CALIFORNIA
High-Speed Rail Authority

Request for Proposals for Habitat Mitigation Services

RFP No.: HSR14-56

January 16, 2015

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1.0 Overview and General Information

The following list provides a general overview of information related to the subject of this Request for Proposals (RFP):

- The California High-Speed Rail Authority (Authority) is issuing this RFP to receive Proposals from qualified firms (Proposers) to provide habitat mitigation services for the portion of the High-Speed Rail System located between Fresno and Bakersfield.
- This procurement will be based on the combined Technical and Cost Proposal scores. Responsive Proposals submitted in response to this RFP will be evaluated with the intent of awarding a contract to the highest ranked Proposer.
- The selected Proposer may be working with the Federal Railroad Administration (FRA), Surface Transportation Board (STB), California Public Works Board (PWB), California Department of Fish and Wildlife (CDFW), United States Army Corps of Engineers (USACE), United States Fish and Wildlife Service (USFWS), California State Water Resources Control Board, United States Environmental Protection Agency (USEPA), and other partnering agencies and contractor(s) on the California High-Speed Rail Project under the direction of the Authority's Director of Environmental Services.
- The contract period will start with a Notice to Proceed (NTP) and is anticipated to extend five (5) years.
- The total dollar value for the contract resulting from this RFP is not to exceed $53,919,800.00.
- Proposers are required to make a commitment to a certain percentage, as ascertained by the Proposer, of participation by Small, Disadvantaged, and Disabled Veteran Business Enterprises.
- Negotiations for final terms and conditions of the contract shall be held with the top ranked Proposer, which will be the Proposer with the highest combined Technical and Cost Proposal score.
- The RFP will be available in electronic format on the State's Contract Register at (www.bidsync.com) and a link can be found on the Authority's website (www.hsr.ca.gov).

All Key RFP Dates related to this RFP are provided in Table 1 in Section 1.4.1 – Submittal Instructions. All questions regarding this RFP must be submitted in writing through bidsync (www.bidsync.com) by the date and time specified in Table 1 in Section 1.4.1 – Submittal Instructions. Responses to questions submitted will be posted on bidsync for the benefit of all participants.

1.1 Definitions

Whenever used in this RFP or any contract resulting from this RFP, the following terms have the definitions indicated:

Authority – California High-Speed Rail Authority.

Authority's Contractors – Entities or individuals under contract with the Authority to perform services for or on behalf of the Authority.

Authority Board – California High-Speed Rail Authority Board of Directors.

Business day – Monday through Friday, except for Federal or State holidays, between the hours of 9:00 a.m. and 5:00 p.m., Pacific Daylight Time or Pacific Standard Time, as applicable.

Contract – Contract resulting from this RFP.

Contractor – Contractor with which the Authority enters into a contract for habitat mitigation services pursuant to this RFP.

Day – Calendar day.

Disadvantaged Business Enterprise (DBE) – A small business concern that is at least fifty-one percent owned and whose management and daily business operations are controlled by "socially and economically disadvantaged individuals" as that phrase is defined in 49 C.F.R. Part 26.

Disabled Veteran Business Enterprise (DVBE) – A for-profit small business concern that is at least 51 percent owned by a veteran of the United States military, which has at least a 10 percent service-connected disability. To qualify as a Disabled Veteran Business Enterprise, the business must have received the appropriate certification issued by the California Department of General Services. This definition applies where the contracts in question are 100 percent state-funded.

First Construction Segment (FCS) – Construction Packages 1 through 5, extending from Avenue 17 in the County of Madera to 7th Standard Road in the County of Kern, plus the rail infrastructure that will be installed in this area.

Grant/Cooperative Agreements – Agreement numbers FR-HSR-009-10-01-05 and FR-HSR-0118-12-01-00 between the Authority and the Federal Railroad Administration providing terms for expenditure of Federal funds provided for the High-Speed Rail System.

High-Speed Rail System – the overall High-Speed Rail System, which will extend from Sacramento to San Diego.

Habitat Mitigation Requirements - requirements as set forth in Table 1, "CP 2/3 and 4 - Impacts on Aquatic Resources under Jurisdiction of CWA Sections 404 and 401" and Table 2, "CP 2/3 and 4 - Proposed Compensatory Mitigation to Offset Impacts on Wildlife." Please note that the exact amount mitigation required will be set forth in the permits issued to the Authority.

Initial Operating Segment (IOS) – That portion of the High-Speed Rail System that will run from Merced to the Los Angeles Basin.

Key Personnel – Those named individuals identified in the Proposer's Proposal to fill the positions specified in Section 4.5.2 – B. Key Personnel and Staffing Plan for which the requisite curriculum vitae has been provided.

Microbusiness (MB) – A for-profit small business concern with gross annual receipts of less than $3,500,000 or, if the small business is a manufacturer, with 25 or fewer employees. The Authority recognizes Microbusiness certifications issued by the California Department of General Services.

Mitigation Properties – The properties listed and described in Attachment F – Mitigation Properties Table to this RFP.

Notice to Proceed – Written direction from the Authority, authorizing the Contractor to commence work.

Open Government Laws – Collectively, the California Public Records Act (Government Code section 6250, et seq.), the Bagley-Keene Open Meeting Act (Gov. Code section 11120, et seq.), and the Freedom of Information Act (5 U.S.C. section 552, as amended by Public Law No. 104-231, 110 Stat. 3048) and other applicable State and Federal open records laws.

Person – Any individual, corporation, company, joint venture, partnership, trust, unincorporated organization, or governmental agency including the Authority.

Phase 1 Environmental Site Assessment Report – report prepared for a real estate holding that identifies potential or existing environmental contamination liabilities. The analysis addresses both the underlying land as well as physical improvements to the property. The actual sampling of soil, air, groundwater and/or building materials is not conducted during a Phase I Environmental Site Assessment Report ("ESA"), as it is the first step in the process of environmental due diligence. Standards for performing a Phase I ESA are promulgated by the U.S. Environmental Protection Agency and are based in part on American Society for Testing and Materials (ASTM) Standard E1527-13

Project – The Fresno to Bakersfield portion of the High-Speed Rail System.

Project Manager – Key individual on Proposer's team who is responsible for leading and managing the habitat mitigation services.

Proposal – proposal submitted in response to this RFP.

Proposal Due Date – the date which proposals for this RFP are due as specified in Table 1 in Section 1.4.1.

Proposed Scope of Work – the complete list of tasks and deliverables that will be proposed by the Proposer to satisfy the mitigation needed for Authority compliance with federal and State approvals and permits.

Proposer – A Person that submits a Proposal in response to this Request for Proposals.

Public Contract Code – Public Contract Code

Risk Manager – The Risk Manager for the Authority.

Scope of Work – The negotiated scope of work set forth in the contract resulting from this RFP.

Small Business – For U.S. DOT-assisted contracts, a Small Business meets the definition for a small business concern contained in Section 3 of the Small Business Act and United States Small Business Administration regulations implementing it (13 C.F.R. Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 C.F.R. Part 26.65(b). Certified SB firms participating in U.S. DOT-assisted contracts are not required to have a principal office located in California. Both State and/or Federal certified SB firms are eligible to be credited toward meeting the SB goal on a U.S. DOT-assisted contract.

State – The State of California.

Subcontractor – Defined as follows:

a. Prior to award of any contract resulting from this RFP, any Person with whom the Proposer proposes to enter into a subcontract for any part of the Work, or that will enter into a subcontract for any part of the Work, at any tier; or

b. After award of any contract resulting from this RFP, any Person with whom the Proposer has entered into a subcontract for any small part of the Work, or with whom any subcontractor has further subcontracted any part of the Work, at all tiers.

Work – All of the tasks, activities, and deliverables required under the contract resulting from this RFP.

1.2 Acronyms

ARRA – American Recovery and Reinvestment Act of 2009

CalSTA – California State Transportation Agency

CDFW – California Department of Fish and Wildlife

CO – Change Order

DBE – Disadvantaged Business Enterprise

DCMP – Draft Compensatory Mitigation Plan

DGS – California Department of General Services

DVBE – Disabled Veteran Business Enterprise

ESA – Environmental Site Assessment

FCS – First Construction Segment

FOIA – Freedom of Information Act

FRA – Federal Railroad Administration

HSR – High-Speed Rail

IOS – Initial Operating Segment

MB – Microbusiness

NOPA – Notice of Proposed Award

NTP – Notice to Proceed

PTE – Permissions to Enter

RFI – Request for Information

RFP – Request for Proposals

SBE – Small Business Enterprise

SONO – Statement of No Objection

SWRCB – California State Water Resources Control Board

USACOE – United States Army Corps of Engineers

U.S. DOT – United States Department of Transportation

USEPA – United States Environmental Protection Agency

USFWS – United States Fish and Wildlife Service

1.3 Authority's Designated Point of Contact

The Authority's Designated Point of Contact for communications concerning the habitat mitigation services or this RFP shall be as follows:

Scott Rothenberg
California High-Speed Rail Authority
770 L Street, Suite 620 MS 2
Email: scott.rothenberg@hsr.ca.gov

Persons intending to submit Proposals in response to this RFP shall not contact or discuss any items related to this process with any Board member or Authority staff other than Scott Rothenberg. Failure to comply with this communication prohibition may result in disqualification. Only the Authority's published responses to questions submitted in writing through bidsync (www.bidsync.com) will be binding upon the Authority. The last day to submit written questions to bidsync is February 27, 2015. The Authority will respond to written questions before close of business on March 6, 2015.

1.4 Proposal Submittal Information

1.4.1 Key RFP Dates and Submittal Instructions

The following table provides the Key RFP Dates, after which are detailed Instructions for Proposal Submittal.

Table 1: Key RFP Dates

Key Dates	Activity Description
January 16, 2015	Final RFP advertised
Week of February 9th	Pre-bid Conference held in Sacramento, CA
February 27, 2015	Last day to submit written questions by 3:00 PM PDT Pacific Daylight Savings Time.
March 6, 2015	Response posted to written questions
March 13, 2015	Proposals due to Authority's office by 4:00 PM PDT Pacific Daylight Savings Time.
Week of April 1st	Discussions/Interviews with Proposers held in Sacramento, CA.
April 7, 2014	Notice of Selection released by 5:00 PM PDT Pacific Daylight Savings Time

1.5 Instructions for Proposal Submittal

Proposals submitted in response to this RFP shall be submitted in two (2) separate sealed packages/envelopes:

1st sealed package/envelope: Technical Proposal – one original and six copies in separate 3-ring binders. The original must be clearly marked "Original" on its face and spine, and each copy must be marked with the Proposer's name and numbered 1 through 6 on their spines. Each

Proposer shall include one electronic version of its Proposal in a searchable .pdf format on a CD or DVD.

2nd sealed package/envelope: Cost Proposal – Original Cost Proposal Form. The sealed Cost Proposal envelope may be placed in the bound original Technical Proposal book.

Proposals must be received (mail or hand-delivered) no later than 4:00 PM PDT, March 13, 2015, addressed as follows:

1st Sealed Package/Envelope	**2nd Sealed Package/Envelope**
Attention: Scott Rothenberg California High-Speed Rail Authority 770 L Street, Suite 620 MS-2 Sacramento, CA 95814 **TECHNICAL PROPOSAL** **DO NOT OPEN**	Attention: Scott Rothenberg California High-Speed Rail Authority 770 L Street, Suite 620 MS MS-2 Sacramento, CA 95814 **COST PROPOSAL** **DO NOT OPEN**

In addition, the following information must be placed on the lower left corner of the submittal shipping packages:

RFP No.: HSR14-56

California High-Speed Rail Authority
Habitat Mitigation Services Proposal

Proposer: _____

1.5.1 Amendments to Request for Proposals

The Authority reserves the right to amend the RFP by addendum before the Proposal Due Date.

1.5.2 Non-Commitment of Authority

This RFP does not commit the Authority to award a contract, to pay any costs incurred in the preparation of a Proposal in response to this request, or to procure or contract for services or supplies. The Authority reserves the right to accept or reject any or all Proposals received as a result of this request, to negotiate with any qualified Proposer, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the Authority to do so.

1.5.3 Late Submittals

In accordance with California Public Contract Code § 10344, Proposals received after the specified date and time are considered late and will not be accepted. There are no exceptions to this law. Postmark dates of mailing, e-mail and facsimile (fax) transmissions are not accepted under any circumstances and are not acceptable toward meeting the submission deadline for Proposal delivery. A Proposal is late if received any time after the time indicated in Table 1, Section 1.4.1 of this RFP. Proposals received after the specified time will not be considered and will be returned to the Proposer.

1.5.4 Modification or Withdrawal of Proposals

Any Proposal received may be withdrawn before the Proposal Due Date by written request to the Authority. The only method for a Proposer to modify its Proposal is by withdrawing its submission in its entirety prior to the Proposal Due Date, by written notification to the Authority. A complete, corrected submission package may be resubmitted prior to the Proposal Due Date. Modifications offered in any other manner will not be considered.

1.5.5 Property Rights

Proposals received within the Proposal Due Date become the property of the Authority and all rights to the contents therein become those of the Authority. All material developed and produced for the Authority under the Contract for habitat mitigation services shall belong exclusively to the State of California. All products used or developed in the execution of any contract resulting from this RFP will be governed in accordance with Exhibit D, Section E – Ownership of Data and Exhibit E – Rights in Data and Copyright.

1.5.6 Improper Communications and Contacts

The following rules of contact shall apply during the procurement for the habitat mitigation services that began upon the date of issuance of this RFP and will be completed with either the execution of the habitat mitigation services Contract or the cancellation of the procurement. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

A. After submittal of Proposals, no Proposer or any of its team members may communicate with another Proposer or its team members with regard to the RFP or any other team's Proposal with the exception of subcontractors that are shared between two or more Proposer Teams. In such cases, those subcontractors may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams (contact among Proposer organizations is allowed during Authority sponsored informational meetings). Protocols established to ensure that subcontractors do not act as conduits of information between teams are subject to Authority review and approval, at the Authority's discretion.

B. Proposers shall correspond with the Authority regarding the RFP only through the Authority's Designated Point of Contact (see Section 1.3 of this RFP) and Proposer's RFP/Proposal Manager.

C. Except for communications expressly permitted by the RFP or approved in advance by the Authority's Chief Counsel, in his or her sole discretion, no Proposer or representative thereof shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Authority Board or with any Authority staff. This includes any of the Authority's advisors, contractors, or consultants (and their respective affiliates) that are involved with the procurement or the habitat mitigation services.

D. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or the procurement of habitat mitigation services, or from participating in public meetings of the Authority or any Authority workshop related to this RFP.

E. The Proposers shall not contact the entities listed below, including any employees, representatives, and members regarding this RFP or the habitat mitigation services:

1. Federal Railroad Administration (FRA)
2. California State Transportation Agency (CalSTA)
3. California Department of Fish and Wildlife (CDFW)
4. California Department of General Services (DGS)
5. United States Army Corps of Engineers (USACOE)
6. United States Fish and Wildlife Service (USFWS)
7. California State Water Resources Control Board (SWRCB)
8. United States Environmental Protection Agency (USEPA)
9. California High-Speed Rail Authority (except as expressly provided in this RFP)

F. Any communication determined to be improper, at the sole discretion of the Authority, may result in disqualification.

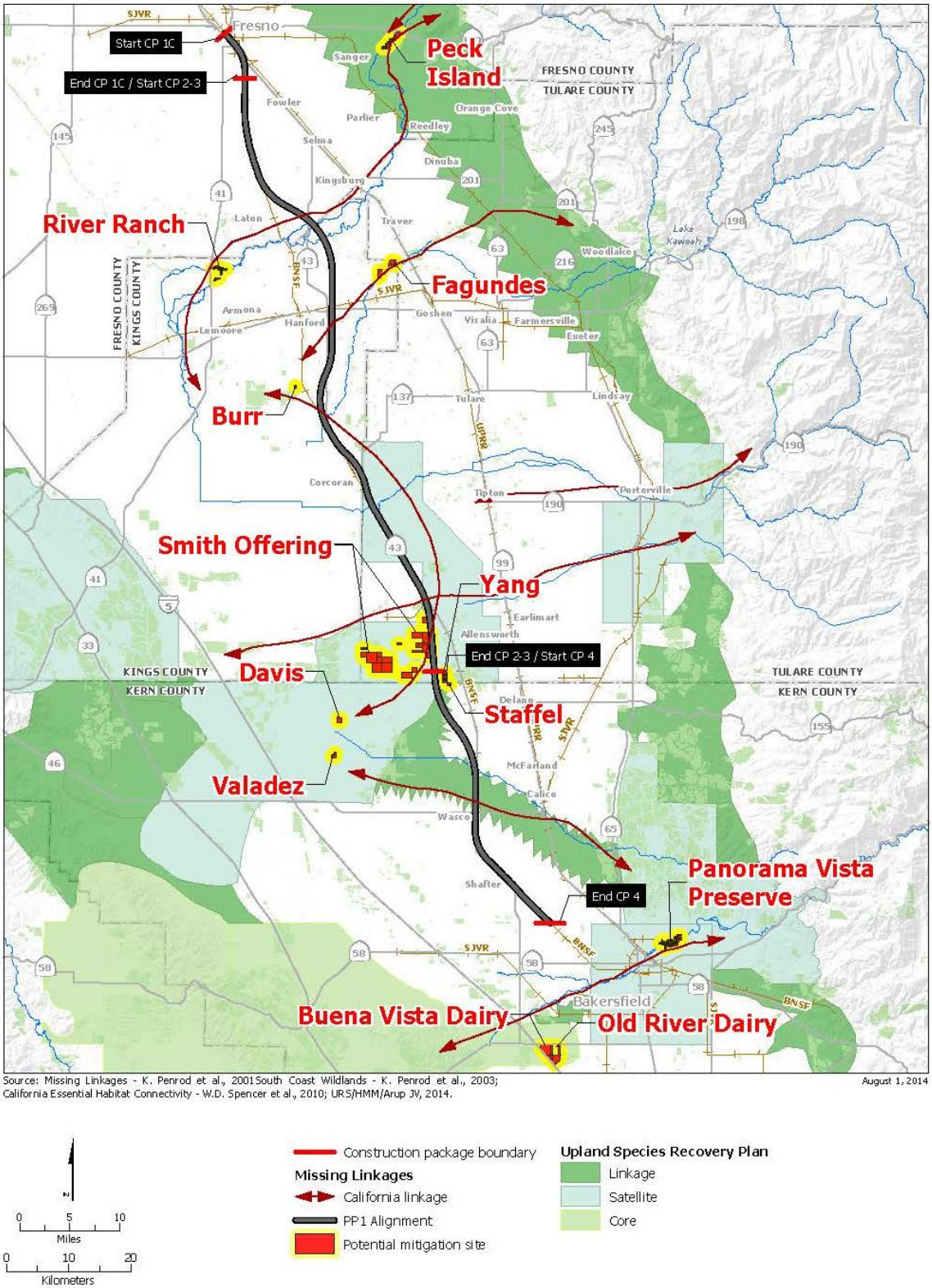
G. The Authority will not be responsible for any verbal exchange or any other information or exchange that occurs outside the official RFP process.

2.0 Background

The California High-Speed Rail Authority (Authority) is responsible for planning, design, construction, maintenance and operation of the first high-speed rail system in the nation. The California High-Speed Rail System (System) will connect the mega-regions of the State, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands. Phase 1 service will connect the San Francisco Bay Area to the Los Angeles Basin in under three hours at speeds of over 200 miles per hour. The System will eventually extend to Sacramento and San Diego, totaling 800 miles with up to 24 stations. In addition, the Authority is working with regional partners to implement a statewide rail modernization plan that will invest billions of dollars in local and regional rail lines to meet the State's 21st century transportation needs.

At this time, the Authority is proceeding with construction of a portion of Phase 1 of the System, specifically the First Construction Section (FCS), which extends from Avenue 17 in the County of Madera to 7th Standard Road in the County of Kern. The habitat mitigation services to be performed under a contract resulting from this RFP are designed to satisfy environmental approvals and federal and State permits requirements for off-site mitigation for impacts to special-status species and waters and wetlands associated with construction and operation of Permitting Phase 1 of the Fresno to Bakersfield portion of the FCS. Figure 1 provides the geographic area where the Work under the contract for habitat mitigation services will be performed.

Figure 1: High-Speed Rail Mitigation Section Map



Source: Missing Linkages - K. Penrod et al., 2001South Coast Wildlands - K. Penrod et al., 2003; California Essential Habitat Connectivity - W.D. Spencer et al., 2010; URS/HMM/Arup JV, 2014.

3.0 Description of Work

3.1 Scope of Work

The Proposer shall submit with its Proposal a Proposed Scope of Work that identifies the tasks and deliverables necessary to meet the Authority's Habitat Mitigation Requirements as set forth in Table 1 CP 2/3 and 4 - Impacts on Aquatic Resources under Jurisdiction of CWA Sections 404 and 401 and Table 2 CP 2/3 and 4 - Proposed Compensatory Mitigation to Offset Impacts on Wildlife. This Proposed Scope of Work must identify (1) the amount of mitigation the bidder presumes would satisfy the Authority's mitigation need (the final mitigation need will be identified in the permits issued to the Authority), (2) the mitigation properties proposed to achieve the Habitat Mitigation Requirements, and (3) justification of the suitability of any proposed mitigation properties not identified in Attachment F – Mitigation Properties Table including, but not limited to, the geographical location, topography and type of mitigation potential.

The cost and schedule associated with the Proposed Scope of Work shall be included with the Proposal as set forth in Attachment E – Cost Proposal. The schedule shall be based on the assumption that the Authority will successfully obtain its permits by the end of June 2015 and the Contractor shall begin to implement all off-site mitigation measures and conditions required by the permits related to short-term and long-term habitat, acquisition, preservation, creation, restoration, or enhancement as necessary to allow impacts to resources subject to such permits to proceed in compliance with applicable laws by December 2015.

Table 1: CP 2/3 and 4 - Impacts on Aquatic Resources under Jurisdiction of CWA Sections 404 and 401

Impact Type	Watershed of Impact	Impact Type	Total Impacts
Emergent Wetlands	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	0.01
		Indirect Bisect	--
Seasonal Wetlands	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	1.556
		Indirect Bisect	--
Vernal Pools and Swales	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	5.63
		Indirect Bisect	11.53
Seasonal Riverine	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	2.08

		Indirect Bisect	--
Canals/Ditches	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	52.43
		Indirect Bisect	--
Retention/Detention Basins	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	36.90
		Indirect Bisect	--

NOTE: Exact mitigation requirements will be specified in the permits.

Table 2: CP 2/3 and 4 - Proposed Compensatory Mitigation to Offset Impacts on Wildlife

Resource Type	Project Impacts (BO Max.)	Project Impacts (PP1 Actual)	Proposed Compensation Strategy	Proposed Mitigation Acreage
Vernal pool fairy shrimp	29.77 ac direct 103.52 ac indirect	4.20 ac direct 27.26 ac indirect	2:1 Preservation	62.80 ac
Vernal pool tadpole shrimp	0.004 ac direct 0.056 ac indirect	0.004 ac direct 0.056 ac indirect	2:1 Preservation	0.12 ac
California tiger salamander (lacustrine)	18.7 ac	11.88 ac	0.1:1	1.19 ac
California tiger salamander (upland)	18.3 ac	8.94 ac	3:1	26.82 ac
Blunt-nosed leopard lizard	98.06 ac	36.41 ac	3:1	109.23 ac
Swainson's hawk	N/A	2,057.83 ac	Following guidance of 1994 Staff Report	1,492.91 ac
San Joaquin antelope squirrel	N/A	62.03 ac	3:1	186.09 ac
Tipton kangaroo rat	453.85 ac	148.95 ac	3:1	446.85 ac
San Joaquin kit fox	5,351.23 ac	3,449.82 ac	See Table 1 of the BO	1,547.07 ac

NOTE: Exact mitigation requirements will be specified in the permits.

3.2 Notice to Proceed

The Authority will direct work to proceed by issuance of an initial Notice to Proceed (NTP). The Authority reserves the right to limit the initial NTP and issue additional limited NTPs to proceed with work pursuant to the negotiated Scope of Work.

4.0 Proposal Requirements

The following summarizes the required content and organization of the Proposal. In addition to the information described below, the Authority may require confirmation or clarification of information furnished by a Proposer or other evidence of qualifications to perform the work described in this RFP.

4.1 General Requirements

The Proposal shall be typewritten; and shall be manually signed. Scanned or faxed responses are not acceptable.

The Proposal shall comply with the following requirements:

- Documents shall be prepared in single-spaced type, 12 point font, on 8-1/2" x 11" sheets printed double-sided. A page is considered a single side of an 8-1/2" x 11" sheet. Should the Proposer wish to submit materials that benefit from larger format paper sizes such as charts, drawings, graphs and schedules then they should do so sparingly.
- Pages shall be numbered at the bottom to show the page numbers and total number of pages in the response; (e.g., Page 1 of 20, Page 2 of 20, etc.).
- Brochures, extraneous publications such as published articles, directories, lengthy client lists, and other miscellaneous materials not specifically requested will not be evaluated.
- If submitting as a team, note which entity is the prime Proposer or lead joint venture partner (if applicable).
- Note the individual who will be the point of contact authorized to bind the Proposer.
- All names and applicable titles shall be typed or printed below the signatures.
- Forms A-B and Certification Nos. 1-10 must be signed and included. If erasures or other changes appear on the forms, each erasure or change shall be initialed and dated by the person signing the response.
- The Proposal shall be divided into sections as described below:
  - A blank page should precede each section with an index tab extending beyond the side of the page; these blank pages will not be counted within the page count.
  - The index tab should have the appropriate section number typed thereon.
  - At a minimum, the items described in Section 4 shall be addressed.
  - Sections in the Proposal should be in the same order as they appear in this RFP.

4.2 Transmittal Letter

The Proposal shall be transmitted with a letter (Transmittal Letter) that must be signed by an official authorized to bind the Proposer contractually and shall contain a statement that indicates

the Proposal is complete and accurate. At a minimum, the Transmittal Letter shall include the following:

a. A statement affirming that the Proposer has or is able to obtain the required insurance specified in Section 6.2 of this RFP.

b. Affirmation that Proposer has not been terminated from another contract for default, nor has the Proposer received a civil judgment or criminal conviction in the past five (5) years.

c. Names, titles, addresses, telephone numbers, and email addresses of individuals authorized to negotiate and contractually bind the Proposer.

d. Names, titles, addresses, telephone numbers, and email addresses of personnel assigned to manage any contract awarded pursuant to this RFP.

4.3 Minimum Qualifications

Proposers must satisfy all of the Minimum Qualifications listed below. Failure to satisfy all of the Minimum Qualifications at the time of Proposal submission will result in the immediate rejection of the submission. The Contractor must continue to satisfy all of the Minimum Qualifications throughout the term of any contract resulting from this RFP.

The Minimum Qualifications for this RFP are:

A. The Proposer must submit a Transmittal letter with all required information as set forth in Section 4.2.

B. The Proposer must hold valid and appropriate licensure necessary to perform the Proposed Scope of Work. Proposers shall attach copies of licenses to the Proposal as Attachment A.

C. The Proposer must provide all necessary information and forms required showing proof of small business participation. These forms shall include, but not necessarily be limited to Form A, Certification 2 and Small Business Certificates and shall be attached to the Proposal in Attachment B.

D. The Proposer must identify the Key Personnel assigned to manage any engagement awarded pursuant to this RFP and provide their resumes.

E. The Proposer must demonstrate that the Key Personnel have successfully completed projects of a similar nature, performing all of the tasks needed to complete the Proposed Scope of Work and complying with the requirements set forth in Section 4.5.2 – B. Key Personnel and Staffing Plan.

F. A letter of commitment from each identified Subcontractor, including any relevant licenses, positions, and hours that the Subcontractor will work to meet the contract performance requirements. These letters of commitment shall be attached to the

Proposal as Attachment B. All subcontractors shall be identified on Form A, which shall be attached to the Proposal in Attachment B.

G. The Proposer must provide all required Forms and Certifications. All Forms and Certifications shall be manually signed and included as Attachment B to the Proposal.

H. The Proposer must provide (3) references for the firm as required in 4.5.1 Subsection B.1. (including all required information and/or documentation).

I. The Proposer must not have been terminated from another contract for default and must have not received a civil judgment or criminal conviction in the past 5 years.

J. The Proposer must demonstrate that they are capable of obtaining a payment and performance bond (see Section 4.9) for the habitat mitigation services, as evidenced from a Surety letter from an insurance company. The Proposer must also demonstrate the financial wherewithal to deliver the habitat mitigation services successfully in order to reduce financial and delivery risks such that the plan and timetable for developing the Project and the High-Speed Rail System is not impaired.

4.4 Executive Summary

The Proposer may include an Executive Summary, preferably not exceeding two (2) pages, stating key points of the Proposal that the Proposer believes highlight its qualifications to provide the Authority's requested habitat mitigation services. As such, the Executive Summary may emphasize the Proposer's strengths as fully described in the balance of the Technical Proposal. Proposers should be aware that the Executive Summary will not be separately evaluated.

4.5 Contents of the Technical Proposal

Using the following criteria as a minimum, and following the content and order provided below, the Proposer should state in their Proposal why it believes it is qualified to provide the habitat mitigation services requested in this RFP.

4.5.1 Past Performance and Experience

A. Mitigation Services on Similar Projects

The Authority wishes to contract with a Proposer with a proven track record of successfully providing mitigation-related services on similar projects. Specifically, the Proposer must demonstrate experience in successfully completing the following:

1. Evaluating, selecting and acquiring potential mitigation sites for large-scale habitat preservation, restoration and creation in California, preferably California's Central Valley;

2. Supporting the other State agencies fully in Federal and State resource agency approval of proposed large scale habitat preservation, restoration and creation mitigation projects; and

3. Designing, constructing and monitoring large-scale preservation, restoration and creation mitigation projects involving similar habitat types to those that would be impacted by the mitigation services.

For each project or assignment identified in response to the experience criteria above, please provide, at a minimum:

- The name of the client;
- The title of the project or assignment;
- Contact phone numbers and email addresses for the client;
- The scope of the project or assignment;
- The relevance of the project or assignment to this RFP;
- The name of each proposed service team member who worked on the project or assignment; and
- The date of service of the contract.

Additionally, please provide examples of the following:

1. Cost saving methodologies utilized on past assignments.
2. Innovative approaches that contributed to project quality and/or cost or schedule savings.

B. Previous Clients

1. Provide names, addresses and telephone numbers for at least three (3) clients for whom the Proposer has performed work related to permittee responsible habitat mitigation/conservation plans and/or habitat mitigation/conservation banks projects. In the case of habitat mitigation/conservation banks, provide the name and location of the bank. Please note the following conditions:

   - If a single entity is the prime contractor submitting the Proposal, the references shall be submitted for the prime.
   - If the Proposal is submitted by a joint venture that has worked together in the past, the references shall be for the joint venture as a whole. (In the event the previous joint venture did not include all prime members of the current joint venture, the Proposer may submit individual references for the remaining prime members.)
   - If the Proposal is submitted by a joint venture that has not worked together in the past, three (3) references shall be included for each member of the joint venture.

4.5.2 Understanding of Project Requirements

The Authority wishes to contract with a Proposer with a Proposed Scope of Work (see Attachment A – Exhibit A) that demonstrates:

A. A thorough knowledge of the Authority's needs for habitat mitigation in the habitat mitigation services area.

B. A thorough knowledge of what is required to perform the habitat mitigation services.

C. How the Proposed Scope of Work will be successful in meeting the Authority's needs.

D. Unique or special techniques, methods, or approaches that will be used in the various functions to make the Proposer more likely to successfully complete the tasks in the Proposed Scope of work in a timely manner.

E. An approach to delivering high quality products that will be successful and repeatable.

The Authority wishes to contract with a habitat mitigation services team with an organization plan and staffing plan that are appropriate for the Proposed Scope of Work and that has assigned experienced Key Personnel in specified roles. Please address the following topics in the relevant section of the Technical Proposal.

A. Team Composition and Responsibilities – Describe the composition of the Proposer's team, and how activities would be assigned, with particular attention to assigned Key Personnel. Also provide a brief description of the following elements related to the Proposer's team organization and management:

    1. Discuss the composition of the Proposer's Key Personnel and staff and their individual experience levels; provide an organizational chart of the entire team that would work on the contract resulting from this RFP.

    2. Describe any history the Proposer's team has of working together in the past, and whether such past working arrangements have been successful.

    3. Discuss how the Proposer's habitat mitigation services team will work toward the goal of achieving optimal efficiency for delivering habitat mitigation to the Authority.

B. Key Personnel and Staffing Plan – The Authority requires continuous availability of the Contractor to meet a demanding schedule associated with the Proposed Scope of Work. Please describe the following items related to the Key Personnel and Staffing Plan:

    1. Explain the current availability of Key Personnel and other staff, and how Proposer will ensure their continued availability throughout the term of Work.

2. Explain the current availability of other staff, and how Proposer will ensure sufficient availability of these team members and/or other equally qualified staff throughout the term of Work.

3. Discuss how the Proposer's Staffing Plan will contribute to the goal of achieving optimal efficiency for delivering the habitat mitigation services to the Authority.

4. Please note that by submitting a Proposal, the Proposer agrees and acknowledges that it will provide for the duration of the habitat mitigation services Contract, the full complement of staff required to perform the habitat mitigation services, including the specific individuals identified in the Proposal. In the event the Contractor proposes to substitute any of the Key Personnel designated in the Proposal, the individual(s) proposed must demonstrate similar qualifications and experience as required to successfully perform such duties. No change in the Key Personnel shall be accepted without prior written approval by the Authority. Any work performed by unapproved personnel is subject to non-payment.

The Contractor shall assign Key Personnel for the following roles. The Contractor shall assign additional Key Personnel as necessary to accomplish the Proposed Scope of Work.

Principal Contract Manager

Duties:

Responsible for ensuring the resources of the successful Proposer are available to perform the Scope of Work under the time frames, costs, and other terms agreed to between the Authority and Contractor; responsible for providing for necessary oversight of the Project Manager. The Principal Contract Manager must have authority to contractually bind the Proposer.

Required Experience/Qualifications:

The Principal Contract Manager must have experience serving in a comparable capacity on habitat mitigation services in the past three years. Experience serving in a role comparable to Project Manager (as described below) in the past five years.

Project Manager

Duties: Responsible for day-to-day project management and oversight across multiple tasks and multiple mitigation properties throughout the engagement.

Required Experience/Qualifications: The Project Manager must have experience serving in a comparable capacity on habitat mitigation services in the past three years.

Resumes – Include the resumes of Key Personnel that demonstrate their experience in working on similar projects.

Resumes shall be limited to three pages and presented in such a way as to particularly highlight the experience on projects or assignments of a similar nature. Resumes shall demonstrate relevant experience and that the proposed assigned individuals have the appropriate licenses or qualifications for the relevant roles. The resumes must include summary chronologies of employment history including dates and titles at each firm. Resumes of administrative and support staff should not be included. Discuss how Key Personnel are qualified for the positions to which they are assigned.

4.5.3 Small Business Participation

The Authority has established a 30 percent Small Business (SB) Enterprise goal. This 30 percent SB goal is inclusive of a 10 percent Disadvantaged Business Enterprise (DBE) commitment and a 3 percent Disabled Veterans Business Enterprise (DVBE) goal. The SB/DBE Program is in compliance with the Best Practices of 49 C.F.R. Part 26, Executive Order S-02-06, Military and Veterans Code 999 and Title VI of the Civil Rights Act of 1964 and related statutes. For additional information regarding the Authority's 30 percent SB goal, refer to the Authority's Revised Small and Disadvantaged Business Enterprise Program for Professional Services Contracts, dated August 20, 2012.

As further set forth in Sections 6.5 and 6.5.1 of this RFP, for this solicitation, the Authority requires each Proposer to set forth its own goal for small business participation. The Proposer shall explain the reasoning behind the determined goal and set forth its approach to ensure that its goal is met during performance of the Contract. Additionally, in this section, list the name of each SB/DBE/DVBE subcontractor that the Proposer will use during the course of the Work, the services each will provide, and the percentage of the Work each is anticipated to perform.

4.5.4 Financial Capacity

The services required for this RFP are a component of a larger delivery schedule for the High-Speed Rail System. Therefore, the Authority seeks Proposers with the financial capability to deliver the habitat mitigation services successfully in order to reduce financial and delivery risks such that the plan and timetable for developing the mitigation services and the High-Speed Rail System is not impaired. Additionally, the Authority seeks to reduce the risk related to potential cash flow management issues of the Proposer, including the inability of subcontractors to bear as much financial risk or bonding capacity as the Proposer.

The Authority will use Attachment B to evaluate the financial capacity of the Proposers, including Equity Members and Guarantors of joint ventures, if any, based on certain financial metrics including but not limited to size, cash flow, profitability, and liquidity.

The Proposer shall also submit a Financial Plan to meet the requirements in Attachment A – Exhibit A. The Financial Plan shall describe the financial resources that the Proposer intends use for the proposed habitat mitigation services.

4.6 Cost Proposal

The Proposer shall provide a milestone payment schedule related to the Proposer's Proposed Scope of Work. The Cost Proposal shall detail only the overall cost and the payment amounts correlated with the proposed milestone payment schedule. The Cost Proposal must be signed and dated by an individual authorized to bind the Proposer. It shall not detail any text that could be construed as a qualification of cost proposed.

4.7 Organizational Conflicts of Interest

The Authority has adopted an Organizational Conflicts of Interest Policy (the "Policy") that will apply to this procurement and the resulting contract, in addition to the Authority's Conflict of Interest Code and other applicable requirements. The Policy can be found on the Authority's website at

http://www.hsr.ca.gov/docs/about/doing_business/Organizational_Conflict_Interest_Policy_Final9152011.pdf

Proposers are advised to carefully review the Policy, and to have their team members review the Policy, since it includes provisions that:

1. Preclude certain firms from participation in this procurement and
2. Affect the ability of the Proposers, their subcontractors and their Affiliates (as defined in the Policy) to enter into business relationships with Authority consultants.

Failure to comply with the Policy in any respect, including the failure to disclose any actual, perceived or potential organizational conflict of interest, may result in serious consequences as described in Section V(2) of the Policy.

An organizational conflict of interest is a circumstance arising out of a Proposer's existing or past activities, business or financial interests, familiar relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results in: (i) impairment or potential impairment of a Proposer's ability to render impartial assistance or advice to the Authority or of its objectivity in performing work for the Authority; (ii) an unfair competitive advantage for any Proposer submitting a Proposal on an Authority procurement; or (iii) a perception or appearance of impropriety with respect to any of the Authority's procurements or contracts, or a perception or appearance of unfair competitive advantage with respect to a procurement by the Authority (regardless of whether any such perception is accurate). If any such conflict of interest is found to exist, the Authority may:

1. Disqualify the Proposer, or
2. Determine that it is otherwise in the best interest of the Authority to contract with such Proposer and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

Each Proposer shall fully disclose organizational conflicts of interest in its Proposal, using Form B. The refusal to provide the required disclosure, or any additional information required, may result in disqualification of the Proposer. If nondisclosure or misrepresentation is discovered after award of the contract through this procurement process, the resulting contract may be terminated.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is discovered following submittal of the Proposal, the Proposer will make an immediate and full written disclosure to the Authority that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts.

4.8 Confidentiality

All written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to the Authority during this procurement process, including as part of a response to this RFP are, upon their receipt by the Authority, the property of the Authority and are subject to the Open Government Laws. None of the aforementioned materials will be returned to the submitting parties. Any materials that are delivered to the FRA are subject to the Freedom of Information Act or other Federal open records laws. Proposers should familiarize themselves with the Open Government Laws, including the Public Records Act and Freedom of Information Act. In no event shall the State, the Authority, the FRA or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a Proposal submitted in response to this RFP or other information provided in connection with this procurement.

If a Proposer has special concerns about information that it desires to make available to the Authority but which it believes constitutes a trade secret, proprietary information, or other information excerpted from disclosure, such Proposer should specifically and conspicuously designate that information as “TRADE SECRET” or “CONFIDENTIAL” in its filed response to this RFP. Blanket, all-inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets, or confidential commercial or financial information shall not be permitted and shall be deemed invalid. The specific proprietary information, trade secrets, or confidential commercial and financial information must be clearly identified as such. Under no circumstances, however, will the Authority be responsible or liable to the Proposer or any other party for the disclosure of any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of the Authority or its officers, employees, contractors, or consultants.

The Authority will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Act, Freedom of Information Act (FOIA), U.S. DOT FOIA regulations (49 C.F.R. § 7.17) or other applicable laws and implementing regulations, as to the interpretation of the Public Records Act or Freedom of Information Act, or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws and for clearly and prominently marking each

and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the Public Records Act, Freedom of Information Act and other applicable laws and their application to the submitting party's own circumstances. In the event of litigation concerning the disclosure of any material submitted by the submitting party, the Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk. The submitting party shall reimburse the Authority for any expenses it incurs in connection with any such litigation.

4.9 Surety Letter

Evidence, provided in the form of a letter, from a surety or an insurance company shall indicate that the Proposer is capable of obtaining a payment bond and a performance bond for the habitat mitigation services. The amount of the bonds shall be 100% of the Contract amount. Letters indicating "unlimited" bonding capability are not acceptable.

The letter must include the following:

a. A specific statement that the surety/insurance company has reviewed this RFP and evaluated the Proposer's backlog and work-in-progress in determining its bonding capacity; and

b. A certificate from the surety/insurance company for the next reporting period.

5.0 Evaluation and Negotiation

The following summarizes the Initial Proposal Review, Qualifying Proposal Evaluation, and Negotiation processes.

5.1 Qualifying Review

5.1.1 Minimum Qualifications

Proposers must satisfy all of the Minimum Qualifications set forth in Section 4.3 above. Failure to satisfy all of the Minimum Qualifications at the time of Proposal submission will result in the immediate rejection of the submission. The Contractor must continue to satisfy all of the Minimum Qualifications regarding licensure throughout the term of any contract resulting from this RFP.

The Authority may reject any Proposal if it is conditional, incomplete, or contains irregularities. The Authority may waive an immaterial deviation in a Proposal. Waiver of an immaterial deviation shall in no way modify the Proposal documents or excuse the Proposer from full compliance with the contract requirements if the Proposer is awarded the contract.

Proposers that meet all Minimum Qualifications will then have their Technical Proposals evaluated and scored. The Minimum Qualifications and Technical Proposals will be evaluated by committee on a consensus basis.

5.2 Qualifying Proposal Evaluation

5.2.1 Technical Proposal Evaluation

If a Proposer passes the Minimum Qualifications phase, its Technical Proposal will be evaluated and scored by committee on a consensus basis in accordance with Attachment D - Criteria for Awarding Points for the Proposal. The Technical Proposal can receive a maximum of 300 points, or 30 percent of the total score.

5.2.2 Discussions/Interviews

The Authority may conduct interviews, but is not required to do so. If the Authority chooses to hold discussions/interviews, all Proposers who receive a score of 85% (255 points out of a possible 300 points) or higher on the Technical Proposal will be invited to participate in discussions/interviews. Discussions will be used to clarify the Technical Proposals and may result in an adjusted Technical Proposal score. Discussions/Interviews will not be separately scored.

5.2.3 Cost Proposal Evaluation

The Cost Proposals will not be opened until all qualifying Technical Proposals are evaluated and each final technical score is established. If the Authority holds interviews, all Proposers invited to participate in discussions will have their Cost Proposals opened and scored, only after

the final technical score is established. A Cost Proposal can receive a maximum of 700 points, or 70 percent of the total score.

The lowest Cost Proposal submitted will be awarded the full 700 points. The remaining Cost Proposals will be awarded cost points based on the Cost Proposal Formula below:

(Lowest Cost Proposal/Other Cost Proposal) x 700 points = Other Cost Proposal Score

The Cost Proposal score will be added to the Technical Proposal score, and the Proposer with the highest combined Proposal score will be the Apparent Best Value Proposer.

The Proposer with the highest combined Technical and Cost Proposal score will be invited to meet with the Authority to ensure that all terms and conditions are mutually agreeable for award for the habitat mitigation services contract.

5.3 Contract Finalization Process

After the Proposer with the highest combined Proposal score is determined, the Evaluation/Selection Committee will commence limited negotiations regarding mutually agreeable terms and conditions of the contract with the Apparent Best Value Proposer. If such limited negotiations are unsuccessful, the Authority will terminate all discussions with the top ranked Proposer and enter into negotiations with the next highest ranked Proposer and so on sequentially. After completion of successful negotiations, the Authority shall recommend a Proposal for contract award to the Board for approval, if required by Board policy.

5.4 Unsuccessful Proposals

After the Notice of Proposed Award is posted, each unsuccessful Proposer may request a debriefing with the Authority Contracts Office. The meeting shall be requested within five (5) business days from the date of the Notice of Proposed Award. The debriefing meeting is an opportunity for unsuccessful Proposers to learn why their particular Proposal was not successful and may provide insight to improving proposal preparation for future solicitations.

6.0 Additional Requirements Related to the Contract for Habitat Mitigation Services

The following contract provisions will be applicable upon execution of any contract resulting from this RFP:

6.1 Licensing Requirements

The Contractor shall be qualified to do business in the State of California and shall be properly licensed to perform the Work set forth herein in accordance with the laws of the State of California at the time of the Proposal.

6.2 Insurance

Without limiting the Contractor's indemnification of the Authority, and prior to commencement of the Work, the Contractor shall obtain, provide and maintain at its own expense during the term of this contract, policies of insurance of the type and amounts described below and in a form satisfactory to the Authority.

6.2.1 Workers' Compensation Insurance

The Contractor shall maintain Workers' Compensation Insurance (Statutory Benefits) and Employer's Liability Insurance with bodily injury limits of at least one million dollars ($1,000,000) each accident, and by disease each employee and policy limit.

6.2.2 General Liability Insurance

The Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than ten million dollars ($10,000,000) each per occurrence, general aggregate, and completed operations aggregate. Limits may be achieved by any combination of primary and excess or umbrella liability insurance, which shall follow form to the primary policy.

6.2.3 Automobile Liability Insurance

The Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the Work to be performed under this contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than five million dollars ($5,000,000) combined single limit for each accident.

6.2.4 Professional Liability (Errors & Omissions) Insurance

The Contractor shall maintain professional liability insurance that covers professional services to be performed in connection with any contract resulting from this RFP, in the minimum amount of two million dollars ($2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this contract.

6.2.5 Contractor's Pollution Liability Insurance

Contractor's Pollution Liability Insurance shall be written on a form acceptable to Authority providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than five million dollars ($5,000,000) per claim and in the aggregate. If the insured is using sub-contractors, the Policy must include work performed "by or on behalf" of the insured. Any policy inception date, continuity date, or retroactive date must be before the effective date of this contract. The cost of such insurance shall be included in Contractor's bid. Insurance as required in this paragraph above may not exclude:

6.2.6 Other Provisions or Requirements

6.2.6.1 Proof of Insurance

The Contractor shall provide certificates of insurance to the Authority as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and an endorsement adding the Authority and its officers, officials, employees, and agents as insureds under the general liability policy. All insurance policies, certificates and endorsements must be approved by the Authority's Risk Manager prior to commencement of work. Current evidence of insurance shall be kept on file with Authority at all times during the term of this contract. The Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

6.2.6.2 Duration of Coverage

The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The Contractor agrees to maintain professional liability insurance, or purchase an extended reporting period if coverage is canceled, for a period of no less than three years after completion of the work under any contract resulting from this RFP.

6.2.6.3 Authority's Rights of Enforcement

In the event any policy of insurance required under any contract resulting from this RFP does not comply with these specifications or is canceled and not replaced, the Authority has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the Authority will be promptly reimbursed by the Contractor or the Authority will withhold amounts sufficient to pay premium from the Contractor's payments. In the alternative, the Authority may cancel this contract.

6.2.6.4 Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact the business of insurance in the State of California, with an A.M. Best's Rating of A- (or higher) and Financial Size Category Class VI (or larger), unless otherwise approved by the Authority's Risk Manager.

6.2.6.5 Waiver of Subrogation

Workers' compensation insurance policies must be endorsed to waive the insurer's right of subrogation. All other insurance coverage maintained or procured pursuant to this contract, except for professional liability, shall specifically allow the Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss or, in the alternative, shall be endorsed to waive subrogation against the Authority, its elected or appointed officers, agents, officials, employees and volunteers. The Contractor hereby waives its own right of recovery against the Authority, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

6.2.6.6 Enforcement of Contract Provisions (non estoppel)

The Contractor acknowledges and agrees that any actual or alleged failure on the part of the Authority to inform the Contractor of non-compliance with any requirement imposes no additional obligations on the Authority nor does it waive any rights hereunder.

6.2.6.7 Requirements not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. All insurance coverage and limits provided by the Contractor and available or applicable to this contract are intended to apply to the full extent of the policies. Nothing contained in this contract limits the application of such insurance coverage.

6.2.6.8 Notice of Cancellation

The Contractor agrees to oblige its insurance agent or broker and insurers to provide to the Authority with thirty (30) days' notice of cancellation (except for nonpayment, for which ten (10) days' notice is required) or nonrenewal of coverage for each that is required.

6.2.6.9 Additional Insured Status

General liability policies shall provide or be endorsed to provide that the Authority and its officers, officials, employees, and agents shall be additional insured under such policies. Additionally, upon construction of mitigation activities on real property, the general liability policies shall provide or be endorsed to provide that the applicable land owners shall be additional insured's under such policies. This provision shall also apply to any excess liability policies.

6.2.6.10 Authority's Right to Revise Specifications

The Authority reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the Authority and Contractor may renegotiate the Contractor's compensation.

6.2.6.11 Self-insured Retentions

Any self-insured retentions must be declared to and approved by the Authority. The Authority reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the Authority.

6.2.6.12 Timely Notice of Claims

The Contractor shall give the Authority prompt and timely notice of claims made or suits instituted that arise out of or result from the Contractor's performance under any contract resulting from this RFP, and that involve or may involve coverage under any of the required liability policies.

6.2.6.13 Additional Insurance

The Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and performance of the Work.

6.2.6.14 Subcontractors

To the extent that the Contractor engages the services of subcontractors, the Contractor agrees to require the same insurance as required of the Contractor, except as to limits, which shall be determined by the Contractor and shall be consistent with custom and practice for such limits for subcontractors for the type of work and location of work.

6.3 Performance and Payment Bonds

The Contractor shall furnish and deliver to the Authority a Payment Bond and a Performance Bond covering the faithful performance and completion of the Work included in this Contract and payment for all materials and labor furnished or supplied in connection with the Work included in this Contract. Said bonds shall be issued and furnished to Authority prior to, and as a condition precedent to, commencement of the Work of this Contract. Both the Payment Bond and the Performance Bond shall be furnished on behalf of the Contractor, shall name the Authority obligee, and shall be in sum of 100% of the contract amount. The Payment Bond and the Performance Bond shall be issued by a surety of financial standing having a rating from A.M. Best Company (or other equivalent rating company) equal to or better than A- and must be included on the approved list of sureties issued by the United States Department of Treasury.

6.4 Recycling Certification

The Contractor shall certify in writing under penalty of perjury, the minimum, if not the exact, percentage of recycled products, both post-consumer material and secondary material as defined in the Public Contract Code section 12200, et seq. This certification shall be made based on material, goods, or supplies offered or products used in the performance of the Contract for habitat mitigation services, regardless of whether the product meets the required recycled product percentage as defined in Public Contract Code, section 12200. Contractor may

certify that the product contains zero recycled content. (PCC § 12205(a)(1).) The Contractor shall also comply with all applicable requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

6.5 Disadvantaged Business Enterprises

The Authority encourages the Contractor to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for certain U.S. DOT agencies in 49 C.F.R. Part 26) in carrying out the habitat mitigation services.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the habitat mitigation services. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of this FRA U.S. DOT-assisted contract. Failure by the Contractor to carry out these requirements will be considered a material breach of the Contract, which may result in the termination of the Contract or such other remedy as the Authority deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. § 26.13(b)).

6.5.1 Small and Disadvantaged Business Enterprise Program

The Authority's Small and Disadvantaged Business Enterprise Program establishes an overall **30 percent** goal for small business utilization in the Authority's contracting and procurement program.

More detailed information regarding the Authority's Small and Disadvantaged Business Enterprise Program requirements, including SB utilization reporting, Substitution/Termination processes, Prompt Payment Provisions, Recognized SB Roster of Certifying Agencies, and other performance related factors, is included in the Authority's Small and Disadvantaged Business Enterprise Program on the Authority's Small Business resource web page:

http://www.hsr.ca.gov/Programs/Small_Business/index.html.

The Contractor shall comply with 41 C.F.R. Part 60, Best Practices of 49 C.F.R. Part 26, Executive Order 1124 6, and Title VI of the Civil Rights Act of 1964 and related statutes. Additionally, the Contractor shall comply with the small business utilization goal set forth in the Contractor's Proposal and, excepting the small business utilization goal, the Contractor shall comply with the Authority's Small and Disadvantaged Business Enterprise Program requirements.

6.6 Subcontracting

1. The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be contracted without written authorization by the Authority's Contract Manager, except that which is expressly identified in the Contractor's Cost Proposal and Form A.

2. Unless specifically noted otherwise, any subagreement in excess of $25,000 entered into as a result of this Contract, shall contain all the applicable provisions stipulated in this Contract. The Contractor shall indicate whether a subcontractor or vendor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
3. The Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the State.
4. Any substitution of subcontractors must be approved in writing by the Authority's Contract Manager in advance of assigning work to a substitute subcontractor.

6.7 Prevailing Wages

Pursuant to the provisions of Section 1773 of the Labor Code, the Authority will obtain the general prevailing rate of wages (which includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code, Section 1773.1, apprenticeship or other training programs authorized by Labor Code, Section 3093, and similar purposes) as applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining contract of the particular craft, classification, or type of worker concerned. Copies of the prevailing rates of wages are on file at the Authority's offices, and will be furnished to the Contractor and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, the Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for habitat mitigation services.

6.8 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, or governmental statutes or regulations superimposed after the fact. The Contractor shall not be liable for damages of such delay or failure, if a delay or failure to perform by the Contractor arises out of a default of its subcontractor, and if such default arises out of the following:

- Causes beyond the control of both the Contractor and subcontractor, and
- Without the fault or negligence of either of them.

However, with respect to supplies or services to be furnished by the subcontractor that were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule, the Contractor and its subcontractors will be held liable for damages of such delay or failure.

6.9 Indemnification

The Contractor shall fully defend, indemnify and hold harmless the Authority, FRA and all of their Board members, 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 arising out of or related to any of the following:

- The breach or alleged breach of or failure or alleged failure to perform the Contract or any subcontract thereunder by the Contractor or any of the Contractor's subcontractors;
- The failure or alleged failure by the Contractor or any of the Contractor's subcontractors to comply with any applicable Law or the Environmental Requirements;
- The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault of the Contractor or any of the Contractor's subcontractors;
- 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 the Authority is not in default in payments owing to the Contractor with respect to such Work;
- The claims and costs arising out of errors and omissions relating to all applicable Laws, Governmental Approvals, Final Environmental Documents and any additional applicable environmental compliance documentation and/or Supplemental or Amended Governmental Approvals.

The Contractor obligations under this section apply regardless of whether or not such liability was caused in part or contributed to by an Indemnified Person. However, without affecting the rights of the Authority under any provision of this Contract, the Contractor shall not be required to indemnify and hold harmless the Authority or any Indemnitee for liability attributable to the active negligence of the Authority or Indemnified Person, provided such active negligence is determined by contract between the parties or by the findings of a court of competent jurisdiction. In instances where the Authority is shown to have been actively negligent and where the Authority's active negligence accounts for only a percentage of the liability involved, the obligation of the Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of the Authority or Indemnified Person.

6.10 Damages

Contractor shall be liable for all claims, damages, losses, and expenses of any nature, character, or description arising out of or related to the breach or failure to perform or timely perform the Contract or any subcontract thereunder by the Contractor or any of the Contractor's subcontractors including, but not limited to, any costs associated with increased mitigation ratios stemming from temporal loss for failure to timely implement mitigation.

6.11 Contract Dependent on Funding Sources

After execution or commencement of this Contract, if Congress or the State Legislature does not appropriate sufficient funds for the Mitigation services to enable the Authority to pay for the Habitat mitigation services, the Authority shall have the option to either: 1) cancel the Contract with no further liability occurring to the Authority; or 2) amend the Contract and reduce the scope of work to reflect any reduction in funds.

In addition, this Contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or State Legislature that may affect the provisions, terms or funding of this Contract in any manner.

7.0 Protest Procedures

A Proposer may file a protest against the proposed awarding of a contract. Once a protest has been filed, contracts will not be awarded until either the protest is withdrawn, or the Authority cancels the RFP, or DGS decides the matter.

Please note the following:

- Protests are limited to the grounds contained in the California Public Contract Code Section 10345.
- During the five (5) working days that the NOPA is posted, protests must be filed with the DGS Legal Office and the Authority Contracts Office.
- Within five (5) days after filing the protest, the protesting Proposer must file with the DGS and the Authority's Designated Point-of-Contact listed in Section 1.3 of this RFP a full and complete written statement specifying the grounds for the protest.
- If the protest is not withdrawn or the solicitation is not canceled, DGS will decide the matter. There may be a formal hearing conducted by a DGS hearing officer or there may be briefs prepared by the Proposer and the Authority for the DGS hearing officer consideration.
- The Authority shall comply with the procedures outlined in PCC § 10344 in the determination of any protest resulting from this RFP.

8.0 Project Representatives

All inquiries during the term of the Contract will be directed to the project representatives identified below:

AUTHORITY	**CONTRACTOR**
Contract Manager:	Project Manager:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
e-mail:	e-mail:

The project representatives listed above may be changed upon notice in writing to the other party's contract representative.

Attachment A – List of Exhibits

Exhibit A: Habitat Mitigation Services Scope of Work

Exhibit B: Budget Detail and Payment Provisions

Exhibit C: General Terms and Conditions (GTC-610)

Exhibit D: Special Terms and Conditions

Exhibit E: Supplemental Terms and Conditions for Contracts Using Federal Funds

Exhibit A: Habitat Mitigation Services Scope of Work

SECTION I. BACKGROUND

The California High-Speed Rail Authority (Authority) is responsible for planning, design, construction, maintenance and operation of the first high-speed rail system in the nation. The California High-Speed Rail System (System) will connect the mega-regions of the State, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands. Phase 1 service will connect the San Francisco Bay Area to the Los Angeles Basin in under three hours at speeds of over 200 miles per hour. The System will eventually extend to Sacramento and San Diego, totaling 800 miles with up to 24 stations. In addition, the Authority is working with regional partners to implement a statewide rail modernization plan that will invest billions of dollars in local and regional rail lines to meet the State's 21st century transportation needs.

At this time, the Authority is proceeding with construction of a portion of Phase 1 of the System, specifically the First Construction Section (FCS), which extends from Avenue 17 in the County of Madera to 7th Standard Road in the County of Kern. The habitat mitigation services to be performed under this Contract are designed to satisfy environmental approvals and federal and State permits requirements for off-site mitigation for impacts to special-status species and waters and wetlands associated with construction and operation of Permitting Phase 1 of the Fresno to Bakersfield portion of the FCS.

SECTION II. SCOPE OF WORK

[INSERT NEGOTIATED SCOPE OF WORK]

Exhibit B: Budget Detail and Payment Provisions

SECTION I. SECTION I. INVOICING AND PAYMENT

A. Upon satisfactory completion of a milestone and receipt and approval of the invoice for the applicable milestone, the Contractor shall be paid according to the milestone payment schedule set forth below:

   1. [INSERT NEGOTIATED MILESTONE PAYMENT SCHEDULE]

B. All invoices shall be in the format specified in section II.

C. The total amount payable by the Authority for this Contract shall be $[Insert Bid Price].

SECTION II. INVOICING

A. The Contractor will be paid as promptly as fiscal procedures will permit upon receipt by the Authority's Contract Manager of an invoice for a satisfactorily completed milestone. Invoices shall be submitted on a monthly basis, no later than 45 calendar days after completion of a milestone. Invoices shall detail/include all information required in this Section.

B. The Authority will accept computer generated or electronically transmitted invoices; however, the date of "invoice receipt" shall be the date the Authority receives the paper copy.

C. The Contractor shall submit backup documentation supporting successful completion of a milestone. The Contractor shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify all subcontractor Involvement in completion of a milestone.

D. An invoice shall reference the Contract number, date prepared and milestone completed.

E. If the Contractor's request for payment (invoice) includes subcontractor awardees and vendors invoices, the invoice shall include

   1. An indication of whether a subcontractor or vendor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise and the invoice from said subcontractor.

SECTION III. BUDGET CONTINGENCY CLAUSE

A. After execution or commencement of this Contract, if Congress or the State Legislature does not appropriate sufficient funds for the Mitigation services to enable the Authority to pay for the Habitat mitigation services, the Authority shall have the option to either: 1) cancel the Contract with no further liability occurring to the Authority; or 2) amend the Contract and reduce the scope of work to reflect any reduction in funds.

B. In addition, this Contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or State Legislature that may affect the provisions, terms or funding of this Contract in any manner.

SECTION IV. PROMPT PAYMENT CLAUSE

A. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

SECTION V. DISPUTES

A. Payments shall be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for Services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for this billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of the Contract. If the invoice is disputed, the Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice; Contractor will be paid the undisputed portion of the invoice.

B. No payment will be made for costs identified in the Contractor's invoices that have or will be reimbursed by any other source, including but not limited to a Governmental Entity contract or subcontract or other procurement contract.

SECTION VI. AUDIT

A. The contracting parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Contract in accordance with Government Code, section 8546.7. The examination and audit shall be confined to those matters connected with the performance of the Contract. The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect proper performance of the Contract. The Authority, an agency of the State or, at the Authority's option, a public accounting firm designated by the Authority, may audit such records at all reasonable times and with prior notice by the Authority. Audits may be performed at any time within three (3) years following the final payment by the Authority of the Contractor's final invoice. Performance of any such interim audits by the Authority does not preclude further audit. Additional terms and conditions regarding audits can be found in the GTC-610, Exhibit C.

SECTION VII. CONTINGENT FEE

A. The Contractor certifies, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, with the exception of bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this certification, the Authority has the right to annul this Contract without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Exhibit C: General Terms and Conditions (GTC-610)

PLEASE NOTE: This page will not be included with the final contract. The General Terms and Conditions will be included in the Contract by reference to Internet site:

http://www.documents.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx

If you do not have internet access, please contact the Point of Contact identified in Section 1.2 of this RFP to receive a copy:

Scott Rothenberg
California High-Speed Rail Authority
770 L Street, Suite 620 MS 7
Email: scott.rothenberg@hsr.ca.gov

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Exhibit D: Special Terms and Conditions

A. Contract Management

1. The Contractor's Account Manager is responsible for the day-to-day task status, decisions and communications with the Authority's Contract Manager. The Contractor may change its Account Manager by giving written notice to the Authority, but the Authority reserves the right to approve any substitution of the Account Manager.
2. The Authority may change its Contract Manager at any time by giving written notice to the Contractor. The Authority Deputy Director of Environmental Services, or his or her designee, will sign the written notice.

B. Standard of Care

1. The Contractor, in performing its professional services under this Contract, owes the Authority the following duties of care (the Contractor's "Standard of Care"):
   a. The duty to have that degree of learning and skill ordinarily possessed by reputable professionals practicing in the same of a similar locality and under similar circumstances;
   b. The duty to use the care and skill ordinarily possessed by reputable members of the professions practicing in the same or similar locality under similar circumstances; and
   c. The duty to use reasonable diligence and his or her best judgment in the exercise of skill and the application of learning.

C. Subcontracts

1. Nothing contained in this Contract or otherwise, shall create any contractual relationship between the Authority and any subcontractors, and no subcontract shall relieve the Contractor of his or her responsibilities and obligations under this Contract. The Contractor agrees to be as fully responsible to the Authority for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Contractor. The Contractor's obligation to pay its subcontractor is an independent obligation from the Authority's obligation to make payment to the Contractor. As a result, the Authority shall have no obligation to pay or enforce the payment of any moneys to any subcontract.
2. The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be contracted without written authorization by the Authority's Contract Manager, except that which is expressly identified in Contractor's Form A attached hereto.
3. Unless specifically noted otherwise, any subagreement in excess of $25,000 entered into as a result of this Contract, shall contain all the applicable provisions stipulated in this Contract. The Contractor shall indicate whether a subcontractor or vendor is a

California Certified Small Business or a Certified Disabled Veteran Business Enterprise.

4. The Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the State.
5. Any substitution of subcontractors must be approved in writing by the Authority's Contract Manager in advance of assigning work to a substitute subcontractor.

D. Evaluation of the Selected Contractor

1. An evaluation of the Contractor's performance will be performed whenever the Authority deems it appropriate to do so. A copy of the evaluation will be sent to the Contractor for comment. The evaluation, together with the comments, shall be retained by the Authority.

E. Ownership of Data

1. During the term of this Contract and upon completion of any and all work under this Contract, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, electronic documents and estimates produced as part of this Contract will automatically be vested in the Authority and no further contract will be necessary to transfer ownership to the Authority. The Contractor shall furnish to the Authority all necessary copies of data needed to complete the review and approval process. This data transmittal will be in a form acceptable to the Authority
2. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the information and data provided by the Contractor under this Contract; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the habitat mitigation services documentation on other projects, for additions to the scope of work under this Contract, or for the completion of this scope of work by others, except for such use as may be authorized, in writing, by the Contractor.
3. Any subcontract entered into as a result of this Contract shall contain all of the provisions in this clause.

F. Confidentiality of Data

1. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Contract, shall be protected by the Contractor from unauthorized use and disclosure.
2. The Contractor shall not comment publicly to the press or any other media regarding this Contract or the Authority's actions on the same, except to the Authority's staff, the Contractor's own personnel involved in the performance of this Contract, at public hearings, or in response to questions from a Legislative Committee.

3. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Contract without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
4. All information related to any construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.
5. Any subcontract entered into as a result of this Contract shall contain all of the provisions of the Confidentiality of Data clause.

G. Conflict of Interest

1. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code and Organizational Conflict of Interest Policy.
2. The Contractor may be required to submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Authority's General Counsel's Office, in consultation with the Contract Manager or its designee, determines is a designated employee under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Authority's staff who perform the same nature and scope of work as the Contractor.

H. Settlement of Disputes

3. In the event of a dispute, the Contractor shall file a "Notice of Dispute" with the Authority and the Chief Program Manager within ten (10) days of discovery of the problem. Within ten (10) days, the Chief Program Manager shall meet with a designated Key Personnel member for purposes of resolving the dispute. The decision of the Chief Program Manager shall be final.
4. In the event of a dispute, the language contained within this Contract shall prevail over any other language including that of the bid Proposal.
5. Neither the pendency of a dispute nor its consideration by the Authority's Contract Manager will excuse the Contractor from full and timely performance in accordance with the terms of this Contract.

I. Damages

1. Contractor shall be liable for all claims, damages, losses, and expenses of any nature, character, or description arising out of or related to the breach or failure to perform or timely perform the Contract or any subcontract thereunder by the Contractor or any of the Contractor's subcontractors including, but not limited to, any costs associated with

increased mitigation ratios stemming from temporal loss for failure to timely implement mitigation.

J. Indemnification

1. The Contractor shall fully defend, indemnify and hold harmless the Authority, FRA and all of their Board members, 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 arising out of or related to any of the following:

   a. The breach or alleged breach of or failure or alleged failure to perform the Contract or any subcontract thereunder by the Contractor or any of the Contractor's subcontractors;

   b. The failure or alleged failure by the Contractor or any of the Contractor's subcontractors to comply with any applicable Law or the Environmental Requirements;

   c. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault of the Contractor or any of the Contractor's subcontractors;

   d. 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 the Authority is not in default in payments owing to the Contractor with respect to such Work;

   e. The claims and costs arising out of errors and omissions relating to all applicable Laws, Governmental Approvals, Final Environmental Documents and any additional applicable environmental compliance documentation and/or Supplemental or Amended Governmental Approvals.

2. The Contractor obligations under this section apply regardless of whether or not such liability was caused in part or contributed to by an Indemnified Person. However, without affecting the rights of the Authority under any provision of this Contract, the Contractor shall not be required to indemnify and hold harmless the Authority or any Indemnitee for liability attributable to the active negligence of the Authority or Indemnified Person, provided such active negligence is determined by contract between the parties or by the findings of a court of competent jurisdiction. In instances where the Authority is shown to have been actively negligent and where the Authority's active negligence accounts for only a percentage of the liability involved, the obligation of the Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of the Authority or Indemnified Person.

K. Termination

1. This Contract can be terminated at any time by Mutual Agreement of the Parties.

2. Termination for Cause: The Authority reserves the right to terminate this Contract immediately in the event of breach or failure of performance by the Contractor.
3. Termination for Convenience: The Authority reserves the right to terminate this Contract upon thirty (30) calendar days written notice to the Contractor if terminated for convenience of the Authority.
4. Termination Issues For Subcontractors, Suppliers, and Service Providers: The Contractor shall notify any subcontractor and service or supply vendor providing services under this Contract of the early termination date of this Contract. Failure to notify any subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this Contract, except those specifically agreed to by the Authority in writing.
5. Contractor Claims Against This Contract Under Early Termination: The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Contract or its early termination, upon acceptance by the Contractor of payment for pro-rata amounts due through the date the notice of termination.

L. Waiver

1. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. No remedy available in this Contract is intended to be exclusive of any other remedy, and every remedy shall be cumulative and shall be in addition to every other remedy provided therein or available at law or in equity. The failure of the Authority to enforce any provision of this Contract or require performance by the Contractor of any provision shall in no way be construed to be a waiver of those provisions, affect the validity of this Contract in whole or in part, or the right of the Authority to subsequently enforce any such provision.

M. Stop Work

1. The Authority's Chief Program Manager or his or her assignees may, at any time, by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Contract.
2. Compliance. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
3. Revoking a Stop Work Order. The Contractor shall resume the stopped work only upon receipt of written instruction from the Authority Contract Officer canceling the stop work order.
4. Equitable Adjustment. An equitable adjustment shall be made by the Authority based upon a written request by the Contractor for an equitable adjustment. Such adjustment request must be made by the Contractor within 30 days from the date of receipt of the stop work notice.

N. Licensing Requirements

The Contractor shall be qualified to do business in the State of California and shall be properly licensed to perform the Work set forth herein in accordance with the laws of the State of California at the time throughout the duration of this Contract.

O. Insurance

Without limiting the Proposer's indemnification of the Authority, and prior to commencement of the Work, the Proposer shall obtain, provide and maintain at its own expense during the term of this contract, policies of insurance of the type and amounts described below and in a form satisfactory to the Authority.

1. Workers' Compensation Insurance. The Proposer shall maintain Workers' Compensation Insurance (Statutory Benefits) and Employer's Liability Insurance with bodily injury limits of at least one million dollars ($1,000,000) each accident, and by disease each employee and policy limit.
2. General Liability Insurance. The Proposer shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than ten million dollars ($10,000,000) each per occurrence, general aggregate, and completed operations aggregate. Limits may be achieved by any combination of primary and excess or umbrella liability insurance, which shall follow form to the primary policy.
3. Automobile Liability Insurance. The Proposer shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Proposer arising out of or in connection with the Work to be performed under this contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than five million dollars ($5,000,000) combined single limit for each accident.
4. Professional Liability (Errors & Omissions) Insurance. The Proposer shall maintain professional liability insurance that covers professional services to be performed in connection with any contract resulting from this RFP, in the minimum amount of two million dollars ($2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this contract.
5. Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance shall be written on a form acceptable to Authority providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than five million dollars ($5,000,000) per claim and in the aggregate. If the insured is using sub-contractors, the Policy must include work performed "by or on behalf" of the insured. Any policy inception date, continuity date, or retroactive date must be before the effective date of this contract. The cost of such insurance shall be included in Proposer's bid. Insurance as required in this paragraph above may not exclude:

6. Other Provisions or Requirements

a. Proof of Insurance. The Proposer shall provide certificates of insurance to the Authority as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and an endorsement adding the Authority and its officers, officials, employees, and agents as insureds under the general liability policy. All insurance policies, certificates and endorsements must be approved by the Authority's Risk Manager prior to commencement of work. Current evidence of insurance shall be kept on file with Authority at all times during the term of this contract. The Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

b. Duration of Coverage. The Proposer shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Proposer, his agents, representatives, employees or subcontractors. The Proposer agrees to maintain professional liability insurance, or purchase an extended reporting period if coverage is canceled, for a period of no less than three years after completion of the work under any contract resulting from this RFP.

c. Authority's Rights of Enforcement. In the event any policy of insurance required under any contract resulting from this RFP does not comply with these specifications or is canceled and not replaced, the Authority has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the Authority will be promptly reimbursed by the Proposer or the Authority will withhold amounts sufficient to pay premium from the Proposer's payments. In the alternative, the Authority may cancel this contract.

d. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact the business of insurance in the State of California, with an A.M. Best's Rating of A- (or higher) and Financial Size Category Class VI (or larger), unless otherwise approved by the Authority's Risk Manager.

e. Waiver of Subrogation. Workers' compensation insurance policies must be endorsed to waive the insurer's right of subrogation. All other insurance coverage maintained or procured pursuant to this contract, except for professional liability, shall specifically allow the Proposer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss or, in the alternative, shall be endorsed to waive subrogation against the Authority, its elected or appointed officers, agents, officials, employees and volunteers. The Proposer hereby waives its own right of recovery against the Authority, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

f. Enforcement of Contract Provisions (non estoppel). The Proposer acknowledges and agrees that any actual or alleged failure on the part of the Authority to inform the

Proposer of non-compliance with any requirement imposes no additional obligations on the Authority nor does it waive any rights hereunder.

g. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. All insurance coverage and limits provided by the Proposer and available or applicable to this contract are intended to apply to the full extent of the policies. Nothing contained in this contract limits the application of such insurance coverage.

h. Notice of Cancellation. The Proposer agrees to oblige its insurance agent or broker and insurers to provide to the Authority with thirty (30) days' notice of cancellation (except for nonpayment, for which ten (10) days' notice is required) or nonrenewal of coverage for each that is required.

i. Additional Insured Status. General liability policies shall provide or be endorsed to provide that the Authority and its officers, officials, employees, and agents shall be additional insured under such policies. Additionally, upon construction of mitigation activities on real property, the general liability policies shall provide or be endorsed to provide that the applicable land owners shall be additional insured's under such policies. This provision shall also apply to any excess liability policies.

j. Authority's Right to Revise Specifications. The Authority reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Proposer ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Proposer, the Authority and Proposer may renegotiate the Proposer's compensation.

k. Self-insured Retentions. Any self-insured retentions must be declared to and approved by the Authority. The Authority reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the Authority.

l. Timely Notice of Claims. The Proposer shall give the Authority prompt and timely notice of claims made or suits instituted that arise out of or result from the Proposer's performance under any contract resulting from this RFP, and that involve or may involve coverage under any of the required liability policies.

m. Additional Insurance. The Proposer shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and performance of the Work.

n. Subcontractors. To the extent that the Proposer engages the services of subcontractors, the Proposer agrees to require the same insurance as required of the Proposer, except as to limits, which shall be determined by the proposer and

shall be consistent with custom and practice for such limits for subcontractors for the type of work and location of work.

P. Performance and Payment Bonds

The Proposer shall furnish and deliver to the Authority a Payment Bond and a Performance Bond covering the faithful performance and completion of the Work included in this Contract and payment for all materials and labor furnished or supplied in connection with the Work included in this Contract. Said bonds shall be issued and furnished to Authority prior to, and as a condition precedent to, commencement of the Work of this Contract. Both the Payment Bond and the Performance Bond shall be furnished on behalf of the Proposer, shall name the Authority obligee, and shall be in the amount of 100% of the Contract amount. The Payment Bond and the Performance Bond shall be issued by a surety of financial standing having a rating from A.M. Best Company (or other equivalent rating company) equal to or better than A- and must be included on the approved list of sureties issued by the United States Department of Treasury.

Q. Recycling Certification

The Contractor shall certify in writing under penalty of perjury, the minimum, if not the exact, percentage of recycled products, both post-consumer material and secondary material as defined in the Public Contract Code section 12200, et seq. This certification shall be made based on material, goods, or supplies offered or products used in the performance of the Contract for habitat mitigation services, regardless of whether the product meets the required recycled product percentage as defined in Public Contract Code, section 12200. Contractor may certify that the product contains zero recycled content. (PCC § 12205(a)(1).) The Contractor shall also comply with all applicable requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

R. Disadvantaged Business Enterprises

The Authority encourages the Contractor to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for certain U.S. DOT agencies in 49 C.F.R. Part 26) in carrying out the habitat mitigation services.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the habitat mitigation services. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of this FRA U.S. DOT-assisted contract. Failure by the Contractor to carry out these requirements will be considered a material breach of the Contract, which may result in the termination of the Contract or such other remedy as the Authority deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. § 26.13(b)).

1. Small and Disadvantaged Business Enterprise Program

The Authority's Small and Disadvantaged Business Enterprise Program establishes an overall **30 percent** goal for small business utilization in the Authority's contracting and procurement program.

More detailed information regarding the Authority's Small and Disadvantaged Business Enterprise Program requirements, including SB utilization reporting, Substitution/Termination processes, Prompt Payment Provisions, Recognized SB Roster of Certifying Agencies, and other performance related factors, is included in the Authority's Small and Disadvantaged Business Enterprise Program on the Authority's Small Business resource web page:

http://www.hsr.ca.gov/Programs/Small_Business/index.html.

The Contractor shall comply with 41 C.F.R. Part 60, Best Practices of 49 C.F.R. Part 26, Executive Order 11246, and Title VI of the Civil Rights Act of 1964 and related statutes. Additionally, the Contractor shall comply with the small business utilization goal set forth in the Contractor's Proposal and, excepting the small business utilization goal, the Contractor shall comply with the Authority's Small and Disadvantaged Business Enterprise Program requirements.

S. Prevailing Wages

Pursuant to the provisions of Section 1773 of the Labor Code, the Authority will obtain the general prevailing rate of wages (which includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code, Section 1773.1, apprenticeship or other training programs authorized by Labor Code, Section 3093, and similar purposes) as applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining contract of the particular craft, classification, or type of worker concerned. Copies of the prevailing rates of wages are on file at the Authority's offices, and will be furnished to the Contractor and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, the Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for habitat mitigation services.

T. Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, or governmental statutes or regulations superimposed after the fact. The Contractor shall not be liable for damages of such delay or failure, if a delay or failure to perform by the Contractor arises out of a default of its subcontractor, and if such default arises out of the following:

- Causes beyond the control of both the Contractor and subcontractor, and
- Without the fault or negligence of either of them.

However, with respect to supplies or services to be furnished by the subcontractor that were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule, the Contractor and its subcontractors will be held liable for damages of such delay or failure.

Exhibit E: Supplemental Terms and Conditions for Contracts Using Federal Funds

The Habitat mitigation services are financed in part with Federal assistance provided by FRA and therefore Federal laws, regulations, policies, and related administrative procedures apply. The Contractor must comply with all applicable Federal laws, regulations, policies, and related administrative practices. The most recent of such Federal laws, regulations, policies and related administrative practices at the time will govern the contract for habitat mitigation services (Contract), unless FRA issues a written determination otherwise. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Contractor and the Authority execute the contact, but may apply to the contract for habitat mitigation services. The Contractor must ensure compliance by its Subcontractors with and include appropriate flow down provisions in its each of its lower-tier subcontracts as required by applicable Federal laws, regulations, policies, and related administrative practices. Some Federal requirements applicable to the Contractor are identified elsewhere in the RFP. This identifies Federal requirements contained in the Grant/Cooperative Agreement between FRA and the Authority, which are applicable to the Contractor and are not addressed elsewhere in the RFP.

1. FEDERAL REQUIREMENTS

The Contractor understands that the Authority has received Federal funding from the Federal Rail Administration (FRA) for the Project and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. The Contractor acknowledges that federal laws, regulations, policies and related administrative practices may change and that such changed requirements will apply to the Project. The Contractor shall ensure compliance by its subcontractors and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein.

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

Notwithstanding anything to the contrary contained in this Contract, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of FRA requirements.

A. Compliance with Federal Requirements

The Contractor's failure to comply with Federal Requirements shall constitute a breach of this Contract.

B. Federal Procurement Standards

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

C. Federal Lobbying Activities Certification

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

A. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal agreement, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

D. The Contractor also agrees that by signing this document, it shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000, and that all such subcontractors shall certify and disclose accordingly.

D. Debarment and Suspension

This Contract is a covered transaction for purposes of 2 C.F.R. 1200. As such, the Contractor is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689,

Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

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

The Contractor's signature affixed herein shall also constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:

A. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

B. Have not had one or more public transactions (federal, state, and local) terminated within the preceding three years for cause or default;

C. Has not been convicted within the preceding three years of any of the offenses listed in 2 C.F.R. § 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period; and

D. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses listed in 2 C.F.R. § 180.800.

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

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

2. SITE VISITS

The Contractor agrees that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Contract accomplishments and for other reasons. If any site visit is made by FRA on the premises of the Contractor or any of its subcontractors under this Contract, the Contractor shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in

the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Contractor or subcontractor.

3. SAFETY OVERSIGHT

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

4. ENVIRONMENTAL PROTECTION

A. The Contractor and any subcontractor under this Contract shall comply with all applicable environmental requirements and regulations, including any amendments, as follows: Clean Air: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

B. Clean Water: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

C. Energy Conservation: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6421 et seq.)

D. Agreement Not To Use Violating Facilities: The Contractor agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Contractor shall promptly notify the Authority if the Contractor or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Contract is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.

E. Environmental Protection: The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.

F. Incorporation of Provisions: The Contractor shall include the above provisions (A) through (F) in every subcontract hereunder exceeding $50,000 financed in whole or in part with federal assistance provided by the FRA.

5. CIVIL RIGHTS

The following requirements apply to this Contract:

A. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d; Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102; Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132; and 49 U.S.C. § 306, the Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in

performance of this Contract. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

B. Access Requirements for Individuals with Disabilities: The Contractor agrees to comply with, and assure that any subcontractor under this Contract complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable Federal regulations, including any amendments thereto.

C. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Contract:

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

ii. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

iii. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. Further, in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor also agrees that it will comply with the requirements of U.S. Department of Transportation, "Nondiscrimination on the Basis of Disability in

Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

The Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, and to comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-2, cited in FR-HSR-0009-10-01-05 as 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

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

6. PROPERTY, EQUIPMENT AND SUPPLIES

The purchase of property, equipment and/or supplies is not authorized under this Contract.

7. FLOOD HAZARDS

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

8. REPRINTS OF PUBLICATIONS

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

9. PATENT RIGHTS

If any invention, improvement, or discovery of the Contractor or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify the Authority immediately and provide a detailed report. The rights and responsibilities of the FRA, third party contractors and the Authority with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

If the Contractor secures a patent with respect to any invention, improvement, or discovery of the Contractor or its third party contractors conceived or first actually reduced to practice in the course of or under this Contract, the Contractor agrees to grant the FRA a royalty-free, non-exclusive, and irrevocable license to use and authorize others to use the patented device or process for Federal Government purposes.

The Contractor agrees to include the requirements of the "Patent Rights" section of this Contract in its third party contracts for planning, research, development, or demonstration under this Contract.

10. RIGHTS IN DATA AND COPYRIGHT

The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Contract administration/completion.

The following restrictions apply to all subject data first produced in the performance of this Contract:

A. Except for its own internal use, the Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the FRA, until such time as the FRA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.

B. As authorized by 49 C.F.R. § 18.34, or 49 C.F.R. § 19.36, as applicable, FRA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes:

i. Any work developed under a grant, cooperative agreement, sub-agreement, or other third party contract, irrespective of whether or not a copyright has been obtained; and

ii. Any rights of copyright to which a Grantee, subgrantee, or a third party contractor purchases ownership with Federal assistance.

When the FRA provides assistance for a project involving planning, research, or development, it is generally the FRA's intent to increase the body of knowledge, rather than to limit the benefits of the project to those parties that have participated therein. Therefore, unless the FRA determines otherwise, the Contractor understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Contract, the FRA may make available to any FRA Grantee, subgrantee, third party contractor, or third party subcontractor, either the FRA's license in the copyright to the "subject data" derived under this Contract or a copy of the "subject data" first produced under this Contract. In the event that such a project which is the subject of this Contract is not completed, for any reason whatsoever, all data developed under that project shall become subject data as defined therein and shall be delivered as the FRA may direct.

To the extent permitted by State law, the Contractor agrees to indemnify, save, and hold harmless the FRA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify the FRA for any such liability arising out of the wrongful acts of employees or agents of the FRA.

Nothing contained in this section on rights in data, shall imply a license to the FRA under any patent or to be construed as affecting the scope of any license or other right otherwise granted to the FRA under any patent.

The requirements of this section of this Contract do not apply to material furnished to the Contractor by the FRA and incorporated in the work carried out under this Contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work.

The Contractor agrees to include the requirements of this section of this Contract in its lower-tier sub-contracts for planning, research, development, or demonstration.

11. ARRA FUNDED PROJECT

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

12. ENFORCEABILITY

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

13. PROHIBITION ON USE OF ARRA FUNDS

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

14. WAGE RATE REQUIREMENTS

Payment of prevailing wages on the Project (for purposes of this section, “the scope of work under this Contract shall be included in the definition of “Project”
) is required by 49 U.S.C. § 24405(c)(2) and ARRA section 1606. For Project components that use or would use rights-of-way owned by a railroad, the Contractor shall comply with the Provisions of 49 U.S.C. § 24312. For these purposes, wages in collective bargaining

agreements negotiated under the Railway Labor Act (45 U.S.C. § 151, et seq.) are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Contractor shall comply with the provisions of 40 U.S.C §§ 3141, et seq. The Contractor shall also comply with the Copeland "Anti-Kickback" Act provisions of 18 U.S.C. § 874 and 29 C.F.R. Part 3.

When prevailing wage rates apply, the Contractor must submit, with each invoice, a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Contract Manager.

A. If there is any conflict between the state prevailing wages and the federal prevailing wages, the higher rate shall be paid.

Any sub-agreement entered into as a result of this Contract shall contain all of the provisions of this clause.

15. ACCESS & INSPECTION OF RECORDS

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

i. Access any books, documents, papers and records of the Contractor that directly pertain to, and involve transactions relating to, this Contract for the purposes of making audits, examinations, excerpts and transcriptions; and

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

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. Pursuant to 49 C.F.R. § 18.26(i)(11), 49 C.F.R. § 19.26, or A-133 (whichever applicable), the Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. The Contractor shall notify the Authority not less than six months prior to disposal of any books, records, accounts and reports required under this Contract.

D. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552(a). The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to the individuals involved with the maintenance of federal records, and that failure to comply with the terms of the Privacy Act may result in termination of the Contract.

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

16. WHISTLEBLOWER PROTECTION

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

A. Gross mismanagement of a contract relating to ARRA funds;

B. A gross waste of ARRA funds;

C. A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;

D. An abuse of authority related to implementation or use of ARRA funds; or

E. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.

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

17. FRAUD AND FALSE CLAIMS ACT

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. Part 13), as amended, 31 U.S.C. § 3801 et seq., the U.S. DOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to the Project. Upon execution of this Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FRA assisted project, for which Work is being performed under this Contract. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as cited above on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FRA, the federal government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

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

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

18. REPORTING REQUIREMENTS

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

A. The total amount of funds received by the Contractor during the time period defined in the Authority's request;

B. The amount of funds actually expended or obligated during the time period requested;

C. A detailed list of all tasks or activities for which funds were expended or obligated, including:

   i. The name of the task or activity;

   ii. A description of the task or activity;

   iii. An evaluation of the completion status of the task or activity; and

   iv. An estimate of the number of jobs created and/or retained by the task or activity.

D. For any contracts or subcontracts equal to or greater than $25,000:

   i. The name of the entity receiving the contract;

   ii. The amount of the contract;

   iii. The transaction type;

   iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number, if known;

   v. The location of the entity receiving the contract;

vi. The primary location of the contract, including city, state, congressional district, and county;

vii. The DUNS number, or name and zip code for the entity headquarters, if known;

viii. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and

ix. The names and total compensation of the five most highly compensated officers of the company if received:

(a) 80% or more of its annual gross revenues in Federal awards;

(b) $25,000,000 or more in annual gross revenue from Federal awards and;

(c) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986;

E. Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this Contract by amendment.

19. RECYCLING CERTIFICATION

The Contractor shall comply with all applicable requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

20. SEISMIC SAFETY

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

21. SIGNAGE

The Contractor is strongly encouraged to post a sign at all fixed Work locations at the most publicly accessible location announcing that the Work or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs will be consistent with guidance issued by the Office of Management and Budget and/or the Department of Transportation and approved by the FRA.

22. FLY AMERICA

No international travel is authorized under this Contract.

23. LABOR PROVISIONS

49 U.S.C. § 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this Agreement shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, U.S.C., and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. §§ 231 et seq.), the Railway Labor Act (45 U.S.C. §§ 151, et seq., cited in FR-HSR-0009-10-01-05 as 43 U.S.C. §§ 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351 et seq.). To the extent required by 49 U.S.C. § 24405(b) and other laws referenced above, the Contractor shall reflect these provisions in its agreements funded in whole or in part by this Agreement with entities operating rail services over such rail infrastructure.

24. LABOR PROTECTIVE AGREEMENTS

The Contractor agrees to comply with the applicable protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. § 836, with respect to employees affected by actions taken in connection with the Project. The Contractor also agrees to include the applicable protective arrangements established by the U.S. DOL under 45 U.S.C. § 836 in its arrangements with entities operating rail services over rail infrastructure constructed as part of this Agreement.

Attachment B – Financial Statements, Material Changes and Off-Balance Sheet Criteria

Financial Statements, Material Changes and Off-Balance Sheet Criteria shall contain the following:

Financial information should be packaged separately for each entity (in the event that a joint-bid is presented) with a cover sheet identifying the name of the organization and its role in the group. Proposers shall identify any information, which it believes is entitled confidential by placing the word "CONFIDENTIAL" on each page as described in Section 4.8 Confidentiality.

SECTION I. FINANCIAL STATEMENTS AND CREDIT RATINGS

Financial statements for the Proposer, each Equity Member of Proposer (if a group), and each Guarantor for the three most recent completed fiscal years must be provided to demonstrate financial capability of the Proposer. If the entity has been in existence for less than three fiscal years, the Proposer should expressly state that such entity has been in existence for less than three fiscal years and shall provide financial statements for the number of fiscal years it has been in existence.

Financial statement information must include:

- Opinion Letter (Auditor's Report), required for those financial statements that are audited
- Balance Sheet
- Income Statement
- Statement of Changes in Cash Flow
- Footnotes, required for those financial statements that are audited.

In addition, financial statements must meet the following requirements:

a. **GAAP** - Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") or International Financial Reporting Standards ("IFRS"). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.

b. **U.S. Dollars** - Financial statements must be provided in U.S. dollars, if available. If financial statements are not available in U.S. dollars, the Proposer must include summaries of the Income Statements and Balance Sheets for the applicable time-periods converted to U.S. dollars by a certified public accountant.

c. **Audited** – Fiscal year-end financial statements must be audited by an independent party qualified to render audit opinions (e.g. a certified public accountant). If audited financials are

not available for an entity, the Proposal shall include unaudited financial statements for such entity, certified as true, correct, and accurate by the chief executive officer, chief financial officer, treasurer, or similar position of the entity.

d. **English** - Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must be provided with the original financial statement information.

e. **Newly Formed Entity** - If the Proposer is a newly formed entity and does not have independent financial statements, financial statements for the Equity Members shall be provided (and the Proposer shall expressly state that the Proposer is a newly formed entity and does not have independent financial statements).

f. **Guarantee** - If financial statements of a parent company or affiliate company ("Guarantor") are provided to demonstrate financial capability of the Proposer or Equity Members of a newly formed Proposer in accordance with GAAP, additional information regarding the Guarantor shall be provided as specified in this RFP. Proposers shall note that the Authority may, in its discretion and based upon the review of the information provided, specify that an acceptable Guarantor is required as a condition of Contract award.

g. **SEC Filings** - If the Proposer or any other entity for whom financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K, which has been filed since the latest filed 10K.

h. **Notes and Disclosures** – Notes and disclosures to the financial statements shall address any material changes in financial condition as described herein and report any off-balance sheet liabilities.

i. **Credit Ratings** - If available, credit ratings and credit rating reports must be supplied for each Proposer, Equity Member, and Guarantor that submits financial statements with the Proposal. If credit ratings do not exist for any Proposer, Equity Member, or Guarantor that has submitted financial statements with its Proposal, then the Proposal must include a statement specifying that no credit ratings exist for that entity.

SECTION II. MATERIAL CHANGES IN FINANCIAL CONDITION

Information regarding any Material Changes in Financial Condition for the Proposer, each Equity Member, and Guarantor for the past three years and anticipated for the next reporting period must be provided with the Proposal. Financial statements dated more than 12 months prior to the Proposal Due Date shall include a letter from the affected entity's chief financial officer or treasurer or an independent auditor's statement disclosing any Material Change that has occurred or is pending since the date of the financial statements.

If no Material Change has occurred and none is pending, the Proposer, Equity Member, or Guarantor, as applicable, shall provide a letter from its chief executive, chief financial officer, treasurer, or similar position so certifying. At the discretion of the Authority, any failure to

disclose a prior or pending Material Change may result in disqualification from further participation in the selection process.

In instances where a Material Change has occurred or is anticipated, the affected entity shall provide a statement describing the following:

i. Each Material Change in detail;

ii. The likelihood that the developments will continue during the period of performance for the Contract; and

iii. The projected full extent of the changes likely to be experienced in the periods ahead.

Estimates of the impact on revenues, expenses, and the change in equity shall be provided separately for each Material Change as certified by the chief executive, chief financial officer or treasurer or similar position. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of Material Changes.

Where a Material Change will have a negative financial impact, the affected entity shall also provide a discussion of measures that would be undertaken to insulate the habitat mitigation services from any recent material changes and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in each of the 3 completed fiscal years (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

If after the submittal of the Proposal and prior to Contract Award a Material Change occurs the Proposer shall disclose to the Authority said Material Change. Failure to disclose any Material Change that occurred after the submittal of the Proposal may result in disqualification, at the sole discretion of the Authority.

Set forth below is a representative list of events intended to provide examples of what the Authority considers a material change in financial condition. The following list is intended to be indicative only.

a. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;

b. A change in tangible net worth of 10 percent of shareholder equity;

c. A sale, merger or acquisition exceeding 10 percent of the value of shareholder equity prior to the sale, merger or acquisition, which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;

d. A change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;

e. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a

waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;

f. In the current and three most recent completed fiscal years, the affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either:

   i. Incurs a net operating loss;

   ii. Sustains charges exceeding five percent of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or

   iii. Implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10 percent of the then shareholder equity;

g. Other events known to the affected entity, a related business unit or parent corporation of the affected entity, which represents a material change in financial condition over the past three years or may be pending for the next reporting period.

SECTION III. GUARANTOR LETTER OF SUPPORT

If the Proposer or Equity Member of the Proposer Team does not have financial statements or cannot demonstrate the financial capability to complete the Habitat mitigation services, then the affected member may propose a Guarantor that will provide a guarantee covering the performance and financial obligations of the affected entity if awarded the Contract.

The Proposal must identify the proposed Guarantor for the Proposer or its members and shall include the financial information required by this RFP for each proposed Guarantor. The Proposal must include a letter from the chief executive, chief financial officer, treasurer, or similar position of the Guarantor explicitly stating that it will guarantee both the performance and financial obligations of the entity on behalf of which it is providing a guarantee.

If a Proposal proposes a Guarantor in order to demonstrate the financial capability to complete the habitat mitigation services, then the Guarantor's financial information shall be used for purposes of evaluating the affected member's financial capability. Following review of the financial information provided and the letter of support, the Authority may, in its sole discretion, specify that an additional guarantee will be required in order to demonstrate financial capability.

SECTION IV. OFF-BALANCE SHEET LIABILITIES

A letter from the Chief Financial Officer or treasurer of the entity or the certified public accountant for each entity for which financial information shall be submitted, identifying all off-balance sheet liabilities. References to notes in the financial statements are not sufficient for identifying all off-balance sheet liabilities.

SECTION V. CONFIDENTIALITY

For questions or concerns about the confidentiality of sensitive or proprietary information, please refer to Section 4.8 of this RFP.

Attachment C – Minimum Qualifications Checklist

No.	Minimum Requirement	Yes	No
1.	Did the Proposer possess and provide proof of valid and appropriate licensure necessary to perform the Proposed Scope of Work?		
2.	Did the Proposer identify the Key Personnel assigned to manage any engagement awarded pursuant to this RFP and provide their resumes; and Did the Proposer identify key personnel for each of the identified positions in Section 4.5.2 – B. Key Personnel and Staffing Plan?		
3.	Does the resume provided demonstrate that the Key Personnel have successfully completed projects of a similar nature, performing all of the aspects of the Proposed Scope of Work?		
4.	Has the Proposed included a letter of commitment from each identified Subcontractor, including any relevant licenses, positions, and hours that the Subcontractor will work to perform the Proposed Scope of Work?		
5.	Did the Proposer provide all necessary information and forms showing proof of small business participation?		
6.	Did the Proposer affirm in the Transmittal Letter that it has or is able to obtain the required insurance, specified in Section 6.2 of this RFP?		
7.	Did the Proposer provide three (3) references for the firm as required in 4.5.1 (including all required information and/or documentation)? Is at least one of these references a Turnkey mitigation project for a public or a private sector client?		
8.	Did the Proposer provide the names, titles, addresses, telephone numbers, and email address of the: (1) Individuals authorized to negotiate and contractually bind the Proposer? (2) Personnel assigned to manage any contract awarded pursuant to this RFP?		
9.	Has the Proposer confirmed that it has **not** been terminated from another contract for default, and that the Proposer has **not** received a civil judgment or criminal conviction in the past 5 years?		
10.	Did the Proposer manually sign provide all required Forms and Certifications?		
11.	Has the Proposer provided surety or a statement from an insurance company that indicates that the Proposer is capable of obtaining a performance bond and a payment bond for the Project for the amount of 100% of the Contract Price?		

Attachment D – Criteria for Awarding Points for the Proposal

Evaluation Criteria		Maximum Score	Actual Score
1.	**PAST PERFORMANCE AND EXPERIENCE** • How much experience does the proposer's team have in successfully evaluating, selecting, and acquiring potential mitigation sites for large-scale habitat preservation, restoration and creation in the Central Valley of California? • How much experience does the proposer's team have in successfully obtaining Federal and State resource agency approval of proposed large scale habitat preservation, restoration and creation mitigation project? • How much experience does the proposer's team have in successfully designing, constructing and monitoring large-scale preservation, restoration and creation mitigation projects involving similar habitat types to those that would be impacted by the Mitigation services?	50	
2.	**UNDERSTANDING OF PROJECT REQUIREMENTS** **Project Criteria** • How well has the Proposer demonstrated a thorough knowledge of the Authority's needs for habitat mitigation in the habitat mitigation services area? • How well has the Proposer demonstrated a thorough knowledge of what is required to perform the habitat mitigation services? • How well has the Proposer demonstrated that its Proposed Scope of Work will be successful in meeting the Authority's needs? • Does the Proposer have any unique or special techniques, methods, or approaches that will be used in the various functions to make the Proposer more likely to successfully and timely complete the tasks required by the Proposed Scope of Work? • How well has the Proposer demonstrated that its approach to delivering high quality products will be successful and repeatable?	100	

	Organization and Management Plan • How well has the Proposer described how the habitat mitigation services team will work toward the goal of achieving optimal efficiency for delivering the mitigation? • How well does the composition of the Proposer's team provide the required experience levels required to perform the proposed scope of work and successfully achieve the objectives set forth by the Authority? • How well does the team structure as presented in the organizational chart meet the full needs of the Authority? • How much history of working together in the past does the Proposer's team have, and has Proposer demonstrated that such past working arrangements have been successful?	25	
	Key Personnel • How strong are the personal qualifications and professional skills of the Key Personnel nominees for the roles assigned? • How much experience from other projects do individual members of the team have in completing aspects of the proposed Scope of Work? • How much experience in the Central Valley of **California** do individuals in the team have in completing the proposed Scope of Work? • How well can the Project Manager effectively lead and manage the proposed Scope of Work? • How well has the Proposer demonstrated the ability to manage time frames, costs, and issues relevant to successful habitat mitigation delivery?	50	
3.	**SMALL BUSINESS PARTICIPATION** • How well does the approach to Small Business utilization demonstrate the Proposer's responsiveness in meeting the objectives of the Authority's Small Business goals (i.e. 30 percent SB goal which is inclusive of a 10 percent Disadvantaged Business Enterprise (DBE) commitment and a 3 percent Disabled Veterans Business Enterprise (DVBE) goal)?	50	
4.	**FINANCIAL CAPACITY** • How reasonable is the Proposer's Financial Plan for funding the proposed Scope of Work?	25	
	Total	**300**	

Attachment E – Cost Proposal

Example Milestone Payment Schedule

Milestone Description	Completion Date	Amount
		Total:

Attachment F – Mitigation Properties Table

The following potential mitigation properties were studied by the Authority and evaluated by the resource agencies and have been found to be generally suitable as part of an overall mitigation solution for impacts resulting from the F-B section of the HSR Program. The Proposer may involve any combination of these properties in achieving the mitigation needed as identified in Section 4 of the RFP. The Proposer is not restricted to the properties listed on this table. It will be the Proposer's responsibility to ensure CEQA and/or NEPA coverage, as applicable, and resource agency permits for the properties it proposes to use for satisfying the Authority's mitigation needs. Attachment F of this RFP provides an excerpt from the F-B Final EIR/EIS that evaluates potential impacts of implementing the Compensatory Mitigation Plan that was prepared by the Authority's Regional Consultant. Attachment G is the Regional Consultant's scope of services for Fiscal Year 2014/2015. Attachment J of this RFP provides a link to the USFWS's Biological Opinion which includes an incidental take statement for the habitat restoration and creation actions identified for the Fagundes Properties in the Compensatory Mitigation Plan.

Mitigation Site Name	Acres	Location	Mitigation Objective(s) Identified by the Authority
Burr Ranch	40 acres	Guernsey, Kings County	Preservation of existing nesting habitat for Swainson's hawk and western burrowing owl. Maybe potentially suitable for Tipton kangaroo rat translocation with agency approval.
Buena Vista Dairy	2 parcels totaling 715 acres (161 and 554 acres)	Kern County, bounded by I-5 to the west and Taft Highway 119/Old River Road to the north	Vernal pool and seasonal wetland preservation. Preservation for blunt-nosed leopard lizard, Tipton kangaroo rat, Nelson's antelope squirrel, and San Joaquin kit fox.
Yang Properties	316.4 acres	Tulare County, adjacent to the Allensworth Ecological Reserve	Preservation of existing vernal pool habitat. Suitable habitat present for vernal pool fairy shrimp, blunt-nosed leopard lizard, Swainson's hawk, western burrowing owl, Nelson's antelope squirrel, Tipton kangaroo rat, and San Joaquin kit fox.
Staffel Family Trust Property	61.2 acres	Kern County adjacent to the Allensworth Ecological Reserve	Preservation of existing vernal pool habitat. Suitable habitat present for vernal pool fairy shrimp, blunt-nosed leopard lizard, Swainson's hawk, western burrowing owl, Nelson's antelope squirrel, Tipton kangaroo rat, and San Joaquin kit fox.
Davis Property	158 acres	Kern County, east of I-5 near Kern NWR; adjacent to Corcoran Road (to the west)	Preservation of existing vernal pool and seasonal wetland habitats. Suitable habitat present for vernal pool fairy shrimp, blunt -nosed leopard lizard, Swainson's hawk, western burrowing owl, Nelson's

			antelope squirrel, Tipton kangaroo rat, and San Joaquin kit fox. Restoration of seasonal wetlands and some hydrologic connectivity to Kern National Wildlife Refuge.
Fagundes Properties	405 acres (2 parcels)	Kings County, 12 miles north west of Visalia	Restoration of the Cross Creek corridor that supports 5.6 acres of riparian restoration and enhancement; riverine preservation; vernal pool preservation and 8.7 acres of vernal pool restoration. Preservation of existing habitat for vernal pool fairy shrimp, vernal pool tadpole shrimp, California tiger salamander, Swainson's hawk, western burrowing owl, and San Joaquin kit fox. Designated critical habitat for vernal pool fairy shrimp, vernal pool tadpole shrimp, and California tiger salamander is present.
Peck Island Properties	414 acres	Fresno County, between SR 180 and E Annadale Avenue	Restoration/enhancement of riparian habitat that supports nesting for Swainson's hawk, and elderberry shrub, the host plant of the valley elderberry longhorn beetle. Preservation, restoration, enhancement and 2.3 acres of riverine reestablishment. Preservation of existing oak woodlands and 83 acres of oak woodland reestablishment. Creation of 157 acres of riparian habitat, restoration/enhancement of 1.5 acres of riparian habitat.
Panorama Vista Preserve	60 parcels totaling 1044 acres	Kern County, along the Kern River	Riverine preservation; 10 acres of seasonal wetland reestablishment; 45 acres of establishment, 118 acres of restoration/enhancement, and preservation of riparian habitats. Suitable habitat present for preservation of valley elderberry longhorn beetle, blunt-nosed leopard lizard, western burrowing owl, Nelson's antelope squirrel, Tipton kangaroo rat, and San Joaquin kit fox.
River Ranch	362 acres	Kings County; along the Kings River	Reestablishment of 4.3 acres of riverine, reestablishment of 182 acres of oak woodland,

			establishment of 87 acres of riparian, and restoration/enhancement of 34 acres of riparian habitat as well as preservation of riverine, oak woodland, and riparian habitats. Nesting and foraging habitat present for Swainson's hawk.
Smith Offering	2793 acres	BLM – Atwell Island	Potential vernal pool and alkali rain pool reestablishment could be attempted.

Attachment G – Regional Consultant Scope of Work Fiscal Year 14/15

Compensatory Mitigation Plan (CMP)
The Fresno to Bakersfield Regional Consultant (RC) completed a biological CMP that was reviewed and approved by the United States Army Corps of Engineers (USACE), Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and California Department of Fish and Wildlife (CDFW) in Fiscal Year (FY)12/13, and updated for preliminary permit submittals in FY 13/14. The plan includes mitigation goals, mitigation approach, and an outline of specific approaches and techniques that are proposed to be implemented for the loss and modification of sensitive biological resources caused by construction and operation of High-speed Rail (HSR) facilities, including effects on special status species, wetlands, and important other waters of the U.S.

Mitigation Land Identification.
In addition to the properties currently identified in the biological CMP, additional work will be required for all new properties (e.g., the Smith Offering) identified as of July 1, 2014, as prospective mitigation properties (to offset the loss of existing mitigation properties) before the properties can be approved by the permitting agencies (USACE, USFWS, CDFW), including acquiring Permission-to-Enter (PTE), completing vegetation/habitat mapping, California Rapid Analysis Method (CRAM), and wetland delineations, documenting species presence (i.e., vernal pool fairy shrimp dry season sample analysis, wet season fairy shrimp surveys and California tiger salamander aquatic surveys). For those properties currently under evaluation, the RC will continue to perform these tasks, as described above, on a limited basis at the direction of the Authority to update the baseline property prospectuses suitable for review by the appropriate agencies (USACE, CDFW, USFWS) for consideration as a prospective mitigation site. Depending on the results of the USACE Standard Operating Procedures (SOP) process (described below), final agency-approved mitigation ratios/strategies, agency concurrence on the determination of species' presence at the properties currently under evaluation, and continued landowner cooperation, additional mitigation site identification and analysis may not be necessary if the resources and acreages identified at the existing mitigation sites are deemed adequate to fulfill the Project's mitigation requirements. Identification of new mitigation properties after July 1, 2014 is excluded from this scope of work.

USACE SOP.
In support of the permitting process, additional work will be required to complete the USACE SOP process, including repackaging the CMP as a technical memorandum to demonstrate the availability and sufficiency of the existing mitigation properties, followed by coordination and collaboration with USACE to complete the SOP process.

Compensatory Mitigation Plan Revisions.
Following the SOP process, supplemental updates to the CMP may be required in support of future wildlife (USFWS, CDFW) and aquatic resource (USACE, SWRCB) permit submittals. The RC has included scope and budget to prepare two draft submittals to the Authority for each resource, and one draft submittal to the agencies for each resource (i.e., a total of 3 versions of each supplemental submittal). At the discretion of the Authority, tasks related to the supplemental updates to the CMP may be performed by a third party to be identified by the Authority, which will be determined during the RFP process (described below).

Alkali Rain Pool Memorandum.
In support of the proposed vernal pool establishment/ reestablishment requirements, additional work will be required to reinitiate the alkali rain pool study to determine the feasibility of alkaline rain pool establishment/reestablishment (creation/restoration) at a replacement mitigation property (tentatively, the Smith Offering) to offset the loss of Old River Dairy property, where this restoration work was originally proposed.

RFP Support.
In support of the proposed vernal pool establishment/ reestablishment requirements, additional work will be required to reinitiate the alkali rain pool study to determine the feasibility of alkaline rain pool establishment/reestablishment (creation/restoration) at a replacement mitigation property (tentatively, the Smith Offering) to offset the loss of Old River Dairy property, where this restoration work was originally proposed.

- Restoration design (e.g., grading, drainage, and planting plans)
- Success criteria
- Monitoring plan
- Maintenance requirements
- Financial assurances
- Identification of easement holder
- Endowment/Property Analysis Report (PAR) analysis
- Adaptive management strategy
- Reporting requirements

The site-specific mitigation plans for properties acquired for preservation of natural resources will contain the same information as the plans prepared for restoration of natural resources, except that the plans will not address restoration design. These plans will also be prepared by a third party to be identified by the Authority.

The RC will assist the Authority's competitive bid process by preparing requests for proposals, reviewing and evaluating proposal submittals, reviewing mitigation plans developed by the selected contractor(s), documenting site-specific mitigation plans for review and approval by resource agencies, and assisting the Authority in resource agency coordination. For FY14/15, this scope of work will include preparation of requests for proposals and review and evaluation of proposal submittals, review of site-specific mitigation plans, and coordinating deliverables for incorporation into permit submittals.

Key Assumptions.

- In FY 14/15, revisions to the Compensatory Mitigation Plan incorporating site-specific mitigation plans (prepared by a third-party contractor) will be made in support of permit(s) submittal; at the discretion of the Authority, tasks related to the supplemental updates to the CMP may be performed by the third-party contractor to be identified by the Authority, which will be determined during the RFP process.
- The CMP Technical Memorandum will be based on the existing CMP and will not require additional data collection or analysis.

Attachment H – Environmental Impact Report (EIR) Excerpt

The description of the mitigation properties and an assessment of potential impacts from implementing the mitigation identified in the Draft Compensatory Mitigation Plan begins on page 3.7-205 and ends on page 3.7-225 of the Final Fresno to Bakersfield EIR/EIS (Authority and Federal Railroad Administration April 2014). The Biological Resources and Wetlands section can be found by following the link:

final_ERIS_FresBaker_Vol_I_CH3_7_Biological_Resources_Wetlands

Attachment I – Draft Compensatory Mitigation Plan

The Draft Compensatory Mitigation Plan (Authority and FRA November 2013) can be found on the Authority's website by following the link:

http://hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_CheckpointC_Compensatory_Mitigation_Plan_Nov_2013.pdf

Attachment J – Biological Opinion for the Fagundes Property

The USFWS Biological Opinion (USFWS 1 April 2014) about the Fresno to Bakersfield Project can be found on the Authority's website by following the link:

http://hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_USFWS_Biological_Opinion.pdf

Attachment K – Phase 1 Environmental Site Assessment Reports

***Phase 1 reports are considered valid for one year**

Name of Mitigation Property	Assessor's Parcel Number	County	PTE	Date of the Phase I ESA*	Appraisal
Fagundes	014-040-026	Kings	Granted	April 2014	Complete
	014-040-030	Kings	Granted	April 2014	Complete
Staffel	047-040-21	Kern	Granted	March 2014	Complete
Yang	333-050-003	Tulare	Granted	March 2014	Complete
	333-050-004	Tulare	Granted	March 2014	Complete
	333-050-005	Tulare	Granted	March 2014	Complete
	333-050-006	Tulare	Granted	March 2014	Complete
	333-050-007	Tulare	Granted	March 2014	Complete
	333-050-008	Tulare	Granted	March 2014	Complete
	333-050-009	Tulare	Granted	March 2014	Complete
	333-050-010	Tulare	Granted	March 2014	Complete
Davis	045-160-13	Kern	Granted	April 2014	Complete
Burr Ranch	028-220-074	Kings	Renewal in process	April 2014	Complete
Buena Vista Dairy	184-090-24	Kern	Granted	Not completed	In progress
	184-090-37	Kern	Granted	Not completed	In progress
Peck Island	333-041-06	Fresno	Renewal in process	Not completed	Complete
	333-410-26	Fresno	Renewal in process	Not completed	In progress
	333-190-08	Fresno	Renewal in process	Not completed	In progress
	333-410-27	Fresno	Renewal in process	Not completed	In progress
	333-041-18	Fresno	Renewal in process	Not completed	In progress
	333-021-36	Fresno	Renewal in process	Not completed	In progress
River Ranch	004-100-038	Kings	Granted	April 2014	Complete
	004-100-031	Kings	Granted	April 2014	In progress
	004-070-026	Kings	Granted	April 2014	In progress

Forms and Certifications

Form A: Schedule of Subcontractor(s)/ Subconsultant(s)

Names and Addresses of Subcontractor(s)/Subconsultant(s)		Type of Work to be Performed	Small Business Status (Check all that apply)	Previous Year's Annual Gross Receipts
Name:			☐ Yes ☐ No	☐ < $500K
Street Address:				
City, State Zip:			Other Certifications:	☐ $500K-$2 Mil
Phone:				
Fax:			☐ DBE ☐ Micro B ☐ DVBE	☐ $2 Mil-$5 Mil
Tax ID:				
Contact Person:		Age of Firm:		☐ > $5Mil
Email:				
Name:			☐ Yes ☐ No	☐ < $500K
Street Address:				
City, State Zip:			Other Certifications:	☐ $500K-$2 Mil
Phone:				
Fax:			☐ DBE ☐ Micro B ☐ DVBE	☐ $2 Mil-$5 Mil
Tax ID:				
Contact Person:		Age of Firm:		☐ > $5Mil
Email:				
Name:			☐ Yes ☐ No	☐ < $500K
Street Address:				
City, State Zip:			Other Certifications:	☐ $500K-$2Mil
Phone:				
Fax:			☐ DBE ☐ Micro B ☐ DVBE	☐ $2Mil-$5Mil
Tax ID:				
Contact Person:		Age of Firm:		☐ > $5Mil
Email:				

(Add rows/pages as needed)

Attach to this form copy(s) of applicable Small Business Certificates for those Subcontractor/Subconsultants that are designated as Small Business Entities.

Signature of Team Representative

Printed Name

Title

Date

Organization Name, Address, and Telephone

Form B: Organizational Conflicts of Interest Disclosure Statement

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

1. Definition

The Authority's Conflict of Interest Policy defines organizational conflicts of interest as follows:

"Organizational Conflict of Interest" means a circumstance arising out of a Contractor's existing or past activities, business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, affiliates, etc.) that results in (i) impairment or potential impairment of a Consultant's ability to render impartial assistance or advice to the Authority or of its objectivity in performing work for Authority, (ii) an unfair competitive advantage for any Proposer with respect to an Authority procurement; or (iii) a perception or appearance of impropriety with respect to any of the Authority's procurements or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by the Authority (regardless of whether any such perception is accurate).

2. Disclosure

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present or planned interest(s) of the Proposer and its team (including Proposer, Proposer Team members, and all subcontractors identified at the time of the submittal of its Proposal, and their respective personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

3. Explanation

In the space below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid or mitigate any organizational conflicts of interest described herein.

4. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Organizational Conflicts of Interest Disclosure Statement, other than as disclosed above.

_____
Signature

_____
Printed Name

_____
Printed Title

_____
Proposer

Cert. 1: Certification Regarding Miscellaneous State Requirements

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

Proposer Name (Printed)	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in the County and State of

CONTRACTOR CERTIFICATION CLAUSES:

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

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

c. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

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

   1. the dangers of drug abuse in the workplace;
   2. the person's or organization's policy of maintaining a drug-free workplace;
   3. any available counseling, rehabilitation and employee assistance programs; and,
   4. penalties that may be imposed upon employees for drug abuse violations.

e. Every employee who works on the proposed Contract will:

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

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the

Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 *et seq.*)

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

Contracts For Legal Services $50,000 Or More- Pro Bono Requirement - Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10 percent of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

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

Sweat-free Code Of Conduct -

f. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

g. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department

of Justice to determine the contractor's compliance with the requirements under paragraph (a).

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

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Contract, the awarding agency must be contacted immediately for clarification.

   Current State Employees (Pub. Contract Code §10410):

   1. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
   2. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

   Former State Employees (Pub. Contract Code §10411):

   1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
   2. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

   If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Contract void. (Pub. Contract Code §10420)

   Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and

Contractor affirms to comply with such provisions before commencing the performance of the work of this Contract. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 *et seq.*)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Contract. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

   a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

6. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

7. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

8. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

9. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be:

   a. In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;

   b. Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or

   c. Finally determined to be in violation of provisions of federal law relating to air or water pollution.

PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

Cert. 2: Proposer's Small Business Goal Commitment Affidavit

AFFIDAVIT

STATE OF _____ §
§
§
COUNTY OF _____ §

The undersigned, being first duly sworn, deposes and says that:

_____
(Contact Name)

is the Official Representative of

_____,
(Proposer's Name)
the Proposer submitting the foregoing Proposal.

(If the Proposer has not yet been formed, modify this form as appropriate to include the names of all of the Principal Participants and to indicate that the Official Representative is signing the form on behalf of all of the Principal Participants.)

The Proposer has carefully examined all documents that form this Request for Proposals and is aware that California High-Speed Rail Authority (Authority) has established a Small Business goal of 30 percent, inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses for the Project, in conformance with Executive Order S-02-06, Title VI of the Civil Rights Act of 1964, and related statutes and Best Practices of 49 C.F.R. Part 26, as set forth in the Authority's Small and Disadvantaged Business Enterprise Program.

The Proposer will aggressively exercise Good Faith Efforts to the satisfaction of the Authority to meet or exceed the goal of ____ percent, consistent with the Proposer's Proposal regarding small business utilization.

_____
Signature

_____
Printed Name

_____
Title

Cert. 3: Iran Contracting Certification

Section 2200 *et seq.* of the California Public Contract Code prohibits a person from submitting a proposal for a contract with a public entity for goods and services of $1,000,000 or more if that person is identified on a list created by the Department of General Services (DGS) pursuant to Section 2203(b) of the California Public Contract Code. The list will include persons providing goods or services of $20,000,000 or more in the energy sector of Iran and financial institutions that extend $20,000,000 or more in credit to a person that will use the credit to provide goods or services in the energy sector in Iran. DGS is required to provide notification to each person that it intends to include on the list at least 90 days before adding the person to the list.

In accordance with Section 2204 of the California Public Contract Code, the undersigned hereby certifies that

It is not identified on a list created pursuant to Section 2203(b) of the California Public Contract Code as a person engaging in investment activities in Iran described in Section 2202.5(a), or as a person described in Section 2202.5(b), as applicable; or

It is on such a list but has received permission pursuant to Section 2203(c) or (d) to submit a Proposal in response to this RFP for habitat mitigation services.

Note: Providing a false certification may result in civil penalties and sanctions.

Date: _____

Entity: _____

Signature: _____

Printed Name _____

Title: _____

Note: Duplicate this form so that it is signed by the Proposer and all joint venture members of the Proposer.

Cert. 4: Darfur Contracting Act Certification

Pursuant to Public Contract Code section 10478, if a Proposer currently or within the previous three (3) years has had business activities or other operations outside of the United States, it must certify that it is not a "scrutinized" company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, please complete only **one** of the following three paragraphs (via initials for Paragraph No. 1 or Paragraph No. 2, or via initials and certification for Paragraph No. 3):

1. _____ Initials We do not currently have, or we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. _____ Initials We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

OR

3. _____ Initials We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company below as defined in Public Contract Code section 10476.

CERTIFICATION for Paragraph No. 3

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the Proposer to the clause listed above in Paragraph No. 3. This certification is made under the laws of the State of California.

Proposer Name (Printed)	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in the County and State of

Cert. 5: Major Participant Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Certification

Primary Covered Transactions

This certification applies to the offer submitted in response to this solicitation, and will be a continuing requirement throughout the term of the contract.

In accordance with the provisions of Appendix A to 49 C.F.R. Part 29, the Proposer certifies to the best of its knowledge and belief, that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- Have not within a 3-year period preceding this offer been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with commission of any of the offenses enumerated in item b of this certification.
- Have not within a 3-year period preceding this offer had one or more public transactions (Federal, state, or local) terminated for cause or default.

(Mark one, below, with an "x")

☐ Certify to the above ☐ Cannot certify to the above.

If the "cannot certify" box is checked, attach an explanation of the reasons.

The Proposer shall require any subcontractor, at any tier, whose contract is equal to or greater than $25,000 to complete this certification form and retain this requirement throughout the term of the contract. A copy of a certification, for subcontractors, shall be furnished by the Contracting Officer upon request (see Cert. 6).

	Organization Name, Address, and Telephone
Signature of Person Certifying	
Printed Name	
Title	
Date	

Cert. 6: Subcontractor Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Certification

Lower Tier Covered Transactions

This certification applies to a subcontract at any tier expected to equal or exceed $25,000, and will be a continuing requirement throughout the term of the contract.

In accordance with the provisions of Appendix B to 49 C.F.R. Part 29, the prospective lower-tier participant (subcontractor) certifies to the best of its knowledge and belief, that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- Have not within a 3-year period preceding this offer been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with commission of any of the offenses enumerated in item b of this certification.
- Have not within a 3-year period preceding this offer had one or more public transactions (Federal, state, or local) terminated for cause or default.

(Mark one, below, with an “x”)

☐ Certify to the above ☐ Cannot certify to the above.

If the “cannot certify” box is checked, attach an explanation of the reasons.

Signature of Person Certifying

Printed Name

Title

Date

Organization Name, Address, and Telephone

Cert. 7: Non-Collusion Affidavit

State of _____ §
§
§
County of _____ §

The undersigned declares:

I am the _____ of _____ ,
(Position / Title) (Company)

the party making the foregoing Proposal, and that the Proposal is:

- NOT made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation
- Genuine and NOT collusive or a sham.

That the Proposer has NOT directly or indirectly induced or solicited any other Proposer to:

- Put in a false or sham Proposal; and
- Colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from bidding.

That the Proposer has NOT, in any manner directly or indirectly, sought by agreement, communication or conference with anyone to:

- Fix the Price Proposal of the Proposer or any other Proposer, or
- Fix any overhead, profit, or cost element, or that of any other Proposer, or
- Secure any advantage against the public body awarding the contract or anyone interested in the proposed contract.

That all statements contained in the Proposal are true.

The Proposer has not and will not, directly or indirectly, for the purposes of effectuating a collusive or sham negotiation, submitted his or her schedule of rates or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, for payment to any corporation, partnership, company, association, organization, bid depository, or any member or agent thereof.

I have the full power to execute, and do execute this declaration on behalf of

_____
(Proposer)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the _____ day of _____ , 20 _____ at _____ , _____ .
(City) (State)

_____
Signature of Affiant

Subscribed and sworn to before me on this _____ day of _____ , 20 _____

at _____ , _____ .
(City) (State)

Seal of Notary Public or Officer Taking Oath

_____
Signature of Notary Public or Officer Taking Oath

Cert. 8: Equal Employment Opportunity Certification

To be executed by the Proposer, all joint venture members of the Proposer, and all Subcontractors.

The undersigned certifies on behalf of _____ that:

_____
(Name of entity making certification)

Check one of the following boxes:

☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

Check one of the following boxes:

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114, or 11246, and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not the Proposer, relationship to the Proposer: _____

Cert. 9: Non-Discrimination Certification

In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. § 2000d, the Proposer agrees that it will not discriminate against any individual because of race, color, national origin, or sex in any activities leading up to or in performance of the contract for habitat mitigation services.

	Organization Name, Address, and Telephone
Signature of Person Certifying	
Printed Name	
Title	
Date	

Cert. 10: Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that the following are true:

- No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this ____day of _____, 20 _____.

Company Name: _____

By: _____
(Signature of Company Official)

_____
(Title of Company Official)

Note:
1) If Joint Venture, each Joint Venture member shall provide the above information and sign the certification.