

June 2, 2013 (resubmitted)  
Surface Transportation Board  
395 E. Street SW Washington, DC 20423-0001

ENTERED  
Office of Proceeding  
June 3, 2013  
Part of Public  
Record

Re: Docket number FD 35724 Comments CHSR project

Subject: July construction start for High-Speed Rail not possible

Dear Board Members:

This letter is in response to the May 15<sup>th</sup> letter that Senators Dianne Feinstein and Barbara Boxer sent to the STB.

They echo the High-Speed Rail Authority's request to the STB for an expedited decision by June 17<sup>th</sup> as to whether their request for exemption from the STB's review will be granted.

**Public Officials confused about the schedule:**

Senators Feinstein and Boxer's letter (Exhibit 1) states that the authority wants to award the construction contract in June and construction will begin in July.

The Authority has made many public statements, including a confirmation from Dan Richard in a press conference March 18<sup>th</sup> that they plan to begin construction in July however their own project managers' reports and engineers in sworn declarations in recent lawsuits declare it will be much later. In fact as late as March 2014 with the prerequisite that in fact all the properties necessary for construction are acquired.

It is true that the board wants to award the contract in June; the chance of construction in July is not possible according to a sworn court declaration by John Popoff, rail authority employee and PB employee. (Exhibit 2)

He states, "the 'design' part of the contract will involve the contractor

and/or its sub-contractors taking the design from less than 30% to 100% before construction can begin, which will take substantial time. This final engineering work is called Final Design and will not commence until notice to proceed (NTP) issuance. The contractor will undertake various other non-construction tasks in the first few months after NTP.”

### **The Initial Construction Schedule 3 - January 2013**

An internal document obtained by a Public Records Act (PRA) request called the Initial Construction Schedule Level 3 to 1-January-2013 from the CHR Program Management team shows on page 5 that the civil construction will start at the earliest March 4, 2014. Note that it says that the first parcel access is also the same date so it appears that the civil construction start date is contingent upon the swift acquisition of properties. (See Exhibit 3)

### **Design/Build Contract Term Sheet Conditions:**

Also in the Design/Build Contract term sheet to the bidders for Construction Package #1, RFP No. 11-016, (See Exhibit 4) there are requirements that must be met and some are as follows:

1. All environmental work must be completed for both the Merced to Fresno portion and the Fresno to Bakersfield portion. In another section it says: All governmental approvals necessary for construction of such portion of the Project have been obtained and all conditions of such governmental approvals that are a prerequisite to commencement of such construction have been performed.” Page 3 and page 11. □ Comment: The reason both segments are required for environmental clearance is that the first 29 miles cross over both Merced to Fresno and Fresno to Bakersfield segments and that path makes up the Amtrak “independent utility,” required by the FRA. As you may know the Fresno to Bakersfield section does not have a certified

- project level EIR/EIS and is it not expected until the fall.
2. All necessary rights of access for such portion of the Project have been obtained. Page 5. It is unknown if the Authority has purchased any properties yet.
  3. All railroad agreements have to be obtained. Page 5 and see below.

**Lack of Rail Agreements:**

Union Pacific responded in the Authority's validation complaint (34-2013-00140689) filed May 9, 2013. (Exhibit 5) They said they do not have definitive agreements including a construction and maintenance agreement, an engineering agreement, and an insurance and indemnity agreement. [] Because the Project's specific routes and service patterns have not been established, Union Pacific is unable to verify whether CHSRA can satisfy its commitments to UP under the MOU to avoid disruption of freight operations, and at the same time achieve, the trip-time requirements for high-speed rail under the Bond Act.

In addition BNSF presented the Authority with a letter dated April 16, 2013 (Exhibit 6) also stated there no final agreements with the High-Speed Rail Authority. To quote, "BNSF has not agreed to or acquiesced in any proposed or potential alignment or change in service in the San Joaquin Valley involving our railroad, whether on, near or adjacent to our current right of way or which could affect current or future rail service on our line, or could affect access to our line by present or future freight customers."

In the FRA funding document before funding takes place, these rail agreements must be in place, therefore it seems unlikely that the project assigned to the contractors for CP-1 in June will start anything in July.

The Authority and PB's employees say construction will be later.

John Popoff, then both Deputy Director for the Northern California portions of the HSR program and employed by Parsons Brinckeroff, wrote two declarations for the Madera Farm Bureau environmental lawsuit- 34-2012-80001165 which settled Spring 2013. His first declaration (Exhibit 2) was dated November 2<sup>nd</sup> and his amended version dated Nov 9. Popoff. (Exhibit 7)

In his original declaration, Popoff states “Construction in earnest is not expected to commence until very late 2013 or early 2014. The work will be done by the contractor and its sub-contractors.” (P 3, line 2).

**The Amended Version filed a week later states:**

“The Authority would not control the sequencing of the contractor's work (given this is a design-build contract) but the Authority expects these and other construction activities to commence no earlier than the second half of 2013 sometime after NTP issuance, with construction likely commencing with more limited construction activities then ramping up thereafter. The work will be done by the contractor and its sub-contractors.” Note: It's made more vague but it allows for the what was predicted in the first declaration to happen.

**Validation Court Case:**

In a court case regarding the Authority's Validation complaint listed earlier, at the May 10<sup>th</sup> hearing, according to Attorney Mike Brady, the AG's office seemed to take the approach, there was no rush. The AG's office was asking to co-join the Validation complaint with the Prop1A suit that was originally scheduled for May 31, 2013. If the court had agreed to combine these two suits as the AG's office was asking, a delay of 30 to 90 days would have occurred.

I am awaiting an official transcript of the May 10<sup>th</sup> hearing but court observers said the AG's office stated that construction using state funds would not occur this year.

The project details were ambiguous during the validation hearing as it

pertained to the project construction, property acquisition and the use of state or federal funds. Since the AG's office was not crystal clear on the plan, Judge Kenny asked the court to hold over the case until May 16<sup>th</sup> so he could get more definitive answers.

Approximately 3 days later the AG's office contacted the attorneys for the Prop1A lawsuit who had been protesting the consolidation of cases. They wanted to reach an agreement, which would allow the AG's office to withdraw its request for the case consolidation.

When the May 16<sup>th</sup> court date arrived, an agreement had been reached. The consolidation issue was withdrawn. The validation case would be heard separately, most likely in the summer or fall of 2013. The judge, the attorneys and the public never heard the details that Judge Kenny was asking for in the May 10 hearing, which some speculate that is exactly why the AG's office wanted to withdraw from this action. The case is now scheduled to be heard in late September.

**New FRA agreement allows California to move forward:**

[http://www.hsr.ca.gov/docs/about/funding\\_finance/funding\\_agreements/FR-HSR-0009-10-01-05.pdf](http://www.hsr.ca.gov/docs/about/funding_finance/funding_agreements/FR-HSR-0009-10-01-05.pdf)

This most recent FRA agreement, December 2012, allows the state can use a reimbursement method of bills and use federal funds without state match until the bonds are sold or April 2014, whichever is earlier. See pages 93 through 101 pages of the agreement. All the risk is on the federal government. This directly contradicts the reason why California was given the grant award from a letter written by then undersecretary of FRA, Roy Kientz (See Exhibit 8). Mr. Kientz now works for Parsons Brinckerhoff, the primary consultant on the rail project.

After the hearing on the Prop 1A suit, which occurred May 31, 2013, in a press conference, HSR attorney Tom Fellenz states that construction "activities" will not occur in July but in late summer. He would not elaborate further. Here is a link to a comprehensive but short article

on that hearing. <http://www.examiner.com/article/prop-1a-suit-begins-and-challenges-california-s-rail-project>

## **Closing**

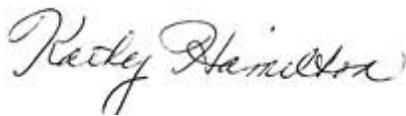
To stress the importance of careful examination of this project, I will end with a California State Senator Joe Simitian quote.

At a State Senate Budget Sub-committee meeting in April 2011, after HSR board member Rod Diridon reminded Senator Simitian that the Authority didn't have a minute to lose, Simitian answered.

He said he appreciated the sense of urgency about the possibility of losing federal funds but "it cannot be an excuse for failure to fully perform or not provide information. "I worry that folks think they can hustle us along by using whatever the deadline is handy for that purpose. It is my judgment, it is more important to get it done right, than to be timely and wrong. I understand the dollars are significant but they pale in comparison to the tens of billions of dollars that could be misspent if we make bad decisions."

I would appreciate your consideration in this matter and seek your agreement not to exempt the high-speed rail project from the careful study of the project under the auspices of the Surface Transportation Board.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Hamilton".

Kathy A. Hamilton

121 Forest Lane

Menlo Park, Ca. 94025

# Exhibit 1

# United States Senate

WASHINGTON, DC 20510

May 15, 2013

The Honorable Daniel R. Elliott III  
Chairman  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423

The Honorable Ann Begeman  
Vice Chairman  
Surface Transportation Board  
395 E Street, SW 234244  
Washington, D.C. 20423

The Honorable Francis Mulvey  
Commissioner  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423

FD 35724

ENTERED  
Office of Proceedings  
May 15, 2013  
Part of  
Public Record

Dear Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey:

California is on the verge of constructing the nation's first high-speed rail system. This project, which has been decades in the making, has the potential to transform California's transportation system, enhance urban and rural community development, spur economic growth, and foster job creation throughout the state.

The Surface Transportation Board (STB) is currently considering the California High-Speed Rail Authority's "Petition for Exemption" to allow the Authority to begin construction of the initial Merced to Fresno section. The Board originally granted 20 days of public review and comment on March 27th, and later extended that deadline by another 20 days to May 8th. This extension allowed more accessibility and opportunity for interested parties to provide valuable analysis and comment.

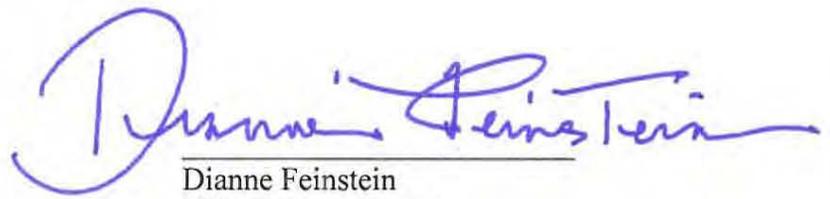
We thank the Board for its diligence and inclusive efforts at gathering public opinion, and we appreciate the Board's fair and thorough consideration of the petition. Regardless of the ultimate decision on the exemption itself, we urge the Board to be mindful of the Authority's proposed timeline for awarding design and construction contracts in mid-June and beginning construction in mid-July. Therefore, if the Board does ultimately decide to grant the exemption, we urge you to announce your final decision with sufficient notice to allow the Authority to move forward with its construction plans for the summer.

We look forward to the Board's full and fair resolution to this matter.

Sincerely,



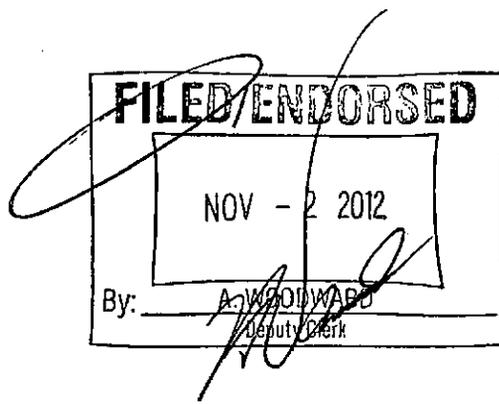
Barbara Boxer  
United States Senator



Dianne Feinstein  
United States Senator

# Exhibit 2

1 KAMALA D. HARRIS  
 Attorney General of California  
 2 DANIEL L. SIEGEL  
 Supervising Deputy Attorney General  
 3 JAMES W. ANDREW, State Bar No. 205992  
 DANA E. AITCHISON, State Bar No. 176428  
 4 JESSICA E. TUCKER-MOHL, State Bar No. 262280  
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 14 *Attorneys for Respondent*  
*California High-Speed Rail Authority*

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 16 COUNTY OF SACRAMENTO

18 COUNTY OF MADERA, et al.,  
 19  
 20 Petitioners and Plaintiffs,  
 21 v.  
 22 CALIFORNIA HIGH-SPEED RAIL  
 23 AUTHORITY, a public entity, and DOES 1  
 through 20,  
 24 Respondents and Defendants.

Lead Case No. 34-2012-80001165-CU-WM-GDS

**Cases Consolidated for Case Management, Briefing and Trial Purposes Only with:**  
 Case Nos: 34-2-12-80001166-CU-WM-GDS and 34-2-12-80001168-CU-WM-GDS

**DECLARATION OF JOHN POPOFF IN SUPPORT OF RESPONDENT'S OPPOSITION TO COUNTY OF MADERA ET AL.'S MOTION FOR PRELIMINARY INJUNCTION/STAY**

Hearing on Motion/Application  
 Date: November 16, 2012  
 Time: 1:30 pm in Department 29

ASSIGNED FOR ALL PURPOSES TO THE HONORABLE TIMOTHY FRAWLEY

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**CITY OF CHOWCHILLA, a California  
municipal corporation**

Petitioners and Plaintiffs,

v.

**CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY, a public entity, and DOES 1  
through 20,**

Respondents and Defendants.

**TIMELESS INVESTMENT, INC.,  
MILLENNIUM ACQUISITIONS, INC.,  
HORIZON ENTERPRISES, G.P.,  
EVERSPRING ALLIANCE, L.P.**

Petitioners and Plaintiffs,

v.

**CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY, a public entity, and DOES 1  
through 20,**

Respondents and Defendants.

1 I, John Popoff, declare as follows:

2 1. I am the Deputy Program Director for the Northern California portions of the  
3 California High-Speed Rail Authority's ("Authority") California High-Speed Train Program  
4 ("Program"). I am employed by Parsons Brinckerhoff, which provides Program Management  
5 Team ("PMT") services to the Authority for the entire Program statewide. My responsibilities  
6 include oversight of PMT work including sub-consultants, on the Northern California portion of  
7 the Program. My responsibilities also have included oversight, under Authority direction, of  
8 design of the Merced-Fresno Section ("MF Section") of the Program, and coordination efforts  
9 with state, regional and local governments necessary to implement the MF Section. These  
10 coordination efforts have included the California Department of Transportation ("Caltrans"). My  
11 responsibilities also include involvement in the development of the design-build construction  
12 program as it affects the MF Section, associated development of requests for proposals and  
13 contract terms, understanding of the aspects of the project that affect and impact the construction  
14 schedule. In order to satisfy my responsibilities, I am familiar with the status, requirements,  
15 constraints and conditions of the construction funding, the status and schedule of right-of-way  
16 acquisition, and the environmental review and permits for the MF Section – as all of these factors  
17 dictate the construction schedule. In performing my responsibilities, I spend significant time  
18 traveling along the entire MF Section alignments, including the Chowchilla "wye" area.

19 2. At present, only a limited portion of the statewide system has both CEQA clearance  
20 for construction and funding. That portion is within the MF Section (the remainder is within the  
21 Fresno-Bakersfield Section, for which CEQA clearance is pending), and covers a little less than  
22 half the MF Section. The portion is located roughly from east of Madera (at the Avenue  
23 17/BNSF railroad intersection) to downtown Fresno (Santa Clara Street). For such construction,  
24 the Authority issued a Request for Proposals ("RFP") in early 2012. The RFP includes this  
25 Madera to Fresno sub-portion into what is called "Construction Package 1" ("CP1"), as depicted  
26 on the map attached hereto as Attachment A.<sup>1</sup> CP1 is further divided into CP1A, CP1B and

27 \_\_\_\_\_  
28 <sup>1</sup> I plotted the location of the AJF Dairy located at 11648 Avenue 23 1/2 in Chowchilla on  
Attachment A.

1 CPIC, as shown on the map. CP1A and CP1B are covered by the EIR for the MF Section and are  
2 at issue in this litigation (CPIC is covered by the still-pending Fresno-Bakersfield EIR).

3 3. [Intentionally omitted].

4 4. RFP Addendum 5 (Book 1, Parts A to C, page 7), issued October 29, 2012, specifies  
5 that bids are due January 18, 2013 (relevant portion of Addendum 5 attached hereto as  
6 Attachment B). The contract for CP1 will be awarded and issued based on the best value  
7 contained in proposals; the price is fixed and binding if the Authority issues a Notice to Proceed  
8 ("NTP") within 180 days of the proposal. Contract award is anticipated June 2013.

9 5. For various right-of-way ("ROW") reasons, the Authority expects to issue the NTP in  
10 July 2013 (*i.e.*, 180 days after proposal due date), as specified in RFP Addendum 5. The main  
11 reason is that the contractor will be restricted in the work it can do after NTP issuance if the  
12 Authority has made insufficient progress by then in acquiring ROW. The Authority's ROW  
13 acquisition schedule is very challenging. The Authority will require approximately 180 days for  
14 adequate ROW acquisition, otherwise the contractor will have access to such a limited amount of  
15 land for up-close review and geotechnical testing that the contractor would not be able to  
16 meaningfully commence final design work necessary for construction. Accordingly, any delay in  
17 ROW acquisition from an injunction directly translates into a day-for-day delay in the date when  
18 construction could start.

19 6. [Intentionally omitted.]

20 7. The contract for CP1 is a design-build contract. At present, CP1A and CP1B are  
21 engineered to less than 30 percent as contained in the RFP. The "design" part of the contract will  
22 involve the contractor and/or its sub-contractors taking the design from less than 30 percent to  
23 100 percent before construction can begin, which will take substantial time. This final  
24 engineering work is called Final Design and will not commence until NTP issuance. The  
25 contractor will undertake various other non-construction tasks in the first few months after NTP.  
26 This includes setting up an initial local project office, and conducting site surveys and  
27 geotechnical investigations to facilitate Final Design and construction planning. Physical work  
28 such as hazardous material remediation, utility relocation and limited building demolition could

1 take place prior to full-scale construction, but would not commence until after NTP..

2 Construction in earnest is not expected to commence until very late 2013 or early 2014. The  
3 work will be done by the contractor and its sub-contractors.

4 8. The estimated cost of the construction work for CP1A and CP1B is \$1.1 to \$1.4  
5 billion. This does not include costs to shift/relocate a portion of State Route 99 ("SR99") in  
6 Fresno, which is part of the MF Section. The Authority has negotiated an inter-agency agreement  
7 with Caltrans for Caltrans to oversee this SR99 relocation work. The total estimate of the  
8 Caltrans SR99 contract is between \$166 million and \$226 million. This includes approximately  
9 \$30 to \$40 million in estimated right-of-way ("ROW") acquisition costs and \$26 to \$31 million in  
10 final engineering design and construction management services Caltrans would perform. The  
11 remainder (\$110 to \$155 million) represents estimated hard construction costs; the work would be  
12 done by private contractor(s), and its sub-contractors, pursuant to a bid process that Caltrans  
13 would oversee.

14 9. The SR99 relocation contract between the Authority and Caltrans is largely in final  
15 form, awaiting final approval and execution. Final design work by Caltrans would commence  
16 upon execution. Construction, however, would not be expected until at least July 2013, due to the  
17 time it will take for Caltrans to complete final design and bid and finalize a construction contract.

18 10. The Authority/Caltrans SR99 relocation contract is set up as a fully-reimbursable  
19 contract. Effectively, Caltrans is providing design and construction contracting/oversight services  
20 to the Authority. Caltrans would get reimbursed monthly for its monthly expenses; if the  
21 Authority is prevented by court order from reimbursing Caltrans, work by Caltrans would cease.  
22 Any delay in Caltrans commencing design work (or interruption of work) will lead to a day-for-  
23 day delay of the time when construction bids would be received, resulting in increased  
24 construction costs to the Authority due to intervening industry inflation in construction costs,  
25 such as those construction cost indices referenced in Section 2 of Book 2 Part A.2: Special  
26 Provisions of the contract terms for CP1.

27 11. The Authority has received two very large federal grants (\$2.3 billion in ARRA  
28 funds, explained below, and just under \$1 billion in non-ARRA funds) to construct a high speed

1 rail line and associated infrastructure in the Central Valley, generally from Madera to just north of  
2 Bakersfield. This is being referred to as the "Initial Operating Segment First Construction" ("IOS  
3 1st"). The IOS 1st encompasses approximately half of the Merced-Fresno high speed rail  
4 segment being challenged in this litigation. The remainder of IOS 1st is located in the Fresno-  
5 Bakersfield segment, which is scheduled for Authority Board environmental clearance  
6 consideration in 2013.

7 12. Right of way ("ROW") acquisition and construction of IOS 1st is completely  
8 dependent on approximately \$2.321 billion in federal 2009 American Recovery and Reinvestment  
9 Act ("ARRA") grant funding, awarded and administered pursuant to a 2010 (plus amendments)  
10 grant agreement ("ARRA Grant") between the Federal Railroad Administration ("FRA") and the  
11 Authority. Under the terms of that current grant agreement, the ARRA funding expires if FRA  
12 does not pay it out by September 30, 2017. Per the terms of the current extant ARRA Grant, the  
13 funding is on a reimbursement basis – the Authority has to incur an expense and actually pay it  
14 before it gets reimbursed (approximately, 50 cents reimbursed for every dollar the Authority  
15 spends) by FRA. Accordingly, in order for FRA to pay out all the ARRA funding by September  
16 30, 2017, the Authority actually has to incur expenses and pay them well before September 30,  
17 2017, to provide time for FRA to receive and process associated invoices, and issue  
18 reimbursement payment by September 30, 2017. To accomplish this, the Authority will need to  
19 complete all construction funded by ARRA by March 31, 2017, in order to get invoices to FRA  
20 by July 31, 2017, as required in Attachment 1B, Section 8, of the current ARRA Grant  
21 Agreement (Section 8 is attached hereto as Attachment C).

22 13. The Authority has established a construction contracting, final engineering, ROW  
23 acquisition (as described above) and construction schedule to facilitate completing all  
24 construction funded by ARRA by March 31, 2017. RFP Addendum 5 specifies Final Acceptance  
25 in February 2017 to meet this deadline.

26 14. The schedule to complete construction by February 2017 is extremely aggressive. It  
27 has to be to meet the terms of the current extant ARRA Grant Agreement. The large scope of the  
28 project and the short time frame in which to complete requires construction work at an

1 unprecedented pace – the fastest rate of transportation construction known in U.S. history, at least  
2 50% faster than the pace (approximated by dollars spent per day) of the recent Bay Bridge  
3 project. This has been widely reported in the press, including in an article in which my statement  
4 was accurately summarized (attached hereto as Attachment D and can be found at  
5 <http://articles.latimes.com/2012/may/14/local/la-me-bullet-risks-20120514>). There is little  
6 opportunity to accelerate the schedule.

7 15. A delay of five to eight months from an injunction, in concert with an already  
8 aggressive schedule to meet a February 2017 Final Acceptance date, likely would render the  
9 project incapable of meeting the March 31, 2017, completion date necessary to meet the federal  
10 September 30, 2017, deadline. At a minimum, it would mean that the construction contractor  
11 would use double shifts to attempt to meet the deadline. Double shifts would introduce  
12 inefficiencies in the work and likely increase construction costs in excess of \$13 million. The  
13 double shifts would also increase trucking operations and construction noise in the evenings and  
14 at night, which almost certainly would be objectionable to local residents and local governments.  
15 The loss of five to eight months from the construction schedule would also amplify the effect of  
16 things like change orders, differing site conditions, or the like, further putting at risk the federal  
17 deadline.

18 16. A five-to eight-month delay from an injunction creates the very real prospect that  
19 CP1A/1B cannot get completed in time (as stated in the preceding paragraph) to meet the terms  
20 of the current extant ARRA Grant Agreement, as described above. Failure to complete  
21 construction in the timing required by the current ARRA Grant, or if it appears that the  
22 construction timing cannot be met because of delays, risks the entire funding. “Any failure to  
23 make reasonable progress on the Project...that significantly endangers substantial performance of  
24 the Project shall provide sufficient grounds for FRA to terminate this Agreement.” ARRA Grant  
25 Agreement, General Provisions Attachment 2, §23(a) (excerpt attached hereto as Attachment E).  
26 The Authority cannot make up any lost ARRA money because the terms of the California  
27 Proposition 1A bond funding (the only other source of funding) requires a 50% match for capital  
28 costs or it cannot be spent under Streets & Highways Code Section 2704.08(a).

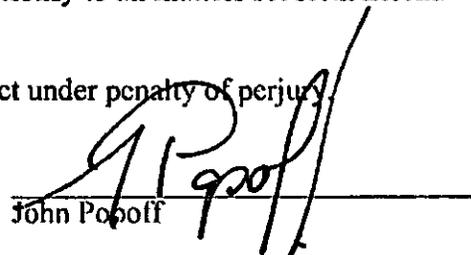
1           17. The construction-contracting and final design/construction dates and schedule  
2 mentioned above are based on the latest RFP (Addendum 5) and the current operative and  
3 controlling ARRA Grant Agreement. To the extent the RFP is revised further and/or the ARRA  
4 Grant Agreement is modified, the dates/schedule could change – but only in a manner that  
5 delays/pushes (not accelerates) those dates and schedule. The schedule has only slipped (not  
6 accelerated) between previous addenda, such as between Addendums 3 and 4 and 5.

7           18. The terms of the ARRA Grant Agreement described above are based on the current  
8 operative and controlling ARRA Grant Agreement. To the extent the ARRA Grant Agreement is  
9 modified, those terms could change.

10           19. The facts set forth in this declaration are true of my own personal knowledge and, if  
11 called as a witness, I could and would competently testify to all matters set forth herein.

12           I declare that the foregoing is true and correct under penalty of perjury.

13  
14 Dated: 31 October 2012

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John Popoff

# Attachment A

**California High-Speed Train Project**



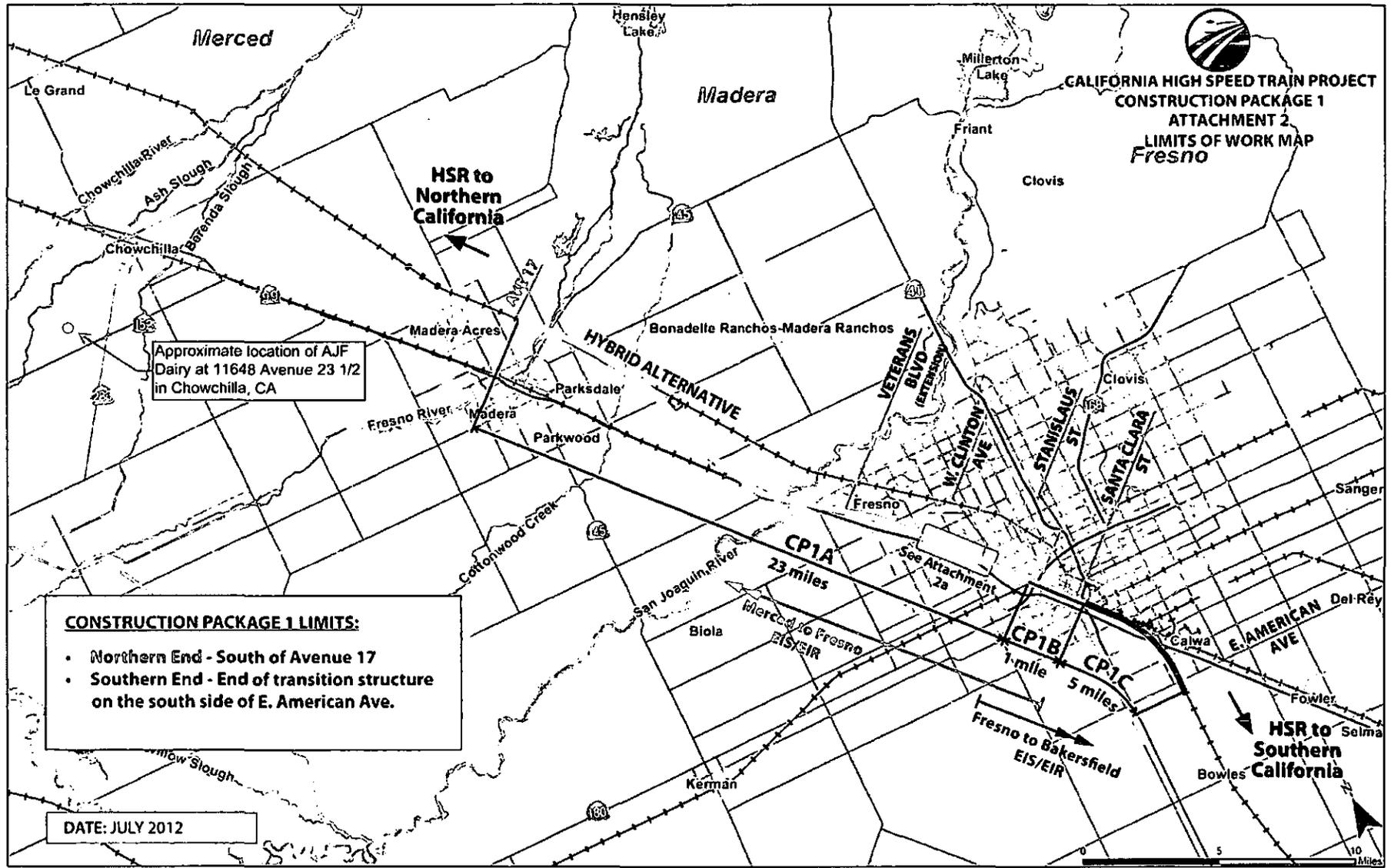
**Request for Proposal  
for Design-Build Services**

**RFP No.: HSR 11-16  
Scope of Work**

**ATTACHMENT 2  
LIMITS OF WORK MAP**



**CALIFORNIA HIGH SPEED TRAIN PROJECT  
CONSTRUCTION PACKAGE 1  
ATTACHMENT 2  
LIMITS OF WORK MAP  
Fresno**



Approximate location of AJF Dairy at 11648 Avenue 23 1/2 in Chowchilla, CA

**CONSTRUCTION PACKAGE 1 LIMITS:**

- Northern End - South of Avenue 17
- Southern End - End of transition structure on the south side of E. American Ave.

DATE: JULY 2012

# Attachment B

# California High-Speed Train Project



## Request for Proposal for Design-Build Services

RFP No.: HSR 11-16

Book 1, Parts A - C: Instructions to Proposers

Revision(s)	Date	Description
0	3/22/2012	Initial Release, R0
1	4/27/2012	Addendum 1
2	6/5/2012	Addendum 2
3	7/1/2012	Addendum 3
4	8/22/2012	Addendum 4
5	10/29/2012	Addendum 5

Note: Signatures apply for the latest technical memorandum revision as noted above.

**Table 1: RFP Schedule**

<b>Activity</b>	<b>Deadline*</b>	<b>Responsibility</b>
Issue RFP	March 22, 2012	Authority
One-on-One Meetings with Potential Proposers	May 14-15, 2012	Both
Mandatory Department of Labor EEO and AA Seminar	May 16, 2012	Both
Mandatory Authority Small Business Program Seminar	May 16, 2012	Both
Mandatory Authority Sponsored Small Business Outreach Meeting	May 17, 2012	Both
Meetings with Potential Proposers on Possible ATCs	June 4-6, 2012	Both
Follow-up Meetings with Potential Proposers on ATCs	June 18-20, 2012	Both
Proposal Agreement Submittal Deadline	June 15, 2012	Proposers
ATC Submittal Deadline	July 9, 2012	Proposers
Follow-up One-on-One Meetings with Potential Proposers	July 10-12, 2012	Both
List of Critical Right-of-Way Parcels Submittal	Within 60 Days of receipt of RFP	Proposers
Response to ATC Submittals	September 14, 2012	Authority
Deadline to Submit Agenda for One-on-One Meetings	November 21, 2012	Proposers
Deadline for Proposer Questions	November 26, 2012	Proposers
Deadline to Submit Changes to Proposer Teams	November 26, 2012	Proposers
One-on-One Meetings with Potential Proposers	November 28-30, 2012	Both
Proposal Deadline	January 18, 2013	Proposers
Deadline to Submit Escrowed Proposal Documentation (See 8.2.5)	January 23, 2013	Proposers
Anticipated Contract Award	June 2013	Authority

\* All deadlines are 3:00 p.m. Pacific Time unless otherwise indicated.

Table 2 summarizes the anticipated schedule of events for Project implementation.

**Table 2: Anticipated Project Implementation Schedule**

<b>Activity</b>	<b>Approximate Date</b>	<b>Responsibility</b>
Initial Notice to Proceed	July 2013	Authority
Final Acceptance	February 2017	Contractor
ARRA Funding Deadline	September 30, 2017	Authority

#### 4 Project Goals

The Authority's goals for this Project focus the Contractor on schedule, budget, quality, environmental mitigation, sustainability, safety, and small business utilization.



# Attachment C



U.S. Department  
of Transportation  
**Federal Railroad  
Administration**

## Grant/Cooperative Agreement

<b>1. RECIPIENT NAME AND ADDRESS</b> California High-Speed Rail Authority 925 L St Ste 1425 Sacramento, CA 95814-3704		<b>2. AGREEMENT NUMBER:</b> FR-HSR-0009-10-01-02	<b>3. AMENDMENT NO.</b> 2
		<b>4. PROJECT PERFORMANCE PERIOD:</b> FROM 08/17/2010 TO 09/30/2017	
		<b>5. FEDERAL FUNDING PERIOD:</b> FROM 08/17/2010 TO 09/30/2017	
<b>1A. IRS/VENDOR NO.</b> 911879327	<b>6. ACTION</b> Supplement/Change for Expansion		
<b>1B. DUNS NO.</b> 011075376			
<b>7. CFDA#:</b> 20.319	<b>9. TOTAL OF PREVIOUS AGREEMENT AND ALL AMENDMENTS</b>		2,466,176,231
<b>8. PROJECT TITLE</b> California High-Speed Train Program-ARRA Grant		<b>10. AMOUNT OF THIS AGREEMENT OR AMENDMENT</b>	86,380,000
		<b>11. TOTAL AGREEMENT AMOUNT</b>	2,552,556,231

**12. INCORPORATED ATTACHMENTS**  
THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREBIN AND MADE A PART HEREOF:  
The terms of this amendment are covered in Attachment 1:

**13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT**  
American Recovery and Reinvestment Act of 2009, Public Law 111-5 (February 17, 2009)

**14. REMARKS**

GRANTEE ACCEPTANCE		AGENCY APPROVAL	
<b>15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL</b> Mr. R. Van Ark CEO		<b>17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL</b> Ms. Gina Christodoulou-AO	
<b>16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL</b> Electronically Signed	<b>16A. DATE</b> 08/01/2011	<b>18. SIGNATURE OF AUTHORIZED FRA OFFICIAL</b> Electronically Signed	<b>18A. DATE</b> 08/08/2011

**AGENCY USE ONLY**

**19. OBJECT CLASS CODE:** 41010      **20. ORGANIZATION CODE:** 9013000000

<b>21. ACCOUNTING CLASSIFICATION CODES</b>				
DOCUMENT NUMBER	FUND	BY	BPAC	AMOUNT
FR-HSR-0009-10-01-00	2709120718	2010	91010029Y0	0
FR-HSR-0009-10-01-00	2709120718	2011	91010029Y0	86,380,000

entered into this Agreement with the firm intention of completing all of the tasks described herein, including providing the Grantee contribution of funding assistance for those tasks. The Grantee will seek and diligently pursue any needed appropriations from the California State Legislature and diligently seek to satisfy such other requirements in Proposition 1A in a timely and appropriate manner as necessary to meet the payment obligations and project funding assistance contribution it has agreed to assume under this Agreement.

6. Attachment 1B, American Recovery and Reinvestment Act of 2009 Clauses, is hereby amended by adding a new Section 8 to read as follows:

**8. Deadline for Recovery Act Reimbursement**

The Grantee acknowledges that pursuant to 31 U.S.C. § 1552 and as described in the High-Speed Intercity Passenger Rail (HSIPR) interim guidance published in the *Federal Register* on June 23, 2009 (74 FR 29900), the fixed appropriation account for funds made available under the Recovery Act closes on September 30, 2017 and any remaining balance (whether obligated or unobligated) in that account shall be cancelled and thereafter shall not be available for obligation or expenditure for any purpose. Therefore, the Grantee is responsible for submitting to FRA all materials necessary for Project closeout and meeting all other requirements for reimbursement under 49 C.F.R. Part 18 with sufficient time for the completion of closeout and reimbursement no later September 30, 2017. FRA shall process all such materials, and complete final closeout and reimbursement by September 30, 2017, provided that FRA receives such materials from CHSRA and determines those materials are consistent with the requirements above by July 31, 2017. Nothing in this Section 8 changes the Grantee's obligations to complete the tasks required in Attachments 3 and 3A, and meet all other requirements, within the time period otherwise specified in Section 4 of this Cooperative Agreement.

7. Subsection 11(g) of Attachment 2 is deleted in its entirety, and the following substituted therefore:

**g. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals:**

- 1) The Grantee agrees to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, and disability, and national origin—benefit from activities funded through this Agreement.

# Attachment D

latimes.com/news/local/la-me-bullet-risks-20120514,0,4603595.story

**latimes.com**

## High-speed spending: Bullet train may need \$3.5 million a day

**California would have to pay \$6 billion to complete a 130-mile segment by September 2017, a plan that requires 120 permits and buying 1,100 parcels of land.**

By Ralph Vartabedian, Los Angeles Times

6:10 PM PDT, May 13, 2012

If California starts building a 130-mile segment of high-speed rail late this year as planned, it will enter into a risky race against a deadline set up under federal law.

The bullet train track through the Central Valley would cost \$6 billion and have to be completed by September 2017, or else potentially lose some of its federal funding. It would mean spending as much as \$3.5 million every calendar day, holidays and weekends included — the fastest rate of transportation construction known in U.S. history, according to industry and academic experts.

Over four years, the California High-Speed Rail Authority would need as many as 120 permits, mostly from a tangle of government regulatory agencies not known to rush their business. It would need to acquire about 1,100 parcels of land, many from powerful agriculture interests that have already threatened to sue. And it would need to assemble five teams of contractors with giant workforces positioned from Fresno to Bakersfield, moving millions of tons of gravel, steel rail and heavy equipment across the valley.

Even if the authority avoids any delays, its ability to complete the first construction section on time will require a breakneck pace of activity.

"It is a very aggressive plan," said Manuel Garcia, associate director at the Construction Industry Institute affiliated with the University of Texas at Austin. "It does appear that it will be a challenge."

If the rail authority runs into technical problems, legal disputes, permit delays or political roadblocks, it could end up building less track and potentially leave an uncompleted project, according to warnings contained in its own business plan. If the project blows past the federal deadline, for example, the flow of money could be stopped. And the scramble to meet that deadline could lead to construction problems and drive up costs.

Rail officials acknowledge that their plans are aggressive but describe them as not unprecedented, pointing to the fast construction pace of the new Bay Bridge in Oakland and the Alameda Corridor freight rail line in Los Angeles.

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But state reports show the \$6.5-billion Bay Bridge will have an average spending or "burn rate" of \$1.8 million per day when it is completed in 2013, less than half what the rail authority is planning. The Alameda Corridor also had a similar \$1.8 million per day burn rate by its completion in April 2002, much less than planned for the bullet train even when adjusted for inflation.

The hurried project to improve I-15 in Salt Lake City before the 2002 Olympics, known in the construction industry as one of the fastest well-executed work packages, spent \$1.6 million per day, according to John Njord, executive director of the Utah Department of Transportation.

"That was a burn rate like we have never seen before," he said, which was on schedule only because of careful planning. The California effort would more than double that pace.

John Popov, a construction expert at Parsons Brinckerhoff, a consulting firm working with the rail authority, said he believes the project can be completed on time. Popov calculates that the job will spend \$2.7 million per day, which excludes the cost of land acquisition, environmental work, management oversight and reserves. But construction experts say that including all of its costs, the authority would spend \$3.5 million per day. Popov added that the authority is considering whether it can legally shift as much as \$1.3 billion of work past the 2017 deadline, an option that has not been vetted with the Legislature.

Outside experts say that only careful management like that in the Utah job can ensure that the Central Valley rail plan does not go haywire. The rail authority has just 37 employees and has been operating for months without a chief executive, a deputy chief executive or a chief financial officer. It also has no single executive overseeing construction, which outside consultants say is needed.

"You have 37 mere mortals who have never done anything like this before," said Robert Bea, a member of the National Academy of Engineering, a retired UC Berkeley professor of civil engineering and director of the National Science Foundation's project on California's transportation infrastructure. "They need God, because he's the only one who can handle this management challenge."

A final environmental report on about half of the 130-mile project is uncompleted and months behind schedule, forcing the agency to start work initially on a 29-mile section from Madera to Fresno and hope that it can get the review problems with the rest of the line cleared up later this year.

In a status report this month, Mark Ashley, a senior vice president with the rail authority's consultant T.Y. Lin International Group, noted that the project has identified 25 issues in the Merced-to-Bakersfield construction plan as high risk or very high risk and that the project is now nine months behind schedule in securing official approval from the Federal Railroad Administration.

"Fresno to Bakersfield is going to be really tight," Ashley said. The acquisition of land is facing problems, including slow progress in getting agreements with freight railroads, he added. "It is dicey right now whether that is going to hold up our construction or impact our schedule."

The rail authority's plan is to break the construction into four contracts to design and build the railroad bed. A fifth contract would cover installation of hundreds of tons of steel rail. The very first construction contract on the section from Madera to Fresno is projected to cost \$1.5 billion to \$2 billion, and five teams of contractors are supposed to submit bids by September.

But the separation of the project also creates another set of risks because each section's design, engineering, construction and workforce management must be integrated.

"The more packages you add, the more interfaces you have, and that's where projects break down," Bea added.

One strategy of the rail authority is to shift the schedule and cost risk to the contractors. Under its contract terms, builders would face \$1 million per day in penalties for failure to meet final deadlines after March 1, 2017. That is the highest penalty rate known to exist in the U.S.

"That would be very punitive, very harsh," said C. William Ibbs, a UC Berkeley civil engineering professor who consults on construction projects around the world. "Anytime an owner puts in an onerous clause, the contractor is going to increase their bid."

Popov, the Parsons Brinckerhoff executive, said he did not consider the penalty excessive.

There is deep concern about the construction pace within the teams, particularly because the state wants contractors to shoulder that risk or face big damages, according to interviews with industry officials who would not speak if identified because they worry that their opinions could be held against them.

"If anybody tells you that a day doesn't matter, don't believe it. Every day counts now," said one construction executive.

At least two companies that are on consortiums qualified to bid on the project are backing away, The Times has learned. The project is further complicated by tinkering designed to placate communities: Contractors must agree to set aside nearly one-third of their work for small businesses, for example, a far higher amount than in other projects.

The contractors will have to spend more than \$8 million on engineering work by the time they submit bids in September, of which only \$2 million will be compensated by the rail authority, industry sources estimate. Yet the Legislature recently decided to delay a decision to provide the state's share of initial construction money until August, just before it adjourns for its summer break. Construction executives are worried that after investing millions of their own money into the contract this summer, the state may not go forward.

"These contractors need certainty and that certainty is that the Legislature is committed to this project," Transportation Secretary Ray LaHood said last week after urging state leaders to speed up their budget decision. The state, LaHood said, should be confident in rail authority Chairman Dan Richard.

"Dan Richard will meet every deadline that needs to be met," LaHood said.

But a number of key California senators are skeptical about the entire strategy of starting construction in the Central Valley.

"It is a big enough problem for me to vote no, as of right now," said Sen. Mark DeSaulnier (D-Concord), chairman of the Senate Transportation and Housing Committee.

[ralph.vartabedian@latimes.com](mailto:ralph.vartabedian@latimes.com)

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# Attachment E



U.S. Department  
of Transportation  
**Federal Railroad  
Administration**

## Grant/Cooperative Agreement

1. RECIPIENT NAME AND ADDRESS California High-Speed Rail Authority 925 L St Ste 1425 Sacramento, CA 95814-3704		2. AGREEMENT NUMBER: FR-HSR-0009-10-01-00		3. AMENDMENT NO. 0	
		4. PROJECT PERFORMANCE PERIOD: FROM 08/17/2010 TO 12/31/2012			
		5. FEDERAL FUNDING PERIOD: FROM 08/17/2010 TO 12/31/2012			
IA. IRS/VENDOR NO. 91-1879327		6. ACTION New			
IB. DUNS NO. 011075376					
7. CFDA#: 20.319		9. TOTAL OF PREVIOUS AGREEMENT AND ALL AMENDMENTS 0			
8. PROJECT TITLE Phase 1 California High Speed Train Program -PE/NEPA/CEQA		10. AMOUNT OF THIS AGREEMENT OR AMENDMENT		194,000,000	
		11. TOTAL AGREEMENT AMOUNT		194,000,000	
12. INCORPORATED ATTACHMENTS THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF: Special Provisions, Attachment 1 Passenger Rail Investment and Improvement Act of 2008, Attachment 1A American Recovery and Reinvestment Act of 2009, Attachment 1B General Provisions, Attachment 2 Statement of Work, Attachment 3 Quarterly Progress Report for FRA, Attachment 4 ACH Vendor/Miscellaneous Payment Enrollment Form, Attachment 5					
13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT American Recovery and Reinvestment Act of 2009, Public Law 111-5 (February 17, 2009)					
14. REMARKS					
GRANTEE ACCEPTANCE			AGENCY APPROVAL		
15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Roelof Van Ark CEO			17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL		
16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL Signature Received		16A. DATE 09/22/2010	18. SIGNATURE OF AUTHORIZED FRA OFFICIAL		18A. DATE
AGENCY USE ONLY					
19. OBJECT CLASS CODE: 41010			20. ORGANIZATION CODE: 9013000000		
21. ACCOUNTING CLASSIFICATION CODES					
DOCUMENT NUMBER FR-HSR-0009-10-01-00	FUND 2709120718	BY 2010	BPAC 91010029Y0	AMOUNT 194,000,000	

shall assist the FRA in complying with the requirements of 49 U.S.C. §303(c).

f. The Grantee agrees to facilitate compliance with the policies of Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. '4321 note, except to the extent that the FRA determines otherwise in writing.

## 22. Project Completion, Audit, Settlement, and Closeout:

a. **Project Completion.** Within 90 days of the Project completion date or termination by FRA, the Grantee agrees to submit a final Federal Financial Report (Standard Form 425), a certification or summary of Project expenses, and third party audit reports, as applicable.

b. **Audits.** Each governmental Grantee agrees to undertake the audits required by 49 C.F.R. § 18.26 and OMB Circular A-128 or any revision or supplement thereto. Each non-governmental Grantee agrees to undertake the audits required by 49 C.F.R. § 19.26 and OMB Circular A-133 or any revision or supplement thereto.

c. **Remittance of Excess Payments.** If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee agrees to promptly remit that excess and interest as may be required by the "Payment by FRA" section of this Attachment.

d. **Project Closeout.** Project closeout occurs when all required Project work and all administrative procedures described in 49 C.F.R. Part 18, or 49 C.F.R. Part 19, as applicable, have been completed, and when FRA notifies the Grantee and forwards the final Federal assistance payment, or when FRA acknowledges the Grantee's remittance of the proper refund. Project closeout shall not invalidate any continuing obligations imposed on the Grantee by this Agreement or by the FRA's final notification or acknowledgment.

## 23. Right of FRA to Terminate:

a. Upon written notice, the Grantee agrees that FRA may suspend or terminate all or part of the financial assistance provided herein if the Grantee has violated the terms of this Agreement, or if FRA determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FRA to terminate this Agreement.

b. In general, termination of any financial assistance under this Agreement will not invalidate obligations properly incurred by the Grantee and concurred in by FRA before the termination date, to the extent those obligations cannot be canceled. However, if FRA determines that the Grantee has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, FRA reserves the right to require the Grantee to refund the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by FRA.

c. Expiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.

## 24. Entire Agreement:

This Agreement constitutes the entire agreement between the parties. All prior discussions and

# Exhibit 3











# Exhibit 4



**CALIFORNIA  
HIGH-SPEED RAIL  
AUTHORITY**

**BRIEFING: MARCH 2012 BOARD MEETING AGENDA ITEM #3**

**TO: Chairman Richard and Board Members**

**FROM: Thomas Fellenz, Chief Counsel**

**DATE: March 1, 2012**

**RE: Terms and Conditions, Stipend and RFP Scoring criteria applicable to the Design Build [DB] construction for the Central Valley Initial Construction Section**

---

**Background/Discussion:**

The initial operating segment (IOS) of the California High Speed Train System will run through the Central Valley and includes the initial construction section (ICS) from Fresno to Bakersfield. Construction of the ICS will involve four design build contracts for the final design and construction of all High Speed Rail (HSR) trackway civil infrastructure up to the top of the ballast. A fifth ICS design build contract will be entered into for the trackwork along the entire length of the ICS.

The Authority has started a two-phase best value procurement process for the first of the five ICS design build contracts, designated Construction Package #1. The first Request for Qualifications (RFQ) phase is complete, resulting in the shortlisting of five qualified design build teams which are now invited to participate in the second Request for Proposal (RFP) phase. The proposals submitted by the teams in response to the RFP will be evaluated and scored resulting in a recommendation to the Board to enter into a \$1.5 to \$2.0 billion design build contract with the selected team, expected to take place in early 2013.

To aid the HSR Authority in the final development of the Request for Proposals documents, a term sheet containing a summary of the major material terms and conditions for the Construction Package #1 design build contract was developed and is presented to the Board for approval.

To partially compensate for the cost of the preparation of the Proposals submitted, the HSR Authority can pay a stipend to those proposer teams not awarded the contract. HSR staff recommends a stipend be paid for each acceptable proposal submitted to the Authority by any shortlisted Offeror that is not awarded the contract or in case of termination of the RFP, proven costs not to exceed \$2 million.

In the evaluation of the proposals it is in the best interests of the HSR Authority to assure technically competent proposals and assure the best value is received. HSR staff is recommending a two-step RFP evaluation process that includes a technical evaluation resulting in the qualification of three of the five proposer teams followed by a combined technical/price evaluation of these top three proposer teams.

**Recommendations:**

Approve the term sheet, the RFP scoring criteria, and the stipend for Construction Package #1 per the terms in the attached Board resolution.

**Attachments:**

Construction Package #1 Term Sheet

Resolution # HSRA 12-04

DRAFT



**RFP No. 11-016**

**Construction Package #1  
Initial Construction Section  
of the  
California High-Speed Train System  
Design-Build Contract Term Sheet**

This document provides background information and summarizes certain terms anticipated to be in the Contract Documents for Construction Package #1 of the Initial Construction Section of the California High-Speed Train System. This document is not a restatement or interpretation of the contract requirements. There are numerous details, exceptions and qualifications associated with the provisions of the Contract Documents that can only be ascertained by reviewing the Contract Documents.

This document is subject to revision as Authority considers how best to allocate risk and responsibilities for the Project.

<b>1. Contract Overview</b>	
<b>Project</b>	Construction Package #1 of the Initial Construction Section of the California High-Speed Train System. The Project consists of Construction Package #1A (including Construction Package #1A Option 1) and options for Construction Packages #1B and #1C. Refer to the “Scope Options” provision under Section 4 (Payment) and the “Notice to Proceed” provision under Section 5 (Commencement of Work; Completion Deadlines) below.
<b>Authority</b>	California High-Speed Rail Authority
<b>Contractor</b>	Contractor will be determined through the procurement.
<b>Contractor-Related Entity</b>	<ol style="list-style-type: none"> <li>1. Contractor;</li> <li>2. If Contractor is a joint venture, partnership or limited liability company, any joint venture member, partner or member of the Contactor;</li> <li>3. Any Subcontractors;</li> <li>4. Their employees, agents and officers; and</li> <li>5. All other Persons for whom Contractor may be legally or contractually responsible.</li> </ol>
<b>Contract Documents/ Order of Precedence</b>	<p>The Contract Documents consist of the following documents, in the following descending order of precedence:</p> <ol style="list-style-type: none"> <li>1. Design-Build Contract (signature document)</li> <li>2. Special Provisions (Book 2, Part A)</li> <li>3. General Provisions (Book 2, Part B)</li> <li>4. Scope of Work (Book 2, Part C)</li> <li>5. Final Environmental Documents and Mitigation Monitoring Plan</li> <li>6. Third Party Agreements and Permits</li> <li>7. Approved Design Variances</li> <li>8. HSR Design Criteria Manual</li> <li>9. HSR Directive Drawings</li> <li>10. HSR CADD Manual</li> <li>11. HSR Plans Preparation Manual</li> <li>12. Proposal (provided that if Authority determines that the Proposal contains a provision that is more restrictive/beneficial to Authority than is specified elsewhere in the Contract Documents, that Proposal provision shall take precedence)</li> </ol> <p>ATCs, amendments and Change Orders will have the priority just above the document that is being amended.</p>
<b>Federal Requirements</b>	The Contract will comply with High-Speed Intercity Passenger Rail (HSIPR) Program requirements (including the American Recovery and Reinvestment Act of 2009 (ARRA) requirements).
<b>DBE/SBE Requirements</b>	The Contract will address DBE/SBE requirements. . Contractor shall comply with the Authority SBE Policy and Plan goal of 30% small business participation. Contractor shall also comply with 41 C.F.R Part 60, 49 C.F.R. Part 26, Executive Order 11246 and Title VI of the Civil Rights Act of 1964.

<b>2. Work</b>	
<b>General Responsibility</b>	Contractor will be solely responsible for all materials, services and efforts necessary to achieve Final Acceptance on or before the Final Acceptance Deadline, and such materials, services and efforts are included in the Contract Price, except as otherwise specifically provided in the Contract Documents.
<b>Design Liability</b>	<p>Construction Packages #1A (not including Construction Package #1A Option 1) and #1B will include Preliminary Design to approximately 30% and Construction Packages #1A Option 1 and #1C will include Preliminary Design to approximately 15%.</p> <p>Contractor assumes full responsibility and liability with respect to design of the Project, including identifying and correcting any errors, omissions, inconsistencies or other defects in the Preliminary Design, if Contractor chooses to follow the Preliminary Design.</p>
<b>Standards</b>	<p>Contractor will design and construct the Project in conformity with the HSR Design Criteria Manual (subject to any variances requested by Contractor and approved by Authority during the procurement).</p> <p>The design will conform to all professional engineering principles generally accepted as standards of the industry in the State, will be suitable for its intended purpose and will be free of defects.</p> <p>Construction will be performed in a workmanlike manner and will conform to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State.</p>
<b>Permits and Approvals</b>	<p>Authority has obtained or will obtain the following permits and governmental approvals (Authority-Provided Approvals):</p> <ol style="list-style-type: none"> <li>1. Merced to Fresno EIR/EIS</li> <li>2. Fresno to Bakersfield EIR/EIS</li> </ol> <p>Contractor will be responsible for obtaining all other permits and governmental approvals, including final versions of any draft approvals obtained by Authority.</p> <p>Contractor will comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all permits and governmental approvals, except to the extent that such responsibility is expressly assigned in the Contract to another Person.</p>
<b>Right of Way (ROW)</b>	<p>Authority will obtain the ROW identified in the ROW acquisition plan incorporated in the Contract by the deadlines provided in the ROW acquisition plan. Contractor must agree to the ROW acquisition plan and must certify that the Contractor is able to construct the Project in accordance with the ROW acquisition plan. Contractor may be entitled to a Change Order for additional costs and a time extension, including overhead, profit and delay damages, due to failure of Authority to provide a parcel by the specified deadline. The Contractor will work proactively with the Authority's representative to resolve right-of-way acquisition plan changes and to adjust its construction schedule to accommodate these changes.</p> <ol style="list-style-type: none"> <li>1. Contractor may request additional ROW and temporary construction interests in its Proposal. To the extent Authority concurs, Authority will acquire such additional property. The additional property will be</li> </ol>

	<p>factored in Authority's evaluation of the Proposal.</p> <ol style="list-style-type: none"> <li>2. Contractor may request additional ROW during the term of the Contract. If Authority determines that such additional ROW is necessary to build the Project, then Authority will acquire such additional property.</li> <li>3. Contractor may request additional ROW as part of a Value Engineering Change Proposal (VECP), in which case the additional ROW costs will be addressed as part of the VECP. In this case, Contractor will be required to provide surveys, appraisals and other documentation to allow Authority to proceed with the acquisition.</li> <li>4. If additional ROW is necessary as a result of an Authority-directed change, the additional ROW costs will be addressed in the Change Order for the Authority-directed change.</li> </ol> <p>Contractor is responsible for acquiring, at its cost, any temporary construction interests not requested in its Proposal.</p> <p>Authority will require up to 24 months to acquire any ROW not identified on the ROW acquisition plan.</p>
<b>Utilities</b>	<p>Contractor is responsible for removing, relocating or otherwise adjusting all Utilities as needed for the Project, except where the applicable master agreement assigns such work to the Utility Owner. Contractor is also responsible for reimbursing relocation work by Utility Owners having "prior rights" (i.e., the legal right to reimbursement for relocation work) and collecting payments owing from Utility Owners. It is anticipated that master agreements will be in place with all impacted Utility Owners before the Proposal due date.</p> <p>Contractor's costs for certain relocations will be chargeable against the Utility/Third Party Provisional Sum (whether incurred for work performed by Contractor or for reimbursing a Utility Owner for its work). All other such costs are included in the Contract Price, except where the Utility Owner does not have prior rights (in which case Contractor will collect reimbursement directly from the Utility Owner). If Contractor's allowable costs exceed the Utility/Third Party Provisional Sum, Authority will reimburse Contractor for 50% of the excess. Authority will retain any positive balance remaining in the Utility/Third Party Provisional Sum after Project completion. The Utility/Third Party Provisional Sum is subject to increase as provided in the "Utilities" provision under Section 3 (Change Orders) below.</p> <p>A draft Task Order will be included in the RFP for each identified Relocation. Cost liability for each Relocation will be determined by Authority and the Utility Owner and indicated in the draft Task Orders. Contractor will also be able to rely on certain other information in the draft Task Orders.</p> <p>See the "Utilities" provision under Section 3 (Change Orders) below for information regarding Change Orders.</p>
<b>Third Party Agreements</b>	<p>Authority anticipates executing agreements with public agencies regarding non-utility facilities by June 2012. The Contract will address Contractor's obligations regarding those agreements. Generally, the Contractor will be responsible for fulfilling the Authorities obligations under the agreements with the Authority continued participation.</p>

<p><b>Railroad Agreements</b></p>	<p>Authority anticipates executing agreements with railroads by June 2012. The Contract will address Contractor’s obligations regarding those agreements. Generally, the Contractor will be responsible for fulfilling the Authorities obligations under the agreements with the Authority continued participation.</p>
<p><b>Hazardous Materials</b></p>	<p>Contractor is responsible for remediating any hazardous materials discovered on the Site. See the “Hazardous Materials” provision under Section 3 (Change Orders) below for information regarding Change Orders.</p> <p>As between Contractor and Authority, Authority will be considered the generator and arranger for hazardous materials other than hazardous materials brought onto the Site by any Contractor-Related Entity or hazardous materials where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity. Whenever Authority has such arranger liability, Contractor’s remediation plans will be subject to the prior written approval of Authority and Authority will have exclusive decision-making authority regarding selection of the destination facility to which such hazardous materials will be transported. Authority will comply with the applicable standards for generators and arrangers with regard to such hazardous materials, including the responsibility to sign manifests for the transport of hazardous wastes. Authority will indemnify, save, protect and defend Contractor from third party claims, causes of action and losses arising out of or related to generator or arranger liability for such hazardous materials.</p> <p>As between Contractor and Authority, Contractor will be considered the generator and arranger for hazardous materials brought onto the Site by any Contractor-Related Entity or hazardous materials where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity.</p>
<p><b>Nonconforming Work</b></p>	<p>Authority may require nonconforming Work to be remedied, removed or replaced. Contractor is responsible for taking all necessary actions to close out any non-conformances to the satisfaction of Authority. Authority may, but is not obligated to, accept nonconforming Work without requiring it to be fully corrected, in which case the Contract Price will be decreased accordingly.</p>
<p><b>Verification and validation</b></p>	<p>Contractor is required to implement a verification and validation management plan following the principals of EN50126. As part of self-certification the Contractor shall engage a qualified Independent Checking and Site Engineer to verify and validate each of the Contractor’s submissions to the Authority. The ICSE will report to the Authority.</p>
<p><b>Quality</b></p>	<p>Contractor is required to establish and implement an Authority-approved Quality Management Plan following the principals of ISO 9001, including quality assurance and quality control.</p> <p>Authority may:</p> <ol style="list-style-type: none"> <li>1. Audit Contractor, at any time, to verify and validate compliance with Contractor’s Quality Management Plan;</li> <li>2. Witness any quality control or quality assurance test, acceptance test or inspection; and</li> <li>3. Conduct independent tests and/or assessments of any material or equipment to be incorporated in the Work.</li> </ol>

<b>3. Change Orders</b>	
<b>Change Orders</b>	<p>An Authority signed Change Order or directive order is required for any Contract Price increase or time extension.</p> <p>Authority may issue a unilateral directive order and Contractor will proceed immediately with the Work as directed in the order, pending the execution of a formal Change Order (or, if the order states that the Work is within the original scope of the Work, Contractor will proceed with the Work as directed but will have the right pursuant to the disputes provision to request that Authority issue a Change Order with respect to the order).</p> <p>Contractor may request a Change Order only for those events and situations that the Contract Documents expressly contemplate that a Change Order is permitted.</p> <p>Contractor is required to provide prompt notice of the event or situation followed by a Change Order proposal including the anticipated price impacts, time impacts, scope of work and any changes to the Contract Documents.</p> <p>Each Change Order proposal must contain a sworn certification by Contractor (and Subcontractor(s), for any Subcontractor involved in the Work or event contemplated by the Change Order) including that the Change Order is made in good faith and in accordance with the terms of the Contract, the amount of time and/or compensation requested accurately reflects the appropriate adjustments and includes all known and anticipated impacts that may be incurred as a result of the event giving rise to such proposed change. Each Change Order proposal involving Subcontractor Work must include a sworn certification including that Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested.</p> <p>Change Orders are subject to strict procedural requirements, including requirements regarding timely notice of the event or situation giving rise to a Change Order.</p>
<b>Authority-Directed Changes</b>	<p>Authority may at any time require Contractor to make changes to the Work or its schedule. Contractor may be entitled to a Change Order for additional costs and a time extension, including delay damages, overhead and profit, resulting from the changes.</p>
<b>Differing Site Conditions</b>	<p>Contractor may be entitled to a Change Order for additional costs and a time extension, excluding delay damages but including overhead and profit, due to Differing Site Conditions.</p> <p>Differing Site Conditions are defined as:</p> <ol style="list-style-type: none"> <li>1. Subsurface or latent physical conditions encountered at the exact boring locations included in the Contract that differ materially from those indicated for such locations in the Contract; or</li> <li>2. Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.</li> </ol> <p>Differing Site Conditions exclude:</p> <ol style="list-style-type: none"> <li>1. Conditions which Contractor had, or should have had, actual or constructive knowledge as of the Proposal due date.</li> </ol>

	<ol style="list-style-type: none"> <li>2. Utility facilities, hazardous materials, non-contaminated water and any conditions which constitute or are caused by Force Majeure.</li> <li>3. Conditions that could have been discovered by reasonable Site investigation or review of other available information prior to the Proposal due date.</li> <li>4. Variations in soil moisture content or groundwater levels from that represented in reports, borings or tests included in the Contract.</li> </ol>
<p><b>Force Majeure</b></p>	<p>Contractor may be entitled to a Change Order for additional costs directly attributable to changes in the Work and a time extension, including overhead and profit on any actual damages but excluding delay damages, due to Force Majeure.</p> <p>Force Majeure is defined as any of the following events, provided it is beyond the control and not due to an act or omission of Contractor or Authority and could not have been avoided by due diligence or use of reasonable efforts by Contractor:</p> <ol style="list-style-type: none"> <li>1. Earthquake exceeding 3.5 on the Richter scale;</li> <li>2. Tidal wave;</li> <li>3. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;</li> <li>4. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed in the Contract;</li> <li>5. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any governmental approval of the Project; and</li> <li>6. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Contractor-Related Entity.</li> </ol> <p>Force Majeure excludes:</p> <ol style="list-style-type: none"> <li>a. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;</li> <li>b. Except as provided in subparagraph 3 above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;</li> <li>c. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Contractor-Related Entity); and</li> <li>d. All other matters not caused by or beyond the control of Authority or a Contractor-Related Entity and not listed in subparagraphs 1 through 6 above.</li> </ol> <p>Refer to the Builder's Risk Policy described in the "Insurance" provision under Section 6 (Security, Indemnities, Insurance, Maintenance, Risk of Loss, Warranties) below.</p>

<p><b>Permits and Approvals</b></p>	<p>Contractor may be entitled to a Change Order for additional costs and a time extension, excluding delay damages but including overhead and profit, due to:</p> <ol style="list-style-type: none"> <li>1. Changes in the final Authority-Provided Approvals from the draft requirements included in the RFP.</li> <li>2. Suspension, termination, interruption, nonrenewal, denial, or failure to obtain any Authority-Provided Approval (except for modifications to such approvals or any new such approvals required to allow Contractor's design concepts to be incorporated into the Project).</li> </ol>
<p><b>Change in Law</b></p>	<p>Contractor may be entitled to a Change Order for additional costs and a time extension, excluding delay damages but including overhead and profit on actual damages, due to a change in one or more applicable laws or the adoption of a new law after the date 30 days prior to the Proposal due date, excluding the following:</p> <ol style="list-style-type: none"> <li>1. Changes in law proposed or otherwise reasonably foreseeable 30 days prior to the Proposal due date.</li> <li>2. Changes in law relating to taxes.</li> <li>3. Changes in law that do not require a material modification in the Work or do not require Contractor to obtain a new major environmental approval (unless the Project or Contractor is specifically targeted by the change in law).</li> </ol>
<p><b>Utilities</b></p>	<p>Contractor may be entitled to a Change Order for additional costs resulting from certain inaccuracies in the RFP regarding existing utilities, provided that if Contractor fails to discover the inaccuracy during the first 180 days following NTP-1 (for the Base Work), NTP-SO1 (for Scope Option 1 Work) or NTP-SO2 (for Scope Option 2 Work), Contractor is entitled to receive only 50% of its increased costs. To the extent Contractor discovers inaccuracies within such 180-day period regarding utilities addressed by the Utility/Third Party Provisional Sum, the Utility/Third Party Provisional Sum will be increased by mutual agreement to reflect any resulting additional costs. (See the "Notice to Proceed" provision under Section 5 (Commencement of Work; Completion Deadlines) below.) Contractor is entitled to overhead and profit but is not entitled to delay damages and disruption damages other than damages for idle time of undepreciated or rented equipment.</p> <p>Contractor may be entitled to a time extension for delays resulting from:</p> <ol style="list-style-type: none"> <li>1. Inaccuracies regarding Utilities which entitle Contractor to additional compensation.</li> <li>2. A Utility Owner's failure to complete any relocation task by the applicable deadline to the extent there is no executed task order, in which case the Contract will provide that the parties share the risk 50/50. To the extent there is an executed task order, Contractor will not be entitled to a time extension under the Contract (although Contractor may be entitled to relief under the executed task order).</li> </ol> <p>There will be no change in compensation, nor any time extension, for any of the following:</p> <ol style="list-style-type: none"> <li>a. Reallocation of responsibility for relocation work between Contractor and a Utility Owner.</li> <li>b. Any Betterments (provided that Contractor will be entitled to collect</li> </ol>

	<p>compensation for any added Betterments directly from the Utility Owner).</p> <p>c. Contractor's increased relocation costs for performing work or reimbursing Utility Owners for their work resulting from a Contractor-initiated change in the Project design.</p>
<p><b>Hazardous Materials</b></p>	<p>Contractor may be entitled to a Change Order for its direct remediation costs, excluding overhead, delay damages and profit, and a time extension, in the event Contractor encounters any hazardous materials. To the extent the hazardous materials are within a category for which unit prices were provided in the Proposal, if any, compensation will be based on the unit prices.</p> <p>The following are excluded:</p> <ol style="list-style-type: none"> <li>1. Investigation or characterization of hazardous materials or preparation of a remediation plan.</li> <li>2. Hazardous materials brought onto the Site by any Contractor-Related Entity or hazardous materials where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity.</li> <li>3. Hazardous materials that could have been avoided by reasonable design modifications or construction techniques.</li> <li>4. Hazardous materials on additional properties requested by Contractor.</li> <li>5. Hazardous materials (including lead and asbestos) encountered during the demolition of buildings, fixtures or other improvements on the Site.</li> </ol>
<p><b>Profit and Overhead</b></p>	<p>Profit and overhead will be paid at 10% of the direct costs plus, if the Work is subcontracted, 5% of the direct costs, regardless of the number of lower-tier subcontractors involved in any and all changed Work. This amount will fully compensate Contractor (and all subcontractors) for administration, general superintendence, overhead, profit and all other expenses not otherwise directly recoverable with respect to a Change Order.</p>
<p><b>Limitation on Contract Price Increases</b></p>	<p>Any increase in the Contract Price will exclude:</p> <ol style="list-style-type: none"> <li>1. Costs caused by breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity.</li> <li>2. Costs which could reasonably have been avoided by Contractor, including by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).</li> <li>3. Costs for (a) any rejected Work that failed to meet the requirements of the Contract Documents and (b) any necessary remedial Work.</li> </ol>
<p><b>Limitation on Time Extensions</b></p>	<p>Any extension of a Completion Deadline will exclude any delay to the extent that it:</p> <ol style="list-style-type: none"> <li>1. Did not impact the Critical Path affecting a Completion Deadline.</li> <li>2. Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity.</li> <li>3. Could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves an</li> </ol>

	<p>Authority-caused delay, Authority shall have agreed, if requested to do so, to reimburse Contractor for its costs incurred, if any, in resequencing, reallocating, or redeploying its forces).</p> <p>4. Was concurrent with any other delay for which Contractor is not entitled to an extension.</p> <p>Contractor will be required to demonstrate to Authority's satisfaction that the change in the Work or other event or situation which is the subject of a Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable delay of the Work which has impacted the Critical Path activity affecting a Completion Deadline.</p> <p>Before March 1, 2017, only those events and situations that the Contract Documents expressly contemplate that a time extension is permitted are eligible for extension of the Completion Deadlines. On or after March 1, 2017, only Authority-caused delays are eligible for extension of the Completion Deadlines.</p>
<p><b>Delay Damages and Disruption Damages</b></p>	<p>Contractor is entitled to reimbursement of delay damages only for those events and situations that the Contract Documents expressly contemplate that delay damages are permitted, generally consisting of those events and situations caused by Authority.</p> <p>Delay damages are limited to direct costs actually and reasonably incurred by Contractor directly attributable to the delay of the Completion Deadline. Home office overhead is excluded from delay damages and not compensable under the Contract. Before Contractor may obtain any increase in the Contract Price to compensate for any delay damages, Contractor must demonstrate to Authority's satisfaction that:</p> <ol style="list-style-type: none"> <li>1. The Project Schedule in fact sets forth a reasonable method for completion of the Work.</li> <li>2. The change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable delay of the Work and impact the Critical Path affecting the Completion Deadline.</li> <li>3. The Delay Damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).</li> <li>4. The delay for which compensation is sought is not concurrent with any other delay for which Contractor is not entitled to delay damages.</li> <li>5. Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to Authority.</li> </ol> <p>Disruption Damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable under the Contract (except as stated above for certain utility-related delays). Disruption Damages include costs of (i) rearranging Contractor's Work plan not associated with an extension of a Completion Deadline and (ii) loss of efficiency, momentum or productivity.</p>

	Contractor may also be entitled to compensation for idle time of certain equipment as described in the “Utilities” provision of this Section 3 (Change Orders) above.
<b>Alternative Technical Concepts</b>	Contractor will be solely responsible for obtaining third party approvals required to implement approved Alternative Technical Concepts. If Contractor fails to obtain such approval or if it fails in any other way to implement the approved Alternative Technical Concepts, Contractor will comply with the corresponding baseline requirements without any increase in the Contract Price or extension of Completion Deadlines.
<b>Value Engineering</b>	Contractor may submit, for approval by Authority, Value Engineering Change Proposals (VECPs) that would reduce the cost of the Project without impairing essential functions or characteristics of the Project as determined by Authority. VECPs cannot be based solely on a change in quantities. Authority and Contractor will share any cost savings on a 50/50 basis. Note: if additional ROW is required by a VECP, or ROW requirements are reduced, that will be factored into the savings sharing.
<b>4. Payment</b>	
<b>Contract Price</b>	The lump sum firm fixed Contract Price will be determined through the procurement.
<b>Provisional Sums</b>	The Utility/Third Party Provisional Sum is the amount of \$_____ [to be provided]. Refer to the “Utilities” provision under Section 2 (Work) above. The Community Betterments Provisional Sum is the amount of \$_____ [to be provided]. Authority will have the option to use the Community Betterments Provisional Sum through Authority-directed changes.
<b>Warranty Options</b>	Refer to the “Warranties” provision under Section 6 (Security, Indemnities, Insurance, Maintenance, Risk of Loss, Warranties) below.
<b>Scope Options</b>	Authority may exercise two options to include the corresponding scope in the Project by issuing a notice to proceed for each option (see the “Notice to Proceed” provision under Section 5 (Commencement of Work; Completion Deadlines) below): <ul style="list-style-type: none"> <li>1. Scope Option 1: Construction Package #1B.</li> <li>2. Scope Option 2: Construction Package #1C.</li> </ul> The option prices will be determined through the procurement.
<b>Retainage</b>	Retainage will be withheld under the Contract at the rate of 5% of all invoices paid up to a cap of \$10,000,000.00.
<b>Cash Flow Curve</b>	The Cash Flow Curve established by the Proposal constitutes a cap on cumulative milestone payments. Payment of any amounts included in an invoice which exceed the maximum aggregate amount payable under the Cash Flow Curve will be deferred (without interest) until funds are available under the Cash Flow Curve. The Contract will provide a process for the Contractor to propose changes annually to the Cash Flow Curve for Authority approval.
<b>Payment Milestones</b>	Payment will be made monthly based on 100% completed milestones. Contractor shall determine and describe the payment milestones in its proposal.

<b>5. Commencement of Work; Completion Deadlines</b>	
<b>Notice to Proceed</b>	<p>Contractor will not proceed with any Work under the Contract without a written notice to proceed for such Work from Authority. Any Work performed or expenses incurred by Contractor prior to Contractor's receipt of a written notice to proceed for such Work is Contractor's risk.</p> <ol style="list-style-type: none"> <li>1. NTP-1 authorizes Work on Construction Package #1A (including Construction Package #1A Option 1) (Base Work).</li> <li>2. NTP-SO1 authorizes Work on Construction Package #1B (Scope Option 1 Work).</li> <li>3. NTP-SO2 authorizes Work on Construction Package #1C (Scope Option 2 Work).</li> </ol> <p>Authority may issue NTP-1 within 180 days after the Proposal due date without escalation and Authority may issue NTP-1 between 180 days and 360 days after the Proposal due date upon application of a prescribed escalation that will be set forth in the RFP (except to the extent that such failure is caused by Contractor). Either party may terminate the Contract if NTP-1 has not been issued within 360 days after the Proposal due date.</p> <p>The Contract will contain deadlines by which Authority must issue NTP-SO1 and NTP-SO2 if it desires to exercise those scope options for the prices set forth in the Proposal.</p>
<b>Prerequisites for Start of Construction</b>	<p>Contractor will not start construction of any portion of the Project until all the following prerequisites have been fully satisfied with respect to the Work proposed to be constructed:</p> <ol style="list-style-type: none"> <li>1. Authority has issued NTP-1 (for Base Work), NTP-SO1 (for Scope Option 1 Work) or NTP-SO2 (for Scope Option 2 Work).</li> <li>2. All governmental approvals necessary for construction of such portion of the Project have been obtained and all conditions of such governmental approvals that are a prerequisite to commencement of such construction have been performed.</li> <li>3. All insurance policies, OCIP enrollments and payment and performance bonds required to be delivered to Authority under the Contract have been submitted to Authority and remain in full force and effect.</li> <li>4. All necessary rights of access for such portion of the Project have been obtained.</li> <li>5. Released for construction documents have been issued for that portion of the Work.</li> <li>6. Any additional conditions for construction set forth in the Contract have been fully satisfied.</li> </ol>
<b>Completion Deadlines</b>	<p>Substantial Completion generally consists of completion of all physical Work other than punch list items and that the Project can be used without damage to the Project or any other property on or off the Site, and without injury to any Person. The Substantial Completion Deadline is 36 months after NTP-1.</p> <p>Final Acceptance consists of completion of all Work including all punch list items and documentation. The Final Acceptance Deadline is 38 months after NTP-1.</p>

<b>Liquidated Damages</b>	<p>Liquidated damages will be assessed if Contractor fails to achieve Final Acceptance by the Final Acceptance Deadline as follows:</p> <ol style="list-style-type: none"> <li>1. Before March 1, 2017: \$20,000/day</li> <li>2. On or after March 1, 2017: \$1 million/day</li> </ol> <p>Liquidated damages will be subject to a cap equal to 10% of the initial Contract Price.</p> <p>Assessment of liquidated damages for delay will not preclude Authority from exercising its other rights and remedies set forth in the Contract other than the right to collect damages associated with such delay.</p>
<b>Float</b>	Float belongs to the Contractor.
<b>6. Security, Indemnities, Insurance, Maintenance, Risk of Loss, Warranties</b>	
<b>Surety Bonds</b>	A payment bond in the amount of 100% of the sum of the Contract Price and all Provisional Sums and a performance bond in the amount of 50% of the sum of the Contract Price and all Provisional Sums are required upon execution of the Contract.
<b>Guaranty</b>	<p>If Contractor is a limited liability company, each limited liability company member will be required to provide a guaranty of Contractor's obligations. If Contractor or its members submitted parent company financial statements in response to the RFQ or RFP, each such parent company will be required to provide a guaranty of Contractor's obligations. Authority may also require an additional performance guaranty based on the financial information provided in response to the RFQ or RFP.</p> <p>The guaranty will require the guarantor to financially support, unconditionally, all obligations of Contractor under the Contract during the Contract term, including the warranty period(s).</p>
<b>Indemnities</b>	<p>Contractor will fully defend, indemnify and hold harmless Authority and all of its directors, officers, employees, and agents and their respective successors and assigns ("Indemnified Persons") from any and all claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to:</p> <ol style="list-style-type: none"> <li>1. The breach of, alleged breach of, failure to perform or alleged failure to perform the Contract, including without limitation breach of warranty, by any Contractor-Related Entity;</li> <li>2. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable laws;</li> <li>3. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct, or fault of any Contractor-Related Entity;</li> <li>4. Any service or design, or product called for in any service or design, provided by any Contractor-Related Entity that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret or other proprietary right of a third party;</li> <li>5. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any</li> </ol>

	<p>property or income of any Contractor-Related Entity with respect to any payment for the Work made to or earned by such Contractor-Related Entity under the Contract Documents;</p> <ol style="list-style-type: none"> <li>6. Any and all stop notices and/or liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any stop notice or lien, provided that Authority is not in default in payments owing to Contractor with respect to such Work;</li> <li>7. Any release or threatened release of hazardous materials (a) brought onto the Site by any Contractor-Related Entity or (b) where the removal or handling involved negligence, willful misconduct or breach of contract by any Contractor-Related Entity; or</li> <li>8. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors or failure of any Contractor-Related Entity to cooperate reasonably with other contractors.</li> </ol> <p>Contractor will fully defend, indemnify and hold harmless the Indemnified Persons from any and all claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the design documents, regardless of whether such errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects were also included in the Preliminary Design. Contractor will acknowledge that the Preliminary Design does not constitute "design furnished" by Authority for purposes of anti-indemnity laws.</p>
<p><b>Insurance</b></p>	<p>Authority will procure a project professional liability insurance policy in the amount of \$25,000,000 that covers the professional duties, services and activities required under the Contract. Participation in this program is mandatory for Contractors and Subcontractors at all tiers who are performing professional duties, services or activities, or who have a pollution legal liability exposure that is covered by this policy.</p> <p>Authority will provide an Owner Controlled Insurance Program (OCIP) for Work performed on the project site:</p> <ol style="list-style-type: none"> <li>1. General Liability Policy. Limits of \$2,000,000 per occurrence and \$4,000,000 annual aggregate. Contractor or Subcontractor of any tier making a claim under the General Liability Policy will be responsible for the deductible of \$10,000 per occurrence.</li> <li>2. Workers' Compensation and Employer's Liability Insurance. Statutory limits on Workers' Compensation Insurance and Employer Liability Limits of:       <ul style="list-style-type: none"> <li>- \$1,000,000 Bodily Injury with Accident – Each Accident</li> <li>- \$1,000,000 Bodily Injury by Disease – Policy Limit</li> <li>- \$1,000,000 Bodily Injury by Disease – Each Employee</li> </ul> </li> </ol> <p>Authority will provide a Builder's Risk Policy with limits of the replacement cost. Contractor or Subcontractor at any tier making a claim under the Builders' Risk Policy will be responsible for the deductible of \$100,000 per occurrence per location (or pro rata share thereof).</p> <p>Authority reserves the right to terminate or modify any insurance provided</p>

	<p>upon providing 45 days advance written notice to Contractor and each Subcontractor. Upon any termination or modification, Contractor and each Subcontractor will be required to obtain replacement insurance coverage acceptable to Authority. In such event, Contractor will be entitled to a Change Order for the reasonable cost of the replacement insurance.</p> <p>Contractor is required to provide the following insurance:</p> <ol style="list-style-type: none"> <li>1. Automobile Liability Insurance. Limits of: <ul style="list-style-type: none"> <li>- \$1,000,000 Bodily Injury – Per Person</li> <li>- \$2,000,000 Bodily Injury – Per Accident</li> <li>- \$1,000,000 Property Damage – Per Accident</li> <li>- \$2,000,000 Combined Single Limit</li> </ul> </li> <li>2. Workers’ Compensation and Employer’s Liability Insurance for non-OCIP workers. Statutory limits on Workers’ Compensation Insurance and Employer Liability Limits of: <ul style="list-style-type: none"> <li>- \$1,000,000 Bodily Injury with Accident – Each Accident</li> <li>- \$1,000,000 Bodily Injury by Disease – Policy Limit</li> <li>- \$1,000,000 Bodily Injury by Disease – Each Employee</li> </ul> </li> <li>3. Commercial General Liability Insurance for occurrences outside of OCIP. Combined Bodily Injury and Property Damage Limit of \$1,000,000 per occurrence, \$2,000,000 General Aggregate.</li> <li>4. Excess/Umbrella Liability Insurance of not less than \$100,000,000 per occurrence in excess of the underlying coverage.</li> </ol>
<p><b>Maintenance / Risk of Loss During Construction</b></p>	<p>Contractor is responsible for maintenance and risk of loss of the Project. Refer to the Builder’s Risk Policy described in the “Insurance” provision above.</p>
<p><b>Warranties</b></p>	<p>Contractor warrants that:</p> <ol style="list-style-type: none"> <li>1. The Work conforms to the requirements of the Contract.</li> <li>2. All design Work conforms to all professional engineering principles generally accepted as standards of the industry in the State, is suitable for its intended purpose and is free of errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects.</li> <li>3. The construction Work is performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State.</li> <li>4. Materials and equipment furnished under the Contract, except Authority-furnished property, are of good quality and, except if otherwise set forth in the Contract, when installed, is new.</li> <li>5. The Project is fit for the purposes intended.</li> <li>6. The Project remains in the same condition as it is in at Final Acceptance excluding normal wear and tear and any damage caused by other contractors working at the Site.</li> </ol> <p>The initial warranty period commences upon Substantial Completion and continues for a period of two years from Final Acceptance.</p> <p>Authority has five options to extend the warranty period by one year for each option. The warranty option prices will be determined through the</p>

	<p>procurement. Authority will exercise its warranty options, if at all, prior to the expiration of the initial two year warranty.</p> <p>The warranties on any repair or replacement will extend beyond the original warranty period if necessary to provide at least a one-year warranty period from the date of acceptance of the repairs or replacement.</p> <p>Upon Final Acceptance, the Contractor will have the right to replace the performance bond with a replacement bond in the amount of 10% of the sum of the Contract Price and all Provisional Sums in a form satisfactory to the Authority in its sole discretion guaranteeing due and punctual performance of Contractor's obligations under the Contract that survive Final Acceptance, or with such other security as is approved by Authority in its sole discretion.</p> <p>Contractor's and Subcontractors' warranties are assignable by Authority immediately upon providing written notice to Contractor.</p>
<p><b>7. Defaults, Remedies, Suspensions, Terminations</b></p>	
<p><b>Contractor Defaults</b></p>	<ol style="list-style-type: none"> <li>1. Contractor refuses or fails to commence the Work within the time required by the Contract.</li> <li>2. Contractor refuses or fails to prosecute the Work or any separable part in accordance with the Contract Documents and with the diligence that will ensure its completion within the time specified in the Contract.</li> <li>3. Contractor refuses or fails to provide sufficient resources to complete the Work in an acceptable manner and without delay or promptly pay its Subcontractors.</li> <li>4. Contractor refuses or fails to complete the Work within the time specified in the Contract.</li> <li>5. Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted in the Contract.</li> <li>6. Contractor or any guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors.</li> <li>7. Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against Contractor or any guarantor and not dismissed within 60 days.</li> <li>8. Contractor fails to provide and maintain the performance and payment bonds, any guaranty and the insurance as required hereunder.</li> <li>9. Any material representation or warranty made by Contractor or any guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents is false or materially misleading when made.</li> <li>10. Contractor violates any law in performance of the Work.</li> <li>11. 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 and effect.</li> <li>12. Contractor breaches any other agreement, representation or warranty contained in the Contract Documents, or Contractor fails to perform any other obligation under the Contract Documents.</li> </ol>
<p><b>Cure Periods</b></p>	<p>Contractor and its surety under the performance bond is entitled to the</p>

	<p>following notice and cure periods:</p> <ol style="list-style-type: none"> <li>1. No notice or cure period with respect to a breach described under paragraphs 9, 10 and 11 of the “Contractor Defaults” provision above.</li> <li>2. 30-day cure period with respect to a breach described under paragraphs 1 through 8 and 12 of the “Contractor Defaults” provision above.</li> </ol> <p>If Contractor is unable to cure the applicable default within the time period specified, but in Authority’s reasonable determination (i) Contractor has diligently and continuously undertaken efforts to cure such default and (ii) such failure to cure is beyond the control of Contractor, Authority may extend the cure period in accordance with its discretion up to 60 days.</p>
<p><b>Authority Remedies</b></p>	<p>Upon an event of default, Authority may terminate Contractor’s right to proceed with the Work or Authority may take over the Work and complete it by contract or otherwise. The rights and remedies of Authority provided for under the Contract are in addition to any other rights and remedies provided by law.</p>
<p><b>Consequential Damages</b></p>	<p>Contractor and Authority will not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of the Contract, tort (including negligence) or any other theory of liability, and each party releases the other party from any such liability. The foregoing limitation on liability for consequential damages will not apply to or limit any right of recovery respecting the following:</p> <ol style="list-style-type: none"> <li>1. Losses (including defense costs) to the extent covered by (a) the proceeds of insurance required to be carried under the Contract or (b) the proceeds of insurance actually carried by or insuring Contractor under policies solely with respect to the Project and the Work;</li> <li>2. Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;</li> <li>3. Contractor’s or Authority’s indemnities under the Contract;</li> <li>4. Contractor’s obligation to pay liquidated damages in accordance with the Contract;</li> <li>5. Specific amounts owing under the express provisions of the Contract; and</li> <li>6. Losses arising out of releases of hazardous materials by Contractor or Authority.</li> </ol>
<p><b>Suspension</b></p>	<p>Authority may order Contractor to suspend all or any part of the Work for the period of time that Authority deems appropriate.</p> <ol style="list-style-type: none"> <li>1. Suspension for cause. No adjustment will be made for suspensions: <ul style="list-style-type: none"> <li>- required to correct conditions unsafe for Project personnel or the general public;</li> <li>- required to comply with any governmental approval, law or otherwise carry out the requirements of the Contract; or</li> <li>- to the extent that performance would have been suspended or delayed by any other cause, including the fault or negligence of Contractor for which an equitable adjustment is provided for or excluded under any other provision of the Contract.</li> </ul> </li> </ol>

	<p>2. Suspension for convenience. Contractor is entitled to a Change Order for additional costs (including overhead and delay damages but excluding profit) and a time extension for suspensions beyond a 240-hour cumulative period.</p>
<b>Termination for Convenience</b>	<p>Authority may, whenever the interests of Authority so require, terminate the Contract, in whole or in part, for the convenience of Authority.</p> <p>Contractor and all Subcontractors will not be entitled to anticipatory or unearned profit or consequential or other damages as a result of a termination or partial termination for convenience.</p>
<b>8. Other Contract Provisions</b>	
<b>Dispute Resolution</b>	<p>Any disputes will be required to go through a formal partnering process and be adjudicated by a dispute resolution board before a party can bring the dispute to binding arbitration. The standing dispute resolution board will consist of one member selected by Authority and approved by Contractor, one member selected by Contractor and approved by Authority, and a third member who will be the chairperson will be selected by the first two members subject to the approval of the parties. Decisions of the dispute resolution board will be binding up to \$1,000,000.00. Disputes not resolved through this process may be submitted to binding arbitration.</p>
<b>Coordination</b>	<p>Contractor will coordinate with Authority and other contractors performing work on or near the Site. Contractor will conduct its Work without interfering with the work being performed by other contractors.</p> <p>If Contractor asserts that any of Authority's other contractors have interfered with the Work, then Contractor's sole remedy will be to seek recourse against such other contractors.</p>
<b>Escrowed Proposal Documents (EPDs)</b>	<p>Contractor's detailed Proposal pricing information will be kept by Authority in a locked cabinet with Contractor controlling the key. The EPDs are available for joint review by Contractor, Authority and the DRB or other dispute resolvers in connection with approval of the schedule of values, negotiation of Change Orders, resolution of disputes and to determine whether the EPDs are complete.</p> <p>Concurrently with submission of quotations or revisions to quotations provided in connection with proposed amendments to the Contract and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order will be added to the cabinet to be held with the other EPDs. Contractor will require each Subcontractor whose Subcontract price equals or exceeds \$5,000,000 to submit to 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 Contractor, Authority, the DRB and other dispute resolvers, on terms substantially similar to those that apply to Contractor.</p> <p>The EPDs will be maintained until: (a) expiration of Contractor's warranties or termination of the Work; (b) all disputes regarding the Contract have been settled; and (c) final payment on the Contract has been made by Authority and accepted by Contractor.</p>

<b>Assignment</b>	<p>Contractor may not assign the Contract, any part of the Contract or any monies due or to become due under the Contract without the prior written approval of Authority.</p> <p>Authority may assign without Contractor's consent all or any portion of the Contract, payment and performance bonds and guaranties to any entity that succeeds to the governmental powers and authority of Authority.</p>
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## **Resolution # HSRA 12-04**

### **Approval of the Term Sheet, Stipend and RFP scoring criteria for Construction Package # 1**

Whereas, the California High-Speed Rail Authority (Authority) may enter into design build contracts with private and public entities pursuant the Public Utilities Code §185036;

Whereas, the Authority is engaged in a procurement process leading to the award of a Design Build contract along the Initial Construction section in the Central Valley from north of the San Joaquin River and south to approximately East American Way through the City of Fresno (Construction Package #1).

Whereas, a Request for Qualifications was issued by the Authority and a shortlist of the most highly qualified Offerors has been established, who may submit proposals for the Construction Package #1.

Whereas, to aid the HSR Authority in the final development of the Request for Proposals (RFP) documents, a term sheet containing a summary of the major material terms and conditions for the Construction Package #1 contract was developed and presented to the Board for approval.

Whereas, the HSR Authority is requesting approval to pay a stipend in the amount up to \$2 million for each acceptable proposal submitted to the Authority by any shortlisted Offeror that is not awarded the contract or in case of termination of the RFP, proven costs not to exceed \$2 million.

Whereas, the HSR Authority is requesting approval of a two-step RFP evaluation criteria to include a technical evaluation resulting in the qualification of three of the five proposer teams followed by a combined technical/price evaluation of these top three proposer teams.

Therefore it is resolved,

The Executive Director/Chief Executive Officer or a designee of the Executive Director/Chief Executive Officer is hereby authorized and directed to proceed with the RFP using the term sheet presented for Construction Package #1, a Design Build Project along the Initial Construction section in the Central Valley which begins north of the San Joaquin River and continues south to approximately East American Way through the City of Fresno.

The Executive Director/Chief Executive Officer is hereby authorized and directed to make appropriate non-substantive changes to the Construction Package #1 RFP terms contained on the term sheet in consultation with the Board Chair as part of the RFP evaluation and contract negotiation process.

The Executive Director/Chief Executive Officer is hereby authorized to include a stipend in the amount of up to \$2 million per proposal as part of the procurement for Construction Package #1 subject to the appropriate conditions set forth in terms of the RFP and above.

The Executive Director/Chief Executive Officer is hereby authorized to use a two-step RFP evaluation process that includes a technical evaluation resulting in the qualification of three of the five proposer teams followed by a combined technical/price evaluation of these top three proposer teams.

Vote:

Date:

o000o

# Exhibit 5

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DOWNTOWN COURTHOUSE  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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6 Attorneys for Interested Party  
UNION PACIFIC RAILROAD COMPANY  
7

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SACRAMENTO

11 \_\_\_\_\_  
12 HIGH-SPEED RAIL AUTHORITY and  
13 HIGH-SPEED PASSENGER TRAIN  
FINANCE COMMITTEE, for the STATE  
OF CALIFORNIA,  
14  
Plaintiffs,  
15  
vs.  
16 ALL PERSONS INTERESTED IN THE  
MATTER OF THE VALIDITY OF THE  
17 AUTHORIZATION AND ISSUANCE OF  
GENERAL OBLIGATION BONDS TO BE  
18 ISSUED PURSUANT TO THE SAFE,  
RELIABLE HIGH-SPEED PASSENGER  
19 TRAIN BOND ACT FOR THE 21ST  
CENTURY AND CERTAIN  
20 PROCEEDINGS AND MATTERS  
RELATED THERETO,  
21  
Defendants.  
22 \_\_\_\_\_

No. 34-2013-00140689  
RESPONSIVE PLEADING AND  
ANSWER OF INTERESTED PARTY  
UNION PACIFIC RAILROAD  
COMPANY, IN RESPONSE TO  
COMPLAINT FOR VALIDATION  
(Code Civ. Proc., § 860 et seq.)

23 To protect its interests and preserve its claims and rights of action, interested party  
24 UNION PACIFIC RAILROAD COMPANY (“Union Pacific” or “UP”) responds to the  
25 Complaint For Validation (“Validation Complaint” or “Complaint”) of Plaintiffs HIGH-  
26 SPEED RAIL AUTHORITY (“CHSRA”) and HIGH-SPEED PASSENGER TRAIN  
27 FINANCE COMMITTEE (“Committee”), for the STATE OF CALIFORNIA (collectively,  
28 “Plaintiffs”) as follows:



1 Memorandum of Understanding (as hereinafter alleged) and any related agreements  
2 between UP and CHSRA that may be executed in the future.

3         3. CHSRA has yet to produce detailed routes and service plans in the areas  
4 where it proposes to construct or operate HSR on, or in close proximity to, rights of way  
5 used by Union Pacific freight trains. Based on information that is currently available to  
6 Union Pacific, UP is unable to confirm or verify that CHSRA can achieve the trip-time  
7 requirements of the Bond Act and that CHSRA can do so while, as required by the MOU,  
8 avoiding disruption of UP freight operations. Therefore, it is premature for Plaintiffs to  
9 request, or for this Court to adjudge, that the HSR Project is in conformity with the trip-  
10 time requirements of the Bond Act, and UP objects to the extent Plaintiffs seek such an  
11 overbroad validation.

12                                   UNION PACIFIC’S FREIGHT RAIL NETWORK

13         4. Union Pacific is a publicly traded corporation, formed and existing under the  
14 laws of Delaware and qualified to do business in California. UP operates a freight rail  
15 franchise, in rights of way owned by UP and others, in California and twenty-two other  
16 states. The UP system is part of a national freight rail network that forms a vital link in the  
17 nation’s interstate and international commerce. UP’s freight tracks are located throughout  
18 the State of California, including in the Central Valley, in the Los Angeles Basin, and on  
19 the San Francisco Peninsula.<sup>3</sup> UP serves all of the state’s major ports, including the Port of  
20 Los Angeles, Port of Long Beach, and Port of Oakland. UP also facilitates international  
21 trade through border crossings that connect with rail networks in Mexico and Canada.

22

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23         <sup>3</sup> When Union Pacific’s predecessor-in-interest, Southern Pacific Transportation Company,  
24 sold its mainline railroad right of way between San Jose and San Francisco to the  
25 Peninsula Corridor Joint Powers Board (which operates Caltrain) in 1991, it retained an  
26 exclusive perpetual easement for freight rail operations on the line. Through its  
27 predecessor, UP also retained sole rights to conduct intercity passenger service on the San  
28 Francisco-to-San Jose line. The Revised Business Plan proposes operating HSR trains  
and blended service on this right of way, but CHSRA has not acquired the rights to do so  
from UP, nor made a proposal to acquire such access rights, nor submitted a plan under  
which HSR trains could simultaneously use the existing rails without disrupting UP  
freight operations.



1 service can meet the trip-time requirements of Proposition 1A (incorporated into the Bond  
2 Act) for truly high-speed passenger rail.

3 7. When the Revised Business Plan was adopted, Union Pacific raised concerns  
4 to CSHRA about how blended service could cause serious disruption to UP's existing and  
5 future freight operations. UP subsequently engaged in negotiations with CHSRA and some  
6 of the commuter railroads whose operations would be affected by blended service under the  
7 Revised Business Plan, and on July 11, 2012, the parties executed a binding Memorandum  
8 of Understanding and Implementation Agreement Related to High-Speed Rail Development  
9 in California (the "MOU"). The MOU adopted several critical terms necessary to avoid  
10 disruption of Union Pacific's freight operations and to protect Union Pacific's rights and  
11 ability to continue meeting its common carrier obligations, including access to new and  
12 existing customers. To further protect Union Pacific's rights in the future, as CHSRA  
13 develops more specific routes and plans for HSR on particular segments that could affect  
14 UP, the MOU specifically reserved UP's rights to participate in future proceedings,  
15 including potential claims or litigation concerning any aspect or portion of the Project.

16 8. Since executing the MOU, Union Pacific and CHSRA have participated in  
17 negotiations for the formation of additional definitive agreements that will be necessary for  
18 construction of the Project to begin—including a construction and maintenance agreement,  
19 an engineering agreement, and an insurance and indemnity agreement—but no such  
20 agreements have yet been made. CHSRA's alignment, construction, and operational plans  
21 for HSR in general—and blended service in particular—likewise have yet to be developed.  
22 Because the Project's specific routes and service patterns have not been established, Union  
23 Pacific is unable to verify whether CHSRA can satisfy its commitments to UP under the  
24 MOU to avoid disruption of freight operations, and at the same time achieve the trip-time  
25 requirements for high-speed rail under the Bond Act. Given these uncertainties, it is  
26 premature for CHSRA to request a judicial determination that the proposed HSR Project is  
27 consistent with the trip-time requirements of the Bond Act. To the extent CHSRA seeks  
28 such a declaration through this Validation Lawsuit, Union Pacific must object to protect its

1 interests—and specifically to ensure that, once the Project’s specific routes and service  
2 patterns are established, CHSRA meets its commitments under the MOU so that freight  
3 operations are not disrupted.

4 THE BROAD SCOPE OF PLAINTIFFS’ LAWSUIT  
5 REQUIRES UNION PACIFIC TO RESPOND TO PROTECT ITS INTERESTS  
6 AND PRESERVE ITS CLAIMS

7 9. The Validation Complaint makes no allegations regarding the trip-time  
8 requirements of the Bond Act under § 2704.09. Nevertheless, the Validation Complaint  
9 invokes Proposition 1A as “codified in the Bond Act” (Compl., ¶ 7) and broadly seeks a  
10 judgment finding that the bonds have been properly issued in accordance with all Bond Act  
11 requirements. Specifically, Plaintiffs request a judgment determining that the bonds are  
12 “consistent” with the Bond Act (Compl., ¶ 1); that all conditions precedent have been  
13 satisfied (Compl., Prayer, ¶ 3(a)); that all proceedings in connection with the bonds “were,  
14 are, and will be in conformity” with the applicable provisions of “all laws and enactments”  
15 (Compl., Prayer, ¶ 3(c)); and that any challenges (including pending challenges) based on  
16 uses of proceeds of the bonds will not affect the determination of validity of the bonds  
17 (Compl., Prayer, ¶ 3(e)). The Complaint also requests a broad injunction against any future  
18 litigation, to restrain “all persons or entities” from the institution of any action challenging  
19 “any matters herein adjudicated or which could have been adjudicated.” (Compl., Prayer, ¶  
20 4.)

21 10. Plaintiffs have taken the position this Validation Lawsuit is related to *Tos v.*  
22 *California High Speed Rail Authority* (“*Tos*”), Sacramento Superior Court Case No. 34-  
23 2011-00113919. The plaintiffs in that case assert a claim for “Violation of Proposition 1A:  
24 2 Hour 40 Minute Travel Time Requirement Not Met.”<sup>5</sup> (Sec. Am. Complaint, at p. 8.) In  
25 the notice of related case filed with the Validation Complaint, CHSRA and the Committee

26 \_\_\_\_\_  
27 <sup>5</sup> In the *Tos* case, CHSRA acknowledges “the bond act requires that the high-speed train  
28 system be designed to achieve nine specified performance characteristics,” and CHSRA  
contends it meets those trip-time requirements. (Opp. to Plaintiffs’ Part I Opening Brief,  
at 5:12-17 and at 36:5-16.)

1 explained that *Tos* and this Validation Lawsuit “are related because one challenges the  
2 authorization of bonds that the other seeks to validate,” and the Court ordered the cases  
3 related on that basis. Plaintiffs have since filed a motion to consolidate the Validation  
4 Lawsuit with *Tos*, stating there are “overlapping issues” and “to the extent that *Tos*  
5 challenges the authorization of bonds, it could have been brought as a validation action, and  
6 consolidation is necessary to ensure that a single judgment resolves any questions  
7 concerning the validity of the bonds.”

8       11. In light of the overbroad, prospective and preclusive judgment sought herein  
9 by Plaintiffs (Compl., Prayer, ¶ 3), against “all persons interested in the matter of the bonds  
10 . . . and other matters related thereto” (Compl., ¶ 5), and given Plaintiffs’ apparent position  
11 that all claims relating to compliance with the Bond Act must be adjudicated herein  
12 (Compl., Prayer, ¶ 3), Union Pacific files this responsive pleading to protect its interests in  
13 ensuring that CHSRA complies with the commitments in the MOU not to disrupt UP  
14 freight operations, and to preserve Union Pacific’s claims in relation to the trip-time  
15 requirements of the Bond Act.

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1 Parties

2 3. Answering Paragraph 3, UP avers that Paragraph 3 contains legal argument  
3 and introductory statements which do not require a response. Further answering Paragraph  
4 3, UP does not have sufficient knowledge to admit or deny the allegations and, on that  
5 basis, denies, specifically and generally, each and every allegation therein.

6 4. Answering Paragraph 4, UP avers that Paragraph 4 contains legal argument  
7 and introductory statements which do not require a response. Further answering Paragraph  
8 4, UP does not have sufficient knowledge to admit or deny the allegations and, on that  
9 basis, denies, specifically and generally, each and every allegation therein.

10 5. Answering Paragraph 5, UP avers that Paragraph 5 contains legal argument  
11 and introductory statements which do not require a response. Further answering Paragraph  
12 5, UP avers that the first sentence of Paragraph 5 is uncertain, ambiguous, and vague in that  
13 it fails to identify phases of construction of the Project that may or may not be subject to the  
14 Validation Lawsuit; and fails to specify precisely which bonds, commercial paper notes,  
15 refunding bonds, and contracts it references and/or seeks to validate, including conditions to  
16 the bond offering set forth in Proposition 1A, such as trip-time requirements. Further  
17 answering Paragraph 5, UP admits that it is an interested party in the matter of the validity  
18 of the bonds and related documents and actions that are the subject of this Validation  
19 Lawsuit, to the extent those bonds, documents and actions are deemed adequately described  
20 by the Complaint. Further answering Paragraph 5, to the extent the statements in Paragraph  
21 5 are deemed to be factual and requiring a response, UP avers it does not have sufficient  
22 knowledge to admit or deny the remaining allegations in Paragraph 5 and, on that basis,  
23 denies, specifically and generally, the remaining allegations.

24 Jurisdiction and Venue

25 6. Answering Paragraph 6, UP avers that Paragraph 6 contains legal argument  
26 and introductory statements which do not require a response.

27  
28



1 the allegations in Paragraph 10 and, on that basis, denies, specifically and generally, each  
2 and every allegation therein.

3 11. Answering Paragraph 11, UP avers that Paragraph 11 contains legal  
4 argument and introductory statements which do not require a response. Further answering  
5 Paragraph 11, UP does not have sufficient knowledge to admit or deny the allegations and,  
6 on that basis, denies, specifically and generally, each and every allegation therein.

7 12. Answering Paragraph 12, UP avers that Paragraph 12 contains legal  
8 argument and introductory statements which do not require a response. Further answering  
9 Paragraph 12, UP avers that Paragraph 12 is uncertain, ambiguous, and vague in that it fails  
10 to identify specific portions of the bonds, notes, refunding bonds, and bond offering,  
11 including attendant conditions set forth in Proposition 1A, such as trip-time requirements.  
12 Further answering Paragraph 12, UP does not have sufficient knowledge to admit or deny  
13 the allegations and, on that basis, denies, specifically and generally, each and every  
14 allegation therein.

15 Statutory Authority for Institution of Validation Proceedings

16 13. Answering Paragraph 13, UP avers that Paragraph 13 contains legal  
17 argument and introductory statements which do not require a response.

18 14. Answering Paragraph 14, UP avers that Paragraph 14 contains legal  
19 argument and introductory statements which do not require a response.

20 15. Answering Paragraph 15, UP avers that Paragraph 15 contains legal  
21 argument and introductory statements which do not require a response. Further answering  
22 Paragraph 15, UP avers that Paragraph 15 is uncertain, ambiguous, and vague in that it fails  
23 to identify phases of construction of the Project that may or may not be subject to the  
24 Validation Lawsuit, and fails to specify precisely which bonds, commercial paper notes,  
25 refunding bonds, and contracts it references and/or seeks to validate, including attendant  
26 conditions to the bond offering set forth in Proposition 1A, such as trip-time requirements.

27 Service

28 16. Answering Paragraph 16, UP admits the allegations in Paragraph 16.



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THIRD DEFENSE

(Lack of Specificity)

The Complaint lacks the specificity required by law, such as to allow this Court to provide Plaintiffs the relief they request. In particular, the Complaint fails to identify phases of construction of the HSR Project that may or may not be subject to the Validation Lawsuit; fails to specify precisely which bonds, commercial paper notes, refunding bonds, contracts and related actions it references and/or seeks to validate; fails to specify the portions of the bond offering as to which bond funds have been appropriated, and segments of the Project for which such bond proceeds will be used; fails to identify each of the specific laws and enactments to which it refers; and fails to identify the procedural, substantive and performance requirements for funding under the Bond Act, including trip-time requirements.

FOURTH DEFENSE

(Ripeness)

There is no ripe case or controversy because conditions of the bond offering mandated by Proposition 1A, which affect the validity of the bonds and bond offering, have not yet occurred. Given the breadth and scope of the Complaint, the validation action is premature.

FIFTH DEFENSE

(Estoppel)

Due to Plaintiffs' own actions and inactions, and Union Pacific's reasonable reliance thereon, Plaintiffs are estopped from maintaining the claims for relief set forth in the Complaint.

SIXTH DEFENSE

(Waiver)

By reason of Plaintiffs' actions, representations, conduct and/or omissions to act, Plaintiffs have waived each and every alleged cause of action against Union Pacific set forth in the Complaint.

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SEVENTH DEFENSE

(Balancing the Equities)

The equities in this case weigh against the relief that Plaintiffs seek.

EIGHTH DEFENSE

(Reservation of Defenses)

Union Pacific reserves all other defenses that may potentially become available as a result of information developed during the case.

PRAAYER FOR RELIEF

WHEREFORE, Union Pacific respectfully requests the Court enter judgment as follows:

A. For a determination that it is premature for Plaintiffs to request, or for this Court to adjudge, that the HSR Project is in conformity with the trip-time requirements of the Bond Act, as set forth in section 2704.09 of the Streets & Highways Code;

B. To the extent a judgment of validation is entered, Union Pacific requests that such judgment be limited to, and state, as follows:

1. This action is properly brought under Code of Civil Procedure § 860 *et seq.*, Government Code § 17700, and Street and Highways Code §§ 2704.12 and 2704.13 (“Bond Issuance Law”), of which the latter is part of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21<sup>st</sup> Century, Street and Highways Code § 2704, *et seq.* (“HST Act”);

2. All proceedings by and for Plaintiffs in connection with issuance of the Bonds, Notes, and any Refunding Bonds (each as defined in the Complaint for Validation) pursuant to the Bond Issuance Law, including the adoption of Resolution IX and Resolution X for the authorization of the issuance and sale of the Bonds, Notes, and any Refunding Bonds, were, are, and will be valid and binding, and were, are, and will be in conformity with the provisions of the Bond Issuance Law;

1           3.       The Bonds, Notes, and any Refunding Bonds to be issued and sold,  
2           when executed and delivered, and any contracts related to the sale of the  
3           Bonds, Notes, or any Refunding Bonds, will constitute valid and binding  
4           obligations of the State of California under the Constitution and laws of the  
5           State of California;

6           4.       Challenges (including pending challenges) based on uses of proceeds  
7           of the Bonds, Notes, or any Refunding Bonds, will not affect the  
8           determination of validity of the Bonds, Notes, and any Refunding Bonds to  
9           be issued and sold, or the validity of any contracts relating to the sale of any  
10          Bonds, Notes, and any Refunding Bonds;

11          5.       This judgment binds and permanently enjoins any and all persons  
12          and entities, public or private, from the institution of any action or  
13          proceeding challenging the validity of the issuance or sale of the Bonds,  
14          Notes, or any Refunding Bonds, or of any contracts related to the issuance  
15          and sale of the Bonds, Notes, or any Refunding Bonds as determined in  
16          sections 1 through 4 inclusive of this judgment, and the payment of principal  
17          and interest on the Bonds, Notes, or any Refunding Bonds;

18          6.       The adjudication or determination of any challenges now or hereafter  
19          based on or relating to implementation or use of proceeds of the Bonds,  
20          Notes, or any Refunding Bonds; compliance of the high-speed rail project  
21          with the criteria and requirements set forth in the HST Act other than the  
22          Bond Issuance Law; the obligations of the High Speed Rail Authority  
23          pursuant to that certain Memorandum of Understanding and Implementation  
24          Agreement Related to High-Speed Rail Development in California dated  
25          July 11, 2012; and other matters arising after the 60-day period in this action  
26          specified in Code of Civil Procedure § 860, or any other matter not expressly  
27          set forth and determined in sections 1 through 4 inclusive of this judgment,  
28          are outside and beyond the scope of this judgment.

1 C. That Union Pacific be awarded reasonable attorneys' fees, as may be  
2 allowed by statute or otherwise by law;

3 D. That Union Pacific be awarded costs of suit herein; and

4 E. That Union Pacific be awarded such other and further relief that the Court  
5 may deem just and proper.

6 Dated: May 9, 2013.

PILLSBURY WINTHROP SHAW PITTMAN LLP  
MICHAEL R. BARR  
BLAINE I. GREEN  
ANDREW D. BLUTH  
Four Embarcadero Center, 22nd Floor  
Post Office Box 2824  
San Francisco, CA 94126-2824

7  
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11 By: 

Blaine I. Green

12 Attorneys for Interested Party  
13 UNION PACIFIC RAILROAD COMPANY  
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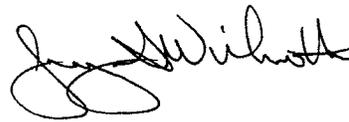
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VERIFICATION

I, Jerry S. Wilmoth, declare that I am General Manager of Network Infrastructure for Petitioner for UNION PACIFIC RAILROAD COMPANY, an interested party in this action, and am authorized to make this verification for and on behalf of said interested party, and I make this verification for that reason.

I declare that I have read the foregoing RESPONSIVE PLEADING AND ANSWER OF INTERESTED PARTY UNION PACIFIC RAILROAD COMPANY, IN RESPONSE TO COMPLAINT FOR VALIDATION and know its contents. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of May, 2013.



---

# Exhibit 6



**DJ Mitchell II**  
*Assistant Vice President*  
*Passenger Operations*

**BNSF Railway Company**  
P.O. Box 961034  
2600 Lou Menk Drive  
Fort Worth, Texas  
76161-0034  
(817) 352-1230  
(817) 234-7454  
dj.mitchell@bnsf.com

April 16, 2013

Mr. Joseph J. Metzler  
Manager- Operations and Maintenance  
Project Management Team for CAHSRA  
On the behalf of the NCRPWG  
Parsons Brinckerhoff  
303 Second Street  
Suite 700 North  
San Francisco, CA 94107

RE: PB-BNSF-3146--California High Speed Rail Authority-Rail Service Concepts for 2018-2025 BNSF Network Capacity Models

Dear Mr. Metzler:

This is in reference to your letter and the request you forwarded in February on behalf of the California High Speed Rail Authority for modeling and review of various proposed passenger rail blended service plans

We have generally reviewed and looked over these plans, but we are at a point in our understanding of intercity passenger rail planning in the San Joaquin Valley that we are at present unable to proceed to more specific planning or review of these materials. This is in light of frankly a great deal of ambiguity and contradictions in the different materials that have been forwarded, in the public statements being made and in the absence of any kind of understanding or agreement with the public agency sponsors of these programs. It is unclear what plans are ready to be progressed on behalf of the Authority and under what terms we should consider them.

In that regard, six intercity rail service options have been forwarded which may be internally inconsistent with respect to the extent to which they would involve BNSF right of way, trackage, or the construction of new railroad sometimes adjacent to and sometimes over BNSF right of way. It is also unclear the extent to which these options would use conventional FRA compliant rolling stock at speeds below 90 MPH or other alternatives.

With respect to truly high speed passenger rail service, elements of the options under consideration appear to be inconsistent with materials or plans that the Authority has submitted in descriptions to the Surface Transportation Board for exemption, and what the Authority has submitted for environmental review. Thus, there appears to be too much ambiguity at this time for a productive review of these plans.

In order to progress this effectively, we ask that the Authority provide us with a draft engineering agreement that contains a scope of work and budget that can be reviewed and for the Authority to specify the corridor alignment that is the realistic plan they might be advancing. As we have emphasized since our first discussions with prior officers of the Authority, it will also be essential



to address the safety implications, risk mitigation strategy and liability associated with any construction near or adjacent to our track as well as for future operations. We would then be in a better position to have meaningful discussions on how this could progress. BNSF has not agreed to or acquiesced in any proposed or potential alignment or change in service in the San Joaquin Valley involving our railroad, whether on, near, or adjacent to, our current right-of-way, or which could affect current or future rail service on our line, or could affect access to our line by present or future freight customers. In order for BNSF to progress any particular segment we will need to understand how these issues are addressed as to the entire proposed line through the San Joaquin Valley.

By the same token, we are not clear with whom we are actually negotiating or what agency would be the responsible entity progressing these plans, whether they are for truly high speed service or for what is being called Blended Service. For that reason I am copying Frank Vacca of CAHSRA and Bill Bronte of Caltrans to help us understand how all of this is to progress, and please feel free to forward this letter to the various parties copied on your initial letter to us as appropriate. With respect to the Authority's two Blended Service options and Caltrans' three service options A, B, and C, we believe it is necessary for the appropriate public agency intercity passenger rail sponsors to make some key decisions:

- Determine which one of the five conventional train speed options should be used as the foundation for any additional service agreement negotiations;
- Confirm that the service option selected consists of Amtrak service as part of its existing network and normal operations, whether operating on BNSF track or facilities constructed by the Authority;
- Identify a lead agency with which BNSF would negotiate;
- Provide BNSF with a projected timeline for the implementation of the proposed additional service; and,
- Confirm, as discussed in recent meetings, that Design-Build will not be used as a project delivery method where CHSRA construction will impact BNSF property or customers.

The different options and scenarios of your various alternative plans, some of which are very aggressive levels of passenger train service, could require significantly different capital infrastructure requirements to permit service and analysis of impacts on future freight service capacity and even access to our own line as a result of potential parallel structures along the right-of-way. In a similar vein, if the agencies envision something along the lines of the Amtrak metrics and standards to apply to this service for measurement of on-time performance, that will also involve significantly increased infrastructure and capital investment to ensure future intercity passenger rail service compatible with the preservation of freight capacity and mobility.

While we appreciate the work Parsons Brinckerhoff has been doing on this project, it is now essential that we have direct contact with whatever authority we would be negotiating definitive agreements if these projects are to be progressed. Therefore, as indicated earlier, we are copying Messrs. Vacca and Bronte for their determination of which agency we should be working with



on which agreement for which service. When we are advised with whom at the appropriate agency we should discuss how best to progress this, we can plan a follow-up call or meeting to include myself and Rick Weicher as we coordinate these efforts for BNSF, consistent with our previous direct meetings with prior representatives for and officers of the California High Speed Rail Authority.

Sincerely,

A handwritten signature in black ink, appearing to read "DJ Mitchell II".

DJ Mitchell II  
Passenger Operations

- cc: Frank Vacca, Chief Program Manager, California High-Speed Rail Authority  
Bill Bronte, Division Chief, Division of Rail, Caltrans  
Karen Greene Ross, Assistant Chief Counsel, California High-Speed Rail Authority  
Gil Mallery, Parsons Brinkerhoff  
Rick Weicher, BNSF Railway  
Walt Smith, BNSF Railway

# Exhibit 7

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14 *Attorneys for Respondent*  
*California High-Speed Rail Authority*

15  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SACRAMENTO

18 **COUNTY OF MADERA, et al.,**

19 Petitioners and Plaintiffs,

20 v.

21  
22 **CALIFORNIA HIGH-SPEED RAIL**  
**AUTHORITY, a public entity, and DOES 1**  
23 **through 20,**

24 Respondents and Defendants.

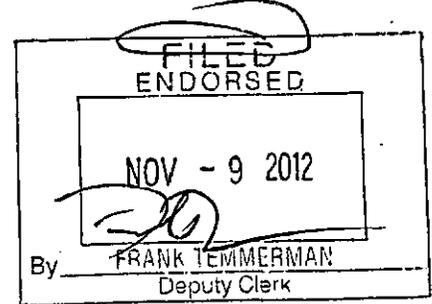
Lead Case No. 34-2012-80001165-CU-WM-GDS

**Cases Consolidated for Case Management, Briefing and Trial Purposes Only with:**  
Case Nos: 34-2-12-80001166-CU-WM-GDS  
and 34-2-12-80001168-CU-WM-GDS

**FIRST AMENDED DECLARATION OF JOHN POPOFF IN SUPPORT OF RESPONDENT'S OPPOSITION TO COUNTY OF MADERA ET AL.'S MOTION FOR PRELIMINARY INJUNCTION/STAY**

Hearing on Motion/Application  
Date: November 16, 2012  
Time: 1:30 pm in Department 29

ASSIGNED FOR ALL PURPOSES TO THE HONORABLE TIMOTHY FRAWLEY



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**CITY OF CHOWCHILLA**, a California  
municipal corporation .  
  
Petitioners and Plaintiffs,  
  
v.  
  
**CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY**, a public entity, and **DOES 1  
through 20**,  
  
Respondents and Defendants.

**TIMELESS INVESTMENT, INC.,  
MILLENNIUM ACQUISITIONS, INC.,  
HORIZON ENTERPRISES, G.P.,  
EVERSPRING ALLIANCE, L.P.**  
  
Petitioners and Plaintiffs,  
  
v.  
  
**CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY**, a public entity, and **DOES 1  
through 20**,  
  
Respondents and Defendants.

1  
2 I, John Popoff, declare as follows (this Declaration amends the Declaration I signed on  
3 October 31, 2012; edits from that Declaration are shown below in ~~strikeout~~ and underline):

4 1. I am the Deputy Program Director for the Northern California portions of the  
5 California High-Speed Rail Authority's ("Authority") California High-Speed Train Program  
6 ("Program"). I am employed by Parsons Brinckerhoff, which provides Program Management  
7 Team ("PMT") services to the Authority for the entire Program statewide. My responsibilities  
8 include oversight of PMT work including sub-consultants, on the Northern California portion of  
9 the Program. My responsibilities also have included oversight, under Authority direction, of  
10 design of the Merced-Fresno Section ("MF Section") of the Program, and coordination efforts  
11 with state, regional and local governments necessary to implement the MF Section. These  
12 coordination efforts have included the California Department of Transportation ("Caltrans"). My  
13 responsibilities also include involvement in the development of the design-build construction  
14 program as it affects the MF Section, associated development of requests for proposals and  
15 contract terms, understanding of the aspects of the project that affect and impact the construction  
16 schedule. In order to satisfy my responsibilities, I am familiar with the status, requirements,  
17 constraints and conditions of the construction funding, the status and schedule of right-of-way  
18 acquisition, and the environmental review and permits for the MF Section – as all of these factors  
19 dictate the construction schedule. In performing my responsibilities, I spend significant time  
20 traveling along the entire MF Section alignments, including the Chowchilla "wye" area.

21 2. At present, only a limited portion of the statewide system has both CEQA clearance  
22 for construction and funding. That portion is within the MF Section (the remainder is within the  
23 Fresno-Bakersfield Section, for which CEQA clearance is pending), and covers a little less than  
24 half the MF Section. The portion is located roughly from east of Madera (at the Avenue  
25 17/BNSF railroad intersection) to downtown Fresno (Santa Clara Street). For such construction,  
26 the Authority issued a Request for Proposals ("RFP") in early 2012. The RFP includes this  
27 Madera to Fresno sub-portion into what is called "Construction Package 1" ("CPI"), as depicted  
28

1 on the map attached hereto as Attachment A.<sup>1</sup> CP1 is further divided into CP1A, CP1B and  
2 CP1C, as shown on the map. CP1A and CP1B are covered by the EIR for the MF Section and are  
3 at issue in this litigation (CP1C is covered by the still-pending Fresno-Bakersfield EIR).

4 3. [Intentionally omitted].

5 4. RFP Addendum 5 (Book 1, Parts A to C, page 7), issued October 29, 2012, specifies  
6 that bids are due January 18, 2013 (relevant portion of Addendum 5 attached hereto as  
7 Attachment B). The contract for CP1 will be awarded and issued based on the best value  
8 contained in proposals; the price is fixed and binding if the Authority issues a Notice to Proceed  
9 (“NTP”) within 180 days of the proposal. Contract award is anticipated June 2013.

10 5. For various right-of-way (“ROW”) reasons, the Authority expects to issue the NTP in  
11 July 2013 (*i.e.*, 180 days after proposal due date), as specified in RFP Addendum 5. The main  
12 reason is that the contractor will be restricted in the work it can do after NTP issuance if the  
13 Authority has made insufficient progress by then in acquiring ROW. The Authority’s ROW  
14 acquisition schedule is very challenging. The Authority will require approximately 180 days for  
15 adequate ROW acquisition, otherwise the contractor will have access to such a limited amount of  
16 land for up-close review and geotechnical testing that the contractor would not be able to  
17 meaningfully commence final design work necessary for construction. Accordingly, any delay in  
18 ROW acquisition from an injunction directly translates into a day-for-day delay in the date when  
19 construction could start.

20 6. [Intentionally omitted.]

21 7. The contract for CP1 is a design-build contract. At present, CP1A and CP1B are  
22 engineered to less than 30 percent as contained in the RFP. The “design” part of the contract will  
23 involve the contractor and/or its sub-contractors taking the design from less than 30 percent to  
24 100 percent before construction can begin, which will take substantial time. This final  
25 engineering work is called *Final Design* and will not commence until NTP issuance. The  
26 contractor will undertake various other non-construction tasks in the first few months after NTP.

27 \_\_\_\_\_  
28 <sup>1</sup> I plotted the location of the AJF Dairy located at 11648 Avenue 23 1/2 in Chowchilla on  
Attachment A.

1 This includes setting up an initial local project office, and conducting site surveys and  
2 geotechnical investigations to facilitate Final Design and construction planning. Physical work  
3 such as hazardous material remediation, utility relocation and limited building demolition could  
4 take place prior to full-scale construction, but would not commence until after NTP; the  
5 Authority would not control the sequencing of the contractor's work (given this is a design-build  
6 contract), but the Authority expects these and other construction activities would in earnest is  
7 not expected to commence no earlier than the second half of until very late 2013 sometime after  
8 NTP issuance, with construction likely commencing with more limited construction activities  
9 then ramping up thereafter or early 2014. The work will be done by the contractor and its sub-  
10 contractors.

11 8. The estimated cost of the construction work for CP1A and CP1B is \$1.1 to \$1.4  
12 billion. This does not include costs to shift/relocate a portion of State Route 99 ("SR99") in  
13 Fresno, which is part of the MF Section. The Authority has negotiated an inter-agency agreement  
14 with Caltrans for Caltrans to oversee this SR99 relocation work. The total estimate of the  
15 Caltrans SR99 contract is between \$166 million and \$226 million. This includes approximately  
16 \$30 to \$40 million in estimated right-of-way ("ROW") acquisition costs and \$26 to \$31 million in  
17 final engineering design and construction management services Caltrans would perform. The  
18 remainder (\$110 to \$155 million) represents estimated hard construction costs; the work would be  
19 done by private contractor(s), and its sub-contractors, pursuant to a bid process that Caltrans  
20 would oversee.

21 9. The SR99 relocation contract between the Authority and Caltrans is largely in final  
22 form, awaiting final approval and execution. Final design work by Caltrans would commence  
23 upon execution. Construction, however, would not be expected until at least July 2013, due to the  
24 time it will take for Caltrans to complete final design and bid and finalize a construction contract.

25 10. The Authority/Caltrans SR99 relocation contract is set up as a fully-reimbursable  
26 contract. Effectively, Caltrans is providing design and construction contracting/oversight services  
27 to the Authority. Caltrans would get reimbursed monthly for its monthly expenses; if the  
28 Authority is prevented by court order from reimbursing Caltrans, work by Caltrans would cease.

1 Any delay in Caltrans commencing design work (or interruption of work) will lead to a day-for-  
2 day delay of the time when construction bids would be received, resulting in increased  
3 construction costs to the Authority due to intervening industry inflation in construction costs,  
4 such as those construction cost indices referenced in Section 2 of Book 2 Part A.2: Special  
5 Provisions of the contract terms for CPI.

6 11. The Authority has received two very large federal grants (\$2.3 billion in ARRA  
7 funds, explained below, and just under \$1 billion in non-ARRA funds) to construct a high speed  
8 rail line and associated infrastructure in the Central Valley, generally from Madera to just north of  
9 Bakersfield. This is being referred to as the "Initial Operating Segment First Construction" ("IOS  
10 1st"). The IOS 1st encompasses approximately half of the Merced-Fresno high speed rail  
11 segment being challenged in this litigation. The remainder of IOS 1st is located in the Fresno-  
12 Bakersfield segment, which is scheduled for Authority Board environmental clearance  
13 consideration in 2013.

14 12. Right of way ("ROW") acquisition and construction of IOS 1st is completely  
15 dependent on approximately \$2.321 billion in federal 2009 American Recovery and Reinvestment  
16 Act ("ARRA") grant funding, awarded and administered pursuant to a 2010 (plus amendments)  
17 grant agreement ("ARRA Grant") between the Federal Railroad Administration ("FRA") and the  
18 Authority. Under the terms of that current grant agreement, the ARRA funding expires if FRA  
19 does not pay it out by September 30, 2017. Per the terms of the current extant ARRA Grant, the  
20 funding is on a reimbursement basis – the Authority has to incur an expense and actually pay it  
21 before it gets reimbursed (approximately, 50 cents reimbursed for every dollar the Authority  
22 spends) by FRA. Accordingly, in order for FRA to pay out all the ARRA funding by September  
23 30, 2017, the Authority actually has to incur expenses and pay them well before September 30,  
24 2017, to provide time for FRA to receive and process associated invoices, and issue  
25 reimbursement payment by September 30, 2017. To accomplish this, the Authority will need to  
26 complete all construction funded by ARRA by March 31, 2017, in order to get invoices to FRA  
27 by July 31, 2017, as required in Attachment 1B, Section 8, of the current ARRA Grant  
28 Agreement (Section 8 is attached hereto as Attachment C).

1           13. The Authority has established a construction contracting, final engineering, ROW.  
2 acquisition (as described above) and construction schedule to facilitate completing all  
3 construction funded by ARRA by March 31, 2017. RFP Addendum 5 specifies Final Acceptance  
4 in February 2017 to meet this deadline.

5           14. The schedule to complete construction by February 2017 is extremely aggressive. It  
6 has to be to meet the terms of the current extant ARRA Grant Agreement. The large scope of the  
7 project and the short time frame in which to complete requires construction work at an  
8 unprecedented pace – the fastest rate of transportation construction known in U.S. history, at least  
9 50% faster than the pace (approximated by dollars spent per day) of the recent Bay Bridge  
10 project. This has been widely reported in the press, including in an article in which my statement  
11 was accurately summarized (attached hereto as Attachment D and can be found at  
12 <http://articles.latimes.com/2012/may/14/local/la-me-bullet-risks-20120514>). There is little  
13 opportunity to accelerate the schedule.

14           15. A delay of five to eight months from an injunction, in concert with an already  
15 aggressive schedule to meet a February 2017 Final Acceptance date, likely would render the  
16 project incapable of meeting the March 31, 2017, completion date necessary to meet the federal  
17 September 30, 2017, deadline. At a minimum, it would mean that the construction contractor  
18 would use double shifts to attempt to meet the deadline. Double shifts would introduce  
19 inefficiencies in the work and likely increase construction costs in excess of \$13 million. The  
20 double shifts would also increase trucking operations and construction noise in the evenings and  
21 at night, which almost certainly would be objectionable to local residents and local governments.  
22 The loss of five to eight months from the construction schedule would also amplify the effect of  
23 things like change orders, differing site conditions, or the like, further putting at risk the federal  
24 deadline.

25           16. A five-to eight-month delay from an injunction creates the very real prospect that  
26 CP1A/IB cannot get completed in time (as stated in the preceding paragraph) to meet the terms  
27 of the current extant ARRA Grant Agreement, as described above. Failure to complete  
28 construction in the timing required by the current ARRA Grant, or if it appears that the

1 construction timing cannot be met because of delays, risks the entire funding. "Any failure to  
2 make reasonable progress on the Project...that significantly endangers substantial performance of  
3 the Project shall provide sufficient grounds for FRA to terminate this Agreement." ARRA Grant  
4 Agreement, General Provisions Attachment 2, §23(a) (excerpt attached hereto as Attachment E).  
5 The Authority cannot make up any lost ARRA money because the terms of the California  
6 Proposition 1A bond funding (the only other source of funding) requires a 50% match for capital  
7 costs or it cannot be spent under Streets & Highways Code Section 2704.08(a).

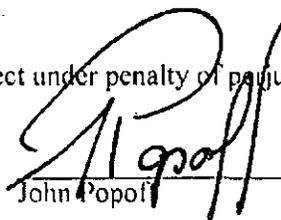
8 17. The construction-contracting and final design/construction dates and schedule  
9 mentioned above are based on the latest RFP (Addendum 5) and the current operative and  
10 controlling ARRA Grant Agreement. To the extent the RFP is revised further and/or the ARRA  
11 Grant Agreement is modified, the dates/schedule could change – but only in a manner that  
12 delays/pushes (not accelerates) those dates and schedule. The schedule has only slipped (not  
13 accelerated) between previous addenda, such as between Addendums 3 and 4 and 5.

14 18. The terms of the ARRA Grant Agreement described above are based on the current  
15 operative and controlling ARRA Grant Agreement. To the extent the ARRA Grant Agreement is  
16 modified, those terms could change.

17 19. The facts set forth in this declaration are true of my own personal knowledge and, if  
18 called as a witness, I could and would competently testify to all matters set forth herein.

19 I declare that the foregoing is true and correct under penalty of perjury.

20  
21 Dated: November 9, 2012

  
John Popoff

# Exhibit 8



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

Under Secretary for Policy

1200 New Jersey Avenue, S.E.  
Washington, DC 20590

May 25, 2011

Mr. Roelof van Ark  
Chief Executive Officer  
California High Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814

Dear Mr. van Ark:

It was a pleasure to meet with you last week while I was in Sacramento. As we discussed, the California Legislative Analyst's Office report released on May 10, 2011 suggested that you inquire of the U.S. Department of Transportation (U.S. DOT) with regard to the expenditure deadline for funds awarded to the California high-speed rail project, the ability to use federal funds as upfront funding, as well as the decisions that have been memorialized in agreements between the Federal Railroad Administration (FRA) and the Authority regarding the initial construction segment in the Central Valley.

As to the expenditure deadline, you should know this is a matter of law prescribed by both the Recovery Act and general appropriations law. Most Recovery Act funds provided by U.S. DOT to its state and local partners had a period of availability not to exceed Fiscal Year (FY) 2010. Fortunately, Congress recognized the unique, start-up nature of high-speed rail projects in this country and granted these funds a period of availability period through 2012, which together with 5 additional fiscal years for adjustment and liquidation (pursuant to 31 U.S.C §§ 1552 and 1553) creates the 2017 final deadline for expenditures.

This was one of the most lenient deadline for transportation funding in the Recovery Act, which was primarily designed to stimulate the economy in the short term during one of the country's most challenging economic times. We believe the time allowed is more than reasonable, and that deadlines are necessary to ensure that Recovery Act funds are used with all due speed. U.S. DOT has no administrative authority to change this deadline, and do not believe it is prudent to assume Congress will change it. We recommend that policy makers in California proceed on the basis that this deadline will remain fixed and make every effort to move the project forward accordingly.

On the matter of using federal funds up front to postpone use of the State's matching funds, we hope you will understand why this is not feasible. Both the fiscal year 2010 appropriations law and the FRA grant commitments require matching funds as a prerequisite for this project to go forward. California was awarded funding based in part on the impressive state match promised in the grant applications. Withholding these matching funds would put the California's high-speed rail project in serious jeopardy.

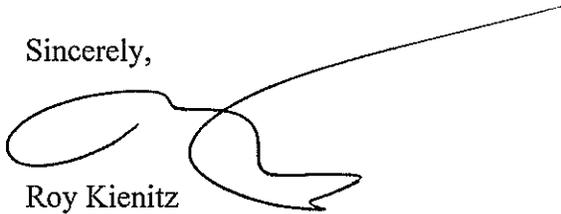
Mr. Roelof van Ark

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On the matter of the initial construction segment, we view the Central Valley as a logical place to begin building the core line to connect the San Francisco Bay Area with the Los Angeles Basin. We believe the decision to begin there was and remains a wise one. This selection was based on careful consideration of the options put forward by California through a competitive application process. First and foremost, construction can begin and be completed in the Central Valley more quickly than in other places. With this central piece built, more complex construction can extend north, south or simultaneously in both directions as additional sections of the project are ready to be built.

When construction of the Interstate Highway System began, the first segments to be completed were not in major population centers. The interstate began in the middle of the country, with the very first sections laid in Kansas and Missouri, allowing this core to extend to more populated areas and over more challenging terrain as the system grew. The Central Valley line is the essential core of any viable high-speed rail plan for California. It will support top speeds of 220 mph and will deliver jobs and future access to a part of the state that could use a serious economic boost. Once major construction is underway and approvals to complete other sections of the line have been obtained, the private sector will have compelling reasons to invest in further construction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roy Kienitz', with a long, sweeping line extending from the end of the signature towards the top right of the page.

Roy Kienitz  
Under Secretary for Policy  
U.S. Department of Transportation