approvals.
- (c) Except where TSCC Contractor is required to take immediate action under this Agreement or Applicable Laws, the Authority shall have three days after receiving written notice under Section 13.3.1(a)(i) to inspect the area and consult with TSCC Contractor about the recommended approach before any other action is taken that would inhibit the Authority's ability to ascertain the nature and extent of the discovery.

13.3.2 Authority Response

- (a) Upon receipt of written notice under Section 13.3.1(a)(i), the Authority will:
 - (i) view the location and conduct such further investigation as the Authority deems appropriate; and
 - (ii) use reasonable efforts to provide, within five days after receiving written notice under Section 13.3.1(a)(i), written notice to TSCC Contractor as to whether Work should be



resumed, whether further investigation is required and whether additional action is required to be undertaken by TSCC Contractor. If Hazardous Materials are involved, the Authority's notice shall describe the Hazardous Materials Management, if any, that TSCC Contractor is to undertake with respect to such Hazardous Materials.

- (b) If any Governmental Approval specifies a procedure to be followed that differs from the procedure in this Agreement, TSCC Contractor shall follow the procedure in the Governmental Approval and shall provide immediate written notice to the Authority of such procedure.

13.4 Differing Site Conditions

13.4.1 TSCC Contractor shall be entitled to a Relief Event involving Differing Site Conditions to the extent provided, and subject to the limitations, in Sections 21 through 23.

13.4.2 TSCC Contractor acknowledges and agrees that, as a result of its agreement to undertake the risk of and responsibility for differences in site conditions from those which may have been anticipated by TSCC Contractor, except to the extent that a Change Order and/or Relief Event is allowed under this Agreement, information regarding site conditions included in the Reference Documents (including any information, reports, or studies about site conditions, geotechnical conditions, utilities, structure or any interpretations, extrapolations, analyses and recommendations contained in the Reference Documents) shall not be considered "indicated" therein as such term is used in California Public Contract Code section 7104.

13.4.3 Subject to Section 13.4.4, to the maximum extent permitted by Applicable Laws:

- (a) TSCC Contractor knowingly, unconditionally, irrevocably and specifically waives each and every right and benefit of California Public Contract Code section 7104. TSCC Contractor acknowledges and agrees that this waiver and the risk allocations in this Agreement are material consideration for the Authority to award this Agreement to TSCC Contractor and to enter into this Agreement;
- (b) the Parties specifically intend to delegate to TSCC Contractor the obligation to perform all responsibilities with respect to identification of Utilities, and to allocate to TSCC Contractor all risk of increased costs and time of the Work resulting from having to (i) repair, remove, or relocate, or (ii) perform any protective activity (not involving removing or relocating) to avoid damaging, any Utility that would not constitute a Differing Site Condition; and
- (c) TSCC Contractor acknowledges and agrees that the provisions of this Section 13.4 satisfy the Authority's obligations under Government Code section 4215. TSCC Contractor acknowledges and agrees that if the foregoing delegation is deemed ineffective, the Authority shall be entitled to reduce the Final Package Price for such Package to reflect the actual costs incurred by the Authority to cause performance of the obligations and satisfaction of the liabilities from which TSCC Contractor is thereby relieved.

13.4.4 Nothing in Section 13.4.3 shall limit TSCC Contractor's right to obtain relief for a Relief Event in accordance with the terms of this Agreement.

13.5 Hazardous Materials

13.5.1 When TSCC Contractor encounters materials which TSCC Contractor reasonably believes to be Hazardous Materials and that are not Known or Suspected Hazardous Materials, TSCC Contractor may continue Work in unaffected areas reasonably believed to be safe. TSCC Contractor shall immediately cease Work in the affected area and report the condition to the Authority. Notwithstanding the foregoing, TSCC Contractor



may also continue Work in the affected area if the Hazardous Material has been rendered harmless.

13.5.2 For Known or Suspected Hazardous Materials, TSCC Contractor shall, as required:

- (a) test, contain, manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of such Known or Suspected Hazardous Materials; and
- (b) perform all other aspects of Hazardous Materials Management as appropriate, in accordance with Applicable Laws, Governmental Approvals, and all provisions of this Agreement.

13.5.3 Where a discovery of Hazardous Materials relates to quantities that trigger any reporting, investigation, remediation, other response action requirements under any Applicable Laws or Governmental Approvals, TSCC Contractor shall develop and obtain the Authority's approval of a plan to undertake Hazardous Materials Management, which shall provide for reasonable steps, including design modifications and/or construction techniques, to avoid excavation, dewatering or other active, intrusive management in areas where Hazardous Materials are encountered.

13.5.4 Where excavation or dewatering of Hazardous Materials is unavoidable, TSCC Contractor shall use appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by the Authority.

13.5.5 TSCC Contractor shall not cause or contribute to Hazardous Materials within the Site or any other land, air or water or cause or contribute to any Hazardous Materials emanating from the Site.

13.5.6 TSCC Contractor shall be entitled to a Relief Event involving Hazardous Materials Management (as described in subsection (f) of the definition of "Relief Event") to the extent provided, and subject to the limitations, in Sections 21 through 23.

13.6 Hazardous Materials Generator

13.6.1 Subject to Section 13.6.2, as between the Parties, the Authority shall be considered the generator and assume generator responsibility for: (a) Known or Suspected Hazardous Materials; (b) any spill of Hazardous Material by the Authority or a third party who is not acting in a capacity of, on behalf or under the authority or permission of a TSCC-Related Entity; and (c) any Unknown Hazardous Materials.

13.6.2 Section 13.6.1 does not alter or modify TSCC Contractor's obligation to undertake all Hazardous Materials Management, including the hazardous waste management responsibilities found at 40 CFR Part 261. TSCC Contractor may list the Authority as the "generator" under Applicable Laws of materials covered under Section 13.6.1 on all manifests and other waste tracking records.

13.6.3 TSCC Contractor shall propose to the Authority, for the Authority approval, the destination facility to which existing or Authority or third party-generated Hazardous Materials will be transported. Authority shall exercise reasonable discretion regarding selection of such destination facilities.

13.6.4 This Section 13.6 does not preclude or limit any rights or remedies that the Authority may have against any Governmental Entity or other third parties, including prior owners,



lessees, licensees and occupants of properties on or under which Hazardous Materials exist under Section 13.6.1.

13.6.5 Notwithstanding the foregoing, TSCC Contractor (and not the Authority) shall be considered the generator and assume generator responsibility for performing the obligations and all Losses associated with any TSCC Contractor Hazardous Materials Release for which TSCC Contractor or a TSCC-Related Entity is responsible under Section 26.2.1(d).

13.7 Project Right of Way

13.7.1 General

- (a) The Authority has acquired, or shall perform all services to acquire, title or rights to use the Project Right of Way and Temporary Right of Way. Subject to this Section 13.7, TSCC Contractor shall perform all Work within the Project Right of Way and Temporary Right of Way. The Authority does not intend to acquire additional interests in any form in any property that is not identified as Project Right of Way or Temporary Right of Way. TSCC Contractor acknowledges that the Project Right of Way and Temporary Right of Way is adequate to perform the Work.
- (b) TSCC Contractor is solely responsible, at its own cost and expense and without any adjustments to the Milestone Deadlines, for: (i) obtaining all temporary easements and temporary property interests that are not designated as the Authority's responsibility in the Authority-Provided Design Documents and Schedule 14 (Right of Way) for performing the Work, including any temporary easements and property interests needed for laydown, staging and material storage and (ii) acquiring all Additional Properties, except for Additional Properties required to be obtained by the Authority pursuant to Section 13.7.1(d).
- (c) TSCC Contractor shall comply with and perform all Work and mitigation commitments for the properties as identified in the Authority-Provided Design Documents and Schedule 14 (Right of Way) and all other mitigations and protection of property reasonably necessary to perform the Work under the Agreement.
- (d) The Authority shall, at its sole cost and expense, acquire Additional Properties in accordance with this Section 13.7.1(d) if: (i) TSCC Contractor cannot design and construct the permanent Project facilities in accordance with the Project Standards within the limits of the Project Right of Way, or (ii) if Additional Properties are required due to an Authority Change Order or Directive Letter.

13.7.2 Property Access

- (a) Subject to and except as otherwise provided in the Authority-Provided Design Documents, TSCC Contractor shall have access to Access-Controlled Right of Way as necessary to support the performance of the Work pursuant to the accepted Baseline Schedule. The Access-Controlled Right of Way shall only be accessed through the Access Points.
- (b) TSCC Contractor must obtain from the Authority a right of entry pursuant to Section 13.1.3 prior to entering any Project Right of Way as acquired, or to be acquired, by Authority or any Additional Property that is otherwise to be obtained by Authority under Section 13.7.1(d). Further, TSCC Contractor shall not contact the owners of such properties to obtain early access to such properties without prior notice to the Authority. Any early access obtained by TSCC Contractor, and any Work performed prior to the Authority acquiring title or rights to such properties, shall be at TSCC Contractor's sole cost and risk.

13.7.3 Property Acquisitions and Scheduling Work



- (a) In developing the Baseline Schedule, TSCC Contractor shall minimize dependence on the property acquisition process. In the event TSCC Contractor experiences a Relief Event entitling TSCC Contractor to an adjustment to a Milestone Deadline and such Project Right of Way or Temporary Right of Way is no longer accessible to TSCC Contractor due to such Relief Event, the Authority shall obtain additional rights of access for such Project Right of Way or Temporary Right of Way, as appropriate.
- (b) TSCC Contractor shall coordinate with the Authority regarding:
 - (i) Project Right of Way requirements and impacts on design and construction activities;
 - (ii) any adjustments to the Baseline Schedule necessary to reflect updates to the property acquisition process; and
 - (iii) any design or construction features that may impact properties for which no property acquisition is contemplated to avoid damages and impacts to such properties.

13.7.4 Access to Non-Operational Right of Way Requested by TSCC Contractor

- (a) If TSCC Contractor identifies any Non-Operational Right of Way that it believes is necessary for the Work, TSCC Contractor shall submit to the Authority a request for access to such Non-Operational Right of Way, including the reason and justification for access to the Non-Operational Right of Way, including supporting Design Documents.
- (b) The Authority will provide access to the Non-Operational Right of Way within 90 days of such request, but TSCC Contractor shall be responsible for obtaining, or assisting the Authority with obtaining, and complying with any environmental clearance required to access any Non-Operational Right of Way. TSCC Contractor shall not access the Non-Operational Right of Way until all environmental clearance has been obtained, and TSCC Contractor shall comply with all environmental requirements for such Non-Operational Right of Way.

13.7.5 Acquisition of Additional Property Requested by TSCC Contractor

- (a) If TSCC Contractor identifies any property that it believes should be added to the Project Right of Way as an Additional Property, TSCC Contractor shall submit to the Authority a request for acquisition of such Additional Property. Such request shall include: (i) the reason and justification for acquiring the Additional Property, including supporting Design Documents and (ii) new or revised surveys, legal descriptions, draft ROW plans, and other related documents describing the property or property interests to be acquired. If Additional Property is required pursuant to Section 13.7.1(d), such request shall also include an analysis identifying alternative approaches and measures that could be utilized to avoid the need for acquiring such Additional Property.
- (b) Except for Additional Property required pursuant to Section 13.7.1(d), the Authority has no obligation to acquire Additional Property requested by TSCC Contractor and may, in its sole discretion, deny such request.
- (c) If the Authority agrees to acquire Additional Property not required by Section 13.7.1(d), TSCC Contractor shall pay the Authority, as applicable: (i) costs of acquisition and relocation services performed by the Authority and its consultants; (ii) costs of relocation and assistance in accordance with Law; (iii) amounts to be paid to property owners for the Additional Property; and (iv) costs for any condemnation proceedings, including legal and consultant fees. Further, TSCC Contractor shall not be entitled to any additional compensation or time extensions caused by the acquisition of such Additional Property.



13.8 Other Conditions Impacting Site

- 13.8.1** If any meeting regarding a proposed excavation is required under California Government Code section 4216.2(c), TSCC Contractor shall provide no less than 14 days' advance written notice to the Authority Representative so that the Authority Representative and/or other Authority-designated representative(s) or agent(s) may attend.
- 13.8.2** TSCC Contractor shall comply with any waste diversion requirements under Applicable Laws concerning materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill.

14. GENERAL OBLIGATIONS APPLICABLE TO THE WORK

14.1 General Obligations and Warranty with respect to the Work

- 14.1.1** TSCC Contractor warrants that it shall perform the Work and deliver the Project:
- (a) in accordance with this Agreement, all Applicable Laws (including Environmental Laws), all Governmental Approvals and consistent with the Project Goals;
 - (b) in conjunction with the Environmental Review Process;
 - (c) so that all Design Work furnished under this Agreement conforms to Good Industry Practice;
 - (d) so that all Construction Work shall be performed as set out in this Agreement, be free from Defects, conform to Good Industry Practice and be such that the Project Facilities are fit for use for the purposes, objective, functions and requirements set out in this Agreement;
 - (e) so that all materials and supplies furnished in connection with the Work are of good quality and new, unless otherwise specified in the Scope of Work, when installed;
 - (f) in a manner that ensures adequate materials, equipment, supplies and resources are available to provide for the Work's uninterrupted progress and compliance with this Agreement under normal conditions and reasonably anticipated abnormal conditions; and
 - (g) otherwise in accordance with this Agreement.
- 14.1.2** The general warranty contained in this Section 14.1 is in addition to any express warranties provided for elsewhere in this Agreement.
- 14.1.3** TSCC Contractor acknowledges that the Authority is relying upon TSCC Contractor's experience, skill and judgment in carrying out its obligations under this Agreement and would not have entered into this Agreement but for TSCC Contractor's expertise in that regard.
- 14.1.4** TSCC Contractor shall control, coordinate, administer and direct all activities necessary to plan, design, commence, construct, commission/start up, complete and hand over the Project Facilities.

14.2 Suspension by the Authority

- (a) The Authority Representative may instruct TSCC Contractor to suspend all or part of the Work and, after a suspension has been instructed, to re-commence the carrying out of all or a part of the Work. The Authority Representative is not required to exercise such authority for the benefit of TSCC Contractor.



- (b) If a suspension under this Section 14.2 arises as a result of TSCC Contractor's failure to properly carry out any of its obligations under this Agreement, such suspension shall be considered for cause and TSCC Contractor will not be entitled to:
- (i) include any Direct Costs incurred as a result of the suspension;
 - (ii) any adjustment of the applicable Final Package Price; or
 - (iii) any time extension or other schedule relief.
- (c) If a suspension under this Section 14.2 arises due to a cause other than TSCC Contractor's failure to carry out its obligations in accordance with this Agreement, such suspension shall be deemed a suspension for convenience by the Authority and shall be subject to subsection (f) of the definition of "Authority-Caused Delay." In the event of a suspension for convenience by the Authority which lasts for more than 180 consecutive days, TSCC Contractor may consider this Agreement to have been terminated for convenience by the Authority.
- (d) TSCC Contractor may not suspend the Work, unless instructed to do so under this Section 14.2, as permitted under Section 27.6, or in the event of an emergency. For purposes of the foregoing, an "emergency" is an unplanned event within or immediately adjacent to the Site that: (i) causes or has the potential to have a material adverse impact on the Project or the HSR System; (ii) presents an immediate or imminent threat to the long term integrity of any part of the Project or the HSR System, the environment, to property immediately adjacent to the Project or to the safety of the public or persons performing the Work; or (iii) is recognized or declared to be an emergency by the Governor of the State, the Federal Emergency Management Agency ("**FEMA**"), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

14.3 Conditions Applicable to Construction Work

14.3.1 Without limiting Section 14.1, TSCC Contractor shall perform the Construction Work in accordance with:

- (a) this Agreement, including the Scope of Work;
- (b) any Design Documents or Construction Documents approved by the Authority in accordance with the Submittal Requirements; and
- (c) any Authority-Provided Design Documents.

14.4 Maintenance Responsibilities During Construction Work

14.4.1 General. The purpose of this Section is to define maintenance responsibilities and coordination requirements between TSCC Contractor and Authority during the execution of the Construction Work on existing constructed civil infrastructure.

14.4.2 Responsibility for Existing Facilities.

- (a) TSCC Contractor shall perform day-to-day maintenance, inspection and upkeep of Existing Facilities, including structures, subgrade, embankments, drainage systems, and associated assets of the Authority in accordance with Schedule 16, Section 13.3.
- (b) TSCC Contractor shall perform the Work in a manner that does not interfere with, hinder, or prevent Authority from carrying out oversight of such maintenance responsibilities.



- (c) TSCC Contractor shall provide reasonable and prudent access and coordinate all Work activities with Authority to ensure safe oversight of and maintenance responsibilities as mutually agreed.

14.4.3 Defects or Damage Arising from Construction Work.

- (a) Any defect, damage, or degradation to the Existing Facilities that occurs as a direct or indirect result of TSCC Contractor's Construction Work, including installation, testing, commissioning, or related activities, shall be the responsibility of TSCC Contractor.
- (b) TSCC Contractor shall, at its own cost and without undue delay, investigate and rectify such defect or damage in consultation with, and to the satisfaction of, Authority.
- (c) All rectification works shall be carried out in accordance with applicable standards, the Design Criteria Manual, and relevant Authority specifications.

14.4.4 Pre-Existing Defects.

- (a) Any defects, deficiencies, or maintenance issues existing within the Site prior to commencement of TSCC Contractor's Work shall become TSCC Contractor's responsibility upon commencement of the Work.
- (b) Upon identification of any such pre-existing defect, TSCC Contractor shall promptly notify Authority in writing, providing sufficient detail to allow Authority to verify and oversee the proposed response plan.
- (c) TSCC Contractor shall correct or repair such pre-existing defects within the Site that affect the execution of the Work or safety, in accordance with applicable and relevant Authority standards and specifications. TSCC Contractor shall have no liability for pre-existing defects outside the Site except where such defects are aggravated or worsened by TSCC Contractor's activities..

14.5 Cooperation with Interfacing Contractors, Utility Owners and Project Stakeholders

14.5.1 TSCC Contractor acknowledges the Work will require coordination with Authority and other Persons, including coordination with:

- (a) Track/OCS Design Services Consultant as described in the Scope of Work; and
- (b) other aspects of the HSR System, Interfacing Contractors, regulatory bodies and Utility Owners performing work on the HSR System.

14.5.2 In performing the Work, TSCC Contractor shall:

- (a) permit Interfacing Contractors and Utility Owners to perform their work;
- (b) promptly inspect work already in place or subsequently performed by Interfacing Contractors and Utility Owners during the term of this Agreement and deliver written notice to the Authority Representative of any problems with that work relating to its connection, impact and, as applicable, integration with the Work and/or the Project;
- (c) communicate and schedule access to Work areas with Interfacing Contractors and Utility Owners so as to maximize the efficiency with which all work is performed. In the event of any conflict affecting use of the Site or the performance, coordination or scheduling of the Work with the work of Interfacing Contractors or Utility Owners or any other Persons designated by Authority, Authority shall make the final determination as to the resolution of that conflict and TSCC Contractor shall comply with Authority's determination;



- (d) ensure personnel of Authority and other Persons designated by Authority are able to safely and conveniently access the Existing Facilities in a manner that allows for their ongoing and uninterrupted operation;
- (e) carefully and fully coordinate, cooperate and interface the Work (including the storage of any materials or equipment used in connection with the Work) so as to avoid inconveniencing, interfering with, disrupting or delaying:
 - (i) the overall HSR System;
 - (ii) Authority, Interfacing Contractors, Utility Owners and any person authorized by Authority to occupy, use, operate, maintain or access the Site or in the exercise of their respective duties and responsibilities in connection with the Project; and
 - (iii) operation, maintenance and function of existing elements located at or in the vicinity of the Site, including the Existing Facilities.

14.5.3 As instructed by the Authority Representative, TSCC Contractor shall restrict its personnel and operations to the immediate Work areas at the Site and in no way go beyond any applicable Work area limits designated by the Authority Representative from time to time.

14.5.4 Authority may occupy or utilize any portion of the Project Assets at any time and before a Date of Substantial Completion. Such occupancy or use shall not constitute acceptance of any part of the Work nor shall it relieve or otherwise reduce TSCC Contractor's responsibilities under this Agreement.

14.6 Coordination and Interface Management

14.6.1 TSCC Contractor shall cooperate with Authority and/or its appointed maintainer in the planning and execution of maintenance and construction activities to ensure safe and efficient interface management.

14.6.2 TSCC Contractor shall incorporate maintenance coordination into its Interface Management Plan and Construction Work plan, identifying all affected assets, access points, and responsibilities.

14.6.3 TSCC Contractor shall participate in coordination meetings and maintain accurate records of all interface and maintenance-related communications with Authority or its appointed maintainer.

14.7 Coordination with Interfacing Contractors

14.7.1 Coordination

TSCC Contractor shall:

- (a) coordinate and cooperate with the Track/OCS Design Services Consultant in accordance with Section 14.5 and the Scope of Work;
- (b) if requested by Authority:
 - (i) review submissions to Authority from the Track/OCS Design Services Consultant;



- (ii) inspect any work Authority is required to inspect under Authority's agreement with the Track/OCS Design Services Consultant; and
 - (iii) provide written comments to Authority regarding that review and inspection, in the form requested by Authority, no later than three days before Authority is required to complete its review or inspection under Authority's agreement with the Track/OCS Design Services Consultant or, in the absence of any required response time, within 10 days after Authority makes its request;
- (c) promptly provide to Authority and the Track/OCS Design Services Consultant all requested information reasonably necessary for interface with TSCC Contractor in connection with the Work and the Project;
 - (d) participate with and assist Authority in inspection, testing and acceptance of elements of work of Interfacing Contractors that interface or integrate with the Work and/or the Project, including all startup, commissioning and acceptance of the Project Facilities;
 - (e) before proceeding with any portion of the Work that depends on performance of work by any Interfacing Contractor, inspect and promptly deliver written notice to Authority of any defects in such work that impact proper execution of the Work and/or the Project; and
 - (f) have the right to request from Authority reasonable information in Authority's possession related to the Work and construction plans produced under Authority's agreement with the Track/OCS Design Services Consultant.

14.8 Survey

TSCC Contractor shall:

- (a) carry out survey obligations required in accordance with the Scope of Work;
- (b) as a condition precedent to Interim Substantial Completion of the Base Project, Extended Project Substantial Completion of the Extended Project or Completion of any Early Works Package, submit to the Authority Representative a certificate signed by a licensed surveyor certifying that:
 - (i) all of the applicable Work is within any particular boundaries stipulated in this Agreement, except to the extent that Work is specifically required by this Agreement to be outside those boundaries; and
 - (ii) if required by this Agreement, structural elements of the applicable Work is within the tolerances specified; and
- (c) not include any contingency in the applicable Direct Costs or General Requirements Costs for the Work described in this Section 14.8.

14.9 Safety

TSCC Contractor shall:

- (a) perform the Work safely and in a manner that: (i) does not put the health and safety of persons at risk; (ii) protects property; and (iii) complies with the Health and Safety Plan and the Scope of Work;
- (b) ensure the Site is in a safe condition, at the completion of Work each day; and



- (c) erect and properly maintain at all times, as required by field conditions and progress of Work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of the Work.

14.9.2 If the Authority Representative reasonably considers there is a risk to the health or safety of people or damage to property relating to the Work, the Authority Representative may direct TSCC Contractor to change its manner of working or to cease working.

14.10 Authority-Provided Materials; Equipment or Other Work

14.10.1 The Authority has executed or will execute Authority Purchase Agreements for the purchase of Authority-Provided Materials. The specifications of materials available under the Authority Purchase Agreements and required to be used by TSCC Contractor are detailed in said Authority Purchase Agreements.

14.10.2 TSCC Contractor shall review the Authority Purchase Agreements and shall request delivery of the Authority-Provided Materials from the material provider in sufficient quantities and with sufficient time for delivery in accordance with the terms in the Authority Purchase Agreement before such material is to be incorporated in the Project. Payment to the material supplier, including payments for shipping, under any Authority Purchase Agreement will be made directly by the Authority.

14.10.3 Prior to requesting delivery of any Authority-Provided Materials under any Authority Purchase Agreement, TSCC Contractor shall provide the Authority Representative a detailed summary of amounts and types of Authority-Provided Material and justification satisfactory to the Authority that such amounts and types of materials are accurate for the Work being performed and in accordance with Good Industry Practice.

14.10.4 TSCC Contractor shall take all commercially reasonable steps to avoid waste of Authority-Provided Materials. In the event that waste of Authority-Provided Materials exceeds the amounts in the table below, TSCC Contractor shall reimburse the Authority for the cost of such wasted material to the extent it exceeds the percentage in the table below; *provided* that if such waste is caused by a Change Order issued by Authority which results in TSCC Contractor no longer needing Authority-Provided Material which has already been ordered, then TSCC Contractor shall not be responsible for such excess waste.

Material	Waste Percentage
Track	2%
Ballast	3%
OCS Poles	2.5%
Ties	2.5%

14.10.5 TSCC Contractor shall make commercially reasonable efforts to resell any excess Authority-Provided Material in accordance with Good Industry Practice. Provided that the amount of excess Authority-Provided Material does not exceed the amounts described in Section 14.10.4, any payment received for excess Authority-Provided Material, shall be shared []% for TSCC Contractor and []% for the Authority. If the amount of excess



Authority-Provided Material exceeds the amount in Section 14.10.4, then 100% of the payments received for the excess Authority-Provided Material shall go to Authority.

14.10.6 TSCC Contractor shall be responsible for unloading Authority-Provided Material when delivered by the provider. Upon delivery of any Authority-Provided Material, Authority and TSCC Contractor shall thoroughly inspect the Authority-Provided Material and ensure there are no defects prior to incorporating such material into the Work. If a Defect or damage to the Authority-Provided Material is discovered by TSCC Contractor after completion of the aforementioned inspection, TSCC Contractor shall notify Authority of such Defect or damage within three (3) calendar days of discovery, with additional back-up evidence of such Defect or damage submitted by TSCC Contractor to Authority within seven (7) calendar days of discovery.

14.10.7 Following delivery of any Authority-Provided Material, TSCC Contractor shall be responsible for all proper storage, tracking, inventory management, and use of such Authority-Provided Material and shall be deemed to hold title and risk of loss for such Authority-Provided Material as described in Section 14.15 as if TSCC Contractor had purchased such material for the Work from its own Supplier.

14.10.8 TSCC Contractor shall not remove from the Site any plant, equipment, machinery, supplies or other work (i.e., such items used, or work undertaken, by TSCC Contractor to construct the Work that will not form part of the Work, including Authority-Provided Material), without the Authority Representative's prior written approval, except as provided in Section 14.11.

14.11 Clean Up

TSCC Contractor shall:

- (a) in carrying out the Work, keep the Site clean and tidy and free of refuse; and
- (b) as a condition precedent to Interim Substantial Completion and Extended Project Substantial Completion, clean up and remove all rubbish, materials and plant, equipment or other work from the part of Site relevant to the Work or the Early Works Package and leave that part of the Site in a safe condition.

14.12 Necessary Protection

The Authority may take any action necessary to protect the Work, other property or the environment or to prevent or minimize risks to the health and safety of persons, which TSCC Contractor is required, but fails, to take. Any Losses suffered or incurred by the Authority in taking that action will be an amount due and payable from TSCC Contractor to the Authority.

14.13 Authority Right to Act

The Authority may, either itself or by a third party, carry out an obligation under this Agreement that TSCC Contractor is allocated or required to perform, but fails, to carry out within the time required under this Agreement (subject to TSCC Contractor's right to notice and cure periods, if any, as set forth in Section 27.3 unless the circumstances represent an Emergency). Any Losses suffered or incurred by the Authority in carrying out that obligation will be an amount due and payable from TSCC Contractor to the Authority.

14.14 Access Hours

Unless otherwise agreed in writing by TSCC Contractor and the Authority Representative, the access hour limitations for performance of Work on the Site are as specified in the applicable Package Specific Information.



14.15 Title and Risk of Loss

14.15.1 TSCC Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies provided, or to be provided, by it and its Subcontractors, that become part of the Project, free and clear of all Liens.

14.15.2 Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to the Authority, free and clear of all Liens, upon:

- (a) payment by the Authority to TSCC Contractor of invoiced amounts pertaining to such materials, equipment, tools and supplies; and
- (b) the sooner of either (i) incorporation into the Project or (ii) acceptance by the Authority.

14.15.3 Notwithstanding any passage of title under Section 14.15.2 and except as otherwise expressly provided in this Agreement:

- (a) from and after the date of approval of any Package involving Construction Work or commencement of any earlier Early Works Package involving Construction Work until the earlier of (1)(A) the Interim Substantial Completion Date for the Base Project or (B) the Extended Project Substantial Completion Date for the Extended Project, and (2) the Expiration Date, TSCC Contractor:
 - (i) bears the risk of loss or damage to the Project Assets;
 - (ii) shall take every reasonable precaution against loss or damage to the Project Assets from any cause, whether arising from the performance or nonperformance of the Work;
 - (iii) shall repair, restore and replace loss or damage to the Project Assets from any cause; and
 - (iv) shall promptly repair, restore and replace any loss or damage to property of or work performed by the Authority, any Utility Owner or any Interfacing Contractor that is damaged due to a TSCC Contractor Fault, to its condition immediately before the occurrence of such damage or such other condition as may be approved by the Authority, in its sole discretion; provided the Existing Assets shall be repaired, restored and replaced in accordance with the Scope of Work or to such other condition as may be approved by the Authority, in its sole discretion; and
- (b) from and after the Effective Date until the Expiration Date, TSCC Contractor bears all risks of loss or damage to and shall repair, restore and replace any loss or damage to:
 - (i) any tools, machinery, equipment, facilities, materials, inventory, supplies, protective fencing, job trailers, scaffolding or other items of any TSCC-Related Entity used in the performance of the Work, but not intended for permanent installation into the Project Facilities;
 - (ii) any machinery, equipment, facilities, materials, inventory, supplies and other property of any TSCC-Related Entity outside the Site; and
 - (iii) any machinery, equipment, facilities, materials, inventory, supplies and other property of any TSCC-Related Entity while in transit to the Site.



14.15.4 Materials, including Authority-Provided Materials, shall be delivered to the Site, or delivered to TSCC Contractor and promptly stored by TSCC Contractor in bonded storage at a location approved by the Authority, in its reasonable discretion. For all materials that are not Authority-Provided Materials, TSCC Contractor shall submit certified bills for such materials with invoices, as a condition to payment for such materials. Authority shall allow and pay only such portion of the amount represented by these bills as in its opinion is consistent with the reasonable cost of such materials. If such materials are stored at any site not approved by the Authority, TSCC Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against the Authority by any state or subdivision thereof on account of such storage of such material. The Authority will permit TSCC Contractor, in good faith, to contest the validity of any such tax levied against the Authority in appropriate proceedings and in the event of any judgment or decree of a court, TSCC Contractor agrees to pay same together with any penalty or other costs, relating thereto.

14.16 Utilities

14.16.1 TSCC Contractor shall:

- (a) provide all necessary communications for the Work, except as otherwise provided in the Scope of Work;
- (b) provide all fuel required for performance of the Construction Work;
- (c) provide for the purchase of power or provide portable power for the Work, except as otherwise provided in the Scope of Work; and
- (d) provide suitable light for Construction Work conducted at night or under conditions of deficient daylight to ensure proper Construction Work and to afford adequate facilities for inspection and safe working conditions.

14.16.2 Any temporary connections for electricity shall be subject to approval of the Authority and the applicable Utility Owner.

14.17 General Obligations Regarding Utility Work

14.17.1 Subject to TSCC Contractor's entitlement, if any, to relief for a Differing Site Condition, TSCC Contractor shall:

- (a) perform all Utility Work necessary to complete the Project as described in the Scope of Work;
- (b) provide such assistance that the Authority may reasonably require to fulfill its obligations under any Utility Agreement, including provision of designs and information, except for designs or information the Utility Owner is required to provide under any Utility Agreement or as otherwise provided in the Scope of Work;
- (c) comply with the terms and conditions of all Utility Agreements;
- (d) timely perform TSCC Contractor's obligations under any Utility Agreement together with any Authority obligations under that Utility Agreement, which are delegated to TSCC Contractor in the Scope of Work;
- (e) as necessary, coordinate with Utility Owners to accomplish any Relocation in compliance with this Agreement and avoid conflicts with work performed by any Utility Owner; and



- (f) provide any assistance reasonably requested by the Authority in dealing with a Utility Owner and/or in prosecuting and defending lawsuits in any matter relating to a Utility Owner's involvement in the Project.

14.18 Relocations

TSCC Contractor shall:

- (a) use best efforts to minimize costs to Utility Owners that will be subject to reimbursement by the Authority to the extent practicable and allowable under this Agreement;
- (b) consider the location of Utilities and the potential impact of Relocations on any part of the HSR System in developing and finalizing all Design Documents with the goal of minimizing Relocations to the extent practicable and allowable under this Agreement;
- (c) use best efforts to avoid multiple Relocations or Protections in Place of the same Utility, whether by the Utility Owner or TSCC Contractor; and
- (d) provide documentation satisfactory to the Authority showing the required analysis was performed and an appropriate determination made regarding the need for a Relocation. TSCC Contractor shall bear the burden of proving the amount of any additional costs or time is both necessary and reasonable.

14.18.2 If any Utility is identified, after the earlier of the date of Package approval for such Package or the commencement of any earlier Early Works Package involving Construction Work, as requiring Relocation:

- (a) the Authority will prepare, negotiate and enter into additional Utility Agreement(s) with the applicable Utility Owner(s) setting out the details for the applicable Relocation(s); and
- (b) TSCC Contractor shall not be a party to any Utility Agreement and shall have no authority to enter into any Utility Agreement on the Authority's behalf.

14.18.3 If any Utility qualifies as a Differing Site Condition and requires Relocation, the corresponding Utility Owner will be responsible for design, construction and/or materials procurement, in accordance with the Scope of Work and as otherwise provided under the applicable Utility Agreement.

14.19 Bonds and Insurance Increase Regarding Utilities

14.19.1 Any Utility Owner with a Relocation included in the Utility Work may, upon request, require TSCC Contractor to:

- (a) add the Utility Owner as an additional obligee to the Payment Bonds and Performance Bonds, to the extent of the amount of the applicable Utility Work; provided that the Payment Bonds and Performance Bonds continue to cover the full amounts required by the Authority, with no riders that reduce the Authority's potential of recovery; or
- (b) provide separate bonds satisfactory to the Utility Owners to cover such Utility Work.

14.19.2 TSCC Contractor shall procure from and provide all information necessary for the bonds required under Section 14.19.1 to each surety providing such bonds.

14.19.3 Without limiting any of the Insurance Requirements, TSCC Contractor shall comply with all insurance requirements in any Utility Agreement. Such insurance shall be provided



by naming the applicable Utility Owner as an additional insured on the insurance provided by TSCC Contractor pursuant to the Insurance Requirements, to the extent it satisfies the Utility Agreement's requirements.

14.20 Betterments

14.20.1 TSCC Contractor shall promptly provide notice to the Authority of any requests or requirements by Utility Owners that TSCC Contractor considers to be Betterments, and TSCC Contractor shall keep the Authority informed as to the status of discussions with Utility Owners concerning such requests and requirements. The Authority may approve or deny any Utility Owner's request for a Betterment.

14.20.2 TSCC Contractor shall provide the Authority with such information, analyses and certificates as may be requested by the Authority in connection with the possible addition of a Betterment to the Utility Work.

14.20.3 A Betterment approved by the Authority will be included in the Scope of Work, and TSCC Contractor shall perform it in accordance with this Agreement.

14.21 Project Risks Generally

Except as otherwise provided in this Agreement (including TSCC Contractor's express entitlement to compensation and/or schedule relief for Relief Events in accordance with this Agreement):

- (a) TSCC Contractor accepts all risks in connection with delivering the Project consistent with this Agreement; and
- (b) TSCC Contractor is not entitled to make any Claim against the Authority in connection with the Project, the Project Assets or this Agreement.

15. DEFECTS AND WARRANTY

15.1 Defects

15.1.1 Subject to Section 15.1.2, and without limiting the Authority's other rights under this Agreement, TSCC Contractor shall rectify all Defects during the Term regardless of whether or not such Defects are the subject of a Notice under this Section 15.

15.1.2 If, prior to the expiration of the Warranty Period for the Work, the Authority Representative discovers or believes there is a Defect, the Authority Representative may give TSCC Contractor an instruction specifying the Defect and doing one or more of the following:

- (a) requiring TSCC Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring TSCC Contractor to carry out a Change Order to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
- (c) advising TSCC Contractor that the Authority will accept the Work, or any part of it, despite the Defect.

15.1.3 If a Notice is given under Section 15.1.2, TSCC Contractor shall rectify the Defect within the time specified in the Notice.



- 15.1.4** If the Defect is not rectified by TSCC Contractor within the time specified in the Notice, then the Authority may rectify the Defect itself or engage a third party to rectify the Defect and the cost of any such rectification work plus an administrative charge of 10% will be payable by TSCC Contractor to the Authority.

15.2 Correction of Defect or Change Order

If an instruction is given under Section 15.1.2(a) or 15.1.2(b), TSCC Contractor shall correct the Defect or carry out the Change Order:

- (a) within 10 days, unless a longer time period is specified in the Authority Representative's instruction; and
- (b) if after Interim Substantial Completion for the Base Project or Extended Project Substantial Completion for the Extended Project, at times and in a manner which cause as little inconvenience to the occupants and users of the Work is as reasonably possible.

15.3 Claim for Correction of Defect

Where an instruction is given under Section 15.1.2(a):

- (a) TSCC Contractor will only be entitled to make a Claim for correcting the Defect (or the relevant part) if the Defect (or the relevant part) is something for which TSCC Contractor is not responsible; and
- (b) Where TSCC Contractor is so entitled to make a Claim, the work involved in the correction of the Defect will be treated as if it were a Change Order issued by the Authority Representative under Section 23.

15.4 Determining Change Order Amount

If a Change Order is contemplated under Section 15.1.2(b), then:

- (a) if TSCC Contractor is not responsible for the Defect (or the relevant part), the cost of the Change Order will be valued in accordance with Section 23.3; or
- (b) if TSCC Contractor is responsible for the Defect (or the relevant part), the Authority Representative will determine the cost of correcting the Defect (or the relevant part) as if Section 23.3 applied and that cost will be a debt due from TSCC Contractor to the Authority.

15.5 Defects Discovered during Warranty Period

If:

- (a) an instruction is given under Section 15.1.2(c) prior to the expiration of the Warranty Period; and
- (b) TSCC Contractor is responsible for the Defect (or the relevant part),

the amount determined by the Authority Representative which represents the cost of correcting the Defect (or the relevant part) will be a debt due from TSCC Contractor to the Authority.

15.6 Warranty Period; Extension of Warranty Period

- 15.6.1** Unless otherwise stated, all warranty periods shall commence upon the earlier of (i)(A) Interim Substantial Completion for the Base Project or (B) Extended Project Substantial



Completion for the Extended Project, or (ii) earlier termination of this Agreement and shall continue for the period specified in the Package Specific Information for any Package, as may be extended by Section 15.6.5 (“**Warranty Period**”).

15.6.2 TSCC Contractor shall furnish the Authority with all warranty and guarantee documents prior to the earlier of (i)(A) Interim Substantial Completion for the Base Project or (B) Extended Project Substantial Completion for the Extended Project, or (ii) earlier termination as follows:

- (a) In both electronic and hard copy format;
- (b) For the hard copy, in a single tabbed binder organized according to the Authority Representative’s directions; and
- (c) Otherwise in accordance with the Submittal Requirements.

15.6.3 The Authority shall notify TSCC Contractor, in writing, within a reasonable time after the discovery of any failure, Defect, or damage subject to a warranty or guarantee. TSCC Contractor shall commence and perform with due diligence all necessary Work to complete or correct the Work at issue within the timeframe specified by the Authority in its notice, except in the event of any Emergency, in which case TSCC Contractor’s obligation to commence and perform the Work shall be immediate. If TSCC Contractor fails or is unable to promptly remedy any failure, Defect, or damage, then the Authority shall have the right to replace, repair, or otherwise remedy the same, and the cost of such remedy will be a debt due from TSCC Contractor to the Authority.

15.6.4 With respect to all warranties, express or implied, from Subcontractors, manufacturers, or suppliers for Work performed and materials furnished under this Agreement, including Authority-Provided Materials, TSCC Contractor shall:

- (a) obtain for the Authority all warranties that would be given in normal commercial practice or that are required under the Agreement including the Package Specific Information;
- (b) require all warranties to be executed, in writing, for the benefit of the Authority; and
- (c) enforce all warranties for the benefit of the Authority until the end of the Warranty Period unless otherwise directed in writing by the Authority.

15.6.5 If:

- (a) the Authority Representative gives TSCC Contractor an instruction under either Section 15.1.2 or during the Warranty Period; and
- (b) TSCC Contractor is responsible for the Defect (or the relevant part),

Then the Warranty Period will be extended only for that specific Work required to correct the Defect (or the relevant part) by the period set out in the Package Specific Information, commencing upon completion of the correction of the Defect (or the relevant part).

15.6.6 If this Agreement terminates prior to (a) Base Project Substantial Completion for the Base Project or (b) Extended Project Substantial Completion for the Extended Project, any warranty or guarantee documents to be provided by TSCC Contractor shall be provided on the basis that TSCC Contractor had complied with all of its obligations in connection with this Agreement up to the time of termination and taking into account the circumstances and timing of the termination.



15.7 Common Law Rights Not Affected

15.7.1 Neither the Authority's rights nor TSCC Contractor's liabilities with respect to a Defect or Subcontractor Warranties, whether under this Agreement or under Applicable Laws, will be affected or limited by:

- (a) the rights conferred upon the Authority or the Authority Representative under this Agreement;
- (b) the failure by the Authority or the Authority Representative to exercise any such rights; or
- (c) any instruction of the Authority Representative under Section 15.1.

15.7.2 Nothing under this Agreement shall limit the Authority's remedies under Applicable Laws or otherwise, including with respect to design defects, latent defects, breach of an express or implied warranty, Subcontractor Warranty, gross mistakes or fraud.

15.7.3 The Authority specifically reserves all rights related to the foregoing, including rights to any defect claims under California Code of Civil Procedure section 337.15.

15.8 Title

15.8.1 TSCC Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies provided, or to be provided, by it and its Subcontractors that become part of the Project free and clear of all Liens; and

15.8.2 Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to the Authority, free and clear of all Liens, upon:

- (a) payment by the Authority to TSCC Contractor of invoiced amounts pertaining to such materials, equipment, tools and supplies; and
- (b) the sooner of either (i) incorporation into the Project or (ii) acceptance by the Authority.

16. LIFECYCLE OBJECTIVES AND QUALITY REQUIREMENTS

16.1 Objectives

Without limiting any other TSCC Contractor obligation, TSCC Contractor shall:

- (a) perform the Work to maximize the achievement of the Lifecycle Objectives and Quality Requirements;
- (b) prepare each Submittal in a manner that maximizes the achievement of the Lifecycle Objectives and Quality Requirements; and
- (c) with each preliminary, draft and final Design Document and Project Plan required to be submitted to the Authority under the Scope of Work, submit to the Authority a summary of how the applicable Design Document or Project Plan addresses the requirement provided under Section 16.1(b).

16.2 Consultation

TSCC Contractor shall meet with the Authority Representative, the Authority and Interfacing Contractors at such times as the Authority Representative may require from time to time to:



- (a) review the progress of the Work against the Lifecycle Objectives and Quality Requirements; and
- (b) consult with the Authority Representative, the Authority and Interfacing Contractors as to any designs, materials or methods of construction which they might recommend to maximize the achievement of the Lifecycle Objectives and Quality Requirements.

17. SUBCONTRACTORS AND SUBCONTRACTS; SMALL BUSINESS

17.1 Restrictions on Subcontractors

- (a) Unless otherwise agreed, in writing, by the Authority Representative, any Work performed by a Subcontractor shall be performed in accordance with an Approved Subcontract Agreement, which will be made between TSCC Contractor and the Subcontractor in accordance with the Subcontractor procurement plan.
- (b) Each proposed Subcontract shall be submitted to the Authority for approval in accordance with the Submittal Requirements. No Major Subcontract shall be executed without the Authority's prior written approval of such Major Subcontract. For Subcontracts that are not Major Subcontracts, the Authority shall have five days after receipt to approve (or withhold approval) of such Subcontract.
- (c) Without limiting the Subcontractor procurement plan, TSCC Contractor shall ensure that all Subcontract proposal processes and documentation are conducted:
 - (i) in accordance with Applicable Laws;
 - (ii) on terms which achieve value for money outcomes for the Authority; and
 - (iii) with the highest standards of probity, fairness and equal opportunity.
- (d) Any Work to be performed by a Subcontractor shall be awarded by TSCC Contractor in accordance with the approved Subcontractor procurement plan.
- (e) TSCC Contractor assigns to the Authority all of TSCC Contractor's interests in first-tier Subcontracts now or after entered into by TSCC Contractor for any part of the Work's performance. This assignment will be effective upon the Authority's acceptance in writing and only as to the Subcontracts that the Authority designates in writing. The Authority may accept this assignment at any time during the course of the Work and before Base Project Final Acceptance for the Base Project or Extended Project Final Acceptance for the Extended Project in the event of a suspension or termination of TSCC Contractor's rights under this Agreement. This assignment is part of the consideration to the Authority for entering into this Agreement with TSCC Contractor and may not be withdrawn before Base Project Final Acceptance or Extended Project Final Acceptance, as applicable.

17.2 Subcontracts

17.2.1 TSCC Contractor shall:

- (a) engage and manage each Subcontract;
- (b) be responsible for all Work performed by Subcontractors;
- (c) properly supervise and coordinate the Work performed by Subcontractors to ensure that all Work is in accordance with this Agreement; and



- (d) be responsible for each TSCC-Related Entity's actions, errors, omissions, negligence, willful misconduct, and breach of any Applicable Law or contract, as though TSCC Contractor directly employed all TSCC-Related Entities and any Person acting on their behalf.

17.2.2 The Authority may reasonably object to TSCC Contractor's selection of any Subcontractor.

17.2.3 TSCC Contractor may not amend or terminate any Major Subcontract or the scope of a Listed Subcontractor without the Authority's prior written consent, which the Authority may grant or withhold in its good faith discretion; provided, however, that TSCC Contractor may terminate a Major Subcontract in the event of material default by the Major Subcontractor if TSCC Contractor has provided notice of that intended termination to the Authority at least 15 days in advance of that termination.

17.2.4 No Subcontractor performing Construction Work may start any Work until after the Authority receives and approves a copy of its Subcontract and a copy of its valid California Contractor's License.

17.3 Listed Subcontractors; Substitution of Subcontractors

17.3.1 TSCC Contractor represents and warrants that each Subcontractor required to be identified to the Authority under Public Contract Code section 4104 has been and will be identified as a Listed Subcontractor using the applicable form provided in Schedule 27 (Subcontractor Identification Form).

17.3.2 TSCC Contractor shall not make any substitution of any Listed Subcontractor or other Subcontractor, except in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 et seq. and provided the proposed replacement has at least equivalent experience, ability and expertise, and is approved, in writing, by the Authority Representative (in its sole discretion) before such replacement.

17.3.3 Any additional cost incurred to substitute a Listed Subcontractor or other Subcontractor shall be borne solely by TSCC Contractor and not reimbursable as a Direct Cost or otherwise.

17.4 Subcontract Requirements

17.4.1 Each Subcontract shall be consistent in all respects with this Agreement's terms and conditions to the extent applicable to that Subcontract's scope of work, and each Subcontract shall include all requirements provided in this Section 17.4.1, to the extent applicable.

- (a) The Subcontract shall name the Authority as a third party beneficiary of the Subcontract, with the independent right to enforce all of the terms of the Subcontract for its own benefit and shall state that all guarantees and warranties, express or implied, inure to the benefit of the Authority and its respective successors and assigns.

- (b) The Subcontract shall assign TSCC Contractor's rights under the Subcontract to the Authority, contingent only upon delivery of notice from the Authority following default by TSCC Contractor or termination or expiration of this Agreement, and shall allow the Authority to assume the benefit of such rights with liability only for those remaining TSCC Contractor obligations accruing after the date of the Authority's assumption.



- (c) The Subcontract shall require the Subcontractor to recognize and attorn to the Authority upon receipt of notice from the Authority that it has exercised its rights under this Agreement, without necessity for consent or approval from TSCC Contractor or for a determination of whether the Authority validly exercised its rights. The Subcontract shall include TSCC Contractor's express covenants to waive and release any claim or cause of action against the Subcontractor in connection with its recognition and attornment in reliance on any such notice from the Authority. TSCC Contractor hereby waives such claims and causes of action.
- (d) For Books and Records, the Subcontract shall require the Subcontractor to:
- (i) maintain usual and customary Books and Records for the type and scope of operations of business in which the Subcontractor is engaged (e.g., constructor, equipment supplier, designer, service provider) for no less than the longest time period provided under Section 26;
 - (ii) permit audits and interviews to be conducted by TSCC Contractor, the Authority and such other Persons specified in Section 24.1.5 on no less than the same terms provided under Section 24.1; and
 - (iii) warrant the completeness and accuracy of all information the Subcontractor or its agents provide in connection with the Work or the Subcontract.
- (e) The Subcontract shall require the Subcontractor to:
- (i) provide progress reports to TSCC Contractor appropriate for the type of work the Subcontractor is performing sufficient to enable TSCC Contractor to provide the reports it is required to provide the Authority under this Agreement;
 - (ii) maintain all appropriate licenses and for any Subcontractor performing Construction Work to be registered and maintain registration to perform public work under Labor Code section 1725.5 and to notify of any labor dispute that may delay performance under this Agreement, requiring each subcontractor to give notice and information to the next higher tier subcontractor (or to TSCC Contractor, if it is a direct Subcontract);
 - (iii) participate in meetings between TSCC Contractor and the Authority concerning matters pertaining to the Subcontract or the Subcontractor's Work, upon notice from TSCC Contractor after the Authority's request; and
 - (iv) carry out its applicable scope of work in accordance with this Agreement, applicable Governmental Approvals, and Applicable Laws, and to be joined in any dispute resolution proceeding under Section 30 if the Authority determines such joinder is reasonably necessary to resolve the Dispute.
- (f) The Subcontract shall not allow for its assignment without TSCC Contractor's prior written consent.
- (g) The Subcontract shall provide TSCC Contractor with the right to terminate the Subcontract, in whole or in part, upon any termination for convenience of this Agreement without liability of TSCC Contractor or the Authority for the Subcontractor's Consequential Damages or other damages (except for Subcontractor's undisputed Work duly performed up to the date of termination).



- (h) The Subcontract shall include:
- (i) a standard of professional responsibility or standard for commercial practice (as applicable) equal to or better than the requirements of this Agreement and Good Industry Practice;
 - (ii) warranties, guarantees, and liability provisions of the contracting party in accordance with Good Industry Practice;
 - (iii) effective procedures for claims and change orders, which procedures are consistent with the Change Order process in this Agreement;
 - (iv) the provisions required under Schedule 26 (Federal and State Requirements);
 - (v) the following term:

"Nothing contained herein shall be deemed to create any privity of contract between or among the Authority and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of the Authority to the Subcontractor except those allowed under California law. In the event of any claim or dispute arising under the Subcontract and/or TSCC Contractor's contract with the Authority, the Subcontractor shall look only to TSCC Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against the Authority arising out of the Subcontract or otherwise arising in connection with the Subcontractor's work";
 - (vi) the prompt payment requirements in Section 20.16 and a requirement that the Subcontractor make payments to sub-subcontractors and suppliers in a similar manner;
 - (vii) provisions consistent with Public Contract Code section 9204(d)(5), which provides that a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier subcontractor, that TSCC Contractor present a Claim for Work which was performed by the Subcontractor or by a lower tier subcontractor on behalf of the Subcontractor, and in such event the Subcontractor must furnish reasonable documentation to support the Claim, and within 45 days of receipt of that written request, TSCC Contractor is required to notify the Subcontractor in writing as to whether TSCC Contractor presented the Claim to the Authority and, if TSCC Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so;
 - (viii) the provisions required under Section 18.1(c); and
 - (ix) all other provisions required by this Agreement.
- (i) In each Subcontract that is more than \$100,000, TSCC Contractor shall require compliance with all Environmental Laws, and TSCC Contractor shall take such action as the Authority directs to enforce that requirement.

17.4.2 TSCC Contractor shall ensure that each Major Subcontract shall include the requirements under Section 17.4.1 and the additional requirements that follow:

- (a) the Major Subcontract shall only be terminable for cause, unless the Authority exercises a termination for convenience under this Agreement, in which case TSCC Contractor may terminate the Major Subcontractor for convenience;
- (b) the Major Subcontract shall include an indemnity from the Major Subcontractor in favor of TSCC Contractor and the Indemnified Parties against any and all Losses in connection with any breach



of the Major Subcontract, breach of this Agreement, negligence, gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional misconduct, breach or violation of Applicable Law or any other negligent or culpable act or omission by the Major Subcontractor, breach of Governmental Approvals, or breach of contract by the Major Subcontractor or any of its officers, employees, agents or representatives; provided, however, that such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Major Subcontractor for the active negligence of the Authority, or to relieve the Authority of liability for such active negligence; and

- (c) the Major Subcontract shall include a covenant, expressly stated to survive its termination, to promptly execute and deliver to the Authority a new contract between the Major Subcontractor and the Authority on the same terms and conditions as the Major Subcontract, in the event: (i) TSCC Contractor rejects the Major Subcontract in bankruptcy or otherwise wrongfully terminates it; or (ii) the Authority delivers notice for such new contract following this Agreement's termination or expiration.

17.5 Other Requirements

- 17.5.1** Under section 6109 of the Public Contract Code, no Subcontractor shall perform Work if that Subcontractor is ineligible to perform work on public works projects under section 1777.1 or 1777.7 of the Labor Code.
- 17.5.2** TSCC Contractor shall comply with all other subcontracting requirements in this Agreement, including Schedule 26 (Federal and State Requirements).
- 17.5.3** The amount of retainage to be withheld under Subcontracts shall not exceed the amount withheld by the Authority under this Agreement.
- 17.5.4** Within 10 days after issuance of NTP for any Package, TSCC Contractor shall complete and provide to the Authority a schedule listing all current Subcontractors for the applicable Package, in the form of Schedule 27 (Subcontractor Identification Form). TSCC Contractor shall provide an updated schedule monthly throughout the Work's performance.
- 17.5.5** TSCC Contractor shall allow the Authority access to all Subcontracts and records regarding Subcontracts. TSCC Contractor shall deliver to the Authority, within 10 days after execution, true and complete copies of all Major Subcontracts, and within 10 days after receipt of a request from the Authority, true and complete copies of all other Subcontracts as may be requested. At TSCC Contractor's option, copies of the pages of the Subcontracts delivered to the Authority may be redacted to remove pricing information.
- 17.5.6** The Authority may review the form of the Subcontract used by TSCC Contractor for the Project and require modifications to such form to conform to the requirements in this Agreement.
- 17.5.7** As a condition precedent to Interim Substantial Completion of the Base Project, Extended Project Substantial Completion of the Extended Project, or Completion of an Early Works Package, TSCC Contractor shall procure and provide to the Authority the warranties described in this Agreement from the relevant Subcontractor undertaking or supplying the work or item that is the subject of the warranty.



17.5.8 No warranty will be construed in any way to modify or limit any of the rights, powers or remedies of the Authority against TSCC Contractor under this Agreement or otherwise under Applicable Laws.

17.5.9 If TSCC Contractor is unable to or fails for any reason to provide any warranty required under this Agreement:

- (a) TSCC Contractor is deemed to have provided the warranty itself on like terms;
- (b) the Authority will be entitled to elect to take an assignment of all the right, title and interest in TSCC Contractor's rights against the Subcontractor in relation to the Project Assets; and
- (c) for the purpose of Section 17.5.9(b), TSCC Contractor irrevocably appoints the Authority as its lawful attorney to execute any instrument necessary to give effect to the assignment.

17.5.10 No assignment of any warranty under Section 17.5.9(b) will be construed in any way to modify or limit any of the Authority's rights, powers or remedies against TSCC Contractor under this Agreement or Applicable Laws.

17.6 Systems Provider

17.6.1 To the extent any requirements described in this Agreement are in conflict with the requirements in Schedule 41 (Systems Provider Procurement Requirements), the requirements in Schedule 41 shall prevail over the requirements of this Agreement.

17.7 Small Business

17.7.1 This Agreement is subject to Small Business ("SB"), Disabled Veteran Business Enterprise ("DVBE"), and Disadvantaged Business Enterprise ("DBE") participation goals in compliance with State of California and federal law as further described in Schedule 39 (Small Business Goals and Program Plan).

18. EQUAL EMPLOYMENT OPPORTUNITIES; LABOR; PREVAILING WAGE

18.1 Equal Employment Opportunity

- (a) Without limiting TSCC Contractor's obligations under Schedule 26 (Federal and State Requirements), TSCC Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, denial of medical and family care leave or pregnancy disability leave, or military and veteran status for any portion of the Work.
- (b) TSCC Contractor will take affirmative action to ensure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, denial of medical and family care leave or pregnancy disability leave, or military and veteran status.
- (c) TSCC Contractor shall: (i) require each Subcontractor to comply with the requirements in Section 18.1(a); (ii) include Section 18.1(a) in every Subcontract to which it is a party (including purchase orders and in every subcontract of any TSCC-Related Entity for the Work); and (iii) require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor. Failure by TSCC Contractor to comply with the requirements in Section



18.1(a) shall be a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Authority deems appropriate (subject to TSCC Contractor's rights to notice and opportunity to cure in this Agreement).

- (d) TSCC Contractor confirms that TSCC Contractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that TSCC Contractor maintains no employee facilities segregated on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. TSCC Contractor shall comply with all Applicable Laws relating to equal employment opportunity and nondiscrimination, including those in Schedule 26 (Federal and State Requirements), and shall require its Subcontractors to comply with such provisions.

18.2 Labor Standards

- (a) In performing the Work, TSCC Contractor shall comply, and require all Subcontractors to comply, with all applicable federal and State labor, occupational safety and health laws and orders, including payment of prevailing wages.
- (b) TSCC Contractor shall maintain emergency first aid treatment in compliance with the federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and CCR, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. TSCC Contractor certifies that it is aware of and has complied with the provisions of California Labor Code section 5401.7, which requires every employer to adopt a written injury and illness prevention program.
- (c) By the 15th day of each month during the term of this Agreement, TSCC Contractor shall submit to the Authority certified payroll records for all employees of TSCC Contractor and Subcontractors at all tiers for the preceding calendar month, provided that such obligation only applies to employees directly involved in the Work. These records shall be certified, prepared and submitted to the Authority and the California Department of Industrial Relations ("DIR") (as applicable) in accordance with Applicable Laws, including Labor Code sections 1771.4 and 1776.
- (d) In the event a prevailing wage law violation is discovered, the Authority will provide notice to TSCC Contractor of such violation, and if TSCC Contractor fails to resolve that violation with 30 days after such notice is provided, the Authority shall withhold from TSCC Contractor an amount equal to the amount of underpayment and any applicable penalties that may be assessed in connection with such violation, until the violation is resolved.
- (e) All individuals performing the Work shall be appropriately qualified, experienced, competent and skilled in the performance of the portion of the Work assigned and related obligations of TSCC Contractor in accordance with this Agreement and Good Industry Practice.
- (f) TSCC Contractor shall at all times enforce strict discipline and good order among all personnel performing the Work, including its employees and Subcontractors.
- (g) If any individual performing any portion of the Work is unfit or lacks required qualifications, skill, competence, experience, licensing, certification, registration, permit, approval, bond or insurance or is not performing the Work in a proper, safe and skillful manner, then TSCC Contractor shall, or shall cause the applicable Subcontractor to, remove such individual who shall not be re-employed for any portion of the Work.
- (h) If, after notice and reasonable opportunity to cure, TSCC Contractor either (i) fails to take action as required by Section 18.2(g) or (ii) fails to ensure that appropriately qualified, skilled,



experienced, competent, licensed, certified, registered, permitted and approved personnel are furnished for the proper performance of the Work, then the Authority may suspend the affected portion of the Work by delivering to TSCC Contractor notice of such suspension. Such suspension shall in no way relieve TSCC Contractor of any obligation contained in this Agreement.

18.3 Labor Code Requirements

- (a) TSCC Contractor shall comply and cause its Subcontractors to comply with the provisions of the Labor Code and implementing regulations, including requirements with respect to prevailing wages (including all Davis-Bacon prevailing wage requirements), and employment and training of apprentices, as described in Schedule 26 (Federal and State Requirements).
- (b) TSCC Contractor shall comply with the applicable provisions of the Labor Code and implementing regulations relating to labor nondiscrimination, and with the applicable federal requirements, including those in Schedule 26 (Federal and State Requirements).
- (c) The DIR is responsible for monitoring and enforcing prevailing wage requirements of applicable labor laws so that all contractors working on the Project are in compliance with State (Division 2, Part 7, Chapter 1 of the Labor Code) prevailing wage statutes and regulations. Accordingly, the Project is subject to the requirements of DIR's compliance monitoring and enforcement program in Title 8, Chapter 8, Subchapter 4.5 of the CCR, which include, among other requirements, the obligation to provide payroll records directly to the DIR Labor Commissioner.
- (d) Schedule 26 (Federal and State Requirements) provides information regarding a number of labor compliance requirements applicable to this Agreement under Labor Code section 1776. The labor compliance requirements do not constitute an exhaustive list, and additional labor compliance requirements may apply to this Agreement under other Applicable Laws.
- (e) TSCC Contractor shall post a notice at the Site containing the following language:

"This public works project is subject to monitoring and investigative activities by the Division of Labor Standards Enforcement (DLSE), Department of Industrial Relations, State of California. This notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the Project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this Project may be filed with the office of the DLSE.

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for



hours worked in excess of 8 hours per day or 40 hours per week, etc.) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html.”

- (f) Whenever TSCC Contractor has knowledge that any actual or potential labor dispute may delay its performance under this Agreement, TSCC Contractor shall immediately notify and submit all relevant information to the Authority.

18.4 Prevailing Wages

- (a) TSCC Contractor shall comply, and cause its Subcontractors to comply, with all applicable requirements of Division 2, Part 7, Chapter 1 of the Labor Code, including those in Schedule 26 (Federal and State Requirements).
- (b) If it is found that a TSCC Contractor employee or a Subcontractor has been or is being paid a wage rate less than that required to be paid by this Agreement to be paid, the Authority may declare an TSCC Contractor Default.

18.5 Work under Approved Subcontract Agreements Not to be Varied

18.5.1 TSCC Contractor shall:

- (a) not vary the work which is the subject of an Approved Subcontract Agreement unless:
 - (i) the Authority Representative has provided TSCC Contractor with a Change Order and that Change Order relates directly to the Work that is the subject of the Approved Subcontract Agreement; or
 - (ii) TSCC Contractor makes a written request to the Authority Representative to authorize it to issue a direction to a Subcontractor to vary the Work and the Authority Representative gives written consent to this request; and
- (b) to the fullest extent permitted by law, release, defend, indemnify, and hold the Authority harmless from and against any and all Claims and Losses of any kind, to property or Persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any variation to such Work, which is not made in accordance with Section 18.5.1(a).

18.5.2 If TSCC Contractor terminates an Approved Subcontract Agreement:

- (a) TSCC Contractor shall complete the Work that is the subject of the terminated Approved Subcontract Agreement and bear the costs incurred by TSCC Contractor in completing that Work; and
- (b) such costs will not form part of any costs to be reimbursed or paid to TSCC Contractor under this Agreement, except to the extent that such costs do not exceed the amount of the costs which would have been payable under the terminated Approved Subcontract Agreement.



19. PROGRESS; STARTUP, COMMISSIONING AND ACCEPTANCE TESTING; COMPLETION

19.1 Progress and Time for Completion

TSCC Contractor shall regularly and diligently progress the Work in accordance with this Agreement so as to achieve each Milestone by the applicable Milestone Deadline.

19.2 Design Interface Inputs

19.2.1 Authority-Provided Design Documents Review

- (a) The Authority will provide TSCC Contractor with the Authority-Provided Design Documents for review and comment as described in the Scope of Work.
- (b) Within thirty days after TSCC Contractor's receipt of the Authority-Provided Design Documents, TSCC Contractor shall provide to the Authority:
 - (i) comments to the Authority-Provided Design Documents; or
 - (ii) a signed certification from TSCC Contractor that (A) TSCC Contractor has reviewed the Authority-Provided Design Documents and such design is sufficient for TSCC Contractor to complete the related aspects of the Project in accordance with this Agreement ("**Authority-Provided Design Certification**").
- (c) Within five days after TSCC Contractor's receipt of any revised Authority-Provided Design Documents, TSCC Contractor shall provide the Authority with comments or certification to that revised report. The process in this subsection (c) shall repeat until TSCC Contractor provides to the Authority the Authority-Provided Design Certification.
- (d) Except as set out in Section 19.3, once TSCC Contractor has certified the Authority-Provided Design Documents, any changes to the Authority-Provided Design Documents to accommodate the Project shall be subject to Authority approval, in its sole discretion, and no change or failure to make a change shall entitle TSCC Contractor to any Claim, Change or Change Order.

19.3 Design Interface Input Disputes

Any disagreement between or among the Authority, TSCC Contractor and the Track/OCS Design Services Consultant regarding any certification under Section 19.2 (including the withholding of any such certification) must be submitted to dispute resolution pursuant to Section 30 within 21 days after either Party's receipt of comments or a certification under Sections 19.2.1 that are the subject of the disagreement.

19.4 Package Scope Closeout

19.4.1 TSCC Contractor shall give the Authority Representative written notices(s):

- (a) [120, 90, 60 and 30] days before it anticipates achieving Package Scope Closeout for any Package, including any Optional Package; and
- (b) when TSCC Contractor determines that it has achieved Package Scope Closeout for such Package.

19.5 Authority Representative to Inspect Work for Package Scope Closeout

19.5.1 Within 10 days after the Authority receives notice under Section 19.4.1(b), the Authority Representative will inspect the Work required for the applicable Package and:



- (a) if satisfied that Package Scope Closeout has been achieved, including all conditions to Package Scope Closeout in the applicable Package Specific Information, issue a **“Certificate of Package Scope Closeout”** to the Authority and TSCC Contractor that:
 - (i) states the date upon which the Authority Representative determines Package Scope Closeout was achieved; and
 - (ii) contains a list of any minor Defects (**“Package Punchlist”**), which (A) do not prevent the Work required under the applicable Package from reasonably being used for its intended purpose, and (B) can be corrected without prejudicing the convenient occupation, use, operation and maintenance of the Work required under such Package; or
- (b) if not satisfied that Package Scope Closeout has been achieved, issue a notice so advising TSCC Contractor and the Authority.

19.5.2 If the Authority Representative issues a notice under Section 19.5.1(b), TSCC Contractor shall:

- (a) proceed to complete the Scope of Work for such Package and satisfy all conditions to Package Scope Closeout in the applicable Package Specific Information; and
- (b) when it considers it has achieved Package Scope Closeout, give the Authority Representative written notice to that effect (after which this Section 19.5 will reapply).

19.5.3 Upon the issuance of a Certificate of Package Scope Closeout, TSCC Contractor shall:

- (a) Complete all items on the Package Punchlist prior to Interim Substantial Completion;
- (b) continue operations and maintenance of the Work completed for such Package until (i) Interim Substantial Completion for the Base Project; and/or (ii) Extended Project Substantial Completion for the Extended Project; and
- (c) meet with the Authority Representative, the Authority and Interfacing Contractor(s) for the purpose of ensuring that the Authority Representative, the Authority or its nominee may perform such other activities as may be required by the Authority with respect to the Work performed under such Package.

19.5.4 Following issuance of the Certificate of Package Scope Closeout, the Authority will (a) release 80% of the Retainage withheld from payments made for such Package, and (b) provided that Authority has received replacement Bonds for such Package in the amount of 10% of the outstanding Bonds for such Package, release the existing Bonds for such Package.

19.6 Certificate of Package Scope Closeout

A Certificate of Package Scope Closeout will not:

- (a) constitute approval of the Work for such Package, nor will it be taken as an admission or evidence that the Work has been satisfactorily carried out in accordance with this Agreement;
- (b) constitute an admission or evidence that the Work complies with this Agreement;
- (c) otherwise, constitute any approval, admission or evidence by the Authority or the Authority Representative of TSCC Contractor’s performance or compliance with this Agreement; or



- (d) prejudice any rights or remedies of the Authority or the Authority Representative under this Agreement or otherwise under Applicable Laws.

19.7 TSCC Contractor to Notify of Interim Substantial Completion

19.7.1 TSCC Contractor shall give the Authority Representative written notices(s):

- (a) 120, 90, 60 and 30 days before it anticipates achieving Interim Substantial Completion of the Base Project; and
- (b) when TSCC Contractor determines that it has achieved Interim Substantial Completion of the Base Project.

19.8 Authority Representative to Inspect - Interim Substantial Completion

19.8.1 Within 10 days after the Authority receives notice under Section 19.7.1(b), the Authority Representative will inspect the Base Project and prepare a list of any minor Defects ("**Base Project Punchlist**") that TSCC Contractor must correct prior to achieving Interim Substantial Completion.

19.8.2 Following completion of all items included on the Base Project Punchlist, Authority will again inspect the Base Project and:

- (a) if satisfied that Interim Substantial Completion has been achieved, issue a "**Certificate of Interim Substantial Completion**" to the Authority and TSCC Contractor that:
 - (i) states the date upon which the Authority Representative determines Interim Substantial Completion was achieved; and
 - (ii) provides reasonable details of the work remaining to be performed to achieve Base Project Final Acceptance.
- (b) if not satisfied that Interim Substantial Completion has been achieved, issue a notice so advising TSCC Contractor and the Authority.

19.8.3 If the Authority Representative issues a notice under Section 19.8.2(b), TSCC Contractor shall:

- (a) proceed to bring the Base Project to Interim Substantial Completion; and
- (b) when it considers it has achieved Interim Substantial Completion, give the Authority Representative written notice to that effect (after which this Section 19.8 will reapply).

19.8.4 Upon the issuance of a Certificate of Interim Substantial Completion, TSCC Contractor shall:

- (a) fully cooperate with the Authority Representative, the Authority and Interfacing Contractors and provide the Authority with such other specific assistance as may be required by the Authority to facilitate the timely, efficient, comprehensive and smooth commissioning of the Base Project; and
- (b) meet with the Authority Representative, the Authority and Interfacing Contractor(s) for the purpose of ensuring that the Authority Representative, the Authority or its nominee may perform such other activities as may be required by the Authority with respect to the Base Project.



19.9 Base Project Final Acceptance Work

During the Base Project Final Acceptance Period, TSCC Contractor shall:

- (a) correct any further Defects listed in the Certificate of Interim Substantial Completion by the date(s) specified by the Authority Representative;
- (b) perform the Base Project Final Acceptance Work; and
- (c) do all things reasonably required by the Authority to ensure Base Project Final Acceptance is achieved by the Base Project Final Acceptance Deadline.

19.10 TSCC Contractor to Notify of Base Project Final Acceptance

TSCC Contractor shall give the Authority Representative written notice(s):

- (a) 30 days before it anticipates achieving Base Project Final Acceptance; and
- (b) when TSCC Contractor determines that it has achieved Base Project Final Acceptance.

19.11 Authority Representative to Inspect – Base Project Final Acceptance

19.11.1 Within 10 days after the Authority receives notice under Section 19.10(b), the Authority Representative will inspect the Work and:

- (a) if satisfied that Base Project Final Acceptance has been achieved, issue a “**Certificate of Base Project Final Acceptance**” to the Authority and TSCC Contractor stating the date upon which the Authority Representative determines Base Project Final Acceptance was achieved; or
- (b) if not satisfied that Base Project Final Acceptance has been achieved, issue a notice so advising TSCC Contractor and the Authority.

19.11.2 If the Authority Representative issues a notice under Section 19.11.1(b), TSCC Contractor shall:

- (a) proceed to bring the Work to Base Project Final Acceptance; and
- (b) when it considers it has achieved Base Project Final Acceptance, give the Authority Representative written notice to that effect (after which this Section 19.11 will reapply).

19.12 TSCC Contractor to Notify of Extended Project Substantial Completion

19.12.1 TSCC Contractor shall give the Authority Representative written notices(s):

- (a) 120, 90, 60 and 30 days before it anticipates achieving Extended Project Substantial Completion of the Extended Project; and
- (b) when TSCC Contractor determines that it has achieved Extended Project Substantial Completion of the Extended Project.

19.13 Authority Representative to Inspect - Extended Project Substantial Completion

19.13.1 Within 10 days after the Authority receives notice under Section 19.12.1(b), the Authority Representative will inspect the Extended Project and prepare a list of any minor Defects



(“**Extended Project Punchlist**”) that TSCC Contractor must correct prior to achieving Extended Project Substantial Completion.

19.13.2 Following completion of all items included on the Extended Project Punchlist, Authority will again inspect the Extended Project and:

- (a) if satisfied that Extended Project Substantial Completion has been achieved, issue a “**Certificate of Extended Project Substantial Completion**” to the Authority and TSCC Contractor that:
 - (i) states the date upon which the Authority Representative determines Extended Project Substantial Completion was achieved; and
 - (ii) provides reasonable details of the work remaining to be performed to achieve Extended Project Final Acceptance.
- (b) if not satisfied that Extended Project Substantial Completion has been achieved, issue a notice so advising TSCC Contractor and the Authority.

19.13.3 If the Authority Representative issues a notice under Section 19.13.2(b), TSCC Contractor shall:

- (a) proceed to bring the Extended Project to Extended Project Substantial Completion; and
- (b) when it considers it has achieved Extended Project Substantial Completion, give the Authority Representative written notice to that effect (after which this Section 19.13 will reapply).

19.13.4 Upon the issuance of a Certificate of Extended Project Substantial Completion, TSCC Contractor shall:

- (a) fully cooperate with the Authority Representative, the Authority and Interfacing Contractors and provide the Authority with such other specific assistance as may be required by the Authority to facilitate the timely, efficient, comprehensive and smooth commissioning of the Extended Project; and
- (b) meet with the Authority Representative, the Authority and Interfacing Contractor(s) for the purpose of ensuring that the Authority Representative, the Authority or its nominee may perform such other activities as may be required by the Authority with respect to the Extended Project.

19.14 Extended Project Final Acceptance Work

During the Extended Project Final Acceptance Period, TSCC Contractor shall:

- (a) correct any further Defects listed in the Certificate of Extended Project Substantial Completion by the date(s) specified by the Authority Representative;
- (b) perform the Extended Project Final Acceptance Work; and
- (c) do all things reasonably required by the Authority to ensure Extended Project Final Acceptance is achieved by the Extended Project Final Acceptance Deadline.

19.15 TSCC Contractor to Notify of Extended Project Final Acceptance

TSCC Contractor shall give the Authority Representative written notice(s):

- (a) 30 days before it anticipates achieving Extended Project Final Acceptance; and



- (b) when TSCC Contractor determines that it has achieved Extended Project Final Acceptance.

19.16 Authority Representative to Inspect – Extended Project Final Acceptance

19.16.1 Within 10 days after the Authority receives notice under Section 19.15(b), the Authority Representative will inspect the Work and:

- (a) if satisfied that Extended Project Final Acceptance has been achieved, issue a “**Certificate of Extended Project Final Acceptance**” to the Authority and TSCC Contractor stating the date upon which the Authority Representative determines Extended Project Final Acceptance was achieved; or
- (b) if not satisfied that Extended Project Final Acceptance has been achieved, issue a notice so advising TSCC Contractor and the Authority.

19.16.2 If the Authority Representative issues a notice under Section 19.16.1(b), TSCC Contractor shall:

- (a) proceed to bring the Work to Extended Project Final Acceptance; and
- (b) when it considers it has achieved Extended Project Final Acceptance, give the Authority Representative written notice to that effect (after which this Section 19.16 will reapply).

19.17 Certificates of Interim Substantial Completion, Base Project Final Acceptance, Extended Project Substantial Completion, Extended Project Final Acceptance

The Authority’s issuance of any Certificate of Interim Substantial Completion, Certificate of Base Project Final Acceptance, Certificate of Extended Project Substantial Completion, or Certificate of Extended Project Final Acceptance will not release TSCC Contractor or sureties from liability for any fraud in construction; in obtaining periodic payments; in payment for materials, labor, or other supplies or services for the Work; or for any claims for damages, loss, or injury sustained by any person through the fault, negligence, or conduct of TSCC Contractor or any employees, agents, Subcontractors, suppliers, or representatives in respect of the Work.

19.18 Liquidated Damages and Indemnity for Delay

19.18.1 If:

- (a) Interim Substantial Completion of the Base Project has not occurred by the Interim Substantial Completion Deadline;
- (b) Extended Project Substantial Completion of the Extended Project has not occurred by the Extended Project Completion Deadline;
- (c) Any Package Milestone is not achieved by the applicable Package Milestone Deadline; or
- (d) Completion or other Milestone of any Early Works Package, as agreed to by the Parties in any Package Specific Information, is not achieved by its applicable Milestone Deadline,

then, in each case TSCC Contractor shall pay to the Authority liquidated damages, which shall accrue at the applicable rate specified in the applicable Package Specific Information, if any, for every day after the applicable Milestone Deadline until the first to occur of the following: (i) the relevant Milestone is achieved; (ii) the Expiration Date; or (iii) 365 days after the Milestone Deadline has elapsed.

19.18.2 Liquidated damages under Section 19.10.1 shall constitute the Authority’s sole right to monetary damages for delay to Interim Substantial Completion of the Base Project,



Extended Project Substantial Completion of the Extended Project or Completion of an Early Works Package.

19.18.3 The Parties agree that the liquidated damages under Section 19.10.1: (a) are reasonable and represent good faith estimates and evaluations by the Parties as to the actual, potential damages or harm the Authority would incur as a result of delay described in Section 19.10.1; and (b) do not constitute a penalty.

19.18.4 The Parties intend for the liquidated damages described in Section 19.12 to constitute “liquidated damages” as such term is used in California Public Contract Code section 10226 to the extent said statute may apply and to constitute “stipulated damages” to the extent that said statute is not applicable.

20. PAYMENTS TO TSCC CONTRACTOR

[Note to Proposers: The Authority is currently considering a risk-sharing pool concept which is under development and will be added to the Agreement by way of addendum once finalized. It is anticipated that the Authority will designate a pool of funds which will be accessible by either party to cover costs of delay or damages, including force majeure, delays to the work, delays in material delivery, etc., as well as for the payment of the early completion incentives identified below. The Authority intends to have further conversations with Proposers to discuss this concept in upcoming one-on-one meetings. Until the concept is finalized and included in an addendum, the Authority cannot guarantee that such a concept will be added to the Agreement.]

20.1 Development of Final Package Prices

- (a) The Parties shall agree modifications to the Table of Rates and Prices as follows:
- (i) During Package 1B, the Parties shall agree on modifications or adjustments to the final design for Package 2B and negotiate in good faith, on an Open Book Basis to reach an agreement on the proposed adjustments or newly developed Direct Costs, as applicable, to the Table of Rates and Prices. When assessing the reasonableness of the proposed updates to the Table of Rates and Prices, the Authority may review the Escrowed Proposal Documents and other supporting information provided by TSCC Contractor related to the costs, among other things. Upon the Authority’s approval of a Package Price Proposal for Package 2B, the Table of Rates and Prices then in effect shall be replaced or supplemented by the approved updates as part of the Package Amendment.
 - (ii) Upon receipt of a Package Price Request for Packages 3A, 3B, and 4, TSCC Contractor shall update the Table of Rates and Prices then in effect to include the proposed Direct Costs, Bond and Insurance Costs, TSCC Contractor Fee, and Final Package Price for the applicable Package and submit the updated Table of Rates and Prices to the Authority in the Package Price Proposal. Then the Parties shall negotiate in good faith, on an Open Book Basis to reach an agreement on the proposed adjustments or newly developed Direct Costs, as applicable. When assessing the reasonableness of the proposed updates to the Table of Rates and Prices, the Authority may review the Escrowed Proposal Documents and other supporting information provided by TSCC Contractor related to the costs, among other things. Upon the Authority’s approval of a Package Price Proposal, the Table of Rates and Prices then in effect shall be replaced or supplemented by the approved updates as part of the Package Amendment and Final Package Price shall be included in the Project Specific Information.
- (b) In response to a Package Price Request, TSCC Contractor shall submit to the Authority a written proposal (each, a “**Package Price Proposal**”) including, at a minimum, the following information:



- (i) a proposed updated Table of Rates and Prices, if applicable; (ii) a proposed Final Package Price, which shall be calculated, in accordance with Schedule 23 (Final Package Price Schedule), based on the Table of Rates and Prices then in effect or the proposed updated version, if applicable; and (iii) any supporting information regarding the proposed updated Table of Rates and Prices or other components of the proposed Final Package Price reasonably requested by the Authority. Once received, the Authority will review, negotiate, and approve the Package Price Proposal together with the other Package Specific Information proposed for the relevant Package in accordance with Section 10.9.
- (c) The Package Price Proposal and Final Package Prices for Packages 5, 6, and 7 will be developed by the Parties in accordance with Schedule 41 (Systems Provider Procurement Requirements); provided that the Final Package Price for each such Package shall be calculated in accordance with Schedule 23 (Final Package Price Schedule).
- (d) The agreed Final Package Price set forth in the Package Specific Information, once effected through the applicable Package Amendment, may only be modified through a Change Order.

20.2 Payment of Final Package Prices

Subject to the issuance of an NTP and the other applicable conditions to payment under this Agreement, the Authority agrees to pay TSCC Contractor the Final Package Price for each Package on a monthly basis for the performance of the Work under the Package based on the percentage of Work completed under such Package and subject to the invoicing and payment terms set forth in Sections 20.10 and 20.11.

20.3 Taxes

- 20.3.1** TSCC Contractor shall pay, prior to delinquency, all applicable Taxes.
- 20.3.2** TSCC Contractor may not make any Claim due to its misinterpretation of Applicable Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes.
- 20.3.3** In the event that an exemption from applicable sales or use taxes becomes available for the Project, the Authority shall have no obligation to reimburse TSCC Contractor for any such taxes, and the Authority shall be entitled to an upfront payment from TSCC Contractor or a reduction in payments made by the Authority, as agreed upon by the Parties, equal to the amount actually saved following the date such exemption becomes available.
- 20.3.4** The Parties agree that they intend for the arrangements provided for in the Project documents to be treated as a partnership for federal income tax purposes under Subtitle A, Chapter 1, Subchapter K of the Internal Revenue Code of 1986, as amended.

20.4 Payment for Bonds and Insurance, Tariffs

- 20.4.1** The Authority shall reimburse TSCC Contractor for Bond and Insurance Costs actually paid, without markup, and not to exceed the amounts stated in the applicable Package Specific Information. With each invoice for payment of Bond and Insurance Costs, TSCC Contractor shall submit to the Authority receipts or other documentation required by the Authority as to the amount paid.
- 20.4.2** TSCC Contractor may invoice those pass-through amounts no earlier than the first invoice following NTP for any Package, for the portion of the Final Package Price for such Package allocated to Bond and Insurance Costs for such Package.



- 20.4.3** TSCC Contractor shall not be entitled to be paid for any difference between the not-to-exceed amounts stated in the Package Specific Information and the amounts payable under Section 20.4.1.
- 20.4.4** The Authority shall reimburse TSCC Contractor for Tariffs actually paid on the importation of Tariff Materials, without markup. With each invoice for payment of such Tariff, TSCC Contractor shall submit to the Authority receipts or other documentation required by the Authority as to the amount paid. TSCC Contractor shall maintain detailed records in connection with each Tariff for the Tariff Materials. No time extension or schedule relief shall be provided in connection with a Tariff Event and the only relief applicable to Tariffs (including with respect to a Tariff Event) shall be as set forth in this Section 20.4.
- 20.4.5** In addition to TSCC Contractor's obligations to minimize and mitigate potential Claims and Change Orders pursuant to the Agreement, in connection with a Tariff Event, TSCC Contractor shall immediately consult with the Authority upon the occurrence of a Tariff Event about the opportunities and options to minimize the effect of the Tariffs and Tariff Event and shall take affirmative action to advance materials and supplies procurement and consider potential replacement materials and supplies and sources of affected materials and supplies.
- 20.4.6** As part of the efforts to minimize and mitigate the effects of Tariffs pursuant to Section 20.4.5, TSCC Contractor shall use commercially reasonable efforts to identify and propose one or more Substitute Tariff Materials that are manufactured or substantially produced in a jurisdiction not subject to the applicable Tariff Event (or subject to a lower Tariff), and available within a timeframe and quality consistent with the Agreement. As part of any payment of Tariffs pursuant to this Section 20.4, TSCC Contractor shall (i) submit written evidence demonstrating that it actively evaluated and pursued Substitute Tariff Materials from alternate sources; (ii) providing detail as to the reasons such substitutes were technically or commercially infeasible, if applicable; and (iii) affirmatively stating that no viable Substitute Tariff Materials were available that met the requirements of the Agreement without material delay or cost increase. The Authority shall have the right to approve or reject any proposed Substitute Tariff Material based on technical compatibility, schedule impact, cost, overall Project quality and compliance with the requirements of the Agreement.

20.5 Allowance Items and Allowance Values.

- 20.5.1** The Parties shall:
- (a) collaborate in good faith to review the Allowance Items and Allowance Values based on design information then available to determine Allowance Values that constitute reasonable estimates for the associated Allowance Items; and
 - (b) collaborate in good faith during design preparation to develop Construction Documents consistent with the Allowance Values.
- 20.5.2** For each Allowance Item, the Authority Representative will give TSCC Contractor a written instruction either deleting that Allowance Item from this Agreement or requiring TSCC Contractor to proceed with the relevant Allowance Item (before TSCC Contractor may perform the Allowance Item).
- 20.5.3** If any Allowance Item is deleted from this Agreement:



- (a) the applicable Final Package Price will be reduced by the Allowance Value; and
- (b) the Authority may engage an Interfacing Contractor to carry out the Allowance Item or perform that Allowance Item itself.

20.5.4 All other costs, including design fees and any General Requirements Costs are deemed to be included in the original Final Package Price for the applicable Package as provided in the Package Specific Information and are not subject to adjustment, regardless of the actual costs of the Allowance Item.

20.5.5 Subject to Section 20.5.6, if an Allowance Item's actual cost differs from the stated Allowance Value, then the applicable Final Package Price shall be adjusted accordingly by Change Order; provided, TSCC Contractor shall submit to the Authority written notice of the difference between the actual cost and the Allowance Value. The amount of the Change Order shall identify the difference between actual cost incurred by TSCC Contractor for the particular Allowance Item and the Allowance Value and reflect a proportional adjustment to the TSCC Contractor Fee.

20.5.6 If an Allowance Item's actual cost is less than the stated Allowance Value, the Authority may (in its sole discretion) authorize TSCC Contractor to allocate any unused amount to another existing Allowance Item in the same Package.

20.5.7 Notwithstanding Section 20.5.5, the Authority shall be responsible for the cost of flaggers in a fixed amount not to exceed the Flagging Allowance of \$[500,000]. If the cost of flagging exceeds the Flagging Allowance, TSCC Contractor shall be responsible for any amounts in excess of \$[500,000] up to a maximum of \$[1,000,000]. If the cost of flagging exceeds \$[1,000,000], the parties shall each pay 50% of all amounts in excess of \$[1,000,000].

20.6 Contingencies in Subcontracted Work

20.6.1 Without limiting Section 20.5 and subject to Section 20.6.2, TSCC Contractor acknowledges and agrees that each Subcontractor engaged to perform Work on a lump sum basis:

- (a) is deemed to have allowed in its lump sum for all Work that may be required of such Subcontractor, except for any Change due to a Relief Event or Change Order directed by the Authority; and
- (b) will not be entitled to any increase in the lump sum or to make any other Claim against the Authority arising in connection with any Change in the scope of that Subcontractor's portion of the Work from that anticipated by the Subcontractor when it proposed its lump sum, except for any additional Work due to a Relief Event or Change Order directed or approved by the Authority.

and TSCC Contractor shall ensure that the foregoing terms are reflected in the terms of each relevant Approved Subcontract Agreement.

20.6.2 TSCC Contractor acknowledges and agrees that nothing in this Section 20.6:

- (a) confers any rights or entitlements on TSCC Contractor;
- (b) relieves TSCC Contractor from, or alters or affects, TSCC Contractor's liabilities or responsibilities whether under this Agreement or under Applicable Laws; or
- (c) prejudices the Authority's rights against TSCC Contractor whether under this Agreement or under



Applicable Laws.

20.7 Calculation of General Requirements Costs

20.7.1 All General Requirements Costs shall be established in accordance with this Section 20.7 and Schedule 18 (Table of Rates and Prices).

20.7.2 After issuance of NTP for any Package, and provided the Authority (in its sole discretion) approved the General Requirements Costs proposed in the Package Price Proposal for such Package, the General Requirements Costs set forth in the applicable Package Specific Information shall not be modified for any reason, except where TSCC Contractor is entitled to compensation for a the Authority-Caused Delay or Change in Law that qualifies as a Compensable Event pursuant to Section 22.3.

20.7.3 Any modification to the General Requirements Costs permitted under this Agreement shall be calculated as provided in this Section 20.7.3, added to the General Requirements Costs by Change Order, and subject to the following:

- (a) TSCC Contractor shall be entitled to receive a liquidated daily rate for Extended General Requirements Costs for each day that a Milestone Deadline is extended pursuant to Section 22.3 for an Authority-Caused Delay or Change in Law (“**TSCC Contractor’s Delay Rate**”);
- (b) the TSCC Contractor’s Delay Rate shall be calculated by dividing the General Requirements Costs by the number of days in applicable Package as provided in the most recent version of the Baseline Schedule prior to the Authority-Caused Delay or Change in Law (as applicable); and
- (c) the TSCC Contractor’s Delay Rate shall be multiplied by the number of days that a Milestone Deadline is extended pursuant to Section 22.3, which shall constitute the “**Extended General Requirements Costs**.”

20.8 Unit Costs

- (a) The Table of Rates and Prices includes Unit Costs agreed on by the Parties.
- (b) TSCC Contractor shall only be compensated for those Unit Costs that are specified in the agreed-upon Table of Rates and Prices and that are actually incurred and submitted for reimbursement in an invoice.
- (c) TSCC Contractor shall be compensated for all Unit Costs within the applicable Final Package Price

20.9 Incentives for Construction Work

20.9.1 TSCC Contractor and Authority recognize that both parties will realize financial and other benefits if certain Milestones are achieved prior to their applicable Milestone Deadline.

20.9.2 Authority and TSCC Contractor agree that as an incentive for completion of the following milestones, Authority shall pay TSCC Contractor the following incentive payments up to the applicable maximum incentive amount:

- (a) CP 4. Authority shall pay TSCC Contractor an incentive of \$[225,000] for every mile of track completed in CP 4 on or before [December 1, 2026], up to a maximum of 60 miles (\$[5 million]). **[Note to Proposers: The Authority is further evaluating the incentive for laying track in 2026 and the amounts and deadlines in this Section 20.9.2(a) remain subject to discussion and revision]**



- (b) Interim Substantial Completion. Authority shall pay TSCC Contractor an incentive of \$[40 million] if TSCC Contractor achieves Interim Substantial Completion prior to the Interim Substantial Completion Deadline. **[Note to Proposers: The Authority is further evaluating the incentive for Interim Substantial Completion and the amounts and deadlines in this Section 20.9.2(b) remain subject to discussion and revision]**

20.9.3 For the purposes of calculating the Incentives under this Section 20.9, TSCC Contractor agrees that it shall not be entitled to any extension of the applicable Milestone Deadlines for any delay except to the extent caused by the intentional or bad faith acts of Authority to prevent achievement of such Milestone Deadlines.

20.9.4 As conditions precedent to TSCC Contractor's entitlement to the Incentives:

- (a) TSCC Contractor must have (i) for the Incentive in Section 20.9.2(a), installed track in the CP 4 geographical area in accordance with this Agreement and all Technical Requirements and specifications on or before December 1, 2026, and (ii) for the Incentive in Section 20.9.2(b) achieved Interim Substantial Completion of the Base Project in accordance with this Agreement and all Technical Requirements and specifications on or before [July 1, 2031]; and
- (b) TSCC Contractor must have agreed to release Authority from all Claims in connection with all applicable Work in accordance with Section 20.12.1(c)(v).

20.9.5 Receiving an incentive the completed Work does not relieve TSCC Contractor of any obligations to repair Defects as described in this Agreement.

20.10 Invoices

TSCC Contractor shall submit to the Authority Representative an invoice on account of all amounts then payable by the Authority to TSCC Contractor under this Agreement:

- (a) monthly (unless some other period is agreed to by the Parties in writing), until the Expiration Date;
- (b) in the format which the Authority Representative may reasonably require;
- (c) which is based on the applicable Table of Rates and Prices to the extent relevant;
- (d) for any Package, a breakdown, by work breakdown structure (in accordance with Schedule 37 (Project Controls Requirements)), of the Final Package Price, which shows separately the amounts (if any) claimed on account of:
- (i) each Unit Cost applicable to the Work performed during the relevant period and the related quantity of Work performed;
 - (ii) TSCC Contractor Fee;
 - (iii) General Requirements Cost;
 - (iv) payment allocated to Tariffs;
 - (v) Bond and Insurance Costs; and
 - (vi) all other amounts then payable by the Authority to TSCC Contractor under this Agreement;
- (e) which provides a current, up-to-date Baseline Schedule;



- (f) which includes:
 - (i) the amounts paid to Subcontractors from the payments made by the Authority to TSCC Contractor with respect to the prior month's invoice;
 - (ii) affidavits of payment and unconditional waivers of Liens and claims, in the applicable forms required under Civil Code sections 8132 and 8138, executed by TSCC Contractor and each Subcontractor with respect to all amounts paid in the prior month's invoice; and
 - (iii) Subcontractor payment releases in the form required in Civil Code sections 8132 through 8138; and
- (g) which sets out or attaches sufficient details, calculations, receipts, supporting documentation and other information on an Open Book Basis with respect to all amounts claimed by TSCC Contractor:
 - (i) to enable the Authority Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Authority to TSCC Contractor under this Agreement; and
 - (ii) including any such documentation or information, which the Authority Representative may by written notice from time to time require TSCC Contractor to set out or attach, whether in relation to a specific invoice or all invoices generally.

20.11 Payment by Authority

20.11.1 Within 45 days after the Authority's receipt of a complete invoice that satisfies all the requirements in Section 20.10, the Authority shall approve or dispute all or a portion of such invoice. The Authority shall provide TSCC Contractor the reason(s) for any disputed portions of such invoice and withhold the disputed amount, and Section 20.17 shall apply. The Authority shall pay TSCC Contractor the undisputed amount of such invoice approved for payment less any applicable Retainage and less any amounts that the Authority is otherwise entitled to withhold or deduct under this Agreement.

20.11.2 No payment by the Authority is or shall be construed as: (a) evidence of the value of Work, (b) evidence that the Work has been satisfactorily carried out in accordance with this Agreement, (c) an admission of liability by the Authority, (d) an approval by the Authority of TSCC Contractor performance or compliance with this Agreement, (e) an acknowledgement that the Authority has inspected or accepted the Work, or (f) a waiver of any Claim or right that the Authority may then or thereafter have, including among others, warranty and indemnity rights.

20.11.3 All payments made by the Authority shall be subject to correction or adjustment in subsequent progress reviews and payments.

20.12 Final Invoice and Notice of Payment

20.12.1 Final payment for the Work shall not become due to TSCC Contractor under this Agreement until:

- (a) with respect to the Base Project, all conditions to Base Project Final Acceptance required under this Agreement have been satisfied;
- (b) with respect to the Extended Project, all conditions to Extended Project Final Acceptance required under this Agreement have been satisfied; and



- (c) TSCC Contractor submits to the Authority an invoice for final payment showing the proposed total amount due to TSCC Contractor, including Retainage, which invoice shall include:
- (i) all requirements for invoices under Section 20.10;
 - (ii) a list of all outstanding or pending TSCC Contractor requests for Change Order and all existing or threatened Claims, Liens and stop payment notices by Subcontractors, Utility Owners, or other third parties relating to the Project, stating the amount at issue associated with each such notice;
 - (iii) complete and legally effective releases or waivers of Liens and stop payment notices, in the applicable forms required under Civil Code sections 8132 through 8138, from all Persons legally eligible to file Liens and stop payment notices in connection with the Work; except that (as applicable) TSCC Contractor may provide release bonds, or other security acceptable to the Authority, in amounts equal to 125% of amounts claimed in any stop payment notices filed in connection with the Project;
 - (iv) consent of each Surety and any Guarantor to the final payment for Work;
 - (v) an executed release from TSCC Contractor for any Claims that arise in connection with the Work that survive the final payment, including an express and unconditional waiver and release sufficient to waive any rights and benefits TSCC Contractor may have under section 1542 of the Civil Code, which shall release and waive any Claims against the Indemnified Parties, excluding only those Claims under dispute at the time such release is given; such release shall be accompanied by an affidavit from TSCC Contractor certifying that:
 - A. all Work has been performed and completed in accordance with this Agreement;
 - B. it has resolved any Claims made by Subcontractors, Utility Owners, and others against TSCC Contractor or the Project;
 - C. it has no reason to believe that any Person has a valid Claim against TSCC Contractor or the Project which TSCC Contractor has not provided notice of to the Authority as of the date of the invoice for final payment; and
 - D. all guarantees and warranties required hereunder, including Subcontractor warranties, are in full force and effect;
 - (vi) bills of sale or other instruments of title transfer or assignment with respect to Intellectual Property (excluding Project Intellectual Property), as requested by the Authority, free and clear of Liens, Claims and encumbrances;
 - (vii) bills of sale or other instruments of title transfer or assignment with respect to the items specified in Section 29(d);
 - (viii) affidavits of prevailing wages paid, signed and submitted by TSCC Contractor and each Subcontractor required to submit such an affidavit under Labor Code section 1775(b)(4) in the form required under Applicable Laws;
 - (ix) assignment to the Authority of all right, title and interest in and to all claims and causes of action it might have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, equipment, hardware, software or materials in accordance with this Agreement or any Subcontract;



- (x) an accounting of any Incentive under Section 20.9;
 - (xi) an accounting of any remaining portion of the General Requirements Cost and TSCC Contractor's Fee which has not yet been paid by the Authority; and
 - (xii) such other supporting documentation to enable the Authority to fully and accurately determine (without needing to refer to any other documentation or information) the amounts payable by the Authority to TSCC Contractor, including any information reasonably requested by the Authority.
- (d) the Authority may withhold amounts for any Claims under dispute at the time a release is given under Section 20.12.1(c)(v) in accordance with Sections 20.15.1(f) and 20.15.2. After the dispute is resolved, TSCC Contractor shall comply with this Section 20.12.1 as a precondition to final payment of any amount no longer in dispute.

20.13 Interest

20.13.1 Any amounts that TSCC Contractor owes to the Authority under this Agreement shall earn interest from the date such amounts are due to the Authority at the lesser rate of either (a) 10% per annum or (b) the maximum rate allowable under Applicable Laws. The foregoing interest charges are separate and in addition to any administrative charge payable by TSCC Contractor to the Authority under this Agreement.

20.13.2 If payment of any undisputed amount from the Authority to TSCC Contractor is made after the 45th day following the proper submission of an undisputed and properly completed invoice in accordance with Section 20.10 or Section 20.12 (as applicable), then the payment shall include interest on the amount owing, at the rate in Code of Civil Procedure section 685.010(a), from the 45th day after the payment was due until the date of payment.

20.13.3 Interest shall not accrue on Retainage or monies withheld pursuant to stop notices or the final payment under this Agreement.

20.14 Correction of Payment Statements

In any payment statement given by the Authority Representative, the Authority Representative may:

- (a) correct any error in any previous payment statement; or
- (b) modify any previous payment statement.

20.15 Deductions, Exclusions and Limitations on Payment

20.15.1 Retainage

- (a) The Authority shall withhold funds ("**Retainage**") from each payment to be made to TSCC Contractor under this Agreement from the date of the first NTP issued under this Agreement until (i) the Date of Base Project Final Acceptance for the Base Project and (ii) the Date of Extended Project Final Acceptance for the Extended Project, the Retainage shall be an amount equal to 5% of the payment amount for the Work.
- (b) Except as otherwise provided in Section 20.15.1(d), the earliest dates for release of Retainage are as follows:
 - (i) (A) 80% of the Retainage held for the any Package 30 days after the Authority approves



Package Scope Closeout for such Package; and (B) the remaining Retainage 60 days after the Authority approves (1) Base Project Final Acceptance for the Base Project or (2) Extended Project Final Acceptance for the Extended Project.

- (c) Except as otherwise provided in Section 20.15.1(d), no portion of any Retainage shall be released until the following conditions have been met:
- (i) all liquidated damages have been paid to the Authority in accordance with this Agreement;
 - (ii) TSCC Contractor has established to the Authority's satisfaction that liquidated damages are not anticipated to be owing to the Authority;
 - (iii) TSCC Contractor has provided notice requesting release of Retainage;
 - (iv) no TSCC Contractor Default has occurred or remains uncured, and no event has occurred that, with the passage of time or the giving of notice, would constitute a TSCC Contractor Default;
 - (v) TSCC Contractor has delivered to the Authority (1) evidence, satisfactory to the Authority, that all persons eligible to file a Claim regarding the Work for such Package have been fully paid, and (2) unconditional releases of Liens and stop payment notices from all Subcontractors who filed a preliminary notice of a Claim for the Work for such Package; or (y) the statutory period for Subcontractors to file a Claim for such Package has expired and no Claims have been filed; and
 - (vi) release of the applicable Retainage has been approved in writing by each Surety.
- (d) The Authority shall release Retainage withheld for any Work completed by any Subcontractor once per fiscal quarter upon receipt of a quarterly application from TSCC Contractor (i) stating the Subcontractor has satisfactorily completed all Work required to be performed under its Subcontract, (ii) stating the amount withheld by TSCC Contractor under the Subcontract, and (iii) providing all backup information and stop payment notice and Lien releases as may be required by the Authority.
- (e) Within seven days after receipt of payment of Retainage from the Authority to TSCC Contractor for completed subcontracted Work, TSCC Contractor shall pay to the applicable Subcontractor (i.e., the Subcontractor that completed the subcontracted Work) all moneys withheld as retention from the Subcontractor, even if Work to be performed by TSCC Contractor or other Subcontractors is not completed and has not been accepted. TSCC Contractor shall show good cause and obtain the Authority's prior written consent for any delay or postponement in payment of retainage over 30 days.
- (f) The amounts to be released under Section 20.15.1(b) shall be reduced by 150% of the sum of the following: (i) any amounts which the Authority is permitted to retain under Public Contract Code section 7107 or 9203; (ii) any amounts applied to the payment of Losses incurred by the Authority for which TSCC Contractor is responsible; (iii) any amounts that the Authority deems advisable, in its good faith discretion, to retain to cover any existing or threatened Claims, Liens and stop payment notices from Subcontractors, suppliers, laborers, Utility Owners, or other third parties relating to the Project; (iv) the estimated cost, as determined by the Authority, in its good faith discretion, of remedying any Defects or otherwise remedying any breach of contract or TSCC Contractor Default by TSCC Contractor; (v) any amounts the Authority is required to retain under applicable federal law, including 26 U.S.C. § 3402; and (vi) any liquidated damages.



- (g) Final payment of Retainage not applied as a result of Section 20.15.1(f) shall be made upon TSCC Contractor's showing, to the Authority's satisfaction, that all such matters have been resolved, and TSCC Contractor shall deliver to the Authority a certificate representing that there are no outstanding Claims of TSCC Contractor or any Claims, Liens or stop payment notices of any Subcontractor, supplier, laborer, Utility Owner or other third party with respect to the Work.
- (h) TSCC Contractor may substitute securities or a letter of credit for the Retainage pursuant to the procedures contained in Public Contract Code section 22300. No such substitution shall be accepted until: (i) the Authority approves such securities or letter of credit as qualifying substitutes; (ii) the value of such securities has been established to the Authority's satisfaction; (iii) the Parties have entered into an escrow agreement (if the securities are to be held in escrow) in form substantially similar to that contained in Public Contract Code section 22300; and (iv) all documentation necessary for assignment of the securities to the Authority or to the escrow agent, as appropriate, has been delivered in form and substance satisfactory to the Authority. If TSCC Contractor has substituted securities for any of the Retainage, then the Authority may request that such securities be revalued from time to time, but not more often than monthly. Such revaluation would be made by the Person designated by the Authority and approved by TSCC Contractor. If such revaluation results in a determination that such securities have a market value less than the amount of Retainage for which they were substituted, then, notwithstanding anything to the contrary contained in this Agreement, the amount of the Retainage required under this Agreement shall be increased by such difference in market value. Such increased Retainage shall be withheld from the next progress payment due to TSCC Contractor under this Agreement.

20.15.2 Withholding of Payment

- (a) Notwithstanding any other provision of this Agreement and in addition to any other authorized deductions, the Authority may deduct from any payment owing under this Agreement:
- (i) any amounts due and payable, charge, payment, reimbursement or other moneys due from TSCC Contractor to the Authority, whether under this Agreement or under Applicable Laws, including liquidated damages that have accrued as of the date of any invoice or that are anticipated to accrue based on the Milestone Deadlines shown in the Baseline Schedule;
 - (ii) any Claim that the Authority or others as specified below may have against TSCC Contractor, including:
 - A. failure of TSCC Contractor to make payments of undisputed amounts to a Subcontractor when such payments are due under the Subcontract, which failure is not cured by TSCC Contractor; and
 - B. Claims by any third party for which TSCC Contractor is or may be responsible;
 - (iii) if a notice to stop payment is filed with the Authority, due to TSCC Contractor's failure to pay for labor or materials used in the Work, money due for such labor or materials, plus the 25% prescribed by law, will be withheld from payment to TSCC Contractor; provided that in accordance with Civil Code section 9364, the Authority may accept a bond by a corporate surety in lieu of withholding payment;
 - (iv) any sums expended by or owing to the Authority as a result of TSCC Contractor's failure to maintain any as-built documents;
 - (v) any sums expended by the Authority in performing any of TSCC Contractor's obligations under this Agreement that TSCC Contractor has failed to perform or that the Authority



- may elect to undertake itself (including Base Project Final Acceptance Work or Extended Project Final Acceptance Work, as applicable) plus an administrative charge equal to 10% of such costs;
- (vi) any sums for a Change Order that decreases, omits, deletes or removes Work as provided in the applicable Change Order;
 - (vii) any sums for Defects that are not timely remedied by TSCC Contractor under the terms of this Agreement;
 - (viii) any sums for liquidated damages assessed under Section 8.5 or 19.12; and
 - (ix) all legally required sums for, but not limited to, stop notices, labor and tax Liens, including any fines or penalties the Authority incurs because of the failure or alleged failure by any TSCC-Related Entity to comply with the Governmental Approvals or Applicable Laws (including any Environmental Laws).
- (b) The failure by the Authority to deduct any of these sums from any payment shall not constitute a waiver of the Authority's rights to such sums or of its rights with respect to any breach or default related thereto. When the reasons for deducting, offsetting or withholding payment are removed, the Authority shall pay TSCC Contractor for amounts previously deducted as part of the next monthly payment.

20.16 Payment to Subcontractors

- 20.16.1** Upon receipt of payment from the Authority, TSCC Contractor shall pay each Subcontractor within seven days of receipt of payment from the Authority, out of the amount paid to TSCC Contractor on account of such Subcontractor's portion of the Work, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract; provided any such retainage may not exceed the amount of Retainage withheld under this Agreement.
- 20.16.2** Any breach of the prompt payment requirements in this Section 20.16 shall subject TSCC Contractor to the penalties, sanctions and other remedies specified in Business and Professions Code section 7108.5, and may result in the application of appropriate administrative sanctions, including the Authority's right to withhold two percent of the invoice amount due to TSCC Contractor as a penalty for every month that full payment is not made to a Subcontractor. This requirement shall not be construed to limit or impair any contractual, administrative, judicial or equitable remedies otherwise available to TSCC Contractor or any Subcontractor against each other in the event of a dispute involving late payment or nonpayment by TSCC Contractor or deficient Subcontract performance or noncompliance by a Subcontractor.
- 20.16.3** The Authority has no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Applicable Laws. Within five days after submission of any notice of Claim that is based in whole or in part on a request by a Subcontractor for a price increase or time extension under its Subcontract, TSCC Contractor shall review and analyze the Claim, determine in good faith and certify that it is justified under the Subcontract and that TSCC Contractor is justified in making its request for an increase in compensation and/or time extension. Each such notice involving Subcontractor work shall include a summary of TSCC Contractor's analysis of the Claim. Any such notice under this Section 20.16 shall be considered incomplete if it involves Subcontractor Work and is not accompanied by such analysis and certification.



20.17 Disputes

20.17.1 Failure by the Authority to pay any amount in dispute shall not alleviate, diminish or modify in any respect TSCC Contractor's obligation to perform the Work in accordance with this Agreement, and TSCC Contractor shall not cease or slow down its performance under this Agreement on account of any such amount in dispute. Any Dispute regarding payment shall be resolved in accordance with Section 30. TSCC Contractor shall proceed as directed by the Authority pending resolution of the Dispute. If TSCC Contractor disagrees with directions provided by the Authority and such directions or determination are subject to the dispute resolution process under this Agreement, it may provide written notice to the Authority that it is performing such Work under protest, that it has not waived or renounced any rights and retains the right to submit a Claim in accordance with Section 30. Upon resolution of any such Dispute, each Party shall promptly pay to the other any amount owing.

20.17.2 Pending resolution of a Dispute, TSCC Contractor shall continue performance of all obligations under this Agreement, without diminution of effort, and the Authority shall continue to make all undisputed payments in accordance with this Agreement.

21. GENERAL PROVISIONS APPLYING TO RELIEF EVENTS

21.1 Sole Entitlement

To the fullest extent permitted by Applicable Laws, TSCC Contractor acknowledges and agrees that:

- (a) the amounts payable under Section 20 constitute full compensation for performance of the Work; and
- (b) TSCC Contractor's sole right to claim an extension of time, additional compensation, relief from performance of its obligations, or other relief under this Agreement or to otherwise make any Claim in connection with any Relief Event are as set out in Sections 21 through 23.

21.2 Mitigation

The TSCC Contractor shall take all proper and reasonable steps within its control to both prevent the occurrence of a Relief Event and minimize its consequences. Such steps may include resequencing, reallocating, or redeploying personnel, equipment, and resources to other Work, as appropriate.

21.3 Deductions for Relief Events

21.3.1 The compensation payable or relief due to TSCC Contractor with respect to any Relief Event will be reduced:

- (a) by any amount which an TSCC-Related Entity recovers under any insurance policy in connection with the Relief Event, or would have recovered if it had complied with the requirements of this Agreement, and which such amount will not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy; and
- (b) by the amount of any costs avoided or otherwise reduced as a result of the Relief Event.

21.3.2 No compensation will be allowed for any Relief Event to the extent that, the Relief Event arises out of, relates to or was caused or contributed to by:

- (a) any TSCC Contractor Fault; or



- (b) to the extent of TSCC Contractor's failure to take all proper and commercially reasonable steps necessary and within its control both to preclude and to minimize the occurrence and consequences of the Relief Event, including by resequencing, reallocating, or redeploying personnel, equipment and resources to other Work, as appropriate.

22. RELIEF EVENTS

22.1 Notice

- 22.1.1** In addition to a Notice of Potential Time Impact required pursuant to Section 3.9.1 of Schedule 37 (Project Controls Requirements), TSCC Contractor is required to provide to the Authority with notice or information with respect to a Relief Event in the form of a "**Relief Event Notice.**"
- 22.1.2** Without limiting TSCC Contractor's obligations under Section 10.6, and notwithstanding any time frames set forth in Section 3.9.2 of Schedule 37 (Project Controls Requirements), TSCC Contractor shall provide a Relief Event Notice to the Authority as soon as possible, but no later than 5 days after TSCC Contractor has Actual Knowledge of or should have known, in performing its obligations in accordance with Good Industry Practice, of a Relief Event that occurs after the Effective Date, but before the Interim Substantial Completion Deadline for the Base Project, the Extended Project Substantial Completion Deadline for the Extended Project or any Completion Deadline for an Early Works Package, which may delay the achievement of Base Project Substantial Completion by the Interim Substantial Completion Deadline, Extended Project Substantial Completion by the Extended Project Substantial Completion Deadline, Completion of any Early Works Package by the applicable Completion Deadline, any Milestone by the applicable Milestone Deadline, or may otherwise materially adversely impact performance of the Work.
- 22.1.3** Each Relief Event Notice shall include, in addition to any submission requirements included in Section 3.9.2 of Schedule 37 (Project Controls Requirements):
 - (a) all information required under Section 6 of Schedule 37 (Project Controls Requirements);
 - (b) a summary of the provisions of this Agreement that entitle TSCC Contractor to relief;
 - (c) sufficient details of the Relief Event to enable the Authority Representative to make an informed decision on whether to grant relief, the circumstances from which the Relief Event arises including its nature, cause, the date of its occurrence, its duration, and the portions of the Project affected;
 - (d) details of the contemporary records which TSCC Contractor shall maintain to substantiate its Claim for relief;
 - (e) in the case of a Relief Event materially impacting the Work before Interim Substantial Completion of the Base Project, Extended Project Substantial Completion of the Extended Project or Completion of an Early Works Package, analysis of consequences (whether direct or indirect, financial or non-financial) the Relief Event may have upon timely achievement of Interim Substantial Completion by the Interim Substantial Completion Deadline, Extended Project Substantial Completion by the Extended Project Substantial Completion Deadline or any Milestone by the applicable Milestone Deadline. Such analysis shall include, but is not limited to:
 - (i) a time impact analysis identifying all activities represented or affected by the change, including activity numbers, durations, predecessor and successor relationships, resources, and cost;



- (ii) a narrative report, in a form satisfactory to the Authority, comparing the proposed revised schedule to the original Baseline Schedule; and
- (iii) rescheduling of activities not otherwise affected by the Relief Event to take advantage of additional scheduling Float resulting from the time extension.

All analyses and reports shall be prepared and submitted in accordance with the requirements set forth in Schedule 37 (Project Controls Requirements).

- (f) where the Relief Event is also a Compensable Event, an itemized estimate of all amounts claimed under Section 22.3;
- (g) details and amounts of applicable deductions under Section 21.3 and measures which TSCC Contractor has taken to date and proposes to adopt to mitigate and minimize the consequences of the Relief Event;
- (h) where the Relief Event involves a Subcontractor, all correspondence relating to, or arising out of, the Relief Event with the Subcontractor; and
- (i) a detailed description (with dates) of all steps and actions that TSCC Contractor has taken to minimize, avoid and mitigate the occurrence and consequences of the Relief Event.

22.1.4 TSCC Contractor shall submit to the Authority supplemental information to substantiate or support TSCC Contractor's Claim within seven days of receipt of any such request from the Authority.

22.1.5 Upon receipt of all details and information described above, the Authority Representative may request further supporting particulars or carry out an inspection to investigate and assess the validity of TSCC Contractor's Claim, including, on-site inspection. TSCC Contractor shall promptly comply with any such request from the Authority Representative.

22.1.6 If the direction or other fact, matter or thing upon which the Relief Event under Section 22.1.3 is based, or the consequences of the direction or other fact, matter or thing are continuing, TSCC Contractor shall continue to give the information required by Section 22.1.3 every 28 days after the Relief Event Notice under Section 22.1.3 was submitted or given to the Authority Representative, until after the direction or other fact, matter or thing upon which the Relief Event is based has, or the consequences thereof have, ceased.

22.2 Delay in Notification

22.2.1 If TSCC Contractor fails to submit any Relief Event Notice within the timeframe required under this Agreement, then TSCC Contractor shall not be entitled to make any Claim for Losses in connection with that Relief Event, unless TSCC Contractor proves to the Authority, based on clear and convincing evidence, that: (a) the Authority was not materially prejudiced by the lack of the Relief Event Notice; or (b) the Authority Representative had Actual Knowledge of the Relief Event before the due date for the Relief Event Notice.

22.2.2 Notwithstanding anything to the contrary in Section 22.2.1, if TSCC Contractor fails to submit any Relief Event Notice within 15 days after the timeframe required under this Agreement, or fails to include information required by Section 22.1, then TSCC



Contractor shall not be entitled to make any Claim for Losses in connection with the Relief Event.

22.3 Relief Events Impacting the Work before Base Project Final Acceptance or Extended Project Final Acceptance

22.3.1 If:

- (a) a Relief Event occurs after the Effective Date and before the applicable Milestone Deadline for such Work that will:
 - (i) delay the achievement of such Milestone by the applicable Milestone Deadline; or
 - (ii) materially adversely impact performance of the Work; and
- (b) TSCC Contractor has complied with Sections 21 and 22, then, subject to Sections 23 and 24, the Authority, in its reasonable discretion, shall provide TSCC Contractor with either:
 - (i) an adjustment to the Milestone Deadline (based on Critical Path method analysis), to the extent that the delay is directly caused by the Relief Event; or
 - (ii) an authorization to accelerate the performance of the Work, without an adjustment to the Milestone Deadline; provided:
 - A. such acceleration, in the Authority's reasonable determination, is commercially reasonable; and
 - B. Section 22.3.2 shall apply to the extra Direct Costs as a result of such acceleration.

22.3.2 Subject to Section 21.3, if a Relief Event that qualifies under Section 22.3.1 is also a Compensable Event, then TSCC Contractor shall be entitled to have the applicable Final Package Price adjusted as follows:

- (a) the Final Package Price may be increased or decreased by:
 - (i) the extra Direct Costs as a result of the Compensable Event, and in the case of an Authority-Caused Delay or Change in Law only; plus
 - (ii) for any Package with Construction Work, Extended General Conditions Cost to the extent permitted under Section 20.7.3; plus
 - (iii) an Authority-approved adjustment to the TSCC Contractor's Fee that shall not exceed the Maximum Fee Percentage of the extra Direct Costs due to the Compensable Event;

in each case above, as determined by the Authority Representative under Section 23.3.

22.3.3 If TSCC Contractor has made a Claim for an extension of time in accordance with Section 22.3.1, TSCC Contractor is not entitled to an extension of time to the Interim Substantial Completion Deadline or Extended Project Substantial Completion Deadline, as applicable, to the extent and for so long as the Relief Event is concurrent with any other unrelated delay to a Critical Path for which any TSCC-Related Entity is responsible under this Agreement.

22.3.4 If a Force Majeure Event is concurrent with any other Relief Event (other than a delay for which the TSCC Contractor or any TSCC-Related Entity is responsible), the TSCC



Contractor shall be entitled to a time extension only, for the period of concurrency, to the extent that such Force Majeure Event or Relief Event affects the Critical Path.

22.3.5 No monetary compensation, adjustment to any Final Package Price, or other financial relief shall be due to the TSCC Contractor for any period of concurrency between a Force Majeure Event and another Relief Event, unless expressly provided otherwise under this Agreement.

22.4 Relief Due to Force Majeure Event During the Term

22.4.1 Notwithstanding anything to the contrary in this Section 22, if:

- (a) any part of the Project Assets is wholly or substantially destroyed or damaged by a Force Majeure Event which is not insured against and is not required to be insured against in accordance with this Agreement; and
- (b) the Authority requires TSCC Contractor to repair, replace or rebuild those Project Assets, then

the Parties will use reasonable efforts to negotiate and agree on how those Project Assets will be repaired, replaced or rebuilt; provided the Parties' attempts to negotiate shall not limit any of the Authority's other rights or remedies under this Agreement, including the right of the Authority to issue a Directive Letter to perform the repair, replacement and rebuilding. Any such agreement will be documented by way of a Change Order.

22.5 Change in Project Standards during the Term

If, after the applicable Setting Date, there is any change or variance in a Project Standard that is inconsistent with requirements of this Agreement:

- (a) the Party discovering the change or variance must promptly give the Authority Representative and the other Party notice in writing;
- (b) the Authority Representative shall, within 14 days of receipt of a notice under Section 22.5(a), instruct TSCC Contractor as to the course it must adopt insofar as the Work is affected by the change or variance; and
- (c) if the Authority directs the TSCC Contractor to comply with the change or variance, TSCC Contractor will be entitled to relief in accordance with Section 22.3, as if the change or variance in the Project Standards was a Relief Event, provided TSCC Contractor has complied with Sections 21 and 22.

22.6 Extension of Time in Approved Subcontract Agreements

TSCC Contractor is required to administer the provisions of each Approved Subcontract Agreement strictly in accordance with their terms and must not approve an extension of time or unilaterally grant an extension of time to any Subcontractor, unless:

- (a) the Subcontractor is entitled to such extension of time under the terms of the Approved Subcontract Agreement;
- (b) TSCC Contractor has given notice of the proposed extension of time to the Authority Representative, including details of the Subcontractor's entitlement to such an extension of time in accordance with the terms of the Approved Subcontract Agreement; and



- (c) the Authority Representative has given written approval of the extension of time.

No extension of time under a Subcontract shall constitute an extension of time under this Agreement unless the circumstances independently entitle TSCC Contractor an extension of time under this Agreement.

23. CHANGE ORDERS

23.1 Change Order Price Request

- 23.1.1** At any time during the term of this Agreement, the Authority Representative may issue a “**Change Order Price Request**” to TSCC Contractor, which will set out details of a proposed Change that the Authority is considering.
- 23.1.2** TSCC Contractor shall immediately take all action required under any relevant Subcontract in relation to each Subcontractor that would be involved in carrying out the proposed Change.
- 23.1.3** Within 30 days of the receipt of a Change Order Price Request, TSCC Contractor shall provide the Authority Representative with a written notice that includes:
- (a) the adjustment (if any) to the applicable Final Package Price to carry out the proposed Change, determined in accordance with Schedule 37 (Project Controls Requirements); and
 - (b) the effect (if any) that the carrying out of the proposed Change will have on:
 - (i) the Direct Costs to perform the Work;
 - (ii) if Section 23.3.1(b) applies, the General Requirements Cost;
 - (iii) the Baseline Schedule, including the achievement of each Milestone by the applicable Milestone Deadline; and
 - (iv) performance of the Work.

23.2 Authority Change Orders and Directive Letters

- 23.2.1** Whether or not the Authority Representative has issued a Change Order Price Request under Section 23.1, the Authority Representative may at any time during the term of this Agreement direct TSCC Contractor to carry out a Change by issuing a “**Change Order**” in which the Authority Representative will state one of the following:
- (a) the proposed adjustments to the amounts payable under this Agreement as set out in TSCC Contractor’s notice under Section 23.1 are agreed and will be made; or
 - (b) any adjustment to the amounts payable under this Agreement will be determined under Section 23.3.
- 23.2.2** The Authority may, at any time and for any reason, issue a Directive Letter to TSCC Contractor in the event of any desired change in the Work or in the event of any Dispute regarding the Scope of Work. The Directive Letter will state that it is issued under this Section 23.2 and will describe the Work in question and will state the basis for determining compensation, if any.
- 23.2.3** TSCC Contractor shall immediately implement the Work in accordance with any Directive Letter issued by the Authority; provided TSCC Contractor may notify the



Authority that it considers the directed Work to constitute a Change and request that the Authority issue a Change Order under Section 23.2.1 (in such event, TSCC Contractor shall proceed with implementation of the Work while the issue of whether the directed Work is a Change is resolved between the parties or pursuant to a Dispute).

23.2.4 Notwithstanding Sections 23.2.1 and 23.2.2, the Authority will not issue a Change Order or Directive Letter with respect to the Work for an Early Works Package after its Date of Completion.

23.2.5 Clarifications or other written communications issued by the Authority that are intended solely to interpret, explain, or confirm requirements of the Agreement shall not be considered Directive Letters, shall not constitute a change to the Work, and shall not entitle the TSCC Contractor to any adjustment of a Final Package Price, the Baseline Schedule, or other term of this Agreement.

23.3 Valuation of Change Order

23.3.1 Subject to Section 23.8, the amounts payable under this Agreement will be adjusted as follows:

- (a) where a Change Order requires a Change, the Final Package Price will be adjusted as follows:
 - (i) as agreed under Section 23.2.1(a); and
 - (ii) if Section 23.3.1(a)(i) does not apply, based on a negotiated lump sum price, Unit Costs or time and materials, with the method determined by the Authority in its sole discretion;
- (b) if time and materials is used, the General Requirements Cost will only be adjusted in accordance with Sections 20.7, as applicable.

23.3.2 No adjustment to any TSCC Contractor's Fee shall exceed an amount equal to the Maximum Fee Percentage for the relevant Package multiplied by the additional Direct Costs incurred as a direct result of the Change.

23.4 Change Orders and Directive Letters Generally

23.4.1 The adjustments agreed to or determined under Section 23.3 with respect to any Change will be deemed to be in full satisfaction of all Claims, compensation and schedule relief with respect to such further work required for the Change, notwithstanding that the amounts actually payable by TSCC Contractor to relevant Subcontractors with respect to such work may be more or less than the adjustment.

23.4.2 No Change Order will invalidate this Agreement, irrespective of the nature, extent or value of the Work that is the subject of the Change.

23.4.3 TSCC Contractor shall immediately comply with any Change Order or Directive Letter issued by the Authority.

23.4.4 If TSCC Contractor undertakes any efforts outside the scope of the Work under the Agreement, without a Directive Letter or Change Order signed by the Authority, TSCC Contractor shall be deemed to have undertaken such efforts voluntarily, and shall not be entitled to a Change Order. If, following receipt of a Directive Letter, TSCC Contractor believes that the directed Work is a Change, it must provide notice pursuant to Section 31.1 and any failure to do so shall carry the same implications as set forth in Section 31.3.



23.5 Omissions

If a Change Order or any direction by the Authority Representative omits any part of the Work or an Early Works Package, the Authority may thereafter carry out the omitted work itself or by engaging Interfacing Contractors. Except in the event that the Authority has exercised any step-in rights and/or undertaken Work that TSCC Contractor has failed to perform in accordance with this Agreement, in the event the Authority performs Work itself or engages Interfacing Contractors in accordance with this Section 23.5, TSCC Contractor shall not have any liability or warranty obligations for the specific Work carried out by the Authority.

23.6 TSCC Contractor Change Order Request

23.6.1 TSCC Contractor may, for its convenience, request the Authority Representative to issue a Change Order. Any such request must be in writing and must contain the following details:

- (a) a description of the Change Order;
- (b) the additional or reduced costs or time involved in the Change Order;
- (c) any benefits which will flow to the Authority from the Change Order;
- (d) the effect which the Change Order will have upon the Baseline Schedule, if any; and
- (e) the effect which the Change Order will have upon the future cost of operating and maintaining the Work.

23.6.2 TSCC Contractor may also request the Authority Representative to issue a Change Order if at any time following the receipt of an NTP for Packages 2, 3, or 4, TSCC Contractor determines that completion of the Work under the Package will require one or more quantities of Work that differ from the Authority-Provided Quantities used to calculate the Final Package Price then in effect. Any such request must be in writing and must contain the following minimum details:

- (a) the requested Change(s) regarding the Authority-Provided Quantity(ies);
- (b) identification of the Unit Costs that will be impacted by the Change(s) in Authority-Provided Quantity(ies) and any adjustment requested as a result of the proposed Change in the Authority-Provided Quantity(ies); and
- (c) the rationale, supporting evidence and other details to sufficiently explain the requested Change(s) in Authority-Provided Quantities and Unit Costs.

23.6.3 Any cost savings realized by TSCC Contractor from a TSCC Contractor requested Change Order shall be shared equally between the Parties.

23.6.4 Any cost savings realized by the Authority from a TSCC Contractor requested Change Order shall remain with the Authority.

23.7 Authority Representative's Determination

23.7.1 After a request is made by TSCC Contractor in accordance with Section 23.6, the Authority Representative will, in the Authority Representative's sole discretion, give a written notice to TSCC Contractor:

- (a) rejecting the request;



- (b) requesting additional information or clarifications with respect to the request (and TSCC Contractor shall have 10 days in which to respond with such requested information and clarifications, such process to continue until the Authority acts pursuant to clause (a) or clause (c); or
- (c) approving the request either conditionally or unconditionally.

23.7.2 The Authority Representative will not be obliged to exercise its discretion for TSCC Contractor's benefit.

23.8 TSCC Contractor Change Order Request Approved by Authority Representative

If the Authority Representative issues a written notice under Section 23.7 approving TSCC Contractor's request under Section 23.6:

- (a) amounts payable under this Agreement (or the methods of determining them) will be reduced by or adjusted to reflect the Parties sharing equally in savings under Section 23.6.2; and
- (b) TSCC Contractor will be responsible for all parts of the Work which are in any way affected by the Change Order.

24. DOCUMENTS AND RECORDS

24.1 Maintenance and Access

24.1.1 TSCC Contractor shall maintain at its Project administration office within the County of [], a complete, accurate and up to date set of all Books and Records, including copies of all original documents delivered to the Authority. TSCC Contractor shall notify the Authority where such records and documents are kept.

24.1.2 TSCC Contractor shall keep and maintain all Books and Records required under Section 24.1.1 in accordance with applicable provisions of this Agreement, and otherwise in accordance with Good Industry Practice until seven years after the Expiration Date or the termination of this Agreement (as applicable); provided, however, that all Books and Records which relate to Claims being processed or Disputes brought under the dispute resolution procedures of this Agreement shall be retained and made available until such Disputes and Claims have been finally resolved.

24.1.3 The Authority may:

- (a) review and audit TSCC Contractor, its Subcontractors and their respective Books and Records, and interview any employees of TSCC Contractor and its Subcontractors who may reasonably have information related to such records as and when the Authority deems necessary from time to time:
 - (i) for the purposes of verifying compliance with this Agreement, the Governmental Approvals and Applicable Laws; and
 - (ii) in connection with the issuance of Change Orders and Agreement amendments or the resolution of Disputes and Claims; and
- (b) audit TSCC Contractor's Quality Management Plan(s) ("**QMP**") and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the QMP(s) and its component parts, plans and other documentation.



- 24.1.4** TSCC Contractor shall provide, or cause to be provided to the Authority, such information or certifications as determined necessary or desirable by the Authority that is in connection with any HSR System financing, including any loan or bonds issued by the Authority, any information for inclusion in the Authority's securities disclosure documents, any information in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. TSCC Contractor shall provide customary representations and warranties to the Authority and the capital markets as to the correctness, completeness and accuracy of any information furnished.
- 24.1.5** TSCC Contractor shall grant to the Authority and its representatives and legal counsel, and to any Governmental Entities that the Authority is required to provide such audit rights pursuant to any HSR System funding agreement or any Applicable Law, the audit and inspection rights under Section 24.1.3 without charge, and agrees to allow such Persons such access to such Books and Records and the Work. Such Persons may conduct any such audit of Books and Records or inspection of the Work upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud or other criminal activity. The right of audit and inspection includes the right to make copies and extracts and take notes.
- 24.1.6** Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all Books and Records and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates TSCC Contractor has been over credited under a previous progress report or progress payment such over-credit will, at the Authority's sole option, be credited against current progress reports or payments or reimbursed to the Authority by TSCC Contractor upon demand therefor.
- 24.1.7** For cost and pricing data submitted in connection with pricing Change Orders or Agreement amendments, unless such pricing is based on adequate price competition (as determined by the Authority), established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by Applicable Laws, such Persons and their representatives have the right to examine all Books and Records related to the negotiation of or performance of Work under such Change Orders and Agreement amendments for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.
- 24.1.8** All Claims or Disputes filed against the Authority shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees, representatives or agents of the Authority or by an auditor under contract with the Authority. No notice is required to commence any audit within 45 days after the Base Project Final Acceptance Date or the Extended Project Final Acceptance Date, as applicable. Thereafter, the Authority shall provide 15 days' notice to TSCC Contractor, any Subcontractors or their respective agents before commencing an audit of any Claim or Dispute. TSCC Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to the Authority, for the audit during normal business hours. TSCC Contractor, Subcontractors or their agents shall cooperate with the auditors. Failure of TSCC Contractor, Subcontractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditor access to the Books and Records of TSCC Contractor, Subcontractors



or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder.

- 24.1.9** Material compliance by TSCC Contractor with the provisions of this Section 24.1 is a contractual condition precedent to TSCC Contractor's right to seek relief.
- 24.1.10** TSCC Contractor represents and warrants the completeness and accuracy of all information (including Books and Records) it or its agents provide in connection with the audits specified in this Agreement, and shall cause all Subcontractors to warrant the completeness and accuracy of all information (including Books and Records such Subcontractors or their agents provide in connection with this Section 24.1).
- 24.1.11** TSCC Contractor's internal and third party quality and compliance auditing responsibilities shall be specified in the QMP(s).
- 24.1.12** TSCC Contractor shall collect and preserve each of the following types of data in written form contemporaneously during TSCC Contractor's performance of the Work, which shall be in form approved by the Authority:
- (a) monthly report of labor by classification of management, supervision, engineering and other technical personnel used on the job;
 - (b) daily labor and equipment reports from TSCC Contractor and each Subcontractor for construction related activities;
 - (c) a daily occurrence log (in the form of a bound book with entries in ink) for construction related activities which shall be maintained by TSCC Contractor Representative or his designee(s), in which shall be recorded daily in a narrative form all significant occurrences on the Project, including permit problems, unusual weather, asserted Force Majeure Events, events and conditions causing or threatening to cause delay or disruption or interference with the progress of any of the Work, known injuries to person or property, a listing of each activity depicted on the Baseline Schedule which is being actively prosecuted, notifications given and received, and significant Project-related meetings; and
 - (d) a daily record in a format reasonably acceptable to the Authority, recording all labor, materials and equipment expenses which are being incurred by reason of any event, condition or circumstance which TSCC Contractor believes is or may become the subject of a Claim against the Authority. Any initialed or signed concurrence by the Authority Representative (or designees) will be for purposes of verifying physical labor, material and equipment count rather than validating TSCC Contractor's Claims.
- 24.1.13** To the extent requested by the Authority, TSCC Contractor shall provide the Authority with access to and a copy of each item described in this Section 24; provided, however, that the provision of such information shall not constitute notice to the Authority.
- 24.1.14** Under Government Code section 8546.7, this Agreement and TSCC Contractor and the Authority, as the contracting parties, are subject to the examination and audit of the California State Auditor, at the request of the Authority or as part of any audit of the Authority, for a period of three years after the final payment under this Agreement. In addition the Authority shall have the right to examine and audit all Books and Records and other data related to negotiating, pricing, or performing the Work in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Authority, for a period of four years after final payment under this Agreement.



24.2 Public Records Act

- 24.2.1** TSCC Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials prepared, owned, used or retained by the Authority, including materials submitted by TSCC Contractor, are subject to the provisions of the California Public Records Act (Government Code section 7920 et seq.) ("**Public Records Act**").
- 24.2.2** If TSCC Contractor believes information or materials submitted to the Authority constitute trade secrets, proprietary information or other information that is not subject to or is excepted from disclosure under the Public Records Act, TSCC Contractor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 24.2 shall modify or amend requirements and obligations imposed on the Authority by the Public Records Act or other Applicable Laws, and the provisions of the Public Records Act or other Applicable Laws shall control in the event of a conflict between the procedures described above and the Applicable Laws. TSCC Contractor is advised to contact legal counsel concerning such Applicable Laws and their application to TSCC Contractor.
- 24.2.3** If the Authority receives a request for public disclosure of materials marked "CONFIDENTIAL," the Authority will use reasonable efforts to provide notice to TSCC Contractor of the request and give TSCC Contractor an opportunity to identify, by notice, a claimed exception under the Public Records Act or other Applicable Laws within the time period specified in the notice issued by the Authority and allowed under the Public Records Act. Under no circumstances, however, will the Authority be responsible or liable to TSCC Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Applicable Laws or court order, or occurs through inadvertence, mistake or negligence on the part of the Authority or its officers, representative, agents, employees, contractors or consultants.
- 24.2.4** In the event of any proceeding or litigation concerning the disclosure of any material submitted by TSCC Contractor to the Authority (including a protective order or temporary restraining order to prevent a disclosure), the Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect to the material, and TSCC Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials; provided, however, that the Authority reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of the Authority's voluntary intervention or participation in litigation, TSCC Contractor shall pay and reimburse the Authority within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs the Authority incurs in connection with any litigation, proceeding or request for disclosure.

24.3 Ownership of Documents

Subject to Section 24.4, all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence, reports, analyses, studies and other documents and materials created or collected under the terms of this Agreement shall be considered "works made for hire" under the US Copyright Act for which the Authority owns the copyright. Design Documents shall become the Authority's property upon preparation;



Construction Documents shall become the Authority's property upon delivery to the Authority; and other documents prepared or obtained by TSCC Contractor in connection with the performance of its obligations under this Agreement, including studies, manuals, as-built documents, technical and other reports and the like, shall become the property of the Authority upon TSCC Contractor's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be provided to the Authority upon preparation or receipt thereof by TSCC Contractor. TSCC Contractor shall maintain all other documents described in this paragraph in accordance with all requirements under Section 24 and shall deliver copies to the Authority as required by this Agreement or upon request if not otherwise required to be delivered, with an indexed set delivered to the Authority as a condition to Base Project Final Acceptance and Extended Project Final Acceptance, as applicable.

24.4 Intellectual Property

24.4.1 Developed Intellectual Property

- (a) Without limiting the generality of Section 24.3, TSCC Contractor hereby assigns to the Authority all rights, title and interest in and to the Developed Intellectual Property including any and all Design Documents, Construction Documents, Submittals, Source Code, Source Code Documentation, and other embodiments of Intellectual Property. TSCC Contractor shall execute such further documents and do such further acts as may be necessary to perfect, register, or enforce the Authority's ownership of such rights, in whole or in part.
- (b) TSCC Contractor shall deliver to the Authority all documents, materials, Submittals and other results of Work authored, created or developed under or for the purpose of this Agreement (i) in accordance with this Agreement, or (ii) as soon as reasonably practicable after such creation or generation, but in no event later than the Expiration Date.
- (c) Subject to Section 26.2.1(e), TSCC Contractor, its Affiliates and its Subcontractors shall have no liability or responsibility to the Authority for Claims made or Losses sustained in connection with the use or unauthorized use of Developed Intellectual Property by the Authority, any Authority-member entity or any regional Governmental Entity on any project, other than the Project, the HSR System or any future or other extension or expansion of the Project or the HSR System.

24.4.2 Subject Patents and Inventions

- (a) The following terms are defined only for purposes of this Section 24.4.2 (all other capitalized terms are as defined in Section 1.1):
 - (i) **Invention** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
 - (ii) **Practical Application** means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the Invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
 - (iii) **Statutory Period** means the one-year period before the effective filing date of a claimed Invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.
 - (iv) **Subject Patent or Invention** means any Invention of TSCC Contractor conceived or first actually reduced to practice in the performance of Work.



(b) **Allocation of Rights**

TSCC Contractor may retain the entire right, title, and interest throughout the world to each Subject Patent or Invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any Subject Patent or Invention in which TSCC Contractor retains title, the Authority will receive a nonexclusive, nontransferable (subject to [Section 24.4.2\(e\)](#)), irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Patent or Invention throughout the world.

(c) **Invention Disclosure, Election of Title and Filing of Patent Application by TSCC Contractor**

- (i) TSCC Contractor will disclose each Subject Patent or Invention to the Authority within two months after the inventor discloses it in writing to TSCC Contractor. The disclosure to the Authority shall be in the form of a written report and shall identify the details and nature of the Invention and the inventor(s). The report shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the Invention.
- (ii) TSCC Contractor will elect in writing whether or not to retain title to any such Invention by notifying the Authority the earliest date within (A) one year of disclosure to the Authority, (B) not later than the Expiration Date, or (C) in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the Statutory Period wherein valid patent protection can still be obtained in the United States, the period for election of title is 60 days before the end of the Statutory Period.
- (iii) TSCC Contractor will file its initial patent application on a Subject Patent or Invention to which it elects to retain title within one year after election of title or, if earlier, before the end of any Statutory Period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use.

(d) **Conveyance of Title**

TSCC Contractor will convey to the Authority, upon written request, title to any Subject Patent or Invention:

- (i) if TSCC Contractor fails to disclose or elect title to the Subject Patent or Invention within the times specified in [Section 24.4.2\(c\)](#), or elects not to retain title; and
- (ii) in any country in which TSCC Contractor decides not to continue the prosecution of any patent application (including provisional) for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a Subject Patent or Invention.

(e) **March-in Rights**

TSCC Contractor agrees that with respect to any Subject Patent or Invention in which it has acquired title under this [Section 24.4.2](#), the Authority has the right to require TSCC Contractor to grant a nonexclusive, partially-exclusive or exclusive license in any field of use to any Person in the Authority's discretion, upon terms that are reasonable under the circumstances, and if TSCC Contractor refuses such a request the Authority has the right to grant such a license itself if:



- (i) such action is necessary because TSCC Contractor has not taken, or is not expected to take within a reasonable time, effective steps to achieve Practical Application of the Subject Patent or Invention in such field of use;
- (ii) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by TSCC Contractor; or
- (iii) such action is necessary to meet requirements for public use to the continued use, expansion or maintenance of the Project, including any Package thereof.

24.4.3 TSCC Contractor Intellectual Property

TSCC Contractor hereby grants to the Authority an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license to use, execute, perform, sublicense, exploit, manufacture, distribute, reproduce, adapt, display, transfer, and prepare derivative works of TSCC Contractor IP in connection with the Project and the Project Assets, including the SCADA System. TSCC Contractor shall deliver to the Authority all documents and other materials that embody TSCC Contractor IP, including but not limited to Source Code, Source Code Documentation and/or related instructions and materials to execute software.

24.4.4 Authority Use

- (a) Subject to Section 24.2, the Authority shall:
 - (i) not disclose any TSCC Contractor IP to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of the Authority relating thereto;
 - (ii) include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all TSCC Contractor IP and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes; and
 - (iii) maintain the confidentiality of any IP Materials released pursuant to Section 24.5 and shall enter into a non-disclosure agreement with any third party to whom the Authority, in its sole discretion, grants access to such IP Materials to the extent that (1) such IP Materials contain confidential information identified by TSCC Contractor or a Third Party pursuant to Section 24.2 and (2) the released IP Materials contain information or materials that have not been previously disclosed to any third party or are otherwise not confidential.
- (b) Notwithstanding any contrary provision of this Agreement, in no event shall the Authority or any of its directors, officers, representatives, agents, employees, consultants or agents be liable to TSCC Contractor, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality in Section 24.4.4(a) if such breach is not the result of gross negligence or intentional misconduct; TSCC Contractor irrevocably waives all claims to any such damages.



24.4.5 Third Party Intellectual Property

TSCC Contractor shall secure license(s) in the name of the Authority to use, execute, perform, sublicense, exploit, manufacture, distribute, reproduce, adapt, display, transfer, and prepare derivative works of Third Party IP, in connection with the Project, including a representation and warranty that Third Party IP does not infringe the rights, including Intellectual Property rights, of any other person or entity. To the extent that the foregoing license rights or representation and warranty are refused by any owner of Third Party IP, TSCC Contractor shall secure the Authority's prior written approval, in its sole discretion, for any license, the terms of which are acceptable to such owner of Third Party IP. For the avoidance of doubt, in no event shall TSCC Contractor incorporate Third Party IP into the Project or Work without first securing such licenses. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to the Authority using commercially reasonable efforts.

24.5 IP Escrow

24.5.1 Authority and TSCC Contractor acknowledge that TSCC Contractor and/or owners of Third-Party IP may not wish to deliver the required IP Materials directly to Authority pursuant to the Agreement as public disclosure could deprive TSCC Contractor and/or such owners of Third-Party IP of commercial value. TSCC Contractor further acknowledges that Authority nevertheless must be ensured access to such IP Materials, and must be assured that the IP Materials (and incorporated Intellectual Property) are delivered to Authority.

24.5.2 In lieu of delivering the IP Materials (and incorporated Intellectual Property) directly to Authority pursuant to the Agreement, TSCC Contractor may elect to deposit it with a neutral depository. In such event, Authority and TSCC Contractor shall: (i) mutually select one or more escrow companies or other neutral depositories (each an "**IP Escrow Agent**") engaged in the business of receiving and maintaining escrows of software source code or other Intellectual Property; (ii) establish one or more escrows (each an IP Escrow) with the IP Escrow Agent on terms and conditions reasonably acceptable to Authority and TSCC Contractor for the deposit, retention, upkeep and release of IP Materials (and incorporated Intellectual Property) to Authority pursuant to the Agreement; (iii) determine a date for TSCC Contractor's deposit of the IP Materials into the IP Escrow; and (iv) determine a process for releasing from escrow the IP Materials to be delivered to Authority pursuant to the Agreement. TSCC Contractor shall be responsible for the fees and costs of the IP Escrow Agent and IP Escrow(s).

24.5.3 Any IP Materials deposited in IP Escrow(s) shall be released and delivered to Authority in any of the following circumstances (the "**Release Conditions**"):

- (a) In the case of TSCC Contractor IP: (i) the Agreement expires by its terms or is terminated; (ii) an application is filed in any jurisdiction for the liquidation, restructuring or relief of debts of TSCC Contractor, voluntary or involuntary; or (iii) TSCC Contractor fails or ceases to provide services, access or other actions as necessary to permit continued use, or the exercise of rights granted under the Agreement, of any such TSCC Contractor IP. In the event of a release of IP Materials pursuant to Section 24.5.3(a)(i), at TSCC Contractor's request, Authority will consider a confidentiality agreement allowing the full access to the relevant IP Materials subject to confidentiality obligations no less restrictive than those of the Agreement provided however that Authority will be (1) permitted to grant access to such IP Materials to any future vendor, contractor or government entity for the purposes of transportation infrastructure and (2) able to employ and enjoy all rights granted under the Agreement with regard to Intellectual Property and IP Materials.



- (b) In the case of Third-Party IP, any of: (a) the owner of Third-Party IP is in material breach of any agreement with Authority; (b) an application is filed in any jurisdiction for the liquidation, restructuring or relief of debts of the owner of Third-Party IP, voluntary or involuntary; or (c) such third party otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing such Intellectual Property for a period of 30 consecutive days.

24.5.4 Regardless of whether one of the Release Conditions occurs, Authority shall have the right, at Authority's sole expense, to require the IP Escrow Agent to verify the relevance, completeness, currency, accuracy, and functionality of the materials held by the IP Escrow by, among other things, compiling the IP Materials and documentation, and performing test runs for comparison with the capabilities of the Project or software. In the event such testing demonstrates the materials held by the IP Escrow does not correspond to the Project or software pursuant to the Agreement, TSCC Contractor shall reimburse Authority for all costs and fees incurred in said verification, compilation, and testing and immediately deposit the correct materials with the IP Escrow Agent.

24.5.5 TSCC Contractor shall incorporate the provisions of this Section 24.5 into each Subcontract involving development, provision or acquisition of Intellectual Property or IP Materials.

24.6 Escrowed Proposal Documents.

24.6.1 TSCC Contractor has delivered to Authority all documentary information used in preparation of the Final Package Price for Packages 1 and 2B (the "**Escrowed Proposal Documents**" or "**EPD**"). The EPDs are held in a locked fireproof cabinet supplied by TSCC Contractor and located in Authority's offices or in another location as designated by Authority, with the key held only by TSCC Contractor to ensure Authority may not access the cabinet without TSCC Contractor present. If TSCC Contractor elected to provide electronic copies of the EPDs, the EPDs were provided in a read-only format on two identical encrypted searchable Universal Serial Bus ("**USB**") drives 256-bit encryption. The USB drives are held in the locked cabinet described above, and the password to decrypt the USB drives is the same for both USB drives and is known only to TSCC Contractor. Concurrently with submission of Final Package Price Proposals or revisions to Final Package Price Proposals provided for any Package, and concurrently with approval of each Package Specific Information, if appropriate, as determined solely by Authority, one copy of all documentary information used in preparation of the Final Package Price Proposals or Change Orders shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained subject to this Section until expiration or termination of the Agreement, all disputes regarding the Agreement have been settled and Final Payment has been made by Authority and accepted by TSCC Contractor. If TSCC Contractor has provided electronic EPDs, Authority may at any time require the creation of hard-copy originals from the electronic EPDs, to be held in a locked fireproof cabinet supplied by TSCC Contractor in the manner described in this Section.

24.6.2 The EPDs shall be available during business hours for joint review by TSCC Contractor, Authority, dispute resolvers and their successors and assigns, in connection with approval of schedules, negotiation of Final Package Price Proposals, Change Orders, and the resolution of disputes. Authority shall be entitled to review, in the presence of TSCC Contractor, all or any part of the EPDs to satisfy itself regarding the applicability of the individual documents to the matter at issue. Provided that Authority has executed and delivered to TSCC Contractor a confidentiality agreement, Authority shall be entitled to make and retain copies, with such copying occurring in the presence of TSCC



Contractor and any necessary Subcontractor, of such documents as it deems appropriate in connection with any such matters. Authority may request copies of EPDs in the format that best meets the type of analysis necessary. The confidentiality agreement shall specify that

- (a) All proprietary information contained in such documents will be kept confidential;
- (b) Copies of such documents shall be stamped with “copy” and will not be distributed to any third parties other than Authority’s attorneys and experts, and dispute resolvers hereunder; and
- (c) All copies of such documents (other than those delivered to dispute resolvers) will be either destroyed or returned to the EPDs depository (or to TSCC Contractor if the EPDs have been returned to it) upon final resolution of the negotiations or disputes to which the copies relate.

The foregoing shall in no way be deemed a limitation on Authority's discovery rights with respect to such documents.

24.6.3 The EPDs are, and shall always remain, the property of TSCC Contractor, and shall be considered to be in TSCC Contractor’s possession, subject to Authority's and TSCC Contractor’s joint right to review the EPDs as provided in this Section 24.6. Authority acknowledges that TSCC Contractor may consider that the EPDs constitute trade secrets or proprietary information. This acknowledgment is based upon Authority's understanding that the information contained in the EPDs is not known outside TSCC Contractor’s business, is known only to a limited extent and by a limited number of employees of TSCC Contractor, is safeguarded while in TSCC Contractor's possession, and may be valuable to TSCC Contractor’s construction strategies, assumptions, and intended means, methods, and techniques of construction. Authority further acknowledges that TSCC Contractor expended money in developing the information included in the EPDs, and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. Authority acknowledges that the EPDs and the information contained therein are being made accessible to Authority, subject to the procedures in this Section 24.6, only because it is an express prerequisite to award of the Agreement.

24.6.4 TSCC Contractor represents and warrants that the EPDs constitute all of the information used in the preparation of the Proposal, Final Package Price Proposal, or Change Order and agrees that no other Proposal, Final Package Price Proposal, or Change Order preparation information will be considered in resolving disputes or claims. TSCC Contractor agrees that the EPDs are not part of the Agreement and that nothing in the EPDs shall change or modify the Agreement.

24.6.5 The EPDs provided in connection with Final Package Price Proposals and Change Orders shall clearly detail how the total price and individual components of that price were determined and shall be adequate to enable a complete understanding and interpretation of how TSCC Contractor arrived at its Final Package Price Proposal and/or Change Order price. In this regard, crews, equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into TSCC Contractor's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in TSCC Contractor's usual format. TSCC Contractor's allocation of plant and equipment, indirect costs, contingencies, mark-up, and other items to each direct cost item shall be clearly identified. The EPDs shall include all assumptions; detailed quantity takeoffs; rates of production and progress calculations; quotes from Subcontractors and suppliers;



memoranda; narratives; and all other information used by TSCC Contractor to arrive at the Final Package Price Proposal or Change Order.

- 24.6.6** It is not intended that TSCC Contractor perform any significant extra work in the preparation of the EPDs. However, TSCC Contractor represents and warrants that the EPDs provided pursuant to the requirements of the RFP were personally examined prior to delivery by an authorized officer of TSCC Contractor and meet the requirements the RFP; and that the EPDs provided in connection with Final Package Price Proposals and Change Orders will be personally examined prior to delivery by an authorized officer of TSCC Contractor and meet the requirements of this Agreement.
- 24.6.7** Authority may at any time conduct a review of the EPDs, subject to the requirements of this Section 24.6.7, to determine whether they are complete. Such review of the EPDs must occur with both Authority and TSCC Contractor (and any necessary Subcontractors) present. In the event Authority determines that any data is missing, TSCC Contractor shall provide such data within three days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPDs information, and added to the EPDs. TSCC Contractor shall have no right to add documents to the EPDs except upon Authority's request.
- 24.6.8** At Authority's option, which may be exercised at any time, representatives of Authority and TSCC Contractor shall review, organize and index the EPDs associated with any NTP for any Package, any Change Order or any Agreement amendment. EPDs shall be organized by labeling each page so that it is obvious that the page is part of the EPDs and so as to enable a person reviewing the page out of context to determine where it can be found within the EPDs. An index listing each document included in the EPDs shall be compiled along with a brief description of the document and its location in the EPDs.
- 24.6.9** Authority shall have a right to retain a copy of the index. If, following the initial organization, Authority determines that the EPDs are incomplete, Authority may require TSCC Contractor to supply data to make the EPDs complete.
- 24.6.10** TSCC Contractor shall require each Major Subcontractor to submit to TSCC Contractor a copy of all documentary information used in determining its subcontract price, immediately prior to executing the Subcontract or change orders or amendments thereto, to be held in the same manner as the EPDs, and which shall be accessible by TSCC Contractor and its successors and assigns (including Authority), and dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Major Subcontractor stating that its EPDs constitute all the documentary information used in establishing its subcontract price. Each Subcontract with a Subcontractor that is not a Major Subcontractor shall require the Subcontractor to preserve all documentary information used in establishing its subcontract price and to provide such documentation to either TSCC Contractor or Authority or both in connection with any claim made by such Subcontractor.

25. INSURANCE

25.1 TSCC Contractor Insurance Obligations

TSCC Contractor shall comply with all insurance requirements found in Schedule 25 (Insurance Requirements).



26. LIMITATION OF LIABILITY; INDEMNITY; CONSEQUENTIAL DAMAGES

26.1 Limitation of Liability

26.1.1 Subject to Section 26.1.2, if Package Approval for any particular Package is obtained, TSCC Contractor's aggregate liability to the Authority with respect to:

- (a) any Package shall not exceed an amount equal to 50% of the sum of all Final Package Prices for any Package which has achieved Package Approval.

26.1.2 The limitation on TSCC Contractor's liability under Section 26.1.1 shall not apply to, and TSCC Contractor shall remain liable for:

- (a) any Losses incurred where TSCC Contractor abandons the Project Assets in whole or part;
- (b) any Losses, to the extent they are covered by insurance required to be carried under this Agreement or for which TSCC Contractor was required to provide insurance under this Agreement if coverage is not in force;
- (c) any fines or penalties levied or imposed by any Governmental Entity to the extent arising out of any TSCC Contractor Fault;
- (d) TSCC Contractor's liability for its indemnity obligations as provided in this Agreement, including Sections 18.5.1(b), 19.12 and 26.2;
- (e) any Losses incurred by any Indemnified Party in connection with, relating to or arising out of any gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional misconduct, or breach of Applicable Law by any TSCC-Related Entity;
- (f) any liquidated damages assessed under Sections 8.5 or 19.12; and
- (g) any Losses arising out of any TSCC Contractor Hazardous Materials Release.

26.1.3 In the event that ninety-five percent (95%) of the applicable limitation of TSCC Contractor's liability described in Section 26.1.1(a) is reached, and a default under Section 27.2(q) has occurred, TSCC Contractor may cure such default if it agrees in writing to increase the amount in Section 26.1.1(a) by an amount no less than twenty-five percent (25%) of the amount in Section 26.1.1(a). TSCC Contractor's cure, if any, must be implemented within five days after it receives notice of such default from the Authority. If TSCC Contractor fails to respond during such five day period or elects not to increase the amount in Section 26.1.1(a), the Authority has all rights under this Agreement, including Section 27.

26.2 Indemnifications by TSCC Contractor

26.2.1 To the fullest extent permitted by law, TSCC Contractor shall release, defend, indemnify and hold the Indemnified Parties free and harmless from any and all Claims and Losses of any kind, to property or Persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of TSCC Contractor, TSCC-Related Entities, or any of their respective officials, officers, employees, subcontractors, suppliers, consultants or agents, in connection with the Project Assets or this Agreement, including:

- (a) the breach or alleged breach of this Agreement by any TSCC-Related Entity;



- (b) any Claims by Subcontractors for nonpayment or otherwise;
- (c) the payment of all damages, expert witness fees, accountants' fees and attorneys' fees and other related Losses;
- (d) any TSCC Contractor Hazardous Materials Release;
- (e) any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, system of methods, processes, design, information or other items provided or communicated to an Indemnified Party in connection with the Project, this Agreement, or the Work;
- (f) to the extent of any TSCC-Related Entity's negligence or failure to comply with TSCC Contractor's obligations to coordinate and integrate the Work with any Interfacing Contractor or Utility Owner under this Agreement, the claim or assertion by any Interfacing Contractor or Utility Owner that an TSCC-Related Entity interfered with or hindered the progress or completion of work being performed by such Person so as to cause disruption, delay or Losses;
- (g) any fines, penalties or other Losses resulting from a violation of or noncompliance with Applicable Laws (including Environmental Laws);
- (h) the actual or alleged culpable act, error, omission, negligence, fraud, recklessness, willful misconduct, breach or misconduct of any TSCC-Related Entity in or associated with performance of the Work; and
- (i) any fines, penalties or other Losses resulting from any act or omission by a TSCC-Related Entity that prevents any of the Existing Facilities from operating for their intended use.

26.2.2 TSCC Contractor's obligations under this Section 26.2 shall not be restricted to insurance proceeds, if any, received by TSCC Contractor or the Indemnified Parties.

26.2.3 To the extent of its liability, TSCC Contractor shall pay and satisfy any judgment, award or decree that may be rendered against any of the Indemnified Parties in any suit, action or other legal proceeding under this Section 26.2. TSCC Contractor shall reimburse the Indemnified Parties for any and all Losses and legal expenses incurred by each of the Indemnified Parties in connection with such suit, action or legal proceeding or in enforcing the indemnity provided in this Section 26.2.

26.2.4 Subject to the releases and disclaimers under this Agreement, TSCC Contractor's indemnity under this Section 26.2 shall not extend to any Claim or Loss, to the extent that such Claim or Loss was directly caused by:

- (a) without limiting Section 26.2.5(a), the active negligence, gross negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party;
- (b) the Authority's material breach of any of its obligations under this Agreement; or
- (c) an Indemnified Party's material violation of any Applicable Laws or Governmental Approvals.

26.2.5 The following restrictions shall apply to the indemnities in this Section 26.2:

- (a) except as permitted by Civil Code sections 2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on TSCC Contractor for the active negligence of the Authority, or to relieve the Authority of liability for such active negligence;



- (b) with respect to Work performed by a design professional as defined in Civil Code section 2782.8, such indemnities shall apply only to the extent permitted by said section 2782.8; and
- (c) in Claims by an employee of TSCC Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 26.2 is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for TSCC Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

26.2.6 The requirement to provide an indemnity for any breach or alleged breach of this Agreement as provided in Section 26.2.1(a) is intended to provide protection to the Authority with respect to third party Claims associated with such breach or alleged breach. It is not intended to provide the Authority with an alternative cause of action for damages incurred by the Authority with respect to such breach or alleged breach.

26.3 Responsibility of the Authority for Certain Hazardous Materials

The Parties acknowledge and agree that:

- (a) the Authority may assert that certain third parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Materials that may currently be present on the Site; and
- (b) certain State and federal statutes provide that individuals and firms may be held liable for damages and claims related to Hazardous Materials under such doctrines as joint and several liability and/or strict liability. It is not the intention of the Parties that TSCC Contractor be exposed to any such liability to the extent arising out of (i) proper Hazardous Materials Management activities in connection with pre-existing Site contamination, whether known or unknown or (ii) the activities of any Persons other than TSCC-Related Entities.

26.4 No Effect on Other Rights

The obligations in Sections 26.1 through 26.3 shall not be construed to negate, abridge or reduce other rights or obligations which would otherwise exist in favor of an Indemnified Party under this Agreement.

26.5 CERCLA Agreement

The indemnities in Section 26.2 are intended to operate as agreements under section 9607(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. section 9607(e), and Health and Safety Code section 25364, to defend, indemnify and hold harmless the Indemnified Parties.

26.6 Notification of Third Party Claim

The Authority and TSCC Contractor shall each provide timely notification to the other Party of the receipt of any third party Claim relating to this Agreement.

26.7 Defense and Indemnification Procedures

26.7.1 If an Indemnified Party receives notice of a Claim or other item covered under this Section 26 or otherwise has Actual Knowledge of a Claim that it believes is within the scope of the indemnities provided under this Agreement, then, as soon as practicable after receipt of the Claim, the Authority shall by notice:

- (a) inform TSCC Contractor of the Claim;



- (b) send to TSCC Contractor a copy of all written materials the Authority has received asserting such Claim; and
- (c) notify TSCC Contractor that if no insurer accepts defense of the Claim, the Indemnified Party will conduct its own defense at TSCC Contractor's cost, unless TSCC Contractor accepts the tender of the defense under Section 26.7.4.

26.7.2 As soon as practicable after TSCC Contractor receives notice of a Claim or otherwise has Actual Knowledge of a Claim, it shall tender the Claim by notice to the insurers under all potentially applicable insurance policies. The Authority and other Indemnified Parties also may tender such Claims directly to such insurers.

26.7.3 If the insurer under any applicable insurance policy accepts the tender of defense, the Authority and TSCC Contractor shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 26.7.4 shall apply.

26.7.4 If the defense is tendered to TSCC Contractor, then within 30 days after receipt of the tender, TSCC Contractor shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a notice stating that TSCC Contractor:

- (a) accepts the tender of defense and confirms that the Claim is subject to full indemnification under this Agreement without any "reservation of rights" to deny or disclaim full indemnification thereafter;
- (b) accepts the tender of defense but with a "reservation of rights" in whole or in part; or
- (c) rejects the tender of defense based on a determination that it is not required to indemnify against the Claim under the terms of this Agreement.

26.7.5 If TSCC Contractor accepts the tender of defense under Section 26.7.4(a), TSCC Contractor may select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and TSCC Contractor shall otherwise control the defense of the Claim, including settlement, and bear the fees and costs of defending and settling such Claim; except that the Authority has the right of prior approval of any settlement that waives any defenses or rights of the Authority, increases the Authority's risk (including risk to the Project or HSR System) or relates to or may impact the Work or the design, construction, operations, maintenance, financing, or revenues of the Project or the HSR System. During such defense:

- (a) TSCC Contractor shall fully and regularly inform the Indemnified Party in writing of the material developments in the case and settlement discussions; and
- (b) the Indemnified Party shall fully cooperate in said defense, provide to TSCC Contractor all materials and access to personnel that TSCC Contractor reasonably requests as necessary for defense, preparation and trial, and which or who are under the control of or reasonably available to the Indemnified Party, and use reasonable efforts to maintain the confidentiality of all communications between it and TSCC Contractor concerning such defense.

26.7.6 If TSCC Contractor responds to the tender of defense as specified in Section 26.7.4(b) or 26.7.4(c), the Indemnified Party may select its own legal counsel and otherwise control the defense of such Claim, including settlement.



26.7.7 Notwithstanding TSCC Contractor's acceptance of a tender of defense under Section 26.7.4(a) or 26.7.4(b), the Indemnified Party may assume its own defense by delivering to TSCC Contractor notice of such election and the reasons thereof, if the Indemnified Party, at the time it gives notice of the Claim or at any time thereafter, reasonably determines that:

- (a) a conflict exists between the Indemnified Party and TSCC Contractor which prevents or potentially prevents TSCC Contractor from presenting a full and effective defense; or
- (b) TSCC Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

26.7.8 If the Indemnified Party is entitled to and elects to conduct its own defense of a Claim for which it is entitled to indemnification under this Agreement, TSCC Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending the Claim. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

- (a) in the case of a defense that otherwise would be conducted under Section 26.7.4(a) or 26.7.4(b), the Indemnified Party may settle or compromise the Claim with TSCC Contractor's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to TSCC Contractor and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by TSCC Contractor; and
- (b) in the case of a defense conducted under Section 26.7.4(c), the Indemnified Party shall have the right to settle or compromise the Claim without TSCC Contractor's prior written consent and without prejudice to its rights to be indemnified by TSCC Contractor.

26.7.9 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party that has assumed control of defense is entitled to do so under Section 26.7.6 shall be resolved in accordance with Section 30 (if the Indemnified Party is bound by Section 30), but the foregoing shall not preclude an Indemnified Party from preserving its rights or defending the Claim pending such resolution.

26.7.10 The Parties acknowledge that this Section 26.7 does not supersede any Applicable Laws governing the required allocation or sharing of liability between the Parties.

26.8 Consequential Damages

26.8.1 Except as otherwise specified in this Agreement, to the extent permitted by Applicable Laws, neither Party shall be liable to the other for punitive, indirect, or Consequential Damages, whether arising out of breach of this Agreement, tort (including negligence) or any other theory of liability, and each Party releases the other Party from any such liability.

26.8.2 The limitations on TSCC Contractor's liability under this Section 26.8 shall not apply to or limit any right of recovery the Authority may have with respect to the following (and TSCC Contractor agrees it shall not assert the application of this Section 26.8 against any such Losses):

- (a) any amounts paid or payable by or on behalf of TSCC Contractor which are covered by insurance proceeds required to be carried under this Agreement, or for which TSCC Contractor was required to provide under this Agreement if coverage is not in force;



- (b) any Losses in connection with any gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional misconduct, or breach of Applicable Law by any TSCC-Related Entity;
- (c) TSCC Contractor's liability for its indemnity obligations as provided under this Agreement, subject to Section 26.2.6;
- (d) TSCC Contractor's obligation to pay liquidated damages under Sections 8.5 and 19.12; and
- (e) any Losses arising out of any TSCC Contractor Hazardous Materials Release.

27. TSCC CONTRACTOR DEFAULT; TERMINATION

27.1 Preservation of Rights

To the fullest extent permitted by law, nothing the Authority does or fails to do pursuant to this Section 27 will prejudice any right or remedy of the Authority under this Agreement or Applicable Laws, including the recovery of damages, where TSCC Contractor breaches this Agreement.

27.2 TSCC Contractor Default

TSCC Contractor shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions (each, an "**TSCC Contractor Default**"):

- (a) TSCC Contractor fails to promptly (i) begin the Work following issuance of any NTP for an approved Package (as applicable); or (ii) resume performance of Work that has been suspended or stopped within a reasonable time after receipt of notice from the Authority to do so or (if applicable) after cessation of the event preventing performance;
- (b) TSCC Contractor fails to achieve Interim Substantial Completion of the Base Project, Extended Project Substantial Completion of the Extended Project or Completion of an Early Works Package under this Agreement by 180 days after the applicable Milestone Deadline;
- (c) TSCC Contractor suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute the Work, excluding Work stoppages due to: (i) termination by the Authority; (ii) the occurrence and continuance of a Force Majeure Event or suspension by the Authority; (iii) the Authority's failure to make undisputed payments to TSCC Contractor under Section 27.6; or (iv) TSCC Contractor's suspension of Work in the event of an emergency under Section 14.2(d).
- (d) TSCC Contractor fails to obtain, provide, replace or maintain in full force and effect any insurance, Bonds, guarantees or other performance security as and when required under this Agreement, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;
- (e) TSCC Contractor makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of this Agreement or any right or interest in this Agreement, except as expressly permitted under this Agreement;
- (f) TSCC Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials under its agreements with Subcontractors and Applicable Laws, or fails to comply with any Applicable Law or reasonably comply with any Authority instruction consistent with this Agreement;
- (g) TSCC Contractor fails to (i) make payment when due to the Authority of any amounts owing to the Authority under this Agreement; or (ii) deposit funds to any custodial account, trust account or other reserve or account in the amount and within the time period required by this Agreement;



- (h) TSCC Contractor fails to timely observe or perform, or fails to cause to be timely observed or performed, any other agreement or covenant that TSCC Contractor is required to perform under this Agreement;
- (i) any Guarantor revokes or attempts to revoke its obligations under its Guaranty, or otherwise takes the position that such instrument is no longer in full force or effect; ***[Note to Proposers: Inclusion of this section (i) subject to determination on guaranty requirement in ITP]***
- (j) issuance of any final judgment holding TSCC Contractor or any of its equity members liable for an amount over \$100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act;
- (k) any representation or warranty made by TSCC Contractor in this Agreement (including any questionnaire responses included in TSCC Contractor's Proposal) or any certificate, schedule, instrument or other document delivered by TSCC Contractor pursuant to this Agreement was false or materially misleading when made;
- (l) TSCC Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to TSCC Contractor or TSCC Contractor's debts under any U.S. or foreign bankruptcy, insolvency or other similar Applicable Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;
- (m) an involuntary case is commenced against TSCC Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to TSCC Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Applicable Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;
- (n) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to TSCC Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Applicable Law, this Agreement, is rejected, including a rejection under 11 U.S.C. section 365 or any successor statute;
- (o) any voluntary or involuntary case or other act or event described in Sections 27.2(l) through 27.2(n) occurs (and in the case of an involuntary case is not contested in good faith or remains undismissed and unstayed for a period of 60 days) with respect to (i) any member, partner or joint venture member of TSCC Contractor (unless said Person has fully met all financial obligations owing to TSCC Contractor investment and payments or transfers of money or property previously made to or for the benefit of TSCC Contractor are not subject to 11 U.S.C. sections 544, 547, 548 or 550 or any similar applicable state or federal Applicable Law respecting the avoidance or recovery of preferences or fraudulent transfers), or (ii) any member, partner or joint venture member of TSCC Contractor for whom transfer of ownership or management authority would constitute a prohibited assignment under this Agreement or impermissible Change of Control;
- (p) after any rights of appeal have been exhausted, TSCC Contractor, any Affiliate or any Subcontractor (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency, or (ii) has not dismissed any Subcontractor whose work is not substantially complete and who is determined



disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a State department or agency; or

- (q) TSCC Contractor incurs liability to the Authority for damages in an amount equal to or greater than (but for such limitation) ninety-five percent (95%) of the limitation on TSCC Contractor's liability in Section 26.1.1(a).

27.3 Notice and Opportunity to Cure

27.3.1 TSCC Contractor shall promptly:

- (a) provide notice to the Authority upon the occurrence of a TSCC Contractor Default; and
- (b) take steps to commence the cure of and mitigate the effects of any TSCC Contractor Default.

27.3.2 If TSCC Contractor so notifies the Authority of a TSCC Contractor Default under Section 27.3.1(a) or the Authority considers a TSCC Contractor Default has occurred, the Authority may give TSCC Contractor a written notice ("**Default Notice**"), which contains:

- (a) details of the TSCC Contractor Default;
- (b) the cure period (if any) by which TSCC Contractor shall cure the TSCC Contractor Default under Sections 27.3.1(b) and 27.3.3; and
- (c) if the TSCC Contractor Default is not capable of being cured or no cure period is applicable, a date by which TSCC Contractor shall comply with any the Authority requirements in connection with that TSCC Contractor Default.

27.3.3 TSCC Contractor shall have the following cure periods under any Default Notice:

- (a) for a TSCC Contractor Default described in Sections 27.2(c), 27.2(d), 27.2(f), 27.2(g) and 27.2(h) a period of 15 days after delivery of a Default Notice;
- (b) for a TSCC Contractor Default described in Sections 27.2(c), 27.2(d), 27.2(f), 27.2(g), and 27.2(h) that is capable of cure, but by its nature cannot be cured within a period of 15 days after delivery of a Default Notice, as determined by the Authority, such additional period of time shall be allowed as may be reasonably necessary to cure the TSCC Contractor Default, so long as TSCC Contractor commences such cure within that 15-day period and thereafter diligently prosecutes such cure to completion; except that in no event shall such cure period exceed 60 days in total;
- (c) for the TSCC Contractor Default described in Sections 27.2(a), a period of seven days after delivery of a Default Notice;
- (d) for the TSCC Contractor Default described in Section 27.2(k), that is capable of cure, as determined by the Authority in its sole discretion, within such period of time provided in the Default Notice; provided that period of time shall be: (i) no less than 15 and no more than 60 days after delivery of the Default Notice; and (ii) determined by the Authority in its sole discretion; and
- (e) for any other TSCC Contractor Default, there is no cure period.

27.4 Right to Terminate Upon Default Termination Event

27.4.1 If any TSCC Contractor Default is not subject to cure or is not cured within the applicable cure period (if any) specified in Section 27.3.3 ("**Default Termination Event**"), the



Authority may terminate this Agreement by providing written notice to TSCC Contractor, or exercise any of the rights under Sections 27.5.1(b).

27.4.2 Termination of this Agreement for a Default Termination Event under this Section 27.4 will take effect on the date stated in the notice given by the Authority to TSCC Contractor under Section 27.3.

27.5 Consequences upon Termination for Default Termination Event

27.5.1 Subject to Section 27.1, if the Authority terminates this Agreement for a Default Termination Event:

- (a) TSCC Contractor shall comply with Section 29; and
- (b) the Authority:
 - (i) may take over and use, or require TSCC Contractor to remove from the Site, equipment and Work and all materials, equipment and other things intended for the Work; provided the Authority shall equitably reimburse TSCC Contractor the actual cost for any such take-over and use up to an amount not to exceed the amount stated in the Proposal or any Package Amendment (as applicable);
 - (ii) may require TSCC Contractor to assign to the Authority, or the Authority's nominee, any or all Subcontracts between TSCC Contractor and its Subcontractors;
 - (iii) shall not be obliged to make any further payments to TSCC Contractor, to the extent permitted by Applicable Laws;
 - (iv) where such TSCC Contractor Default is not cured within the applicable cure period, if any, specified in Section 27.3.3, make demand upon and enforce any Performance Bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to the Authority under this Agreement with respect to the TSCC Contractor Default in any order, in the Authority's sole discretion, without Notice to TSCC Contractor. The Authority will apply the proceeds of any such action to the satisfaction of TSCC Contractor's obligations under this Agreement, including payment of amounts due the Authority;
 - (v) may suspend the Work in whole or part in accordance with Section 14.2;
 - (vi) may recover from TSCC Contractor all Claims and Losses, in excess of any amount payable to TSCC Contractor under this Agreement, suffered or incurred by the Authority arising in connection with such termination; and
 - (vii) may exercise any other remedies available under this Agreement or at law or in equity.

27.5.2 TSCC Contractor and each Surety shall not be relieved of liability for continuing liquidated damages on account of a TSCC Contractor Default, by the Authority's declaration of TSCC Contractor Default or by actions taken by the Authority under this Section 27.5.

27.6 Right to Stop Work for Failure by Authority to Make Undisputed Payment

27.6.1 TSCC Contractor may stop Work if the Authority fails to make an undisputed payment due under this Agreement within 60 days after receipt of a written notice of nonpayment from TSCC Contractor.



27.6.2 Any Work stoppage under Section 27.6.1 shall be considered a suspension for convenience under Section 14.2.

27.7 Conversion to Termination for Convenience

If the Authority terminates TSCC Contractor under this Section 27 and it is later determined that the grounds for that termination were not justified, the termination shall automatically be converted to, and treated as, a termination for convenience under Section 28. In that event, TSCC Contractor shall be entitled to receive only the amounts payable under Section 28, and TSCC Contractor specifically waives any Claim, including for any lost profits or other amounts or damages, to the maximum extent permitted by Applicable Laws.

28. TERMINATION FOR CONVENIENCE

28.1.1 At the Authority's convenience, the Authority may, at any time, terminate this Agreement, in whole or in part, by providing notice to TSCC Contractor specifying the extent of the termination and its effective date.

28.1.2 This Agreement's termination for convenience under this Section 28 will take effect on the date stated in the Authority's notice provided under Section 28.1.1.

28.1.3 If the Authority terminates this Agreement for convenience, TSCC Contractor will be entitled to payment of the following amounts, as documented by TSCC Contractor, subject to reasonable review and approval by the Authority Representative:

- (a) the reasonable cost of removing from the Site all labor, plant, equipment and other things used in performing the Work;
- (b) for Work carried out under this Agreement up to the date of termination, the amount which would have been payable if this Agreement had not been terminated; provided TSCC Contractor submits an invoice (under Section 20.10) for that Work; and
- (c) the cost of goods or materials reasonably ordered by TSCC Contractor for the Work, before the date of termination, for which TSCC Contractor is legally bound to pay, including any required early termination fees (if applicable), provided that:
 - (i) the value of the goods or materials is not included in the amount payable under Section 28.1.3(b); and
 - (ii) title in the goods and materials will vest in the Authority upon payment.

28.1.4 TSCC Contractor shall:

- (a) submit an invoice under Section 20.10 for all amounts claimed under Section 28.1.3;
- (b) take all steps possible to mitigate the costs referred to in Section 28.1.3; and
- (c) comply with Section 29.

29. TRANSITION UPON TERMINATION / EXPIRATION DATE

Upon termination under Section 27 or Section 28 or in connection with the expiration of this Agreement:

- (a) subject to Section 29(b), TSCC Contractor shall comply with all of its handover obligations under Schedule 42 (Handover of Existing Facilities);



- (b) if and as directed by the Authority, TSCC Contractor shall discontinue the Work, withdraw from the Site, and remove materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, any TSCC-Related Entity in the performance of the Work and leave the Site in a safe condition;
- (c) if and as directed by the Authority, TSCC Contractor shall remove all temporary Utility connections and piping installed and return all affected improvements to their original condition, or better, to the satisfaction of both the Authority and the agency owning the affected Utility;
- (d) within 10 days after the Expiration Date, TSCC Contractor shall deliver to the Authority, free and clear of Liens, the following: (i) all special tools, equipment, furnishings and supplies purchased and/or used by TSCC Contractor as provided in this Agreement; and (ii) all replacement spare parts as required by the Scope of Work;
- (e) TSCC Contractor shall comply with its obligations under Section 24, including by delivering to the Authority, within 10 days after the Expiration Date, possession of any or all Design Documents, Construction Documents, Project Plans, and all other completed or partially completed Books and Records that the Authority deems necessary to complete the Work or operate and maintain the Project Facilities;
- (f) TSCC Contractor shall cooperate with the Authority and any third parties required by the Authority Representative, and take all other steps necessary, to ensure that the Authority is able to re-procure or procure the execution of the Work (whether with or without obtaining a proposal from TSCC Contractor) or procure the execution of the Work in any other manner which the Authority may determine in its sole discretion;
- (g) TSCC Contractor shall execute and confirm the assignment to the Authority of all Subcontracts requested by the Authority, terminate all other Subcontracts and not enter into any new Subcontracts;
- (h) the Authority may pay any amount or perform any act as may then be required by TSCC Contractor under this Agreement or any Subcontract;
- (i) the Authority may appropriate any or all materials and equipment on the Site; and
- (j) solely in the event of a termination pursuant to Section 27, the Authority may direct the Surety to complete the Project, enter into an agreement to complete the Project with another contractor or the Surety or use any other method to complete the Project.

30. DISPUTE RESOLUTION

30.1 Informal Dispute Resolution Process Overview

Except with respect to the ineligible matters described in Section 32.7 and limitations on TSCC Contractor's right to pursue a dispute regarding a proposed Change Order set forth in Section 15.3, all disputes between the Parties must be resolved in accordance with this Section 30. As a condition to TSCC Contractor's right to pursue a dispute regarding an Interfacing Contractor's obligations, TSCC Contractor must first follow the requirements of Section 14.7. Authority and TSCC Contractor agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing a hierarchy of individuals with contact information within each Party's organization to whom issues may be addressed as they arise to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either



Party to review the ongoing status of the Project. The Parties shall exchange their written hierarchy of individuals with contact information upon execution of the Agreement, and promptly provide updated contact information should the individuals change.

The existence of a dispute does not relieve TSCC Contractor of any obligations under the Agreement; all Work must continue per the obligations of the Agreement.

The dispute resolution process established by this Section 30 includes the following required steps and timeframes:

- (a) Establishment and exchange of hierarchy of individuals: Upon execution of the Agreement.
- (b) Periodic meetings requested by other Party: Ongoing.
- (c) Initial written notice of dispute, as established in Section 30.2: Promptly, but not more than 21 days after TSCC Contractor knew or should have known of the circumstance giving rise to the dispute.
- (d) Partnering process, as established in Section 30.3: Starts upon Authority's receipt of notice of dispute.
- (e) Request for written decision from Authority: Must be made within 10 days following conclusion of partnering process.
- (f) Authority written decision: If issued, within 14 days of request for decision; if not requested or no written decision issued, deemed to be a denial of original dispute.
- (g) Referral to binding arbitration: If dispute remains, either Party may refer to binding arbitration within 45 days of issuance of decision by Authority or affirmation of prior decision.

30.2 Dispute Statement

In the event TSCC Contractor objects to any recommendation, determination, action, direction, or position of Authority, TSCC Contractor shall provide prompt written notice of this objection to Authority. The notice shall include the reasons for such objection, including a concise statement of the dispute and the relevant facts and data with supporting documentation, and shall reference the applicable Agreement provision(s). TSCC Contractor shall provide this written notice no later than 21 days after TSCC Contractor knew or should have known of the circumstance that gave rise to the dispute. TSCC Contractor's provision of a compliant dispute statement is a condition precedent to any further formal or informal dispute resolution proceedings.

30.3 Partnering Process and Request for Decision

After Authority's timely receipt of a compliant notice of dispute, the Parties shall attempt to resolve such potential dispute through the partnering process, which shall include escalation through the hierarchy established for the partnering process. The partnering process shall commence the day following Authority's receipt of TSCC Contractor's timely notice of dispute and shall begin no later than 14 days following such notice. Participation by TSCC Contractor in the partnering process is a prerequisite to requesting a written statement from Authority on its decision on the dispute.

As part of the partnering process, TSCC Contractor shall furnish any additional information or documentation that Authority may require to enable it to evaluate and decide the dispute. Either Party may, if meaningful progress is not being made during the partnering process, request that the other Party escalate the dispute to the next level of individual identified on the other Party's hierarchy of individuals.



If the dispute persists, TSCC Contractor may request a written statement from Authority concerning its decision on the dispute no later than 10 days after the conclusion of the partnering process. The request shall be in writing and state clearly, and in detail, the nature of the remaining dispute, including all issues and claims remaining in dispute, a statement of the facts asserted, the contractual support for the remaining dispute and the nature and amount of the costs involved. The request shall include a certification, executed by an authorized representative of TSCC Contractor, stating that: (i) the claim is made in good faith; (ii) the supporting data are accurate and complete to the best of the certifier's knowledge and belief; (iii) the amount requested accurately reflects the adjustment for which TSCC Contractor believes Authority is liable; and (iv) the certifier is duly authorized to certify the claim on behalf of TSCC Contractor.

Authority will provide written notice of its decision to TSCC Contractor, which shall be deemed final. Failure of Authority to provide a written decision within 45 days after TSCC Contractor's request for Authority written decision shall be deemed a denial of TSCC Contractor's dispute. If TSCC Contractor does not submit a timely request for a written decision, the dispute shall be deemed denied upon expiration of the period for submitting such request.

30.4 Arbitration

Any disputes not resolved under the informal dispute resolution process set forth previously in this Section 30 shall be resolved in binding arbitration. Either Party may file a request for arbitration within 45 days after the conclusion of the informal dispute resolution process set forth previously in this Section 30. Complete participation in the informal dispute resolution is a condition precedent to undertaking arbitration.

Within 30 days after delivery of the request for arbitration, the Parties shall seek to jointly appoint a panel of three arbitrators who have at least 10 years' experience in complex construction disputes involving public works transportation projects. For any insurance disputes that are subject to arbitration, at least one of the arbitrators shall be experienced with regard to insurance coverage underwriting. Each Party shall appoint one arbitrator of its choosing, and jointly appoint a mutually agreeable third arbitrator, all of whom shall meet the foregoing qualifications. If any Party fails to select one arbitrator of its choosing who meets the foregoing qualifications, or if the Parties are unable to agree upon the selection of the third arbitrator, within such 30-day period, then either party may petition the Superior Court of Sacramento County to select such arbitrator(s) meeting the foregoing qualifications. For any insurance disputes that are subject to arbitration, at least one of the arbitrators shall be experienced with regard to insurance coverage underwriting.

If the Parties cannot agree on a panel of three arbitrators or agree which arbitrator shall serve as the chairperson of the arbitral tribunal, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator, who shall serve as the chairperson of the arbitral tribunal; in each instance, all such arbitrators shall meet the relevant qualifications. In the event that any arbitrator has not been appointed pursuant to these procedures, then any party may seek the appointment of such an arbitrator by the chief judge of the Superior Court for Sacramento County. The arbitration proceeding shall be conducted in accordance with the procedures specified in Public Contract Code section 10240 et seq. and the implementing regulations thereto, 1 C.C.R. section 1300 et seq., to the extent those statutes and regulations do not conflict with these provisions. In the case of a conflict, the provisions of the Contract shall prevail. The arbitration hearings shall be held in Sacramento, California or such other place in California as the Parties may agree. The arbitral tribunal shall permit discovery reasonably necessary to the prosecution or defense of the claims, including discovery authorized under the California Code of Civil Procedure. The decision of the arbitrators shall be binding on the Parties except as expressly provided in Public Contract Code section 10240 et seq., and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.



The decision of the arbitrators shall be based upon the relevant facts and the pertinent provision(s) of the Agreement and Applicable Law, and shall be set forth in writing. The arbitrators shall not have the power to award punitive damages, rescind the Agreement, reform the Agreement, or void any limitations on Authority's liability contained in the Agreement.

The arbitration panel will be specifically required to name the prevailing party pursuant to the award.

30.5 Limitation on Relief through Arbitration

If it is determined, through the arbitration process described in Section 30.5, that Authority's interpretation of the Agreement, direction to TSCC Contractor, or any other action required by Authority's decision is an erroneous determination of the rights and obligations of the Parties under the Agreement, TSCC Contractor's claim and any award by the arbitration panel shall be limited to the proven damages incurred by TSCC Contractor with respect to the disputed matter as a direct result of such erroneous determination (crediting Authority for any corresponding reduction in TSCC Contractor's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

30.6 Matters Ineligible for Arbitration

The following matters are ineligible for resolution through the arbitration procedures specified in this Section 30:

- (a) Any matters that the Agreement expressly states are final, binding or not subject to dispute resolution, including decisions subject to sole discretion;
- (b) Any matters relating to the scope or applicability of indemnities provided under the Agreement;
- (c) Any claim for declaratory or injunctive relief;
- (d) Any claim against an insurance company, including any Subcontractor claim that is covered by insurance;
- (e) Any claim arising solely in tort;
- (f) Any claim involving a third party which is a necessary or appropriate party to such dispute, including any related claims between the Parties arising therefrom;
- (g) Any claim regarding failure to comply with equal employment opportunity requirements or requirements of the Agreement relating to Small and Disadvantaged Business Enterprises;
- (h) Any claim for, or claim based on, remedies expressly created by statute; and
- (i) Any claim that is actionable only against a surety.

30.7 Additional Requirements for Subcontractor Demands

For purposes of this Section 30, a "Subcontractor Demand" shall include any dispute or claim by a Subcontractor (including also any pass-through claims by a lower tier Subcontractor) against TSCC Contractor that is actionable by TSCC Contractor against Authority and arises from the Work, services or materials provided or to be provided under the Agreement. If TSCC Contractor determines to pursue a dispute against Authority that includes a Subcontractor Demand, the following additional conditions shall apply:

- (a) TSCC Contractor shall identify clearly in all submissions pursuant to this Section 30, that portion of the dispute that involves a Subcontractor.



- (b) TSCC Contractor shall include, as part of its submissions pursuant to this Section 30, a certification in a form acceptable to Authority by the Subcontractor's officer, partner or authorized representative with authority to bind the Subcontractor and with direct knowledge of the facts underlying the Subcontractor's claims. TSCC Contractor also shall submit a TSCC Contractor's certification that:
- (i) TSCC Contractor has investigated the basis of the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and time requested, and has reviewed and verified the adequacy of all back-up documentation;
 - (ii) Subcontractor's claims have been prepared and submitted in accordance with the terms of the Agreement and the applicable Subcontract(s) and contain all information required by the Agreement and applicable Subcontract; and
 - (iii) TSCC Contractor has no reason to believe and does not believe that the factual basis for the Subcontractor's claims is falsely represented.
- (c) Any dispute under this Section 30 involving Subcontractor Work shall be considered incomplete if it is not accompanied by such analysis and certification.
- (d) At any arbitration hearing on a dispute that includes one or more Subcontractor Demands, TSCC Contractor shall require that each Subcontractor that is involved in the dispute have present one or more authorized representatives with actual knowledge of the facts underlying the Subcontractor's claims to assist in presenting the Subcontractor's claims and to answer questions raised by the arbitration panel or Authority's representatives.
- (e) Failure of TSCC Contractor to assert a Subcontractor's claim on behalf of any Subcontractor or supplier at the time of submitting a dispute to Authority as provided in Section 30.1, shall constitute a release of Authority by TSCC Contractor on account of such Subcontractor's claim.

TSCC Contractor shall require in all Subcontracts that all Subcontractors and suppliers of any tier:

- (f) Agree to submit Subcontractor's claims to TSCC Contractor in a proper form and in sufficient time to allow processing by TSCC Contractor in accordance with this Section 30;
- (g) Agree to be bound by the terms of this Section 30 to the extent applicable to Subcontractor's claims;
- (h) Agree that, to the extent a Subcontractor's claim is involved, completion of all steps required under this Section 30 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by law;
- (i) Agree that any Subcontractor's claim brought against a bonding company, that also is actionable against Authority through TSCC Contractor, shall be stayed until completion of all steps required under this Section 30; and
- (j) Agree that the existence of a dispute resolution process for resolving Subcontractor's Demands shall not be deemed to create any claim, right or cause of action by any Subcontractor or supplier against Authority.

Notwithstanding the foregoing, this Section 30 shall not apply to, and any arbitration panel convened under this Section 30 shall not have the authority to consider:



- (k) Any Subcontractor claim between the Subcontractor(s) and TSCC Contractor that is not actionable by TSCC Contractor against Authority;
- (l) Any Subcontractor claim based on remedies expressly created by statute;
- (m) Any Subcontractor claim that is covered by insurance; and
- (n) Any Subcontractor claim that is actionable only against a bonding company.

30.8 Waiver

In the event TSCC Contractor fails to submit a notice of dispute or appeal a decision by Authority within the time periods specified herein, or if TSCC Contractor fails to refer the dispute to arbitration within the specified time period, TSCC Contractor shall be deemed to have waived any and all rights it may have to object to or to seek arbitration of such decision, action, or order. TSCC Contractor shall further have waived its right to seek relief from a court of competent jurisdiction. This waiver shall occur whether or not there is any showing of prejudice resulting from the delay in filing the objection.

30.9 Consolidation of Arbitrations and Joinder of Parties

In the event that substantially similar disputes have arisen between Authority and another Authority contractor, TSCC Contractor agrees that Authority may consolidate pending arbitrations or join other such contractors in an arbitration with TSCC Contractor, provided that the evidentiary hearings in a pending arbitration between Authority and TSCC Contractor have not yet begun. For the purposes of this Section 30.9, "substantially similar disputes" means that there are common questions of law or fact that are predominating and significant to the disputes and the likelihood of duplicative or inconsistent rulings is present. In the case of such an arbitration between Authority and multiple contractors, then all of the parties shall seek to name a panel of three arbitrators with the qualifications as provided in Section 30.4. If the parties are not able to agree on three arbitrators, then Authority shall name one arbitrator and the contractors together shall name one arbitrator, and the two arbitrators shall name the third arbitrator who shall serve as the chairperson of the arbitral panel. In the event that any arbitrator has not been appointed pursuant to these procedures, then any party may seek the appointment of such an arbitrator by the chief judge of the Superior Court for Sacramento County. All other provisions of Section 30.4 shall apply to such a consolidated arbitration.

30.10 Government Claims Act Compliance

Nothing in this Section 30 relieves TSCC Contractor or any Subcontractor of the obligation to comply with the Government Claims Act, Government Code, sections 810-996.6, prior to filing a legal action against Authority. TSCC Contractor shall include this clause in all Subcontracts.

31. NOTICES

31.1 Notice of Change Order

If a direction by the Authority Representative, not specifically identified as a Change Order, constitutes or involves a change to the Work that TSCC Contractor believes warrants a Change Order, TSCC Contractor shall, if it wishes to make a Claim against the Authority relating to the direction:

- (a) within 7 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Authority Representative that it considers the direction to constitute or involve a Change Order;
- (b) within 21 days after giving the notice under Section 31.1(a), submit a written Claim to the Authority Representative, which includes:



- (i) details concerning the direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated in sufficient detail to permit verification; and
- (c) continue to carry out the Work in accordance with this Agreement and all directions of the Authority Representative, including any direction with respect to which notice has been given under this Section 31.1.

31.2 Continuing Events

If the direction or other fact, matter or thing upon which the Claim under Section 31.1(b) is based, or the consequences of the direction or other fact, matter or thing are continuing, TSCC Contractor shall continue to give the information required by Section 31.1(b) every 28 days after the written claim under Section 31.1(b) was submitted or given to the Authority Representative, until after the direction or other fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

31.3 Delay in Notices

If TSCC Contractor fails to comply with Sections 31.1 through 31.2:

- (a) the Authority will not be liable (to the fullest extent permitted under Applicable Law) upon any Claim by TSCC Contractor, and
- (b) TSCC Contractor will be absolutely barred from making any Claim against the Authority,

arising in connection with the relevant direction or fact, matter or thing (as applicable) to which Section 31.1 applies.

31.4 Other Provisions Unaffected

Nothing in Sections 31.1 through 31.3 will limit the operation or effect of any other provision of this Agreement which requires TSCC Contractor to give notice to the Authority Representative in order to preserve an entitlement to make a Claim against the Authority.

31.5 Notices

31.5.1 All notices under this Agreement shall be in writing and provided by one of the following methods: (a) delivered personally; (b) sent by certified mail, with return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone.

31.5.2 Notices shall be sent to the following addresses (or to such other address as may from time to time be specified by notice):

- (a) all notices to TSCC Contractor shall be delivered to the address specified in the Package Specific Information or as otherwise directed by TSCC Contractor Representative; and



- (b) all notices to the Authority shall be marked with the Project's name and shall be delivered to the address specified in the Package Specific Information or as otherwise directed by the Authority Representative.

31.5.3 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery, except notices received after 5:00 p.m. (Pacific Time) shall be deemed received on the first day following delivery.

31.6 Communications

31.6.1 Any technical or other communications pertaining to the Work shall be conducted by the TSCC Contractor Representative and the Authority Representative.

31.6.2 The TSCC Contractor and the Authority shall create and participate in the "Public Involvement Plan" and the "Communications Working Group" in addition to any other requirements set forth by Schedule 35 (Communication and Public Engagement Protocol).

32. MISCELLANEOUS

32.1 Standard for Governmental Approvals

In all cases where approvals, acceptances or consents are required to be provided by the Authority or TSCC Contractor under this Agreement, such approvals, acceptances or consents shall not be withheld unreasonably, except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to any dispute resolution procedures under this Agreement, including [Section 30](#).

32.2 Entire Agreement; Amendments

This Agreement, together with its incorporated documents and references, contains the entire, integrated agreement of the Parties, and supersedes any and all other prior to contemporaneous negotiations, understandings and oral or written agreements between the Parties. This Agreement may be amended or modified only by a written instrument duly executed by or on behalf of the Parties, except to the extent provided otherwise in this Agreement.

32.3 Waiver

32.3.1 The failure of a Party to exercise or delay in exercising any right under this Agreement shall not:

- (a) constitute a waiver of such right or any other right under this Agreement; or
- (b) relieve the other Party from performance of its obligations under this Agreement, except as otherwise provided in this Agreement.

32.3.2 No waiver of any right under this Agreement shall be effective unless made in a writing duly executed by a duly authorized representative of the Party charged with the waiver, and any such waiver shall be limited to the specific instance and shall not constitute a waiver of such right in the future or of any other right under this Agreement.

32.3.3 If the Parties make and implement any interpretation of this Agreement without documenting such interpretation by an instrument in writing signed by both Parties, such



interpretation and implementation thereof will not be binding in the event of any future Disputes.

- 32.3.4** No waiver of any right under this Agreement shall be deemed to have occurred as the result of any acceptance by the Authority, any payment for or acceptance of the whole or any part of the Work, any extension of time, or any possession taken by the Authority.

32.4 Independent Contractor; No Joint Venture or Partnership

32.4.1 TSCC Contractor is an independent contractor. Neither TSCC Contractor nor any of its employees or agents is or shall be deemed to be an employee or agent of the Authority, and in no event shall the relationship between the Authority and TSCC Contractor be construed as creating any relationship whatsoever between the Authority and TSCC Contractor's employees or agents. Except as otherwise provided in this Agreement, TSCC Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that TSCC Contractor or any Subcontractor hires to perform or assist in performing the Work.

32.4.2 Nothing in this Agreement is intended or shall be construed to create any partnership, joint venture or similar relationship between the Authority and TSCC Contractor; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.

32.4.3 TSCC Contractor shall not have, or be deemed to have, power or authority to make any commitments on the Authority's behalf or to execute agreements in the name of or on behalf of the Authority. TSCC Contractor shall not enter into any agreement with any Governmental Entity, Utility Owner, property owner or other third party having regulatory jurisdiction over any aspect of the Work or the HSR System (including the Project) or having any property interest affected by the Work or the HSR System that in any way purports to obligate the Authority, or states or implies that the Authority has an obligation to the third party, to undertake any activity, unless the Authority otherwise provides its prior written approval.

32.5 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Authority and TSCC Contractor and each of their permitted successors, assigns and legal representatives.

32.6 Survival

The following provisions shall survive the Expiration Date and/or the completion of the Work:

- (a) the Parties' respective representations and warranties;
- (b) the dispute resolution procedures in this Agreement;
- (c) the indemnifications, limitations and releases in this Agreement;
- (d) the limitations on remedies in this Agreement;
- (e) each Party's express obligations following termination; and
- (f) all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement or completion of the Work.



32.7 Limitation on Third Party Beneficiaries

32.7.1 Except to the extent that specific provisions (such as, without limitation, the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits:

- (a) no provision of this Agreement is intended to create any third party beneficiary to this Agreement or authorize anyone, other than a Party, to maintain a suit for personal injury or property damage under this Agreement; and
- (b) the duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed by law.

32.7.2 This Agreement shall not be construed to create a contractual relationship of any kind between the Authority and any Subcontractor or other Person, except TSCC Contractor.

32.8 Governing Law; Venue

This Agreement shall be governed by and construed in accordance with the laws of the State, any applicable federal law, and the ordinances, regulations, codes, and executive orders enacted and/or promulgated pursuant thereto. The venue for any litigation arising from any Dispute shall be in the County of [].

32.9 Severability

32.9.1 If any provision or part of this Agreement is ruled invalid (including invalidity due to any Change in Law or other change in law) by a court having proper jurisdiction, then the Parties shall:

- (a) promptly meet and negotiate a substitute for such provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including (as applicable) an appropriate adjustment to TSCC Contractor's compensation to account for any change in the Work resulting from such invalidated portion; and
- (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the Parties' negotiation.

32.9.2 The invalidity or unenforceability of any such provision or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable provision or part.

32.10 Further Assurances

Each Party shall promptly execute and deliver to the other Party all such instruments and other documents and assurances as are reasonably requested by the other Party to further evidence the first Party's obligations hereunder, including, specifically with respect to TSCC Contractor, assurances regarding the validity of (a) the assignments of any contract required under this Agreement and (b) any instruments securing performance of this Agreement or the Work.

32.11 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



32.12 Cumulative Rights; Liability

Each right and remedy of the Authority under this Agreement is cumulative and in addition to every other right or remedy provided under this Agreement and Applicable Laws, and the exercise by the Authority of any part of such rights or remedies does not preclude the simultaneous or later exercise by the Authority of any or all other such rights or remedies.

32.13 Costs

Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, and execution and delivery of this Agreement. Except as otherwise provided in this Agreement, each Party shall perform its obligations in accordance with this Agreement at its own cost and risk.

32.14 Assignment

32.14.1 TSCC Contractor may collaterally assign its rights to receive payment under this Agreement in connection with a financing and may subcontract Work in compliance with the requirements of this Agreement. TSCC Contractor shall not otherwise sublet, transfer, assign or dispose of any portion of this Agreement, or delegate any of its duties hereunder, except with the Authority's prior written approval. TSCC Contractor's assignment or delegation of any of its Work under this Agreement shall be ineffective to relieve TSCC Contractor of its responsibility for the Work assigned or delegated, unless the Authority, in its sole discretion, has approved in writing such relief from responsibility. Any assignment of money shall be subject to all proper set-offs and withholdings in favor of the Authority and to all deductions provided for in this Agreement.

32.14.2 For the purpose of, but without limiting Section 32.14.1, an assignment of this Agreement will be deemed to have occurred where there has been a Change of Control.

32.15 Novation

32.15.1 The Authority is pursuing a development partner for certain aspects of the design, construction, integration, testing, operations and/or maintenance of the HSR System. The Authority may, upon written notice, require novation of this Agreement or portions thereof to the development partner for the HSR System, its operator, or their respective successors or assigns.

32.15.2 If the Authority pursues novation of the Agreement, TSCC Contractor shall negotiate with the Authority and the development partner in good faith to develop a novation agreement that is acceptable to each party.

32.15.3 In the event that the novation agreement would result in material changes to TSCC Contractor's obligations to which TSCC Contractor agreed under this Agreement, TSCC Contractor and the Authority shall, in good faith, negotiate together, and invite the potential development partner to negotiate, appropriate changes to TSCC Contractor's compensation to account for such material changes. Any adjustment in compensation shall be in accordance with the general principles used for valuation of Change Orders described in Section 23.

32.15.4 The Authority will authorize compensation for the negotiation process for TSCC Contractor for up to sixty (60) days of negotiation as described in Section []. At the end of such sixty (60) day period, the Authority, in its sole discretion, may either authorize additional compensation for continued negotiation or to terminate the negotiation process. TSCC Contractor shall continue negotiating in good faith with the Authority and



the development partner until the parties reach a mutually acceptable novation agreement or until the Authority chooses to terminate pursuit of the novation process or does not approve additional compensation for TSCC Contractor for the negotiation process.

- 32.15.5** If a novation agreement agreeable to each party is negotiated, TSCC Contractor shall execute the novation agreement and all documents necessary to effect such novation within thirty (30) days of receipt of the final novation agreement.
- 32.15.6** The Authority will not require novation in a manner that materially increases TSCC Contractor's retained risk beyond that expressly set forth in this Agreement without TSCC Contractor's express written consent. TSCC Contractor shall be reimbursed for all work performed and accepted by the Authority in the event of dissolution or default of the development partner.
- 32.15.7** During the negotiation of a potential novation agreement described in this Section 32.15, TSCC Contractor shall continue to perform all of its obligations under this Agreement. Nothing in this Section 32.15 shall entitle TSCC Contractor to extensions to any Milestone Deadlines or changes to any compensation unless the Authority specifically agrees in writing to such extension or compensation.

32.16 Possessory Interest Tax

Rights granted to TSCC Contractor by the Authority may create a possessory interest. TSCC Contractor agrees that any possessory interest created may be subject to California Revenue and Taxation Code section 107.6 and a property tax may be levied on that possessory interest. If applicable, TSCC Contractor shall pay the property tax. TSCC Contractor acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided.

32.17 Publicity

32.17.1 TSCC Contractor:

- (a) shall not furnish any information or issue any document or other written or printed material concerning the Project for publication in the media without the prior written approval of the Authority Representative; and
- (b) shall refer any enquiries from the media concerning the Project to the Authority Representative.

[Signatures Follow]



IN WITNESS WHEREOF, this Agreement has been executed as of _____.

TSCC Contractor:

By: _____

Name:

Title:

Contractor's License No.:

**The Authority:
CALIFORNIA HIGH SPEED RAIL AUTHORITY**

By: _____

Name:

Title:

APPROVED AS TO FORM:

By: _____

Name:

Title:

Date: _____

